

No. 805, S.]

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CHAPTER 585.

AN ACT relating to the county board of Trempealeau county, and to conferring additional jurisdiction, powers and duties as therein provided, on the county court of said county.

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

SECTION 1. ADDITIONAL JURISDICTION CONFERRED. There is conferred additional jurisdiction, powers, duties and functions upon the county court of Trempealeau county, as provided in this section, unless the context indicates otherwise. The words "county court" or "court" means county court of Trempealeau county; "county judge" or "judge" means the judge of the county court of Trempealeau county.

(1) The said county court shall have and exercise jurisdiction concurrent with and equal to the jurisdiction of the circuit court in said county in all civil actions, suits and proceedings, either in law or in equity, of every kind and nature, and in all special proceedings of every kind and nature, except in actions where the debt or balance due or damages or relief claimed in the complaint exceed the sum of \$25,000.

(2) The said county court shall also have and exercise jurisdiction in all illegitimacy actions and in all criminal cases except homicide. Subject to the exceptions aforesaid, the said county court shall be a court of general jurisdiction, with the same power and jurisdiction to issue writs and processes of every kind and nature, and to hear, try and determine all civil and criminal suits, actions and proceedings of every kind and nature as are now or may hereafter be conferred by the constitution or statutes of this state upon the circuit courts of the state.

(3) Said court shall further have all jurisdiction and authority, power and rights given by law to justices of the peace.

SECTION 2. ISSUANCE OF WRITS AND PROCESS. The said county court within the jurisdictional 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 3. LIENS AND FORECLOSURES. Said county court shall have jurisdiction in the matter of liens and the foreclosure of the same as set forth in chapter 289 of the statutes, and the provisions of law with reference to the filing and docketing of claims for liens and the foreclosure thereof now or hereafter applicable in circuit court proceedings shall be equally applicable in similar proceedings in said county court.

SECTION 4. TRIALS. 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 hereafter provided, be tried by a jury of not less than 12 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.

SECTION 5. JUDGMENTS. 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 6. REVIEW. All orders and judgments of the said county court may be reviewed by the supreme court in the same manner and with like effect as judgments and orders of the circuit court may be reviewed; and the supreme court shall have the same power and jurisdiction over actions, proceedings, orders and judgments as 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 courts 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 and 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 by the circuit court, by law or the rules and practice of said circuit court or of said county court relative thereto.

SECTION 7. TERMS. There shall be held at the county seat of said county 2 general terms, namely, a term on the first Wednesday of November, and a term on the first Wednesday of May. Each term shall continue up to the first day of the succeeding term. Any trial, hearing or argument or assessment in said county court 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 8. DEFAULTS IN VACATION. Judgment may be had and entered in vacation of said county court, subject to the limitations of the jurisdiction thereof, if the defendant fails to answer or demur to 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 the clerk of circuit court has in such cases.

SECTION 9. DISABILITY OF JUDGE. Any circuit judge or any county judge may preside over and discharge the duties of the said county court in event of the absence, sickness or other temporary 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 the judge of said court in all matters, actions and proceedings coming before him in said court. Such request shall be made in writing and filed in said court.

SECTION 10. CHANGE OF VENUE. 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 Trempealeau county; and such change of venue shall not prevent the granting by said county court of a further change of venue as provided in sections 261.04 and 356.03 of the statutes; provided, however, that nothing herein contained shall be construed as abrogating the right to a change of venue provided by section 261.03 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. Sections 261.08 and 356.03 of the statutes, as far as applicable, shall apply to said county court, and the judge thereof shall have the right to call upon any circuit judge or any county judge 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 persons charged upon indictment or information with a criminal offense shall have procured a change of venue to the circuit court of Trempealeau 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 cognizances previously given in such cases and returned to the 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 261.08 or chapter 356 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 shall be called to preside as above provided.

SECTION 11. JUDGE NOT TO PRACTICE. No judge of said county court, while holding such office, shall engage in the practice of law or shall be in any manner engaged or act as attorney or give advice, or draft or prepare any papers or other proceedings, relating to any action, except when expressly authorized by law, upon penalty of removal from office.

SECTION 12. JURORS: JURIES. (1) Jurors shall be chosen when directed by the county judge for each term of said court. The jury commissioners of Trempealeau county shall, however, prepare a sufficient jury list to be known as Trempealeau county

court jury list from which list the jurors shall be drawn as is now provided by law for trials in the circuit court under the direction of the county judge.

(2) Jurors shall be summoned as in the circuit court, and the county judge may direct at what time the jurors shall be summoned to appear; but 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, 24 jurors for such term, and the list so elected shall forthwith be filed in the office of the 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) The panel of jurors selected for any term of said county court under its civil or criminal jurisdiction shall constitute the panel of jurors for 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.

(5) Whenever directed by the judge the clerk of said county court shall issue a venire to the sheriff of said county to summon such jurors returnable at such time as the judge may direct.

(6) In case the whole panel is not summoned for the trial of any civil or criminal action or proceeding in the said county court in which a jury trial is demanded or ordered, the parties shall choose from the panel of jurors selected for such term the jury for such action. The district attorney or plaintiff or plaintiffs shall be entitled to 6 peremptory challenges and the defendant or defendants to a like number of challenges to be made alternately, the district attorney or plaintiff or plaintiffs, first challenging. When either party shall decline to challenge in his turn each 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.

(7) If any of the jurors named in such venire shall not be found or shall fail to appear, or if there 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 4 such talesmen shall be selected from the residents of any one town, city or village, except by consent of the parties. The officer summoning the same may insert the names of such talesmen on the venire. Or the court may cause persons qualified to serve as jurors to be called from the bystanders.

(8) 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 assessment of damages may be made by the court or judge thereof without the intervention of a jury.

(9) The parties in any case, civil or criminal, wherein a jury trial may be had, may agree upon a trial thereof by any number of jurors less than 12.

SECTION 13. CALENDAR; TIME OF TRIAL; ELECTION OF TRIAL BY JURY. The court may set down any case, in said court, civil or criminal, on the calendar for trial on any particular day; and after issue joined in any civil action or proceeding or after information filed in any criminal action pending in said court, any party may, upon 5 days' notice to the other party or parties, and without any notice of trial having been previously served, apply to the said court or judge thereof to set down such case for trial on a particular day, and the court or judge shall, if it be reasonably possible, fix a definite time for such trial, which shall not be less than 14 days nor more than 30 days from the time of the hearing of such application, unless for cause the court or judge shall otherwise order. When any action or proceeding is so set down for trial, if it be one triable by jury, the court shall 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, in its discretion, grant a trial by jury; and if a trial by jury is demanded by any party to such action, 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 cause, 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 proper and necessary orders therefor, provided that in all civil cases involving \$500 or less brought in said court, if a jury trial is demanded by either party or required by the court, a jury of 6 persons shall be chosen in the same manner as jurors are selected in said county court, each side to have 9 strikes.

SECTION 14. COSTS. All costs, fees and disbursements in actions in said county court shall be taxed and allowed the prevailing party in the same manner and in like amounts as they are taxed and allowed in circuit court.

SECTION 15. SALARY OF JUDGE. The county judge of said Trempealeau county shall receive an annual salary for performing the duties required by this act in such amount as shall be fixed by resolution of the county board of Trempealeau county, which sum shall be in addition to the salary now provided for said county judge.

SECTION 16. CLERK; FEES; SALARY. (1) The clerk of the circuit court shall be ex officio the clerk of said county court and shall have the care and custody of all books and papers belonging or pertaining to said court. Said clerk shall perform all clerical duties necessary to carry into effect the provisions of this act and shall keep all necessary records of proceedings and judgments in the same manner provided for in circuit court or as otherwise in this act provided.

(2) On each civil action commenced in or appealed to said county court, there shall be paid to the clerk of said court a state tax of \$1, and \$2 to apply on clerk's fees at the same time and in the same manner as now provided for the payment of state tax and clerk's fees for actions commenced in or appealed to the circuit court. In all civil actions the clerk of said court shall be entitled to the same fees for services as though the case was originally brought and disposed of in circuit court.

(3) The clerk of said court, for performing the duties required by this act, shall receive such salary, in addition to his salary as clerk of the circuit court, as is fixed from time to time by the county board of Trempealeau county. Such salary shall be paid out of the county treasury of said county in equal monthly instalments on the twenty-fifth day of each month.

SECTION 17. REPORTER. The phonographic reporter of said court shall be appointed by the county judge; the position of phonographic reporter of said court may be filled by the same person serving in that capacity in the probate branch of county court. Said reporter and his assistants shall furnish parties to actions, or their attorneys, requiring them transcripts of the testimony and proceedings had at the same price as provided in the circuit court.

SECTION 18. OATH OF OFFICE. All court officers shall take and subscribe the oath of office prescribed in the constitution, and shall attend court whenever required by said court, and, in addition to the duties herein and otherwise by law specified, shall perform such duties as the judge may require. The clerk and the reporter shall be furnished with all books, stationery and other necessary equipment at the expense of the county.

SECTION 19. DEPUTY CLERKS AND ASSISTANT REPORTERS. The judge of said county court may appoint one or more deputy clerks, which appointments shall be revocable by the judge at his pleasure. Each deputy clerk shall be ex officio an assistant phonographic reporter of said court. Such appointments and revocations shall be in writing, and filed in the office of the clerk of said court; such deputy clerks, upon request of the judge of said court, shall aid the register in probate, clerk or phonographic reporter in the discharge of his duties, and in his absence from his office or from the county, may perform all his duties, or in case of a vacancy by resignation, death, removal or other cause, the first deputy clerk shall perform all such duties until such vacancy is filled, said deputy clerks to be paid out of the county treasury on order of the county judge, at the rate of not to exceed \$5 per day.

SECTION 20. BAILIFF. The sheriff of said county in person or by his undersheriff or one of his deputies shall attend such court when so required by the court, 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, payable in like manner as is, or may be provided by law for like services in the circuit court.

SECTION 21. FEES. In actions and proceedings commenced in said county court, including appeals from decisions of justices of the peace, the fees of the clerk, witnesses, jurors and officers shall be the same as is now allowed by law to the clerk, witnesses, jurors and officers in the circuit court for Trempealeau county in such actions.

SECTION 22. COURT COMMISSIONERS. Court commissioners for the county of Trempealeau 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 23. COURT SEAL. The seal of the county court of Trempealeau county shall continue to be used as the seal of said court.

SECTION 24. BOOKS, RECORDS, STATIONERY. The county of Trempealeau shall provide all books, blanks and stationery for keeping the records and proceedings of said county court made necessary by this act. The books, records and proceedings shall be kept at the court house in the county seat.

SECTION 25. FINES AND FEES; TO WHOM PAID. All fines, forfeitures, costs and fees collected by the clerk in every civil and criminal action or proceeding tried in the county court, shall be accounted for and paid over to the county treasurer monthly, except that all fines and forfeitures recovered for municipalities shall be remitted monthly to the proper treasurers for such municipalities.

SECTION 26. LAWS APPLICABLE. So far as applicable and not inconsistent with this act the laws of this state now or hereafter in effect, including the rules of the supreme court, relative to circuit courts and actions, proceedings, procedure practice, process, pleadings, trials and judgments therein, shall apply to said county court and to actions, proceedings, procedure, practice, process, pleadings, trials and judgments therein. The judge of said county court shall have the 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 such county court shall have power to make and enforce such other rules of practice not inconsistent with this act as may be by him deemed necessary.

SECTION 27. DIVORCE COUNSEL. The divorce counsel appointed by the circuit court of said county shall also be the divorce counsel for the county court.

SECTION 28. CONSTRUCTION. Nothing contained in this act shall be construed as in any manner limiting the jurisdiction of the county court as heretofore existing.

SECTION 29. TITLE OF PLEADINGS AND PROCESS. All process and pleadings and documents shall be entitled county court of Trempealeau county, civil branch, or criminal branch, as the case may be.

SECTION 30. REVIEW. (1) A review may be had in the supreme court of all actions and proceedings including original actions in the same manner as is now provided to review like proceedings now had in the circuit courts of this state.

(2) Writs of error may be taken directly to the supreme court in all criminal proceedings tried in the county court of Trempealeau county in the same manner as is now provided for reviewing convictions in criminal proceedings in the circuit court and all provisions of law now applicable to criminal proceedings in circuit court and to obtain a review thereof now applicable to circuit court shall be applicable in criminal cases tried in the county court of Trempealeau county.

SECTION 31. DUTY TO TRY AND PLACE OF TRIAL. The county judge of Trempealeau county shall hear, try and determine all actions in the court house in the city of Whitehall.

SECTION 32. SPECIAL COUNSEL IN CRIMINAL CASES. The said county court shall have authority to appoint counsel to assist the district attorney in prosecuting or defending civil or criminal actions or proceedings in said county court when requested by the county board of Trempealeau county.

SECTION 33. BINDING OVER FOR TRIAL. In all preliminary examinations brought before the county judge of Trempealeau county in which the said county judge shall hold the defendant to trial, he shall hold the defendant to trial in all cases, excepting in cases of homicide, to the current term of the county court pending, unless the defendant shall in writing demand that it be held for trial in the circuit court, and the trial shall be had in county court in the same manner as if the action were triable in the circuit court, and all provisions as to noticing for trial relating to civil actions shall apply in criminal actions of this section.

SECTION 34. This act shall take effect on January 1, 1952.

Approved July 6, 1951.