

[Published March 3, 1877.]

CHAPTER 119.

AN ACT to confer civil jurisdiction on the county court of Fond du Lac county.

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

SECTION 1. There is hereby conferred upon the county court of Fond du Lac county, jurisdiction in all civil actions and proceedings in law and equity, and under the statutes of the state of Wisconsin, except actions of quo warranto and proceedings by information in the nature of quo warranto, concurrent with and equal to the jurisdiction of the circuit court in said county, for all claims, demands and sums, and of and concerning all property, not exceeding the sum or value of twenty thousand dollars; *provided*, that said county court shall have jurisdiction in all actions in said county for the foreclosure of mortgages, in which the amount claimed, and in actions for divorce in which the alimony asked for does not exceed twenty thousand dollars, although the property to be affected by the judgment may exceed that amount in value; 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 such civil actions and proceedings as belong to and are exercised by the circuit court in and for said county.

Jurisdiction conferred on county court.

SECTION 2. From and after the taking effect of this act, all appeals in civil actions from justices of the peace of said Fond du Lac county, or from any judgment in any civil action, rendered by or recovered before any justice of the peace in said county, except a justice of the peace of the city of Ripon shall be taken to the county court of said Fond du Lac county, instead of the circuit court of said county, as now provided by law, and the like proceedings therein shall be had in the 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 of Fond du Lac is concerned.

Appeals to be taken to county court.

County court
to be court of
record.

SECTION 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.

Clerk of circuit
court to be
clerk of county
court.

SECTION 4. The clerk of the circuit court of said county shall be 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 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 herein limited or provided.

Deputy clerk of
circuit court to
be deputy clerk
of county court.

SECTION 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 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 the said county court.

County court to
have powers of
circuit courts.

SECTION 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 they shall be issued, executed and returned in the same manner, and with like effect, as in the circuit courts.

Statutes to ap-
ply to county
court. —

SECTION 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 proceed-

ings 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.

SECTION 8. The county court of Fond du Lac 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. Seal of court.

SECTION 9. The county of Fond du Lac shall provide all books, blanks and stationery necessary for keeping the records and proceedings of said county court made necessary by this act. County to supply books and blanks.

SECTION 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. Parties to have same rights as in circuit courts.

SECTION 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. Appeals to supreme court.

SECTION 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. Attorneys may demand bills of exception, etc.

SECTION 13. Judgment may be had and rendered in vacation in said county court, subject to the foregoing limitations as to jurisdiction, if the defendant fail to answer the complaint, in the same manner and in like cases wherein judgment may now be, or may be here- Judgment may be rendered in vacation.

after had and entered in the circuit court in vacation: *provided, however*, that execution may be issued upon any such judgment at any time after the entry of the same.

Terms of
county court.

SECTION 14. There shall be held at the county seat of said county three general terms of said court, viz: On the second Mondays of January, May and September in each year. Special terms of said court may be called and held by order of the judge of said court, a copy of which order shall be published three successive weeks in some newspaper published at the county seat of said county before such special term, and a jury may be selected for any such called special term in the same manner as for general terms of said court, when in the discretion of such judge it is deemed necessary. A special term of said court shall be held on the second Monday of April and October in each year; *provided*, that no issues of fact nor appeals from justices' courts shall be tried or heard at such special terms. Such special terms may be held at the office of the county judge, and no officer except the clerk shall receive any compensation for attendance upon such special terms unless directed to attend by the judge of said court.

When judge
does not attend,
sheriff or clerk
to adjourn
court.

SECTION 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 said court.

When judge
not to try cause.

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

Change of
venue.

SECTION 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.

County tax on
suits.

SECTION 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 toward the payment of the salary of the judge of said county court.

SECTION 19. Costs shall be recovered in said court (to be taxed by the judge or clerk thereof), to the same amount as in circuit court, including jury fees and county tax, except as herein otherwise provided or limited. How costs to be recovered.

SECTION 20. The county judge of said Fond du Lac county, for performing the duties required by this act, shall receive a salary of one thousand dollars per annum, to be paid quarterly, out of the county treasury, by the county treasurer, in addition to the compensation now allowed him by law. Salary of judge.

SECTION 21. If an issue of law be made in any cause in 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, be made, 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 issue 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, When cases to be tried by jury.

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.

Powers of clerk

Jury fees.

SECTION 22. The demand for a jury shall be accompanied by the payment into the court of three dollars jury fees. If the jury, agreed upon shall be six or less, then the fees to be paid into court shall be one dollar and fifty cents.

How jury to be paid.

SECTION 23. In all appeal cases tried in said court the jury shall be paid by the county through the clerk of the court, who is hereby authorized on his own certificate in each case for that purpose, to draw the requisite amount of money from the county treasury.

Fees of jurors.

SECTION 24. The fees of jurors in said court shall be one dollar and twenty-five cents per day for each day's actual attendance, and seventy-five cents for each half day or a less fractional part of a day's attendance, to be paid in the same manner as jurors in the circuit court.

Qualifications of jurors.

SECTION 25. The qualifications of jurors shall be the same as now required by law of jurors in the circuit court: *provided, however*, that no person shall be compelled to sit upon a jury who is over sixty years of age.

How persons to be selected.

SECTION 26. The jurors for said court shall be selected as follows, from residents of the county of Fond du Lac, qualified to act as jurors, the county judge and clerk of the circuit court shall, at least two weeks before each term of court, select from such residents qualified to serve as jurors, fifty persons to serve as jurors in said court, at and during the next term there-

of: *provided, however*, that if such jury is not selected as herein provided, it may be selected at any other time; *and, provided further*, that such jury shall not be illegal if persons in good faith are selected who are not qualified, but the names of such persons when discovered, shall be stricken therefrom. A list of such jurors when selected, shall forthwith be filed in the office of the clerk of the court.

SECTION 27. At each term of said court, general or special, the clerk shall put the names of all such jurors so selected in a box, and when a jury shall be demanded, the same shall be drawn from the names in such box. The plaintiff or plaintiffs shall be entitled to six peremptory challenges, and the defendant or defendants to a like number of challenges, to be made alternately from the full list, the plaintiff challenging first. When a jury shall have been selected as aforesaid, or otherwise agreed upon, a venire therefor may be issued by the judge or clerk of said court and delivered to the sheriff or his under-sheriff, or any of his deputies, who shall duly execute the same. 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 shall direct the sheriff or his under-sheriff, or any of his deputies to summon a sufficient number of talesmen to supply the deficiency. The officer summoning the same may insert the names of such talesman in the venire. If the jury shall be required to make an inquest or 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 as 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 inquest may be had or held, or such assessment of damages made by the court or the judge thereof, without the intervention of a jury. The court may set down any case on the calendar for trial on any particular day, and when a case is set down for trial on any particular day by order of the court or otherwise, the court may then or any time afterwards, require the parties in such action to determine and select whether he or 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, then at the said term neither party

Challenge of jurors and selection of talesmen.

shall be entitled to a trial by jury, but the court may, at its discretion, grant a trial by a 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 therefore, returnable at the time fixed for the trial of such action. If for any cause in selecting a jury the panel shall become exhausted, a jury may be obtained as provided in similar cases in the circuit court.

Sheriff to attend court.

SECTION 28. 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.

Fees of clerk.

SECTION 29. The fees of the clerk of said court in any one cause shall not exceed the following sums: In cases settled or discontinued before answer, two dollars; in cases discontinued after answer and before the same shall be put upon callendar, three dollars, and after answer, and after having been put upon calendar, four dollars; in cases when judgment is entered without application to the court, four dollars; in cases of no answer when judgment is upon application to court, seven dollars; in like cases, when judgment is entered upon application to court and the same could be entered in vacation, five dollars; in case there is an answer and the same is tried by court, eight dollars (if a final determination on a demurrer, six dollars); if tried by a jury, ten dollars; in appeal cases tried by the court upon return of justice, five dollars; in all appeal cases which are dismissed without trial, four dollars; in all other appeal cases, seven dollars. In case there is more than one trial, three dollars shall be added to such limitations for each additional trial.

Suits commenced before justices of the peace to be sent to county court.

SECTION 30. When in any suit, commenced before any justice of the peace of Fond du Lac county, a plea or answer shall be put in showing that the title of lands will come in question, as provided by sections 51, 52, 53, 54 and 55, of chapter 120, of the revised statutes, or of any act which may hereafter be passed amendatory thereof, such suit shall be sent and certified in said county court, instead of the circuit court of said county, and wherever in said sections the word "circuit" or "circuit court" are used, the same shall be and are hereby changed, so far as the same relate

to Fond du Lac county, to county and county court, and the bond to be given shall be conditioned to prosecute his said action in the county court instead of the circuit court.

SECTION 31. 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 32. This act shall take effect and be in force from and after its passage and publication.

Approved March 3, 1877.

[Published March 6, 1877.]

CHAPTER 120.

AN ACT to change and define the limits of the Third, Seventh and Ninth Judicial Circuits, and fix the time for holding the terms of court therein, and for other purposes.

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

SECTION 1. The counties of Green Lake, Dodge, Washington, Ozaukee and Winnebago, shall constitute the Third Judicial Circuit.

SECTION 2. The counties of Portage, Marathon, Waupaca, Wood, Waushara, Lincoln and Taylor, shall constitute the Seventh Judicial Circuit.

SECTION 3. The counties of Marquette, Adams, Juneau, Columbia, Sauk and Dane, shall constitute the Ninth Judicial Circuit.

SECTION 4. The times for holding the terms of court in the Third Judicial Circuit shall be the same as now fixed by law.

SECTION 5. The times for holding the terms of circuit court in the Seventh Judicial circuit shall be as follows :

For the county of Portage, on the first Tuesday in March and second Tuesday in November of each year.

For the county of Marathon, on the second Tuesday of April and on the first Tuesday of October in each year.