

No. 341, S.]

[Published June 26, 1929.]

CHAPTER 217

AN ACT to amend, revise and consolidate chapters 136 and 663 of the laws of 1917, chapter 56 of the laws of 1919, chapters 368 and 546 of the laws of 1921, chapter 188 of the laws of 1923, chapters 7 and 33 of the laws of 1925, relating to the superior court of Dane county.

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

Chapters 136 and 663 of the laws of 1917, chapter 56 of the laws of 1919, chapters 368 and 546 of the laws of 1921, chapter 188 of the laws of 1923, chapters 7 and 33 of the laws of 1925 are hereby amended, revised and consolidated to read:

SECTION 1. The superior court of Dane county is, and shall be known and understood as, the court created and established by chapter 136 of the laws of 1917 with powers and jurisdiction hereinafter specified and provided.

SECTION 2. The superior court of Dane county shall be a court of record with a seal to be designated and procured by the judge thereof at the expense of the county of Dane.

SECTION 3. Said superior court shall be held in the city of Madison in some suitable room or rooms to be furnished and supplied at the expense of the county under the direction of the county board thereof.

SECTION 4. No person shall be eligible to the office of judge of the superior court unless he be a practicing attorney duly admitted to the bar of Dane county and a qualified elector of said county.

SECTION 5. On the first Tuesday of April, 1926, and on the first Tuesday of April every six years thereafter there shall be elected in the county of Dane, in the same manner as county judges are elected, a judge of the superior court who shall hold his office for the term of six years thereafter, beginning the first Monday of January succeeding his election and continuing until his successor is elected and qualified, and shall be subject to removal from office in the manner provided by the constitution of this state for the removal of judges of the circuit court. The nominations of candidates for superior judge shall be made in the same manner as provided for county judges.

SECTION 6. The superior judge, before entering upon the duties of his office, shall take and subscribe the constitutional oath of office and file the same in the office of the clerk of the circuit court for Dane county.

SECTION 7. Whenever a vacancy shall happen in the office of the superior judge after the first day of May, 1926, the governor shall appoint a suitable person, duly qualified, to fill such vacancy until a successor is elected and qualified; elections to fill vacancies for the residue of the term shall be held and notice thereof given in the same manner as for the election of a county judge.

SECTION 8. From and after the first day of April, 1919, the superior judge shall receive a salary of five thousand dollars per year, payable monthly, until otherwise fixed by the Dane county board, but which salary shall not be less than five thousand dollars per year, two-thirds of the same to be paid out of the county treasury of Dane county, and one-third to be paid out of the city treasury of the city of Madison, until otherwise apportioned by the county of Dane and the city of Madison jointly.

SECTION 9. The present judge of the superior court for the county of Dane shall continue in office as judge of the Superior court of the said Dane county under this act until the expiration of the time to which he was elected, to-wit, the first Monday of January, 1933, and until his successor is elected and qualified.

SECTION 10. 1. The superior court of Dane county shall have jurisdiction equal to and concurrent with the circuit court of Dane county in all cases of crimes and misdemeanors arising in said county, excepting the crime of treason, and in all civil actions and proceedings, in law and equity, except in actions and proceedings in which it is sought to recover a sum in excess of one hundred thousand dollars, exclusive of interest and costs. In the exercise of such jurisdiction, such court shall have all the powers, according to the usages of law and equity, necessary to the full and complete jurisdiction of the causes and parties and the full and complete administration of justice and to carry into effect its judgments, orders and other determinations, subject to re-examination by the supreme court as provided by law.

2. All the provisions of law relating to the circuit court and the judges thereof and to the trial of civil actions and proceedings therein shall apply to the superior court and the judge thereof in the exercise of the jurisdiction conferred by this act, so far as applicable, except as otherwise herein provided, and when-

ever the term "circuit court," "circuit judge," "court," "presiding judge of the circuit court," "judge of the circuit court," "presiding judge" or "judge" shall appear in any statute of the state the same shall be deemed to apply to the superior court and superior judge in any action within the jurisdiction of said superior court, except as herein otherwise provided.

3. No costs shall be recovered in any civil action in the superior court over which a justice of the peace has jurisdiction.

4. No justice of the peace or court commissioner within the city of Madison shall exercise any jurisdiction in criminal or bastardy cases, but all such jurisdiction is vested in said superior court and in the circuit court for Dane county. All examinations, recognizances and commitments from the superior court and from the justices of the peace of said county, in criminal cases and in bastardy cases, shall be certified and returned to the superior or the circuit court for Dane county for trial in the discretion of the superior judge or the justice of the peace as the case may be at or before the time fixed for the appearance of the accused, and all other papers except the criminal docket record; the said superior court shall have concurrent jurisdiction with the circuit court of Dane county to try and determine all criminal cases, except the crime of treason; and the accused shall be committed to appear, or recognized to appear, before said superior or circuit court on a day certain, not more than thirty days from the date of such commitment or recognizance. The said superior court shall have concurrent jurisdiction with the circuit court of Dane county to try and determine appeals to such superior court in all cases where appeals are taken from justices' courts of Dane county. Said superior court shall also have jurisdiction concurrent with the circuit court of all actions brought for the breach of any recognizance given in said court.

SECTION 11. The general provisions of law which may at any time be in force relative to circuit courts, and actions and proceedings therein, and appeals therefrom to the supreme court, shall relate also to said superior court, unless inapplicable, and the rules of practice prescribed by the justices of the supreme court for circuit courts shall be in force in said superior court, and its rules of practice and proceedings shall conform, as near as practicable, to the rules and practice of circuit courts, except as herein otherwise provided.

SECTION 12. The superior court in addition to the powers vested in the superior court as aforesaid, is vested with all the powers and jurisdiction of a justice of the peace in said county, in criminal actions and proceedings, and exclusive jurisdiction of all prosecutions for breach of the charter or of any ordinance or by-law of the city of Madison, and, to exercise such jurisdiction, shall hold the superior court as courts are held by justices of the peace, and the clerk of said superior court shall act as the clerk of said court when it is held as a justice court and when the judge thereof is sitting as an examining magistrate, and is hereby authorized and empowered to administer oaths and perform the other duties of his position the same as when the said superior court is sitting as a court of record. The general provisions of law relative to criminal actions before justices of the peace shall apply to said court so far as applicable. Said judge shall open court each morning (Sundays and legal holidays excepted), and hear and dispose of, in a summary way, all cases for violation of the charter, ordinances and by-laws of said city which shall be brought before him by police officers, or otherwise, either with or without process. Proceedings therein shall be in the forms heretofore used, except as modified by said judge, and the city attorney shall be the prosecuting officer therein. All the provisions in the charter and ordinances of the city of Madison relating to the police justice or criminal prosecutions, not inconsistent or contradictory hereto, shall be applicable to said superior court.

SECTION 13. The provisions of law applicable to change of venue in the circuit courts of this state shall be applicable to all civil actions and proceedings in said superior court, except that when the venue of any action shall be so changed, it shall be changed to the circuit court of Dane 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 261.04 of the statutes. Nothing herein contained shall be construed as abrogating the right to the change of venue provided for by section 261.03 of the statutes, and when such change of venue shall be made it shall be by said superior court direct to the proper county for the trial of the action, and section 261.08 of the statutes so far as applicable shall apply to said superior court. The judge of said court may call upon a circuit judge to attend, hold court and try such action and while so doing such circuit judge

shall have the same powers as if elected judge of said superior court.

SECTION 14. Civil and criminal actions and proceedings shall be heard at regular terms of the superior court of Dane county to begin at ten o'clock in the forenoon on the first Monday in each month except July and August. For such matters such court shall be open for business on all secular days, except as the judge thereof may otherwise order, from the commencement of any regular term until the next regular term and no adjournment from day to day shall be necessary to the validity of any proceeding in said court under this act. All trials, proceedings, hearings, motions, orders, arguments, and unfinished business of every kind and nature of each term shall, without any order of the court, be and stand continued to the next succeeding term and shall be heard and disposed of at such time as the judge may decide. All motions for a new trial on the judge's minutes may be made at any time during the term at which the case was tried or at any time within five days after the expiration of the term at which the verdict was rendered. Motions for new trials not decided at the same term or the next succeeding term after which they were made shall be taken as overruled.

SECTION 15. The judges of the circuit court for Dane county or either of them and the judge of the superior court of said county may transfer any civil or criminal action or proceeding from one such court to the other within the jurisdiction of the court to which same is transferred, with the consent of the parties to the action and may make such rules and institute such measures as may promote justice and expedite the business of such courts.

SECTION 16. 1. Either of the judges of the circuit court for Dane county or the county judge of said county may hold court as the judge of the superior court of such county in case of the absence, sickness, disqualification or disability of such superior judge, or upon his request. Any judge so called in or acting for the superior court shall have the same powers as if elected the judge of said court.

2. Such superior judge may with the consent of the parties to the action or proceeding hold court as the judge of the circuit court for Dane county upon the request of the presiding judge of said court or in case of the absence, sickness, disqualification or

disability of such circuit judge, in cases within the jurisdiction of said superior court.

3. In case of the absence, sickness or temporary disability of said judge, he may, by order in writing to be filed in said court, appoint a justice of the peace of said county, to discharge the duties of such judge during such absence, sickness or disability, who shall have all the powers of such judge while administering such office, except the trial of informations, or appeals, and actions, over which a justice court has no jurisdiction. And the clerk shall make a like record of his proceedings. Such justice of the peace shall receive for his services five dollars a day to be paid by said county; provided, however, that any and all sums in excess of two hundred dollars to be paid to any such justice or justices as aforesaid in any one year shall be paid by the said superior judge.

SECTION 17. In case of the sickness, absence, or inability arising from any cause, of the county judge of Dane county, or when said judge for any cause deems it improper for him to hear or try any proceeding in the county court for Dane county, or before him as judge of said court, he may request the superior judge of said county to hold court or hear and try any matter or proceeding as a court or as a judge of said court in the Dane county court; and the said superior judge is hereby authorized and empowered upon such request from the county judge to hold said county court or perform any act as judge thereof as fully as said county judge is authorized or empowered to do. In case of the inability of such county judge to make such request, or in case of a vacancy in such office, said superior judge shall so act and fulfill the duties of such county judge, and said superior judge when so acting shall be designated in such proceeding as "acting county judge." Such superior judge shall have and is hereby given concurrent jurisdiction with the judge of the county court of Dane county, and is hereby given full power, as to all matters in which such county judge is authorized to act (1) in relation to feeble-minded persons as provided in chapter 52 of the statutes, (2) in relation to the relief and support of the poor as provided in chapter 49 of the statutes, and (3) in relation to neglected or abused children as provided in chapter 48 of the statutes.

SECTION 18. The judge of said court shall have the same powers to appoint court commissioners as circuit court judges,

and the commissioners so appointed shall have the same powers relating to actions in the superior court as circuit court commissioners have relating to actions in the circuit court.

SECTION 19. All appeals in any action or proceeding tried or determined in the superior court of Dane county shall be taken to and reviewed by the supreme court in the same manner as appeals from orders and judgments of the circuit court, except that appeals in actions involving a breach of the charter or of any ordinance or by-laws of the city of Madison shall be taken to the circuit court for Dane county.

SECTION 20. 1. The jury commissioners appointed by the circuit judge shall also act as jury commissioners of the superior court. The superior judge shall notify the jury commissioners to certify two lists of not less than one hundred names each of citizens qualified to act as jurors in the circuit court; one of said lists to be selected from citizens of the city of Madison, and the other list to be selected from citizens of the city of Madison and the county at large, and no name shall be placed in both boxes at the same time. When either list becomes reduced the superior judge shall order said jury commissioners to replenish the list, and the jury commissioners shall certify, as before, sufficient names to bring the total up to not less than one hundred. The names of each juror certified shall be written on a slip of paper and deposited in boxes to be provided for that purpose by the clerk, one of said boxes to contain the list of city jurors and the other box to contain the list of jurors selected from the city of Madison and the county at large. In all civil and criminal actions by stipulation of the parties, the jury may be drawn from the jury box containing the names of jurors drawn from the city of Madison.

2. The judge of said court shall have power to make all such rules for conducting the judicial business of said court as he may deem advisable for the due administration of justice.

3. Whenever a panel of jurors chosen from the county at large shall be in attendance upon either the circuit or the superior court for Dane county, jurors for both of said courts may be drawn from said panel with like effect as if the panel has been drawn for service in the court in which the jury is empaneled.

4. Jurors shall receive the same compensation as in the circuit court and shall be paid on the order of the clerk of the superior

court out of the treasury of Dane county in the same manner as in circuit court.

5. When the court is held as justice court for the trial of criminal cases and a jury of six be demanded the jury shall be drawn from the city of Madison jury list box and the clerk shall issue the venire for the jury so drawn.

SECTION 21. 1. The clerk of the circuit court of said Dane county shall ex officio be the clerk of the said superior court in civil actions and proceedings not otherwise cognizable by justices of the peace, and shall have the care and custody of all books and papers belonging to said superior court insofar as they appertain to civil actions and proceedings therein not otherwise cognizable by justices of the peace, and shall in such actions and proceedings perform the duties of the clerk of said superior court in the same manner as is now by law required by him as clerk of the circuit court so far as it shall be requisite and necessary to discharge the duties of clerk of said superior court and to carry into effect the provisions of this act; and as said clerk of the superior court he shall keep in the office of clerk of the circuit court, all necessary dockets, indexes, minute books and other records of the proceedings and judgments had in said superior court in like manner and with like effect as is now provided in the circuit court in civil actions and proceedings; and his fees and compensation therefor shall be the same as are now or may hereafter be provided by law for the fees and compensation of the clerk of the circuit court except as hereinafter limited or provided.

2. Such clerk, with the approval of the judge of the superior court, may appoint the clerk of said superior court as deputy clerk, which appointment shall be in writing and filed in the office of the said clerk of the circuit court. Such deputy shall in all matters pertaining to the superior court aid the said clerk in the discharge of his duties, and in his absence from the said superior court may perform all his duties in said court; or in case of vacancy by resignation, death, removal or other cause, said deputy shall perform all duties in relation to said superior court until such vacancy shall be filled. The said clerk of the circuit court shall give his bond in the sum of one thousand dollars or such other amount as shall be required by the county board of Dane county conditioned as near as may be as his bond as clerk of the circuit court, and the said clerk shall be respon-

sible on said bond for all official default or misconduct of his said deputy arising in any way out of the performance of his duties as deputy clerk of said superior court.

SECTION 22. All judgments, orders and decrees made and entered in and by said superior court shall be filed, recorded, docketed and indexed as shall like judgments, orders and decrees made and entered in and by the circuit court for Dane county, and when so filed, recorded, docketed, and indexed shall have the same force, effect and lien and shall be executed and carried into effect and enforced as judgments, orders and decrees made and entered in said circuit court, and all 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 superior court.

SECTION 23. The said judge of the superior court shall enter an order in writing appointing a suitable person to act as clerk of said court who shall serve at the will of the judge of said court until his successor shall have been appointed and qualified. The clerk so appointed shall subscribe to the oath of office prescribed in the constitution. Said appointment and oath of office shall be filed with the clerk of the circuit court of the county of Dane and a duplicate copy with the city clerk of the city of Madison. Said clerk of the superior court shall receive as compensation the sum of eighteen hundred dollars per annum, until otherwise fixed by the Dane county board, but which shall not be less than eighteen hundred dollars per annum, apportioned and paid monthly, two-thirds out of the treasury of Dane county and one-third out of the treasury of the city of Madison, until otherwise apportioned by the county of Dane and the city of Madison jointly, the same to be in full for all services rendered by said clerk as clerk of the said superior court. When said judge of the superior court is designated as judge of the juvenile court of said county, the clerk of the superior court shall also be the clerk of the juvenile court and shall receive the sum of seven hundred and twenty dollars per annum additional compensation for his services as such clerk of the juvenile court. The clerk of said superior court may with the approval of the judge of said superior court appoint one or more suitable persons to act as deputy clerk or deputy clerks of said court as the Dane county board may provide. The deputy clerk or deputy clerks of said court shall receive such compensation as the Dane county board shall fix, but which compensation

shall not be less than nine hundred dollars per annum each, apportioned and paid monthly, two-thirds out of the treasury of Dane county and one-third out of the treasury of the city of Madison, until otherwise apportioned by the county of Dane and the city of Madison jointly.

SECTION 24. The judge of said superior court shall, by an order in writing filed in court, appoint a regular phonographic reporter who shall serve until his successor is appointed or until removed by the said judge. Such reporter shall take and subscribe the constitutional oath, and shall be furnished with all necessary stationery, and shall attend, when required by said judge, and report the proceedings had in such court, and perform such duties as the said judge shall require. The compensation of the phonographic reporter so appointed shall be two hundred and fifty dollars per month, the same to be paid monthly, out of the treasury of the county of Dane. For transcribing testimony he shall receive the same compensation provided by law for the phonographic reporter of the circuit court for Dane county. The appointment of said reporter shall be filed in writing with the county clerk of Dane county. The reporter so appointed may appoint a deputy as provided in the circuit court for Dane county.

SECTION 25. All fines and costs assessed and paid into said court in state cases shall by the clerk of said court be paid monthly to the county treasurer of Dane county. All fines and costs assessed and paid into said court in city cases shall by the clerk of said court be paid monthly to the city treasurer of the city of Madison.

SECTION 26. This act shall take effect upon passage and publication.

Approved June 24, 1929.

No. 485, A.]

[Published June 26, 1929.

CHAPTER 218

AN ACT to create section 348.085 of the statutes, relating to gambling and providing a penalty.

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

SECTION 1. A new section is added to the statutes to read:
348.085 (1) All devices or things whatever, whereby any per-