

No. 381, A.]

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### CHAPTER 212

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

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

There is hereby conferred upon the county court of Buffalo county, additional jurisdiction, powers, duties and functions as follows:

SECTION 1. BRANCHES. For the purposes of this chapter and in the exercise of the jurisdiction thereby conferred the court shall consist of 3 branches, designated as follows: "County Court for Buffalo County, Circuit Court Branch"; "County Court for Buffalo County, Police Court Branch"; and "County Court for Buffalo County, Small Claims Branch".

SECTION 2. CIRCUIT COURT BRANCH. (1) CIVIL JURISDICTION. The circuit court branch shall have and exercise jurisdiction to hear, try and determine all actions and proceedings of every kind and description,

both in law and equity, wherein the claim, debt, damage, penalty or forfeiture shall, after deducting all payments and setoffs, not exceed the sum of \$2,500; actions to recover the possession of personal property with damages for the unlawful taking or detention thereof, wherein the value of the property claimed shall not exceed \$2,500; actions arising under chapter 291 of the statutes relating to unlawful detainer when the amount claimed shall not exceed \$2,500; actions for forfeitures and actions for breach of any recognizance given in said court under the jurisdiction conferred by this chapter; actions for the foreclosure of mortgages in which the amount claimed does not exceed \$2,500, although the property to be affected by the judgment exceeds \$2,500 in value; and all actions for divorce or for affirmance, or annulment of a marriage contract.

(2) **JUDGMENT BY CONFESSION.** A judgment by confession may be entered by the judge of the circuit court branch in any sum not exceeding \$2,500 without action, either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, if a statement be made in writing, signed by the defendant, and verified by his oath to the following effect: (1) It must state the amount for which judgment may be entered and authorize the entrance of judgment therefor by the judge. (2) If it be for money due or to become due, it must state concisely the facts out of which the indebtedness arose and it must show that the amount confessed therefor is justly due or to become due. (3) If it be for the purpose of securing the plaintiff against a contingent liability, it must state concisely the facts constituting the contingent liability, and must show that the sum confessed does not exceed the same.

(3) **CRIMINAL JURISDICTION.** The circuit court branch shall have and may exercise powers and jurisdiction concurrent and equal with the circuit court of Buffalo county, in all cases of crimes and misdemeanors of whatever kind and nature, arising in said county, except murder, and in all bastardy actions arising in said county.

(4) **GENERAL RULES.** The general statutes, laws and rules of court governing like proceedings and practice in the circuit court shall, so far as applicable and not herein otherwise provided, apply to and govern all actions and proceedings in the circuit court branch; and whenever the term "circuit court"; "circuit judge"; "court", "presiding judge of the circuit court"; "judge of the circuit court", "presiding judge" or "judge" shall appear in any statute the same shall be deemed to apply to the said county court and the judge thereof in any action or proceedings within the jurisdiction of the circuit court branch, except as herein otherwise provided.

(5) **POWER TO APPOINT ATTORNEY.** The county judge shall have the power to appoint an attorney to defend a person charged with an offense in the same manner and upon the same conditions as the circuit court of Buffalo county may now or hereafter appoint an attorney to defend a person charged with an offense.

(6) **CLERK OF COURT.** The clerk of the circuit court of Buffalo county shall be the clerk of the county court as to all matters which come within the jurisdiction conferred by this chapter on the county court and the powers and duties conferred and imposed upon him as clerk of the circuit court extend to him as such clerk of the county court.

(7) **ENTRY AND DOCKETING.** All orders and judgments of the circuit court branch shall be entered, recorded and docketed in the same manner and in the same books that the Buffalo county circuit court orders and judgments are recorded and docketed, but with a notation added to indicate that they are the orders and judgments of the circuit court branch of the county court.

(8) **TERMS OF COURT.** The circuit court branch shall hold a regular term thereof on the second Wednesday of March, June, September, and December of each year. Each regular term shall continue until the commencement of the succeeding term. The clerk of the court shall prepare such calendars of cases and give such notice of cases pending, by posting, mail or otherwise, as the judge shall direct.

(9) **DISABILITY OF COUNTY JUDGE.** If the county judge is unable to hold court on the day appointed, he may continue any or all matters to a day certain, or to the next term; or any circuit judge or any other county judge may, upon the request of the county judge, attend and hold court, and while so doing shall have the authority conferred by this section upon the county judge. In case of the vacancy in the office of county judge, or in case of his absence or disability for more than 10 days without having designated some other judge to act in the circuit court branch thereof, the circuit judge of Buffalo county may on his own motion or upon application made to him, act as judge of said branch or designate some other qualified judge to act therein during such vacancy, absence or disability. All matters set for hearing or trial during any term and not disposed of shall stand continued to the next term.

(10) **APPEALS TO COUNTY COURT.** Appeals from judgments of justices of the peace in the county may be taken to either the circuit court branch or the circuit court of Buffalo county, as the appellant may elect, and the procedure for taking such appeal shall be the same in either case.

(11) **LAND TITLES INVOLVED.** All actions before justices of the peace in the county where the title to lands shall come in question, shall be sent to the county court or the circuit court of Buffalo county at the election of the party making the plea that the title of land will come in question.

(12) **DATE OF TRIAL.** After issue joined, any party may upon 10 days notice apply to the court to set the same for trial on a particular day, and the court or judge shall, if it be reasonably possible, fix a time for such trial, which shall not be less than 10 days after hearing such application unless for cause the court otherwise orders.

(13) **DRAWING JURY.** Jurors shall be chosen for each term of the court by the same persons and in the same manner as jurors in the circuit court for Buffalo county, 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 the circuit court branch, except as herein otherwise provided.

(a) *Summoning of jurors.* Jurors shall be summoned as in the circuit court, and the county judge may direct at which time jurors shall be summoned to appear; but no jurors shall be summoned to attend upon any term of the court unless it shall appear to the satisfaction of the judge that a jury panel is necessary.

(b) *Drawing of jurors.* 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 provided for jury service in the circuit court, 24 jurors for such term, and the list so selected shall forthwith be filed in the office of the clerk. If the name of any person known to be disqualified or no longer liable to jury duty in Buffalo county be drawn, such name shall be cast out and the name of another juror drawn to take his place.

(14) **VENIRE.** Whenever directed by the judge, the clerk shall issue a venire to the sheriff of Buffalo county to summon such jurors, returnable at such time as the judge may direct. 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 of them, or if upon examination any of them shall

be excused by the court or parties, the court may direct the sheriff 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.

(15) CHANGE OF VENUE. When the venue of any action or proceeding shall be changed pursuant to section 261.04 of the statutes it shall be changed to the circuit court of the proper county. When the venue shall be changed pursuant to section 261.08 of the statutes it shall be either changed to the circuit court of the county, or the judge of the county court may call upon the circuit judge of the county or upon any other county judge to attend and hold court and try the action or proceeding and while doing so he shall have the powers of the judge of the county court.

(16) CHANGE OF VENUE FROM CIRCUIT COURT. Any action or special proceeding commenced in the circuit court of the county, but which is within the jurisdiction of the county court, may, by written stipulation of the parties or their attorneys, be transferred to the county court; and the filing of such stipulation shall effect such transfer, and further proceedings therein shall be had in the circuit court branch in the same manner as though the action or proceeding had been commenced in the county court.

(17) SHERIFF'S DUTIES. The sheriff of the county, in person or by his undersheriff or deputy, shall attend the court when requested by the court, and the court shall designate the number of officers that shall be present during sessions of the court.

(18) FEES. The fees of the clerk, witnesses, jurors, officers, reporters, and interpreters shall be the same as are allowed to them in the circuit court of the county.

(19) COURT COMMISSIONERS. Court commissioners of the county shall have the same powers and be subject to the same duties in respect to actions and proceedings in county court as in actions and proceedings in the circuit court of the county.

SECTION 3. POLICE COURT BRANCH. (1) JUSTICE COURT JURISDICTION. The police court branch and its presiding judge shall have and exercise all the jurisdiction, power and authority in criminal and bastardy actions and proceedings within the county which are possessed by justices of the peace and their courts, including offenses against the county, city, town and village ordinances therein.

(2) EXTENDED JURISDICTION. In addition thereto, such jurisdiction, power and authority under sub. (1) is extended to all crimes and offenses not punishable by imprisonment in the state prison.

(3) JUSTICE OF THE PEACE JURISDICTION. No justice of the peace within the county shall have or exercise jurisdiction in any criminal case or in any bastardy action, except that justices of the peace may, in the manner prescribed by law, issue warrants returnable to the county court of Buffalo county, and except that violations of city, town, and village ordinances may be brought before either a justice of the peace or the county court.

(4) TRIAL BY JURY. Trial by jury may be had in the police court branch in the same manner and process as in justice courts.

(5) OFFICERS OF THE COURT. Sheriffs, deputy sheriffs, and constables of Buffalo county shall have the same power to serve and execute process of the police court branch as process of justice's courts and shall be entitled to the same fees therefor as in justice's courts.

(6) **CLERK OF COURT.** The clerk shall keep a police court 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.

(7) **FEEES.** The same fees in all criminal actions, that are now allowed by law to justices of the peace, shall be lawful for the judge to charge and collect, and \$2 in addition thereto for each and every action, proceeding or matter had or heard in his court, which said \$2 shall be the fee of the clerk for his services.

**SECTION 4. SMALL CLAIMS BRANCH.** (1) **JUSTICE COURT JURISDICTION.** The small claims branch shall have and exercise all of the jurisdiction, powers, and authority in civil actions and proceedings within the county which are possessed by justices of the peace and the courts thereof.

(2) **EXTENDED JURISDICTION.** In addition thereto, such jurisdiction, powers and authority under sub. (1) are extended to all civil actions and proceedings wherein the claim, debt, damage, penalty or forfeiture shall, after deducting all payments and setoffs, not exceed the sum of \$500; actions to recover the possession of personal property with damages for the unlawful taking or detention thereof, wherein the value of the property claimed shall not exceed \$500; actions on instalments as they become due on any written instrument when the amount claimed does not exceed \$500; actions arising under chapter 291 of the statutes relating to unlawful detainer when the amount claimed shall not exceed \$500; and actions of attachment and garnishment where the amount claimed does not exceed \$500 under the provisions of chapter 304 of the statutes wherever applicable except as follows:

(a) *Garnishee summons.* The garnishee summons shall be issued and signed by the judge or clerk of the small claims branch.

(b) *Answer of garnishee.* The garnishee or his authorized agent may answer by letter directed to the judge, which letter shall have the same force and effect as an answer made through personal appearance on the return day. The letter shall not be deemed a timely answer unless received by the judge prior to or at the time when the garnishee is summoned to appear. In the event issue is to be taken upon an answer made by letter, all further proceedings shall be the same as in garnishment proceedings under chapter 304, and the prevailing party shall be entitled to receive costs. Nothing herein shall be construed as prohibiting a garnishee from answering in all garnishment actions through personal appearances.

(c) *Fee of garnishee.* A garnishee, other than the state, shall be entitled to a fee of 50 cents and shall not be required to answer unless such fee is first tendered in cash or by check of the county court. In the event the garnishee summons is served by mail, such fee shall be mailed with the summons and shall be by check of the county court made payable to the garnishee and advanced by the plaintiff in such action. The fact that such check was mailed shall be noted in the records of the court with the record of mailing.

(3) **JURISDICTION OF JUSTICE OF THE PEACE.** No justice of the peace within the county shall have or exercise jurisdiction in any civil action or proceedings at law within the county, wherein the debt, demand value of the property or damages claimed in the complaint shall exceed \$25.

(4) **SERVICE.** Any summons or other legal process or paper shall be served as follows:

(a) *Personal service.* By service on individuals or corporations, in the manner provided by sections 262.08 and 262.09 of the statutes. Every person serving any summons or other process of the court shall forthwith make his return thereon in writing, stating the manner and time of service, and sign his name and add, if an officer, his official title, and return the same to the clerk of the court.

(b) *Service by mail.* Service by mail upon defendants residing in the county may be made by leaving the original and necessary copies of the summons with the clerk of the court, together with the sum of 25 cents to cover the expense of mailing. The clerk shall mail the copy to the defendant at his last address as known to the plaintiff or clerk. Service of the summons shall be deemed completed when it is mailed. The clerk shall enter upon the docket the date when the summons is mailed and the name of the person to whom mailed. All mailing of summons shall be done in envelopes setting forth the name of the court and a request to return to the court. If registered mail is required an additional fee may be charged to cover the expense of such mailing.

(5) **RETURN DATE.** Every summons or other order or paper shall be made returnable not less than 6 nor more than 15 days from the date when it is served upon the defendant, if service is made other than by mail. If service is made by mail, the summons or other order shall be made returnable not less than 10 nor more than 20 days from the date of mailing. If a summons is issued by an attorney, the return date and time must be with the consent of the judge or his clerk, so that cases may be scheduled to be heard with as little delay as possible.

(6) **DOCKETING OF ACTIONS.** The clerk shall docket every summons or other paper at the time the summons or paper is left with the clerk for service by mail. The clerk shall docket every summons or paper served otherwise, after it has been returned to him by the person serving it. The docket entry shall, in the event the summons was issued in blank, have the same force and effect as if made at the time the summons was issued.

(7) **TRIAL BY JURY.** Trial by jury may be had in the small claims branch in the same manner and process as in justice courts.

(8) **OFFICERS OF THE COURT.** Sheriffs, deputy sheriffs, and constables of Buffalo county shall have the same power to serve and execute process of the small claims branch as justice's courts process and shall be entitled to the same fees therefor as in justice's courts.

(9) **FINES, COSTS, PENALTIES AND FEES.** All fines, costs, penalties and court fees shall be taxed and allowed in the same manner and amount as would be allowed in justice court except as herein otherwise provided:

(a) *Docketing fee.* In all civil cases coming before the court, there shall be paid to the clerk, a docketing fee of \$3 of which \$2 shall be the fee of the clerk of court, at the time of issuing of the summons, in actions originally commenced in the court and at the time of filing the papers, in actions brought into the court on appeal or change of venue. The fee of \$3 shall be applied by the judge to the payment of the costs of the court and if there be any surplus, such surplus shall, upon application, be refunded to the party paying. If the party paying such sum shall obtain judgment for his costs in such action, the amount so paid by him shall be included in his judgment. If the adverse party shall have judgment for cost, such sum shall be applied to the costs.

(b) *Attorney fees.* 1. In all actions in the small claims branch, an attorney fee shall be allowed to the plaintiff if he recovers judgment as follows: If the judgment does not exceed the sum of \$50, the sum of \$5;

if the judgment exceeds \$50 and does not exceed \$250, the sum equal to 10 per cent of the judgment; if the judgment exceeds \$250, the sum of \$25.

2. In case judgment shall be for the defendant, he shall receive the same attorney fee, and the amount claimed by the plaintiff shall be the basis for computing the same.

3. In actions of replevin the value of the property as proved shall govern the amount of attorney fees in case judgment is for the plaintiff, and the value of the property as claimed shall govern the amount of attorney fees in case judgment is for the defendant.

4. In any case not herein provided for, a reasonable attorney fee shall be allowed in the discretion of the court, provided that no attorney fee shall exceed the sum of \$25. No attorney fee shall be allowed unless the prevailing party shall appear in the action by an attorney of a court of record.

SECTION 5. VENUE. No action shall be removed from the police court branch or the small claims branch for trial. In case it shall be made to appear in the same manner and for the same causes as in justice court, that the county judge is disqualified to try any matter pending before him, and in case of the absence, sickness or temporary disability of the judge, he may, by order in writing to be filed in the court, appoint a properly qualified circuit court commissioner in the county, not otherwise disqualified, to discharge the duties of such judge while administering such office. The court commissioner shall receive a compensation of \$5 for each half day for the actual number of days engaged in the trial or hearing of such matters, hearings, or proceedings, and regardless of the number of cases actually heard, to be paid by the treasurer of the county upon a certificate signed by the county judge.

SECTION 6. APPEALS. Appeals from judgments of the small claims branch and the police court branch may be made, at appellant's election, either to the circuit court of Buffalo county or to the circuit court branch of the Buffalo county court, and in either case the laws relating to appeals from justice court shall apply thereto. An appeal to either court shall be a waiver of the right to appeal to the other court, but not of the right to appeal from the decision on the appeal to the supreme court.

SECTION 7. COURT REPORTER. The judge of said county court may employ a phonographic reporter to take testimony in any trial, examination, or proceeding before him under this chapter, and who shall take and subscribe the oath of office provided in the constitution. The judge shall fix the compensation of such reporter, on the basis of 10 cents per folio, but not to exceed \$15 for each day's attendance and \$7.50 for each one-half day's attendance, except that in all cases before the circuit court branch, the reporter shall in addition to the fees above receive the sum of \$5 for each half-day's attendance, which fees shall be in full compensation for services and for making such transcripts from shorthand notes as may be required by the judge. The fees above specified shall, in all civil cases, be taxed as costs against the losing party. In criminal cases, bastardy cases, and violations of local ordinances they shall be returned to the county or local government as part of the costs in the case. A transcribed copy of the notes so taken, shall be filed in lieu of the minutes required by law to be taken by justices of the peace in like proceedings. The reporter shall furnish parties to the action or their attorneys requiring them, like transcripts at a price not to exceed 10 cents per folio for transcripts and 2½ cents per folio for carbon copies thereof. The per diem compensation of the reporter shall be paid out of the treasury of Buffalo county upon the certificate of the judge.

SECTION 8. FINES, FEES AND COSTS. All fines, fees, and costs, except those payable to the parties litigant, shall be paid to the clerk of the court, who shall account therefor and pay the same over on January 1, April 1, June 1, and September 1, of each year to the proper authorities lawfully entitled thereto.

SECTION 9. COUNTY JUDGE. (1) GENERAL DUTIES. The judge of said county court shall hold his office at the court house in the city of Alma in some suitable room or rooms to be furnished and supplied at the expense of Buffalo county under the direction of the county board thereof, and the county shall provide all books, blanks, stationery and judge's dockets required by the court. On one regular day each month the judge shall hold a general session of the county court in the city of Mondovi in some suitable room or rooms to be furnished at the expense of the city of Mondovi.

(2) HOURS. The office of the county judge shall be open every day between the hours of 8:30 and 12 in the forenoon and the hours of 1 to 4:30 in the afternoon excepting Saturdays, when it shall be open from 8:30 to 12 in the forenoon, and Sundays and legal holidays, when it shall be closed all day.

(3) PRIVATE PRACTICE. The office of county judge shall be considered a full time job and no judge of said court shall engage in the practice of law anywhere in the state, or shall be in any manner so engaged or act as attorney or give advice or draft or prepare any papers or other proceedings relating to any action in this state, except when expressly authorized by law, upon penalty of removal from office for any violation hereof.

(4) SALARY. The salary of the county judge of Buffalo county for performing all of the additional duties required by this chapter shall be \$2,000 per year, payable in equal monthly instalments out of the treasury of Buffalo county until the governing body of said county shall by proper action, fix the salary at some other sum, which shall not be less than \$2,000 per year.

(5) POWERS. In his discretion, the county judge of said county in proceedings before him in the police court branch or the small claims branch shall have the same powers and rights as he has in the circuit court branch thereof, to charge the jury upon written charges or otherwise, and to punish for contempt of court.

Approved June 8, 1955.

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