

CHAPTER 360

[Published April 28, 1860.]

AN ACT to legalize the sale of lands for unpaid taxes in Douglas county.

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

Tax sale in Douglas Co. for 1859, declared valid.

SECTION 1. The tax sale of lands for unpaid taxes, held in September, 1859, in Douglas county, is hereby declared to be as valid and binding, to all intents and purposes, the same as if all the provisions of law then in force, relative to the sale of lands for unpaid taxes, had been fully complied with, and the omission or neglect of the county treasurer to post the statements and notices, and to make and file the affidavits, as required by chapter twenty-two, of the General Laws of 1859, shall not, in any manner, invalidate such tax sale; nor shall any certificate of sale of lands for unpaid taxes, given at said sale, nor shall any tax deed that hereafter may be given pursuant to any such certificate of sale be invalidated, or in any manner prejudiced, by reason of any such omission.

Certificates valid.

SEC. 2. This act is hereby declared to be a general law, and shall take effect from and after its passage.

Approved April 2, 1860.

CHAPTER 361.

[Published April 30, 1860.]

AN ACT conferring jurisdiction on the county court of Winnebago county.

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

Nature and extent of jurisdiction conferred.

SECTION 1. There is hereby conferred upon the county court of Winnebago county, jurisdiction in all civil actions, equal to and commensurate with the circuit court, for all sums not exceeding five hundred dollars. And the said county court shall have, and may exercise, the same powers and jurisdiction, within the county of Winnebago, as is now exercised by the circuit court in and for said

county, in civil actions, within the above mentioned limits ; and it is herein expressly provided and understood that the jurisdiction, in civil actions, herein conferred, on the said county court, shall include, (subject to the above jurisdiction as to amount), the following actions and proceedings, viz: “of proceedings against debtors by attachment,” also, “of the lien of mechanics and others,” also, “of claim and delivery of personal property,” heretofore known as the action of replevin, and also, “of proceedings for the collection of demands against ships, boats, and vessels:” *Provided*, that the said county court shall not have jurisdiction in actions of ejectment, mandamus, or quo warranto. Limitation.

SEC. 2. From and after the taking of effect of this act, all appeals in civil actions, from justices of the peace of said Winnebago county, or from any judgment rendered by, or recovered before any justice of the peace in said county, shall be taken to the county court of said Winnebago county, instead of the circuit court of said county, as now provided by law, and the like proceedings therein shall be had in said county court, and such appeals shall be tried and determined therein, in the same manner as is, by law, required in the circuit court, and all laws providing for taking appeals in civil actions from justices of the peace or justices' courts of said county, to the circuit court thereof, shall, from thenceforth, be construed to mean and read to the said county court, so far as the said county court of Winnebago is concerned. Appeals from justices to be taken to Co. court
Proceedings same as in circuit court.

SEC. 3. The said county court shall be a court of record, with a clerk and seal, and shall have full power and authority to issue all legal process proper and necessary to carry into effect the jurisdiction given to it by this act, and the laws of this State, and to carry out such jurisdiction, shall have and exercise all the powers usually possessed by courts of record, under the common law and in equity, under the regulations imposed by statute. County court shall be a court of record.

SEC. 4. The clerk of the circuit court of said county, shall be the clerk of said county court, and shall have the care and custody of all the 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 as is now, by law, 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, Clerk of circuit court to be clerk of Co. court—duties.

and to carry into effect the provisions of this act. And the said clerk of the county court shall keep all necessary records of the proceedings and judgments had in said county court, in like manner as is now provided in the circuit court in all civil 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.

Deputy clerk SEC. 5. The deputy, now authorized by law, to be appointed by the clerk of the circuit court of said county, shall also be deputy clerk of said county court, and shall, in like cases, and in like manner, as he is now authorized by law to perform the duties of clerk of the circuit court, he is hereby authorized and empowered to perform and discharge the duties of the clerk of said county court.

Authority to issue writs and proceedings. SEC. 6. Said county court shall have like power to issue all necessary and proper writs, in all civil actions or proceedings, as is now possessed, or hereafter may be possessed, by the circuit courts of this State, and the same proceedings shall be had, by parties, to procure such writs, as in the circuit courts of this State, and shall be issued, executed, and returned in the same manner, and with like effect, as in the circuit courts.

General provisions of statutes relating to circuit courts to apply. SEC. 7. All the general provisions of the statutes of Wisconsin, and of all general laws which now exist, or may hereafter exist, relating to the proceedings in civil actions in the circuit courts of this State, and to the powers and duties of courts of record, shall apply, in like manner, and with like effect, to said county court, as to said circuit courts, and the judge of said county court shall have power to punish for contempts, in the same manner that the judges of the circuit courts are, or may be, authorized by law to punish for contempts. The rules and practice of said county court shall be the same as in the circuit courts of this State, as they may exist, or as shall hereafter be provided for said circuit courts in civil actions.

Power of judge. SEC. 8. The county court of Winnebago county shall continue to use the present seal of said court: *Provided*, that whenever it shall be necessary, the judge of said court may procure, at the expense of the county, a new seal for said court.

Rules and practice. SEC. 9. The county of Winnebago shall provide all books, blanks, and stationery necessary for keeping the

Seal

Books, blanks, &c.

records and proceedings of said county court made necessary by this act.

SEC. 10. Parties to all civil actions, in said county court, shall have the same rights to writs of error and appeal, from said county court to the Supreme Court of this State, as now are allowed by law from the circuit courts of this State, or may hereafter be allowed by law. Writs of error and appeal.

SEC. 11. Causes removed from the county court to the Supreme Court, and the decisions and judgments of said county court, may be reviewed by the Supreme Court in the same manner that causes removed from circuit courts are reviewed by the Supreme Court; and the Supreme Court shall have the same power over such causes and judgments, as it has over causes and judgments of the circuit court. Causes reviewed by supreme court.
Authority of supreme court

SEC. 12. The party or attorney in a cause in said county court, may demand and shall be entitled to receive, of 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 or 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. Bill of exceptions—same as in circuit court.

SEC. 13. 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 fail to answer the complaint, in the same manner and in like cases wherein judgment may now be had and entered in the circuit court in vacation. Judgment may be had in vacation.

SEC. 14. There shall be held, at the county seat of said Winnebago county, four terms of said court in each year, viz: on the first Monday of March, the fourth Monday of May, the first Monday of October, and the first Monday in January, in each year. Terms of court—when held.

SEC. 15. If the judge, authorized to hold such court, shall not attend, for that purpose, before four o'clock in the afternoon on the day appointed for such court to meet, it shall be the duty of the sheriff or 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 at that time, the court shall stand adjourned for the term, and all cases continued until the next regular term of such court. In case of absence of judge

SEC. 16. No judge of said county court shall have power to try and determine any cause in which he shall Limitations on authority of judge.

have acted as counsel for either party, except by agreement of parties; and all such cases he shall transmit to the circuit court of the said county, and the circuit court shall, thereupon, proceed to try and determine the same in the same manner and order as if it had originated in the circuit court.

In case of
change of ve-
nue in certain
cases.

SEC. 17. In all cases where a change of venue is allowed for the reason of interest, or prejudice, upon the part of the county judge, the cause shall not be remitted to another county, but shall be removed to the circuit court of the same county.

Tax on suits

SEC. 18. On each civil suit, commenced in, or appealed to, said county court, there shall be paid a county tax of one dollar, to be paid as follows: on each suit commenced in said court, to be paid to the clerk of court, at the time of the commencement thereof; on all suits appealed to said court from a justice of the peace, to be paid to the justice from whom such appeal is taken, at the time now required by law, for the payment of the State tax on such suits appealed to the circuit courts, and shall be in lieu of such State tax. The justice shall forward such county tax to the clerk of the court, at the time he makes his return to the appeal. The clerk of the county court shall, on the first Monday in January, May, and September, in each year, make a return, under oath, to the county treasurer of such county of the amount of money by him received for such county tax, since the date of his last return, and also a list of the suits commenced in, or appealed to, said court since his last return, and shall, at the time of making such return, pay over to said treasurer all money which shall be due from him to the county, for such county tax on suits, by him received. The aforesaid county tax, collected on such suits, shall form a separate fund, to be applied to the payment of the salary of the judge of said county court.

Clerk to make
return of tax.

Tax—how ap-
plied.

Costs.

SEC. 19. Costs shall be recovered and taxed in said county court, (to be taxed by the clerk or judge thereof,) in the same manner, and to the same extent, as in the circuit court, except as herein otherwise provided or limited, and whenever any party, in any action in said court, shall be entitled to recover costs, he shall be entitled to have taxed in his bill of costs, in addition to his other costs, all moneys by him paid, or incurred, in such action, for county tax, judge's fees, jury fees and sheriff

fees, for-making list of jurors and serving same, in such action.

SEC. 20. The said county judge shall receive a salary ^{Salary.} of five hundred dollars per annum, to be paid, quarterly, out of the county treasury. There shall be paid, in all actions which may be commenced in said court, or appealed thereto, the following fees, as a tax, in addition to the county tax heretofore required to be paid, viz: In ^{Fees to be paid.} any amicable suit, where judgment is confirmed, upon the first appearance of the parties, and in actions where-ever judgment is entered in vacation, in default of answer, one dollar, to be paid before entry of judgment. In action wherein final judgment is entered upon an issue of law, one dollar and fifty cents, to be paid before the entry of judgment. In all actions discontinued before issue joined, fifty cents after issue joined and before trial, one dollar; if by order of court, one dollar and fifty cents. In appeal suits dismissed, one dollar, to be paid in advance. In all actions wherein judgment is entered in term time, in default of answer or demurrer, one dollar and fifty cents, to be paid before entry of judgment. In all actions, wherein issue of fact is tried by the court or by jury, including rendition of judgment, and receiving and entering judgment, two dollars. The fees mentioned in this section, in actions wherein an issue of fact is tried by the court or a jury, shall be paid at or before such cause is reached for trial; and if it be in a cause commenced in said court, such fees shall be paid by the plaintiff, and if an appealed case from a justice of the peace, by the appellant. And if any party, ^{In case of neglect to pay fees.} upon whom its [it] devolves to pay the fees required by the provisions of this section, shall fail or neglect to pay such fees, at the time herein required, the court may, if it be a suit commenced in said court, render judgment, as in the case of non-suit, against the plaintiff therein; if the case be an appeal from a justice of the peace, the court may dismiss the appeal therein, and render judgment in said court, against the appellant, for the costs therein, in said court, on appeal. All the fees mentioned ^{Fees—how paid and applied.} in this section, shall be paid to the clerk of the court, and when so collected, shall be paid, quarterly, into the county treasury, and the same shall constitute a separate fund, to be applied towards the payment of the salary of the county judge.

SEC. 21. If an issue of law be made in any cause in ^{Certain issues to be tried by court.} said court, or an issue of fact in any action, heretofore

cognizable only in a court of equity, the same shall be tried by the court; if an issue of fact properly triable by a jury, and not heretofore cognizable only in a court of equity, it 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, the issues shall be tried by the court: *Provided*, that nothing herein contained shall prohibit the trial of a case by a jury, properly triable by a jury, for the reason that an equitable defence is set up. If an inquest or assessment is necessary to be had, or taken, in any cause in said court, the same shall be had or taken by the court, except that in such cases wherein an inquest or assessment of damages according to law, or the rules and practices, of the circuit court, has heretofore been required to be had or taken by a jury, either party may demand an inquest or assessment of damages by a jury, and upon such demand being made, the inquest or assessment of damages in such cases, shall be had or taken by a jury, and in any action arising on contract for the recovery of money only, where the defendant has failed to answer the complaint, the clerk of the court may assess the damages therein, or ascertain the amount due the plaintiff therein: *And, provided further*, that the clerk of said court shall have the same authority and power to assess damages, or ascertain the amount due in like cases, and in the same manner, as he is authorized and empowered to do, in the circuit courts of this State, and shall have generally the same power and authority and duties in all cases in said county court, as he has now by law, or otherwise, in cases in the circuit court.

Issues to be tried by jury.

Jury may be demanded in certain cases.

Powers of clerk same as in-circuit court

Demand for jury to be accompanied by fees. Proceedings in selection of jury.

SEC. 22. The demand for a jury shall be accompanied by the payment into court the fees for a jury, which fees shall be fifty cents for each juror. On such demand, the court shall direct the sheriff of said Winnebago county, his under-sheriff, or any of his deputies, or the clerk of said county court, to write down, or make a list, of the names of twenty-four persons (unless the parties shall agree upon a jury of six or less, as hereinafter provided), residents of the county of Winnebago, with the qualifications necessary to be a juror in the circuit court, and not of kin to either party, or in any manner interest [interested] in the cause. The list being made, the parties shall each, alternately, strike out a name, (the plaintiff commencing,) until the requisite number be left:

Provided, however, that if the parties shall agree to try any cause by a jury of six or less, then such officer, making such list, shall write down the names of three times the number of persons, (with the qualifications aforesaid) agreed upon for a jury, and thereupon, as aforesaid, the parties shall each alternately, strike out a name, until the number agreed upon for a jury shall be left, and if either party, in any action, in said court, (after a list shall be made out as provided in this section) shall refuse or neglect to strike out, on his part, the clerk of said court, or the judge thereof, shall strike out in his stead, and when a jury shall have been selected, as aforesaid, or otherwise agreed upon, a venire may then be issued by the court, or the clerk of the court, for the jurors thus selected or agreed upon, and delivered to the sheriff of said county, his under-sheriff, or any of his deputies, who shall forthwith proceed to summon the jury therein named. If any of the jurors named in such venire, shall not be found, or shall fail to appear, according to the summons, or if there shall be any legal objections to any that shall appear, or if any of them be excused by the court or the parties, the court shall direct the officer to summon a sufficient number of talesmen to supply the deficiency; but in all cases the parties may agree upon any number of persons to try the cause. The demand for a jury for the trial of any issue or for taking an inquest, or the assessment of damages, in any cause in said court, (in a cause in which a party is entitled to a jury), may be made at any time before the commencement of the trial of such issue or the taking of an inquest, or the assessment of damages, and may be either oral or in writing.

In case of a jury of six or less.

In case jurors shall fail to appear.

Demand for jury may be made at any time before trial, and orally or in writing.

SEC. 23. The sheriff of said county, in person, or by his under-sheriff or deputies, shall attend said county court, when actually in session, for the transaction of business other than probate business. And he shall be entitled to receive therefor the same compensation, payable in like manner as is or may be provided by law, for like services in the circuit court.

Duty of sheriff

Compensation of sheriff.

SEC. 24. The fees of the clerk of the county court, in any one cause, shall not exceed the following sums: In cases settled or discontinued before answer, one dollar and fifty cents; in cases settled or discontinued after answer, and before the cause has been put upon the calendar, two dollars and fifty cents; in cases settled after answer, and when cause has been put upon the calendar,

Fees of clerk of county court.

three dollars and fifty cents ; in cases where judgment is entered without application to court, two dollars and fifty cents; in cases where no answer is filed and judgment can be entered only upon application to court, and judgment is entered upon such application, four dollars and fifty cents; in cases where judgment might be entered, in vacation, but is entered in term time, upon application to court or otherwise, three dollars ; in cases where an answer has been filed, and the same is tried by court, six dollars; in cases where an answer has been filed and tried by a jury, eight dollars; in all appeal cases where the same is tried upon return of justice, three dollars; in all appeal cases which are dismissed without trial, three dollars; in all other appeal cases, six dollars.

SEC. 25. This act shall take effect and be in force from and after its passage and publication.

Approved April 2, 1860.

CHAPTER 362.

[Published April 27, 1860.]

AN ACT relating to the Milwaukee county court.

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

Jurisdiction made equal to circuit court.

Exception

General provisions of statutes applied.

Proviso.

Rules of practice.

SECTION 1. There is hereby conferred upon the county court of Milwaukee county, jurisdiction in all civil actions, both as to matters of law and equity, equal to, and commensurate and concurrent with, the circuit court of Milwaukee county, and the said county court shall exercise the same powers and jurisdiction, in all civil actions, as now exercised by the said circuit court; *Provided*, that the value of the property, or the amount of money in controversy, in any action in said county court, exclusive of costs, do not exceed twenty thousand dollars.

SEC. 2. The general provisions of the Statutes of Wisconsin that may, at any time, be in force relative to the circuit courts of this State, shall relate also to the said county court, unless inapplicable; *Provided*, that the jurisdiction be limited to the amount of money and value of property aforesaid; and the rules of practice,