

No. 514, A.]

[Published June 23, 1947.]

CHAPTER 303.

AN ACT to amend, revise and consolidate chapter 357, laws of 1891, chapter 191, laws of 1895, chapter 48, laws of 1903, chapter 55, laws of 1911, and chapter 124, laws of 1917, conferring civil and criminal jurisdiction on the county court of Portage county.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

Chapter 357, laws of 1891, chapter 191, laws of 1895, chapter 48, laws of 1903, chapter 55, laws of 1911, and chapter 124, laws of 1917 are hereby amended, revised and consolidated to read:

SECTION 1. (1) There is hereby conferred on the county court of Portage county jurisdiction in all civil actions and proceedings in law and equity, concurrent with and equal with the jurisdiction of the circuit court in said county, for all claims, demands and sums to and concerning all property, not exceeding the sum or value of \$15,000. Said county court shall have jurisdiction of all actions in said county for the foreclosure of mortgages, mechanics liens, land contracts and actions for specific performance of contract 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 \$15,000 in value; and of all actions for divorce or for affirmance 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 illegitimacy actions and in all criminal cases except murder and treason; 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, 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 statute upon the circuit court, coming within the above limitations, as belong to and are exercised by the circuit court in and for said county.

(2) The said court shall also have exclusive jurisdiction of all prosecutions and actions arising under the charter of the city of Stevens Point and under the ordinances, rules and by-laws of said city and under the ordinances of Portage county.

SECTION 2. All actions commenced before a justice of the peace in Portage 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 Portage 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 processes 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 an examining magistrate of said county in illegitimacy cases and in all criminal actions except murder and treason 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 county 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 pro-

ceedings 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 12 persons, unless a lesser 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 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 illegitimacy actions or in criminal cases except felonies.

(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 \$5.

(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 Portage.

(6) Costs and fees shall be taxed and allowed in the same amount as would be allowed in justice court, except that the clerk's fees shall be taxed at a sum not to exceed \$5 and the taking down of evidence shall not be charged for or taxed.

(7) The fees of 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 justice of the peace 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 justice of the peace 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 \$10 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 the actions and proceedings specified herein 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. But an appeal may be taken to the supreme court from all judgments in civil actions in which the amount involved is more than \$20, exclusive of costs, and from judgments in criminal actions 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 proceed-

ing exclusive of preliminary examinations in criminal cases and illegitimacy actions shall be removed from any justice of the peace of said county of Portage upon the oath of the defendant, his agent or attorney according to the provisions of law for such removal, such action or proceeding shall be removed to said county court, and all papers therein shall be transmitted by mail or otherwise to the said county judge at the city of Stevens Point, 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 said action not exceeding 3 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 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 section 7 (11) of this act may be reviewed 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, 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 re-

quired in the circuit court by law or by the rules and practice of said circuit court or of the said county court relative hereto.

SECTION 10. There shall be held at the county seat of said county 3 general terms, a term on the second Monday of each of the following months, to-wit: February, June and September. 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 of 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 2 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 3 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 the 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 Portage

county; and such change of venue shall not prevent the granting by said circuit court of a further change of venue as provided in chapter 261 of the statutes; but nothing herein contained shall be construed as abrogating the right to change of venue provided by said chapter 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 said chapter of the statutes so far as applicable shall apply to said county court, and the judge thereof shall have the right to call upon any justice of the peace of said county, 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 or justice of the peace called in is trying the actions 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 Portage 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 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 ground of prejudice of the judge of the circuit court may be removed to said county court; but nothing herein contained shall be construed as abrogating or abridging the power conferred upon the circuit court by said chapter of the statutes. In 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 or justice of the peace shall be called to preside as above provided. A justice of the peace shall receive \$10 per day to be paid out of the county treasury, when so acting.

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 case or proceedings had originated in the circuit court.

SECTION 15. (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 6 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, 36 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 6 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 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 6 peremptory challenges and the defendant or defendants to a like number of challenges to be made alter-

nately, 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. But not more than 4 such talesmen shall be selected from the residents of one town, city or village, except by consent of parties. The officers 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 on such list, 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 objection is 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 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 summoned 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 action 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 may order a new panel of jurors to be drawn for the subsequent, or any succeeding term.

SECTION 16. 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 17. The county judge of Portage county shall, for the performance of his duties as county judge and such additional duties as are imposed by this act, receive as compensation the sum of \$6,000 per year, payable in equal monthly instalments out of the treasury of said county until the county board of said county shall fix the same at some other sum not less than herein provided. Said judge shall not engage in the practice of law while holding said office.

SECTION 18. (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 \$1 and an advance clerk's fee of \$2 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 19. Any deputy clerk authorized by law to be ap-

pointed by the clerk of the circuit court of said county shall also be a deputy clerk 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 20. 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 21. 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 Portage county.

SECTION 22. (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 trial 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 \$10 for each day, and \$5 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 Portage 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 10 cents per folio; and $2\frac{1}{2}$ 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 Portage upon the order of the judge.

SECTION 23. Court commissioners from the county of Portage 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 24. The seal of the county court of Portage county shall continue to be used as the seal of said court.

SECTION 25. The county of Portage 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 26. 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 Portage.

SECTION 27. 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 the circuit courts 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 28. 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 29. This act shall take effect July 1, 1947.

Approved June 20, 1947.

No. 393, A.]

[Published June 25, 1947.

CHAPTER 304.

AN ACT to amend 59.23 (8) and to create 59.715 of the statutes, relating to the destruction of obsolete county records.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 59.23 (8) of the statutes is amended to read:

59.23 (8) * * * The sheriff is authorized to destroy all sheriff's dockets, daily jail records and cash books dated prior to 1901. It shall be the duty of the sheriff to hereafter retain and safely keep all such records for a period of 30 years, after which the same may be destroyed.

SECTION 2. 59.715 of the statutes is created to read:

59.715 DESTRUCTION OF OBSOLETE COUNTY RECORDS. Whenever necessary to gain needed vault and filing space, county officers may destroy obsolete records in their custody as follows:

(1) Notices of tax apportionment received from the secretary of state, after 3 years.

(2) Copies of notices of tax apportionment sent to local taxing districts by the county clerk, after 3 years.

(3) Records of bounty claims forwarded to the conservation commission, after one year.

(4) Lists of town, city and village officers certified to the county clerk by the town, city and village clerks, after the date of the expiration of the term listed.