

No. 523, A.]

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CHAPTER 293.

AN ACT to repeal chapter 340 and chapter 726 of the laws of 1913 and chapter 272 of the laws of 1917 and conferring civil and criminal jurisdiction on the county court of Monroe county.

The people of the state of Wisconsin, represented in Senate and Assembly, do enact as follows:

SECTION 1. There is hereby conferred on the county court of Monroe county, jurisdiction in all civil actions and proceedings in law and in equity, concurrent with and equal with the jurisdiction of the circuit court in said county, for all claims, demands and sums and to and concerning all property, not exceeding the sum or value of ten thousand dollars; provided, that said county court shall have jurisdiction of all actions in said county for the foreclosure of mortgages and mechanic liens, in which the amount claimed does not exceed the sum above mentioned, although the property to be affected by the judgment exceeds the sum of ten thousand dollars in value; and of all actions for divorce or for affirmation or annulment of marriage contracts; and all actions for removing clouds and quieting title to real estate and all actions for partition of real estate; and in all bastardy actions and in all criminal cases except treason, murder, manslaughter and homicide; and to the amount and within the limits aforesaid the said county court shall be a court of general jurisdiction, with the same power and jurisdiction in all civil and criminal actions and proceedings, and including the power of review of records on certiorari, discharging mortgages of record, and such other special powers as are now or may hereafter be conferred by the statutes upon the circuit court, coming within the above limitations, as belong to and are exercised by the circuit court in and for said county.

SECTION 2. All actions commenced before a justice of the peace in Monroe county, where the title to lands will come in question, and which were heretofore required by law to be sent and certified to the circuit court, may hereafter at the election of the party making the plea or answer showing that the title of lands will come in question, be sent and certified either to the circuit court or to the county court.

SECTION 3. Appeals from judgments of justices of the peace in said county, may hereafter be taken either to the circuit court or county court of said county at the option of the appellant, and if taken to said county court such appeal shall be tried and determined therein in the same manner as is by law required in the

circuit court of Monroe county, in force at the time of said trial, and all laws providing for taking appeals in civil actions from justices of the peace or justices' courts of said county, shall hereafter be construed to apply equally to such appeals when taken to said county court.

SECTION 4. The said county court, within the limits aforesaid, shall be a court of record, with a clerk and seal, and shall have full power and authority to issue all writs and legal process, proper and necessary to carry into effect the jurisdiction conferred by this act and the laws of this state, and to carry out such jurisdiction shall have and exercise all powers now possessed, or which may hereafter be possessed by the circuit courts of this state, and the same proceedings shall be had by the parties to procure such writs and process as in circuit courts and such writs and process shall be issued, executed and returned in the same manner and with like effect as in the circuit courts.

SECTION 5. All examinations, recognizances and commitments from or by any examining magistrate of said county in bastardy cases and in all criminal actions, except charges of treason, murder, manslaughter and homicide, shall be certified and returned to such county court, instead of to the circuit court for said county, within the time prescribed by law, and the attendance of witnesses upon the trial of any person so committed shall be secured in the same manner as provided by law in the circuit court, and said court shall have power to appoint any attorney or counselor to defend a person charged with any offense in the same manner and upon the same conditions as the circuit court may now or hereafter appoint any attorney or counselor to defend persons charged with any offense.

SECTION 6. Every issue of law in any civil action or proceeding in said court, and every issue of fact in any action heretofore cognizable only in a court of equity, shall be tried by the court, but the court may order such issue of fact tried by a jury; every issue of fact, in a civil case properly triable by a jury, and not heretofore cognizable in a court of equity, shall, on demand of either party, as hereinafter provided, be tried by a jury of not less than twelve persons, unless a less number be agreed upon by the parties, and if no jury be demanded by either party, shall be tried by the court. Every criminal action shall be tried in the same manner as in the circuit court, unless a jury is expressly waived as herein provided.

SECTION 7. 1. The county judge shall have all the jurisdiction and powers that are now or hereafter may be conferred upon the justices of the peace in said county in all civil and criminal actions and proceedings and the power to hear and determine

all such cases although the title to land may come into question therein, but shall not have the power to hold preliminary examinations in bastardy actions or in criminal cases.

2. All provisions of law which may at any time be in force relative to justices' courts, to actions and proceedings and judgments therein, and appeals therefrom, in civil and criminal cases, shall apply to said county court, so far as applicable, except as otherwise provided in this section.

3. The phonographic reporter, when directed by the court or presiding judge thereof shall report the proceedings of trials as in other cases, and no charge shall be made against the parties therefor, unless a transcript is furnished under the provisions of section 23 of this act.

4. The clerk of said court shall keep a justice docket, shall have the care and custody of all books, papers and records therein, shall be present at all trials, shall administer oaths, shall issue process as in other cases, shall tax the costs, and perform all other clerical and ministerial duties required of and imposed upon justices of the peace in such cases, and perform all such duties by and under the direction of the judge of said court. For all services so performed he shall receive the same compensation a justice of the peace would receive, except he shall receive nothing for taking testimony and his fees shall in no case exceed five dollars.

5. All fines and all costs collected by the clerk in every civil action and in all criminal prosecutions and proceedings under the general statutes of this state tried or determined by the county court, which, if tried or determined by a justice of the peace would be paid over to the county treasurer, shall be accounted for and paid over quarterly by the clerk of said county court unto the county treasurer of the county of Monroe.

6. Costs and fees shall be taxed and allowed in the same amount as would be allowed in justice court, except clerk's fees shall be taxed at a sum not to exceed five dollars and the taking down of evidence shall not be charged for or taxed.

7. The fees of the witnesses, jurors and officers shall be the same as would be allowed in justice court for similar services except when otherwise provided.

8. The judge of said court shall be disqualified to hear or determine any case in which he shall have acted as counsel for either party, except by agreement of the parties.

9. In case of the disqualification of said judge to hear, try or determine any case, or in case of his disability, sickness or temporary absence, or in case of a change of venue from him in any case, he shall by an order in writing filed and recorded in

said court, appoint some court commissioner of the county not otherwise disqualified, to discharge the duties of such judge relative to such action or proceeding, or during such disability, sickness or temporary absence. The court commissioner so appointed shall in every case have all the powers of such judge over the actions and proceedings that may come before him. He shall receive for his services the sum of five dollars per day to be paid out of the county treasury.

10. When acting under the provisions of this section said court shall not be a court of record and no state tax shall be collected on cases commenced in said court by virtue of this section.

11. The provisions of this section shall apply only to actions and proceedings within the jurisdiction of justices of the peace and to no other action or proceedings whatsoever. And no other section of this act shall have any application whatsoever to actions or proceedings within the jurisdiction of justices of the peace; provided, that an appeal may be taken to the supreme court from all judgments in civil actions in which the amount involved is more than twenty dollars, exclusive of costs, and from judgments in criminal actions, all within the jurisdiction of justices of the peace in the same manner and in accordance with the provisions of section 9 of this act.

12. Whenever any civil or criminal action or other proceeding exclusive of preliminary examinations in criminal cases and bastardy actions, shall be removed from any justice of the peace of said county of Monroe upon the oath of the defendant, his agent or attorney according to the provisions of law for such removal, if said defendant, his agent or attorney, or the district attorney or other prosecuting officer, shall request in writing to said justice that the said action or proceeding be removed to said county court, then such action or proceeding and all papers therein shall be transmitted by mail or otherwise to the said county judge at the city of Sparta in said county, who shall then proceed with such action or proceeding in the same manner as if originally instituted before him; and when any criminal action is removed to said county court in the manner provided in this section, the justice of the peace before whom the same was originally brought, may, without the consent of either party, adjourn such action not exceeding three days for hearing before said county court and admit the defendant or defendants to bail to appear before said county court on such adjourned day and from time to time thereafter until discharged by law.

SECTION 8. All judgments, orders and decrees, made and entered in and by said county court, shall have the same force.

effect and lien, and be executed and carried into effect and enforced as judgments, orders and decrees, made and entered in the circuit court, and all the remedies given, and proceedings provided for the collection and enforcement of the judgments, orders and decrees of the circuit court, shall apply to and be exercised by and pertain to said county court.

SECTION 9. All orders and judgments of said county court including judgments in actions or proceedings within the jurisdiction of justices of the peace as provided in paragraph 11 of section 7 of this act may be viewed by the supreme court in the same manner and with like effect that judgments and orders of the circuit court may be reviewed; and the supreme court shall have the same power and jurisdiction over such actions, proceedings, orders and judgments as it has over actions, proceedings, orders and judgments in the circuit court of said county, and the parties shall have the same rights to writs of error and appeal from said county court to the supreme court of this state as now, or may hereafter be, allowed by law from circuit courts of this state and may demand and shall be entitled to receive from the judge of said county court a bill of exceptions or case, have the same settled in the same manner and under the same restrictions as in the circuit court and the same shall be heard and settled within the same time as now required or may hereafter be required in the circuit court, by law or the rules and practice of said circuit court or of the said county court relative thereto.

SECTION 10. There shall be held at the county seat of said county five general terms, a term on the second Monday of each of the following months, to wit: December, February, May, August and September of each year; special terms of said court may be called and held by order of the judge of said court, a copy of which order shall be mailed at least fifteen days before such special term to each of the practicing attorneys of said county. All such special terms of said court shall be held at the county seat of Monroe county aforesaid. After an action or proceeding commenced or pending in said court has been noticed and placed on the calendar it shall not be necessary for either party to notice the same for trial at any subsequent term, but the clerk shall place the same on the calendar according to the nature and date of the issue or issues then or thereafter formed therein until it shall be tried or otherwise finally disposed of. Any trial, hearing, argument or assessment which shall have been commenced during any term, but shall not have been concluded before the commencement of any subsequent term, shall be continued and proceeded with at any subsequent term in the

manner and with like effect as though it had been commenced at such subsequent term.

SECTION 11. Judgment may be had and entered in vacation in said county court, subject to the limitations of the jurisdiction of said court, if the defendant fails to answer the complaint, in the same manner and in like cases wherein judgments may now be had and entered in the circuit court in vacation, and the clerk of said court shall have the same powers and authority relative thereto as he has by law or otherwise in circuit court.

SECTION 12. If the judge authorized to hold such court shall not attend for that purpose before two o'clock in the afternoon of the day appointed for such court to meet, it shall be the duty of the sheriff or the clerk to adjourn said court from day to day for three days unless the judge shall sooner appear; and if the judge does not appear within that time, the court shall stand adjourned for the term, and all cases continued until the next term of such court. Any circuit judge or any county judge of a county court having civil jurisdiction may hold court in event of the absence, sickness or other disability of the judge of said county court upon the request of the judge thereof, and while so doing he shall have the same power as if elected judge of said county court.

SECTION 13. The provisions of law applicable to change of venue in the circuit courts of this state, shall be applicable to said county court, except that when the venue of any action shall be so changed, it shall be changed to the circuit court of Monroe county: and such change of venue shall not prevent the granting by said circuit court of a further change of venue as provided in section 2622 of the statutes; provided, however, that nothing herein contained shall be construed as abrogating the right to a change of venue provided by section 2621 of the statutes, and when such change of venue shall be made, it shall be made by said county court direct to the proper county for the trial of the action, and, provided further, that section 2625 of the statutes so far as applicable shall apply to said county court, and that the judge thereof shall have the right to call upon any circuit judge or any county judge of a county court having civil or criminal jurisdiction of like subject matter to attend, hold court and try such action, and while so doing he shall have the same powers as if elected judge of said county court. But the judge of said county court shall have and retain jurisdiction over all other actions and proceedings, and may exercise such jurisdiction and hold court and try such actions and proceedings at the same time the judge called in is trying the action so transferred to

him. If any person charged upon indictment or information with a criminal offense shall have procured a change of venue to the circuit court of Monroe county, said county court shall commit or hold the party to bail to appear at the next term of the circuit court, and the clerk of said county court shall transmit all papers and a copy of the records and proceedings in said case, properly certified to be such under the seal of said court, to the said circuit court, which shall then have full jurisdiction of the action; all recognizances previously given in such cases, and returned to said county court may be enforced in said circuit court as fully as if they had been originally returned thereto. In like manner shall all such cases which might originally have been brought in said county court or appealed thereto where a change of venue is allowed or directed by the circuit court on the grounds of prejudice of the judge thereof be removed to said county court; provided, however, that nothing herein contained shall be construed as abrogating or abridging the power conferred upon the circuit court by section 2625 of the statutes. In all such cases in either said circuit court or county court if the affidavit shall allege that the circuit and county judges are both prejudiced the case shall be removed to some adjoining circuit unless some other judge shall be called to preside as above provided.

SECTION 14. The judge of the county court shall be disqualified to try and determine any case in which he shall have acted as counsel for either party, except by agreement of the parties, and he shall transmit all such cases to the circuit court of said county; the judge of the county court may also transmit to the circuit court any other case or proceeding before him, if, in his discretion, he deem it expedient; and the circuit court shall thereupon proceed to try and determine the same in the same manner as if said cases or proceedings had originated in the circuit court.

SECTION 15. No judge of said county court, while holding such office, shall be in any manner engaged or act as attorney or counsel in any action, cause or proceeding in or which he has good reason to believe may be brought in the county court of said county, or give advice or opinion therein; and the judge of said court shall not give advice to parties litigant in any action pending before him for decision; or draft or prepare any papers or other proceedings relating to any such matter or action, except when expressly authorized by law, upon penalty for any violation hereof of removal from office.

SECTION 16. 1. Jurors shall be chosen for each term of said court by the same persons and in the same manner as jurors in

the circuit court and all provisions of law, rules and practice relating to the selection, qualifications, duties and compensation of jurors in the circuit court shall be applicable to said county court, except as otherwise provided herein.

2. No jurors shall be summoned to attend upon any term of said court unless it shall appear to the satisfaction of the judge that a jury panel is necessary.

3. At least six days before each term, unless otherwise ordered by the judge, the clerk shall, in the presence of the judge, draw from the list of persons provided therefor, twenty-four jurors for such term and the list so selected shall forthwith be filed in the office of said clerk. If the name of any person known to be disqualified or no longer liable to jury duty in said county be drawn, such name shall be cast out and the name of another juror drawn to take his place.

4. When any criminal action or proceeding is pending at any term of said court the clerk, if requested at least six days before such term by the district attorney, or by any defendant or by the attorney for the defendant in such action, or whenever directed by the judge, shall issue a venire to the sheriff of said county to summon such jurors returnable at such time as the judge may direct.

5. In case the whole panel is not summoned for the trial of any criminal action or for the trial of any action or proceeding in which a jury trial is demanded or ordered, the parties shall strike from the panel of jurors selected for such term, the jury for such action. The district attorney or the plaintiff or plaintiffs shall be entitled to six peremptory challenges and the defendant or defendants to a like number of challenges to be made alternately, the district attorney or the plaintiff first challenging. When either party shall decline to challenge in his turn such challenge shall be made by the clerk by lot. When a jury shall have been selected as aforesaid, or otherwise agreed upon, a venire therefor returnable at such time as the judge may direct shall be issued by the clerk to the sheriff of said county.

6. If any of the jurors named in such venire shall not be found, or shall fail to appear, or if there shall be any legal objection to any that shall appear, or if any of them be excused by the court or parties, the court may direct the sheriff or his undersheriff, or any of his deputies, to summon a sufficient number of talesmen to supply the deficiency; provided, that not more than four such talesmen shall be selected from the residents of one town, city or village, except by consent of parties. The officer summoning the same may insert the names of such talesmen on the venire.

7. If a jury shall be required to make an assessment of damages in any case, the same shall be drawn from the names in such box, or the court may direct the same to be had and taken by any jury summoned in any other case, or may direct the clerk to issue a venire to summon a special jury for that purpose, to be composed of persons qualified to serve as jurors in said court, and unless objections are made, such assessments of damages may be made by the court, or the judge thereof, without the intervention of a jury.

8. The court may set down any case on the calendar for trial on any particular day. When a civil case on the calendar is called, the court may then, or at any time thereafter, require the parties in such action to determine and elect whether they wish a jury, and if both parties elect to try such case without a jury, or if both parties neglect or refuse to so determine or elect at said time, neither party shall be entitled to a trial by jury, but the court may, at its discretion, grant a trial by jury; and if a trial is demanded, the court may then or at any time afterwards direct that a jury be selected as aforesaid in such case, and issue a venire therefor, returnable at the time fixed for the trial of such action. If for any case, in selecting a jury, the panel shall become exhausted the court may cause persons qualified to serve as jurors to be returned from the bystanders or from the county at large for the trial thereof and make the proper and necessary orders therefor.

9. In any criminal actions a jury may be waived by the accused by filing a written waiver or by his consent thereto in open court entered on the minutes.

10. Jurors shall be summoned as in the circuit court, and the county judge may direct at what time jurors shall be summoned to appear.

11. The panel of jurors selected for any term of the county court of said county, under its civil and criminal jurisdiction, shall constitute the panel of jurors for the subsequent and all succeeding terms of court until discharged by the court; but the judge of said court, in his discretion, may order a new panel of jurors to be drawn for the subsequent, or any succeeding term.

SECTION 17. All costs, fees and disbursements shall be taxed and allowed the prevailing party in the same manner and to like amount as they are taxed and allowed in the circuit court, except as hereinafter provided.

SECTION 18. Until otherwise ordered by the county board, the county judge of Monroe county, for performing the duties required by this act, shall receive a salary of six hundred dollars

per annum, to be paid out of the county treasury in equal monthly installments at the end of each month.

SECTION 19. 1. The clerk of the circuit court of said county shall ex officio be the clerk of said county court, and shall have the care and custody of all books and papers belonging to said county court except those that appertain to the probate jurisdiction thereof and shall perform the duties of clerk of said county court in the same manner required of him as clerk of the circuit court, so far as it shall be requisite and necessary to discharge the necessary duties as clerk of said county court, and all other duties necessary to carry into effect the provisions of this act; and the said clerk of the county court shall keep all necessary records of proceedings and judgments had in said county court, in the manner provided in the circuit court or as otherwise in this act provided.

2. On each civil action beyond the jurisdiction of justices of the peace, commenced in or appealed to said county court there shall be paid a state tax of one dollar and an advance clerk's fee of two dollars at the same time and in the same manner as now provided for the payment of state tax and advance clerk's fees for actions commenced in or appealed to the circuit court.

SECTION 20. The deputy clerks authorized by law to be appointed by the clerk of the circuit court of said county, shall also be the deputy clerks of said county court, and may aid said clerk in the discharge of his duties as clerk of said county court and in the absence of the clerk from his office or from the court may perform all his duties and in case of a vacancy by resignation, death, removal or other cause the deputy appointed shall perform all such duties as clerk of said county court until such vacancy shall be filled.

SECTION 21. The sheriff of said county in person or by his undersheriff or one of his deputies, shall attend such court when actually in session for the transaction of court business, other than the probate business, and the court shall designate the number of officers that shall be present when such court is in actual session as aforesaid and such officers shall be entitled to receive the same compensation and payable in like manner as is, or may be provided by law for like service in the circuit court.

SECTION 22. The fees of the clerk, witnesses, jurors and officers shall be the same as are allowed by law to the clerk, witnesses, jurors and officers in the circuit court of Monroe county.

SECTION 23. 1. The judge of said county court may, from time to time, employ a phonographic reporter for said court, and may appoint and remove at pleasure an assistant phonographic reporter, who shall, in the absence of, or during the disability of

the phonographic reporter, have all the powers and perform all the duties of the phonographic reporter.

2. Each of said officers shall take and subscribe the oath of office prescribed in the constitution, and shall be furnished with all necessary stationery, and attend, when required by said judge, and report the proceedings of trials at said court, and perform such duties as the judge may require.

3. Said judge shall fix the compensation of such reporter, not to exceed ten dollars for each day, and five dollars for each one-half day's attendance, which shall be in full compensation for services and for making transcripts from shorthand notes, as may be required by said judge; but, in lieu of the salary herein provided, the county board of said Monroe county may, in its discretion, from time to time, fix the salary of the phonographic reporter of said court, which salary shall be paid at the end of each month. During the time the assistant phonographic reporter shall perform the duties of the phonographic reporter, he shall receive the compensation provided by law for the phonographic reporter, the same to be deducted from the salary of the phonographic reporter.

4. Said reporter and assistant reporter shall furnish parties to an action, or their attorneys, requiring them, transcripts of the testimony and proceedings had at a price not to exceed five cents per folio; and two and one-half cents per folio for copies. Until otherwise fixed by the county board, the per diem compensation of said reporter and assistant reporter shall be paid out of the treasury of the county of Monroe upon the order of the judge.

SECTION 24. Court commissioners for the county of Monroe shall have the same powers and be subject to the same duties in respect to actions and proceedings in said county court as in actions and proceedings in circuit court.

SECTION 25. The seal of the county court of Monroe county shall continue to be used as the seal of said court.

SECTION 26. The county of Monroe shall provide all books, blanks and stationery for keeping the records and proceedings of said county court made necessary by this act; the county court of said county shall be held in the county court room or building, at the county seat of said county, where all books, records and proceedings shall be kept and in event that said room or building for any reason is rendered unsuitable or unsafe the county board shall procure, provide and furnish other suitable room or rooms at said county seat for holding court and for the offices of the judge and clerk of said court.

SECTION 27. All fines and all costs collected by the clerk in every civil action and in all criminal prosecutions and proceedings under the general statutes of this state tried or determined by the county court, which if tried or determined by the circuit court or circuit judge would be paid over to the county treasurer, shall be accounted for and paid over quarterly by the clerk of said court unto the county treasurer of the county of Monroe.

SECTION 28. The general provisions of the statutes of Wisconsin, and all the general laws which may at any time be in force relative to the circuit courts and actions and proceedings therein, in civil and criminal cases, shall apply also to said county court, unless inapplicable, and except as otherwise provided in this act; and the rules of practice prescribed or which may hereafter be prescribed by the justices of the supreme court for circuit court, shall, unless inapplicable, be in force in said county court, and the judge of said county court shall have power to punish for contempt in the same manner that the judges of circuit courts are or may be authorized by law to punish for contempts; and said county court shall have power to make and enforce such other rules of practice as may be necessary.

SECTION 29. In all matters, examinations or proceedings of which the county court and the judge thereof has jurisdiction, independent of this act, it shall be lawful for the county judge to charge and receive the same fees and per diem as are allowed by law for like services, to be paid in like manner.

SECTION 30. Whenever the court shall find, in any action or proceeding brought under the provisions of section 7 of this act or any other action or proceeding to be tried by the court, without a jury, that the interests of the parties and the convenience of witnesses will be promoted by the trial of any such action or proceeding at the city of Tomah in said county, the court in its discretion may adjourn any such action or proceeding for trial within the said city of Tomah on any date as shall suit the convenience of the court.

SECTION 31. Chapter 340 and chapter 726 of the laws of 1913 and chapter 272 of the laws of 1917 are hereby repealed.

SECTION 32. This act shall take effect upon passage and publication.

Approved June 5, 1919.