

No. 528. A.]

[Published June 23, 1909.]

CHAPTER 549.

AN ACT to establish the civil court of Milwaukee county and prescribing its jurisdiction and powers.

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

SECTION 1. There is hereby created and established in and for the county of Milwaukee a municipal court to be designated as the "civil court of Milwaukee county," hereinafter referred to as the civil court, with the jurisdiction and powers hereinafter specified and provided, which shall be exercised by as many branch courts as there may be judges of said court, and each of which branch courts shall exercise all the powers vested by this act in said civil court. For the purposes of this act the said county of Milwaukee is hereby declared to be a municipality.

SECTION 2. Said civil court shall be deemed, taken and held to be a court of record and shall have official seals to be furnished by the county of Milwaukee, which shall have such design as the judges of said court shall prescribe and on which shall be engraved the words "civil court of Milwaukee county. Seal." There shall be provided one seal for each district in which said court shall be held. The clerk and deputy clerks of said court shall have the custody of such seals, and any certificate made by such clerk or deputy clerks under his hand and the seal of said civil court of any fact or matter to which, by this act, he shall be entitled to certify shall be received in evidence in all courts and places and be of the same force and effect as the certificate of the clerks of any other court of record.

SECTION 3. 1. Said civil court shall be held in one or more districts and in the first instance shall be held in one district which shall comprise the entire county of Milwaukee. The number and boundaries of such districts may be changed from time to time by orders signed by a majority of the judges of said court and spread upon its records; provided, that no such change in the boundaries of such districts shall become effective unless the order therefor shall have been approved in writing by two of the judges of the second judicial circuit and a copy of such order and approval shall have been published once a week for three successive weeks in an English newspaper of general circulation in said county of Milwaukee.

2. Except as hereinafter provided, as many branch courts shall be held in each of said districts for as many days in each month as the chief judge of said civil court may determine to be necessary for the prompt and proper disposition of all the business of said civil court.

SECTION 4. 1. The board of supervisors of Milwaukee county shall provide in one central location in the city of Milwaukee suitable rooms, light, heat, furniture, necessary blank books, blanks and stationery for each of the branches of said civil court, for the use of the judges of said court and of attorneys and litigants therein. The said board of supervisors may also make such arrangements as such board may deem advisable with the authorities of other cities and of the towns and villages in said county for the use of rooms for holding branches of said court in the various districts which may hereafter be established by the judges of said court as provided by section 3 of this act.

2. The board of supervisors of said county shall also provide for the payment of the salaries of the judges, clerks, deputy clerks, deputy sheriffs and assistants of said court, and any other necessary expenses of said court.

SECTION 5. 1. The said civil court shall have jurisdiction and cognizance of the actions and proceedings set forth and enumerated in section 3572 of the statutes, when the amount claimed or involved in such actions or proceedings does not exceed the sum of one thousand dollars; and shall possess, except so far as may be inconsistent with the provisions of this act, the jurisdiction and powers over persons and subject matter heretofore possessed by justices of the peace in the city of Milwaukee immediately prior to the passage of this act, provided said court shall have jurisdiction of any action founded on an account when the same shall not exceed in amount, or shall have been reduced by payments to an amount not exceeding one thousand dollars; and shall have territorial jurisdiction co-extensive with the county of Milwaukee.

2. Said court shall not have cognizance of any action or proceeding enumerated in section 3573 of the statutes except the actions specified in subdivisions 2 and 4 of said section 3573, over which said civil court shall have and exercise jurisdiction where the amount claimed or involved does not exceed one thousand dollars.

SECTION 6. 1. At the regular judicial election to be held in the various towns, villages and cities in the county of Milwaukee on the first Tuesday in April, 1910, there shall be elected by

the qualified electors of said county of Milwaukee seven judges of said civil court. Immediately after their qualification the persons so elected judges of said court shall elect one of their number as chief judge, who shall hold such office so long as he shall remain a judge of said court. Whenever the chief judge shall cease to be a judge of said court, the remaining judges shall elect one of their number as chief judge who shall hold such office so long as he shall remain a judge of said court.

2. Of the persons so elected associate judges of said court, the three receiving the highest number of votes shall hold their offices until the first Monday of January, 1916; the persons receiving the next two highest number of votes shall hold their offices until the first Monday of January, 1914; and the persons receiving the next two highest number of votes shall hold their offices until the first Monday in January, 1912. Each of said associate judges shall enter upon the discharge of his duties as such on the third Tuesday in April, 1910, and shall hold office during his said term and until his successor is elected and qualified.

3. The successors of each said judges shall be elected at the regular judicial election held in the various towns, villages and cities in said county in the last year of the term of his predecessor and shall hold his office for the term of six years commencing on the first Monday in January next succeeding such election, and until his successor is elected and qualified.

SECTION 7. No person shall be eligible to the office of judge of said civil court unless for three years prior to the date of his election he shall have been a resident of Milwaukee county and shall have been an attorney, regularly admitted to practice in the circuit court of the state of Wisconsin for three years prior to the date of his election. No judge of said court shall practice law in any of the courts of said county of Milwaukee while holding such office.

SECTION 8. The judges of said civil court, elected or appointed under this act shall, before entering upon their duties, take the constitutional oath of office and file the same in the office of the county clerk of said Milwaukee county.

SECTION 9. 1. The judges of said civil court are hereby authorized and empowered to solemnize the rites of marriage. They shall also have power to take acknowledgments and administer oaths with the same force and effect as a justice of the peace. The said judges or either of them may command the services of the sheriff or any constable of said Milwaukee county to enforce the authority of said court and to maintain the peace.

2. The chief judge, in addition to the exercise of all the other powers of any associate judge of said court, shall have the general superintendence of the business of said court; he shall preside at all meetings of the judges and shall assign the associate judges to duty in the branch courts from time to time as he may deem necessary for the prompt disposition of the business thereof and the promotion of justice, and it shall be the duty of each associate judge to attend and serve at any branch court to which he may be so assigned.

3. The chief judge shall also superintend the preparation by the clerk of said court of calendars of cases for trial in said court and shall also superintend the distribution and assignment by said clerk of such cases upon different calendars pursuant to law and the rules of said court.

4. The chief judge shall give his attention faithfully to the discharge of the duties especially pertaining to his office and to the performance of such additional judicial works as he may be able to perform.

5. Each associate judge must perform his share of the labors and duties appertaining to his office and as required by the chief judge, unless prevented by sickness. Each associate judge must be in attendance in some branch of said court, or in the district court of Milwaukee county each day, except Sunday or a public holiday; provided, that each judge shall be entitled to vacations, which shall not exceed thirty-six business days in all in any one year and which shall be taken at such times as may be arranged by the chief judge. At least three branch courts shall be kept open within the city of Milwaukee and at least three judges assigned for that purpose by the chief judge, shall be in attendance thereat each day, except Sunday or a public holiday, from nine o'clock in the forenoon to five o'clock in the afternoon excepting one and one-half hours intermission, for the transaction of such business as may come before them.

6. It shall be the duty of the chief judge and the associate judges to meet together at least once in each month, excepting the months of July and August, in each year, at such hour and place as may be designated by the chief judge, and at such other times as may be required by the chief judge, for the consideration of such matters pertaining to the administration of justice in said civil court as may be brought before them.

7. At such meetings they shall receive and investigate, or cause to be investigated, all complaints presented to them per-

taining to said civil court, and to the officers thereof, and shall take such steps as they may deem necessary or proper with respect thereto, and they shall have power and it shall be their duty to adopt or cause to be adopted all such rules of practice, not inconsistent with the provisions of law, and such regulations for the proper administration of justice in said court as they may deem expedient.

8. Such rules shall not be effective, however, until the same shall have been approved in writing by two of the judges of the second judicial circuit and until the same shall have been published at least once a week for three successive weeks in an English newspaper of general circulation in said Milwaukee county.

SECTION 10. Whenever a vacancy shall occur in the office of a judge of said civil court the same shall be filled for the unexpired term by appointment of some qualified and competent person with qualifications as provided in this act by the governor of the state, and the person so appointed shall hold such office until his successor is duly elected and qualified.

SECTION 11. 1. Said civil court shall have a clerk and seven deputy clerks and such other assistants as the board of supervisors of Milwaukee county may prescribe. The judges of said court shall appoint the clerk and each of said judges may appoint one of said deputy clerks and the assistants shall be appointed by said chief clerk with the approval of a majority of said judges. Said clerk and deputy clerks who may be appointed shall before entering upon the duties of their offices, take an oath faithfully and honestly to discharge the duties of such office, and shall each give a bond in the sum of two thousand dollars for the faithful performance of his duties in such form and with such sureties as shall be approved by the judges of said court, such oath and bond to be filed with the county clerk of Milwaukee county. Such clerk, deputy clerks and assistants shall hold office during the pleasure of the persons appointing them.

2. It shall be the duty of said clerk, and deputy clerks to keep in the docket of said court a complete and accurate record of all the processes issued out of and returned to said court, and of all proceedings in any action or proceeding brought in said court, substantially as required by section 3574 of the statutes of 1898, except as otherwise herein provided. Said docket shall be evidence in the court of this state the same as the docket of other courts of record. The said clerk and deputy

clerks may make and certify in the form prescribed by law for clerks of courts of record for this state copies of the entries in said docket and of all papers filed in said court, and said clerk and deputy clerks shall have power to administer oaths.

3. Said clerk shall keep an accurate account of all fees and moneys paid into said court, stating from whom and the time when the same were received, and at the end of each calendar month, or oftener if required by the judges of said court, shall deposit the amount of such fees with the county treasurer of Milwaukee county, together with a detailed statement showing all moneys received or paid out by said clerk for fees or otherwise during the period covered by said statement, and which statement shall be verified by said clerk to be true and correct.

4. Said deputy clerks shall be competent phonographic reporters and shall take phonographic notes of any trial had in said court for the convenience and use of said judge or judges. They shall, when requested by said judges, or either of them, transcribe such phonographic notes into longhand for the use of said judges, and shall also transcribe into longhand such notes of the testimony or such part thereof as may be requested by any party to any action or proceeding or his attorney; provided, however, that for each copy of such testimony so furnished to any party or his attorney they shall charge five cents for each folio of one hundred words so transcribed; said amount to belong to the county of Milwaukee.

5. The said clerk under the superintendence of the chief judge shall divide and apportion the business of the court among the several branches thereof, and shall prepare calendars of cases for trial in said court and distribute and assign such cases upon different calendars pursuant to law and the rules of said court.

6. The clerk and deputy clerks shall also perform such other duties as may be imposed on them by any of the judges thereof or by the rules of said court.

7. The said assistants which may hereafter be prescribed shall be skilled in the use of the typewriter and shall perform such duties as may be required of them by said clerk or any of the judges of said court.

8. In case of the inability for any reason of said clerk or any of said deputy clerks to be present for the holding of said court at any branch or division thereof, any of the judges of said court shall possess all the powers and may perform all the duties devolved on such clerk or deputy clerks by this act.

SECTION 12. 1. The sheriff of Milwaukee county is hereby authorized to appoint seven additional deputy sheriffs who shall be designated as deputy sheriffs of the civil court, and each of whom shall receive the same salary as is paid to other deputy sheriffs of said Milwaukee county to be paid in monthly installments by the county of Milwaukee in the same manner as the salary of other deputy sheriffs of said county are now paid. Such deputy sheriff shall act as attendants upon the various branches of said civil court during their sessions. The judges of said court shall have power to make such necessary rules and regulations, to be entered in full on the records of said court, concerning the attendance and duties of such deputy sheriffs as such judges shall deem proper, and it shall be the duty of such deputy sheriffs to conform to the same.

2. The said deputy sheriffs shall be otherwise under the direction and control of the sheriff of Milwaukee county.

3. No constable shall possess any power with respect to said civil court or any process which may issue from it, but the sheriff of Milwaukee county shall possess all the powers and shall exercise all the duties with respect to said civil court and its process which constables have heretofore possessed or exercised by law with respect to courts of justices of the peace.

4. There shall be paid to the sheriff of Milwaukee county the following fees for his services in actions or proceedings in said civil court:

5. For serving a summons or any other process by which an action shall be commenced in said court, and making return thereon, for one defendant, one dollar; for each additional defendant, fifty cents.

6. For traveling in making service of any summons, writ or other process, the amount actually and necessarily expended in taking or procuring any necessary means of conveyance.

7. For all other services, the same fees as are now allowed by law to constables for services in actions or proceedings in courts of justices of the peace.

8. All such fees shall belong to the county of Milwaukee and shall be paid to the treasurer of said county in the same manner as other fees received by said sheriff are now paid.

SECTION 13. 1. The judges of said court shall each receive an annual salary of three thousand dollars, to be paid in monthly installments by the county of Milwaukee in the same manner as the salaries of other officers of said Milwaukee county are now paid.

2. It shall be the duty of each of said judges, before re-

ceiving any installment of such salary, to file with the county clerk of said Milwaukee county a detailed statement showing the number of cases assigned to him, the number of cases finally disposed of by him and whether the same were tried by a jury or before the court or otherwise disposed of, the number of such cases remaining undisposed of during the preceding calendar month, and the number of days during which such judge has been in attendance upon some branch of said court during such period.

3. The clerk of said court and each of said deputy clerks shall receive an annual salary to be paid by the county of Milwaukee in the same manner as the salaries of the judges of said court; and the board of supervisors of Milwaukee county, shall by resolution duly passed, fix the salary of the assistants and clerks of said court at such an amount as they may determine, and such board may at any time by resolution increase the salary of the judges, clerks, or assistants of said court.

4. But the salary of every officer whose election or appointment is herein provided for shall not be changed until the expiration of the term for which he was elected or appointed.

5. No officer of said court shall receive for his own use any other fee or compensation as such officer than as herein provided for; except, that the judges of said court shall be entitled to receive and retain for their own use the fee allowed by law for performing marriages and taking acknowledgment.

SECTION 14. 1. The process, service of the same, appearance, practice, pleadings, proceedings for contempt, trials, judgments by confession, default, or of non-suit, fees, costs and disbursements, and all the writs, warrants and proceedings in said civil court and in appeals therefrom, shall, except as herein otherwise provided, be governed by the provisions of Title XXVIII of the statutes, as amended, relating to courts of justices of the peace and proceedings therein in civil cases, and by the provisions of chapter 64 of the statutes, relating to bastards and proceedings in bastardy. The following sections of the statutes are hereby declared to be inapplicable to said court or the proceedings therein: Sections 3569, 3584 to 3592 inclusive, 3598, 3616, 3617, 3623, 3638, 3666, 3667, 3716 and 3776.

2. Provided, that in all actions and proceedings specified in sections 3572 and 3573, commenced in said court where the amount involved or demanded in the complaint in said action shall exceed the sum of two hundred dollars, except ac-

tions for forcible entry and detainer, the practice, pleadings, trials, judgments and proceedings thereafter shall be governed by the provisions of law relating to circuit courts and proceedings therein; except that the time in which any proceeding shall be had shall be governed by the provisions of this act and of said Title XXVIII so far as applicable.

SECTION 15. 1. The summons, warrant, or other process of said civil court shall be made returnable before said court by its proper title, and shall be otherwise, except as herein provided, substantially in the form and returnable within the same time prescribed for the process of courts of justices of the peace, and shall be signed by a judge or by the clerk of said court. The summons of said court may be signed, sealed and delivered by the clerk to attorneys authorized to practice law in Wisconsin, and may be issued by them in the manner provided by and subject to the restrictions of chapter 20 of the laws of Wisconsin for 1903.

2. Any summons issued to an attorney in such manner, excepting a summons in an action for forcible entry and detainer, may be served and proof of such service may be made in the same manner as the service of a summons and proof thereof in actions in the circuit court of this state. The summons of said civil court shall be signed by the clerk or a judge thereof and shall be in substantially the following form:

STATE OF WISCONSIN,
Civil Court of Milwaukee County.

.....,
Plaintiff,

vs.

.....,
Defendant.

The State of Wisconsin, to the said defendant (s) (and each of them):

You are hereby summoned to appear on theday of.... 19....; at nine o'clock in the forenoon, before the Civil Court of Milwaukee County, to answer to the complaint of the plaintiff (s) above named; and in case of your failure so to do, judgment will be rendered against you according to the demand of such complaint (of which a copy is herewith served upon you).

(Court Seal.)

3. Every summons of said civil court when duly served shall be filed with the clerk of said court at least two days before

the time when such summons is returnable, and the action thereby commenced shall immediately thereafter be assigned and placed upon the calendar of a branch court by said clerk in accordance with the provisions of law and the rules of said court.

SECTION 16. In all cases if either party shall file with the clerk an affidavit stating that from prejudice or other cause he believes the judge to whom such case is assigned or before whom the same is pending will not decide impartially in the matter, the same shall stand adjourned for one day and shall be transferred by the clerk to another branch of said court and heard, tried and determined by another of said judges qualified to act in such matter. But such affidavit must be filed before the commencement of the trial or hearing of such case. A party shall be entitled to but one transfer of a case under this section, but in such affidavit may specify not more than one other judge of said court whom he believes will not decide impartially in the matter.

SECTION 17. Either party may demur to the pleading of his adversary upon any of the grounds specified in section 2649 of the statutes and not otherwise. Where a pleading of a party is not sufficiently explicit, the court may, upon motion, order such party to make the same more definite and certain.

SECTION 18. The said civil court may, in its discretion, grant one or more adjournments of the trial of an action, or the hearing of a motion or other proceeding, for such time and upon such terms as it may deem just, unless the defendant has been arrested, in which case no adjournment shall be made without the consent of the defendant unless he shall first be discharged from custody. Subject to the approval of a judge of the court, an action or special proceeding may be adjourned after issue joined by stipulation signed by the parties or their attorneys and filed with the clerk of the court, or by consent of the parties made in open court and noted by the clerk or deputy clerk in the docket.

SECTION 19. 1. Jurors and trial juries for said civil court shall be drawn in the manner provided by sections 2544a to 2540 inclusive, of the statutes, except as hereinbefore provided, and sections 3639 to 3654 inclusive, of the statutes, with respect to such matter shall not be applicable to said civil court. Provided, that the chief judge of said civil court may, by an order made and filed with the clerk of said court, require that the names of more than thirty-six persons be so drawn to serve as petit jurors therein: that the several branches of said civil

court shall each draw their petit jurors from one panel of jurors drawn and summoned for said court; that the duties of the clerk of the circuit court, as provided in sections 2533a to 2540, shall be performed with respect to said civil court by the clerk of said civil court; and that the names of said jurors for any term of said civil court may be drawn by the clerk of said court in the absence of the said jury commissioners.

2. Either party to any civil action in said civil court on first paying to the clerk the sum of six dollars may demand that the action be tried by a jury of six men; and either party may also, on first paying to the clerk the sum of twelve dollars, demand that the action be tried by a jury of twelve men. Provided that such demand shall be made at the time of joining issue or prior thereto; and a neglect to make such demand shall be a waiver of the right to trial by jury. Upon such demand being made and such sum deposited as aforesaid, the first six persons, when a trial by a jury of twelve men is not demanded, or the first twelve persons when a trial by a jury is demanded who appear as their names are drawn and called, and who are not lawfully challenged and are approved as indifferent between the parties and not discharged or excused, shall be sworn and constitute the jury to try the issue. Except as herein otherwise provided, a jury in any action in said civil court shall be empaneled in the same manner and pursuant to the same rules as in the circuit court, except that sections 2544a to 2544h, shall not be applicable to said civil court.

3. The jurors in any case in said civil court may, in the absence of the judge before whom such case was tried, and when so directed by him, deliver a sealed verdict to the clerk of said court in the same manner that sealed verdicts are returned in actions in the circuit court. It shall be the duty of the judge before whom any case in said civil court is tried to charge the jury on questions of law, and such judge shall also have power to direct a verdict.

4. For the purpose of trials by jury a regular term of said civil court shall be held on the first Tuesday of each month, except the months of July and August, and a special term of said court for the trial of cases by jury may be held upon any day of said months of July and August, when so ordered by the chief judge. Whenever a trial by a jury shall be duly demanded in any case in said civil court, such case shall stand adjourned until the next term of said court. The clerk of said court, under the superintendence of the chief judge, not more than two days before any term of said court, shall pre-

pare in the order of their date of issue a list of cases in which a trial by a jury has been demanded, and such list shall constitute the jury calendar for such term by said civil court. The cases upon such jury calendar shall be assigned by the clerk to one or more of the branches of said court for trial as may be directed by the chief judge or the rules of said court, and shall be tried in their order upon such calendar unless continued for cause shown as required in the Circuit Court. Unless the court shall otherwise order, every such case shall be continued, and every other case on such jury calendar which shall not be tried or disposed of at such term shall stand continued to the next term of said court and be placed by the clerk upon the jury calendar for such term. Provided that if any party who shall have demanded a jury in any action in said court specified in section 3572 of the statutes, except actions for injury to persons or to real or personal property, shall ask to have such action continued for any cause after the commencement of the term upon the jury calendar for which such action has been placed for trial, such continuance shall be granted only upon payment by such party to the clerk of said court of the sum of ten dollars, unless such party shall waive a trial by jury in such action, in which case the action shall be taken off of such jury calendar and assigned by the clerk for trial before a branch of said court without a jury. And provided further, that in case a continuance in any action upon the jury calendar is asked, the court may, in its discretion, grant such continuance upon condition of the payment to said clerk of the sum of ten dollars.

SECTION 20. The appearance of an attorney authorized to practice in the circuit courts of this state on behalf of any party to an action or proceeding in said civil court may be made by filing with the clerk a notice of appearance, or by filing any pleading in such action or proceeding signed by him. Provided, that an attorney who shall have issued a summons in any action pursuant to section 15 of this act shall be deemed to have appeared in such action. Any party to any action or proceeding before said court may appear and prosecute the same in person or by an attorney regularly authorized to practice in the circuit courts of this state but not otherwise.

SECTION 21. 1. The said civil court shall have power to open any default judgment rendered by it within one year from the docketing of such judgment, except when an appeal has been taken. Said court, or the judges thereof, shall have the same

power as the circuit court, or the judges thereof, to entertain motions, make orders, stay proceedings, and grant relief to a party in any action where the amount claimed or involved does not exceed two hundred dollars, to grant a new trial. If notice of a motion or any other proceeding is necessary it shall be served on the party, or his attorney, at least five days before the time appointed for the hearing, unless the court or a judge thereof, upon an affidavit showing grounds therefor, makes an order to show cause why the order or relief prayed for should not be granted and in the order prescribes a shorter time for such service. Judgment in all actions, motions and proceedings must be rendered by the court within ten days after the same has been finally submitted.

2. Every action or proceeding brought in said court shall be called at the time specified in the order or process by which it is commenced or as soon thereafter as the business of the court will permit. Except in a case where an appeal has been taken, the court may in a proper case and in the furtherance of justice, vacate, modify or correct a judgment rendered in said court at any time within six months after the same was docketed; and may correct or amend a return upon an appeal on such terms as may be just. Section 2792 of the statutes relating to the consolidation of actions, sections 2601 to 2612 inclusive, of the statutes, relating to the parties to civil actions and proceedings and Rule XV of the Rules of Court, adopted by the supreme court for the circuit courts of this state, relating to the tender and payment of money into court, shall be applicable to said civil court of Milwaukee county.

SECTION 22. If upon the trial of an action in said civil court, it satisfactorily appears that a witness does not understand the English language, a judge of said court may, in his discretion, appoint a competent person to act as interpreter, who shall be duly sworn as such, for such action or proceeding. The compensation of such interpreter shall be fixed by the judge before whom the action or proceeding is tried, not exceeding, however, two dollars for each day's services. The amount so fixed shall be paid by the party to the action in whose behalf such witness is called, and if any such witness shall be called by both parties to the action, the amount of the compensation of such interpreter shall be paid by both parties in such proportion as the judge shall direct. The amount so paid by any party who is successful in the action may be taxed by him as costs and recovered in the action.

SECTION 23. 1. There shall be paid to the clerk or deputy

clerks of said civil court the following sums only as court fees in a civil action: Upon the issuing of a summons or warrant, one dollar; upon the return day, if judgment is taken by default or issue is joined, fifty cents where the judgment or the amount demanded in the complaint is less than twenty-five dollars and one dollar where the amount demanded is more than twenty-five dollars; for the trial of an action by the court, if issue is joined, and the amount claimed or involved is twenty-five dollars or less, two dollars and fifty cents; and five dollars where the amount claimed or involved is more than twenty-five dollars the foregoing to be paid by the plaintiff in such action; for the trial of an action by a jury in addition to all other fees two dollars and fifty cents to be paid by the party demanding such jury; for each transcript, execution or certificate issued by the clerk or deputy clerk, twenty-five cents; for making a return upon an appeal from a judgment or order, two dollars, and in addition thereto shall be paid by the appellant before the return is filed with the clerk of the circuit court five cents for each folio of one hundred words in such return.

2. The clerk shall require the prepayment of such fees, provided, however, if any person shall satisfy one of the judges by affidavit which must be in writing and filed with the court that he has a good and meritorious cause of action against another within the jurisdiction of said court, and that he has made a personal demand for the payment thereof of the debtor, and that such payment has been refused, and shall also state the name and residence of the debtor and the amount due over and above all legal set-offs, and that the applicant is unable to pay the fees therefor, the judge to whom said affidavit is presented may, in his discretion, indorse on such affidavit directions to the clerk or deputy clerks to waive such advance payment in favor of such person and to issue any proper process without charging court fees.

3. Where a summons is issued by an attorney pursuant to section 15 of this act, the court fees for issuing the same must be paid at the time such summons is issued by the clerk. All fees paid into court or included in any judgment therein, except witness and interpreter's fees, shall belong to the county of Milwaukee, and no such judgment shall be satisfied until such fees are paid into said court. But fees prepaid by either party recovered by any judgment in his favor and paid into court shall be refunded to him by the clerk.

SECTION 24. 1. The prevailing party in any action or proceeding in said civil court shall be entitled to costs, in the dis-

cretion of the judge before whom such action or proceeding was heard or tried. Such costs shall be taxed by the clerk or deputy clerk upon application of the party entitled thereto in the manner provided by section 3775 of the statutes for taxation of costs in justice's courts. Provided that such costs shall be limited to the actual and necessary disbursements, including witness fees, court fees and interpreter's fees and any amount paid into court upon demanding a jury, made by such prevailing party in such action or proceedings and an attorney's fee as follows: five per cent. of the amount recovered, or when judgment is for the defendant and dismissing the complaint, five per cent. of the amount demanded in the complaint, but in no case shall such attorney's fees be less than five dollars, nor more than twenty-five dollars.

2. Provided further, that any party to an action or proceeding against whom costs are taxed may have such taxation reviewed by the court by a motion therefor made within three days after receiving notice of such taxation, or, when such notice is not given, within ten days after the entry of judgment against him.

3. Sections 3782 and 3783 of the statutes shall not apply to said court, but security for costs may be ordered and demanded in the cases and in the manner prescribed by sections 2942 to 2946, inclusive, of the statutes except that such undertaking shall be in the amount, not exceeding one hundred dollars, as the court or either of said judges may determine, and provided, further, that in lieu of such undertaking any person required to furnish the same may pay into court such sum of money, not exceeding one hundred dollars, as the court or a judge thereof may direct, to be applied to the payment of the costs, if any, awarded against him.

SECTION 25. A judgment of said civil court shall have the same force and effect as a judgment rendered by a justice of the peace; and all provisions of chapter 156 and of section 2900 of the statutes as amended, in relation to issuing and filing transcripts of such judgments and docketing the same in the office of the clerk of the circuit court of any county shall apply to the judgments of said civil court, and the same, when so docketed, shall have the same force and effect as if rendered by a justice of the peace. Provided, that all the powers given by law to justices of the peace to give transcripts of judgments are hereby given to the judges and to the clerk of said civil court with respect to its judgments.

SECTION 26. All executions upon judgments of said civil

court shall be issued by the clerk or a judge of said court in the same manner and in substantially the same form, except as hereinbefore provided, as executions upon a judgment of a justice of the peace; and the provisions of chapter 157 of the statutes of 1898 shall apply to said court and its judgments, except as herein otherwise provided, the same as to judgments of a justice of the peace; except that in cases of garnishment upon execution the affidavit prescribed by section 3700 of the statutes shall be made and delivered to a clerk or a judge of said civil court, and upon receipt of such affidavit said clerk or judge shall issue a garnishee summons, which shall be served at least six days before the return day of the execution, and the same proceedings shall be had upon such affidavit and summons as in other garnishee actions in said court.

SECTION 27. 1. Whenever any action shall have been commenced by summons upon contract, express or implied, or by warrant of attachment in said civil court, or shall be pending therein, if the plaintiff or some one in his behalf shall make and deliver to the clerk or any judge of said court an affidavit stating that the affiant has good reason to believe that some person, (naming him) is indebted to the defendant, or has personal property in his possession or under his control belonging to the defendant, or when there is more than one defendant, to any or either of them, not by law exempt from sale on execution, said clerk or judge shall issue a summons to such person to appear before said court on the return day of such summons or attachment, to answer touching his liability as garnishee. Such affidavit may be amended with the same effect as is provided in section 3702 of the statutes.

2. Such summons shall be issued under the seal and be returnable before said court, shall be signed by the clerk or a judge thereof, shall be otherwise substantially in the form provided by section 3717 of the statutes and shall be served by a deputy sheriff of said Milwaukee county. All proceedings in garnishment in said civil court, except as herein otherwise provided, shall be governed by the provisions of chapter 158 of the statutes, relating to garnishment proceedings in courts of justices of the peace.

SECTION 28. 1. Except as herein provided, an appeal may be taken to the circuit court of Milwaukee county by any party to an action or proceeding in said civil court from any final judgment of said civil court or from any order of said civil court from which an appeal to the supreme court might be taken if such order were made by a circuit court. Such appeals shall be taken and the returns and amended returns upon such ap-

peals shall be made by the clerk of said civil court in the manner provided in chapter 160 of the statutes relating to appeals from justices' courts; provided, that upon an appeal from any order of said civil court, such clerk shall include in the return only so much of the record and testimony in said action as shall be necessary to determine the questions raised by such appeal.

2. Upon such appeals the circuit court shall either affirm or reverse any judgment so appealed from, except that said circuit court may modify, and affirm as modified, any such judgment in all cases where the same might have been so modified, and affirmed as modified, if such appeal had been taken to the supreme court from the judgment of the circuit court. Every order of said civil court from which an appeal is taken shall be either affirmed or reversed by the circuit court, and the action in which such order was made shall be returned to the clerk of said civil court for further proceedings according to law and in accordance with the direction of said circuit court.

3. Every judgment of said civil court shall be affirmed or modified and affirmed as so modified, by the circuit court, upon appeal, unless, by reason of manifest prejudicial error in the trial of the action in which such judgment was rendered, any party thereto has not had a fair trial thereof in the civil court; but in any such case of mistrial, where substantial justice cannot otherwise be done and the rights of the parties otherwise observed and protected, the judgment of the civil court therein shall be reversed, and the circuit court shall order the action tried in said circuit court in the same manner as if originally brought there, except that in case any judgment of the civil court in any action wherein the amount involved or demanded in the pleadings of either party does not exceed the sum of two hundred dollars, shall be so reversed, there shall be no new trial thereof by jury in the circuit court, if a jury trial thereof was not demanded in the civil court or if the parties thereto may not of right require it, but such action shall be heard, determined and judgment therein rendered in the circuit court, on motion as hereinafter provided, upon the original papers and the return of the clerk of said civil court in the manner provided in section 3769 of the statutes.

4. At any time after the filing in the circuit court of the return upon any appeal from said civil court, any party to the action or proceeding in which such appeal is taken, upon notice given as required of other motions in the circuit court, may move that the judgment appealed from be affirmed, or reversed, or modified and affirmed as modified, or that the order appealed

from be affirmed or reversed. Such motion shall be heard upon the original papers and the return of the clerk of said civil court in the same manner as other motions in said court, except that the said circuit court of Milwaukee county shall have power to make and adopt such rules, not inconsistent with the law, to facilitate the hearing of such appeals and such motions as it may deem advisable.

5. Whenever any judgment of the civil court shall, upon appeal, be affirmed or modified and affirmed, the circuit court shall so order and thereupon the judgment so affirmed or as so modified and affirmed shall be entered and docketed in the circuit in the same manner as if originally rendered therein, and it shall thereupon become for all purposes the judgment of said circuit court. The proceedings upon any appeal from any judgment or order of the civil court, except as herein otherwise provided, shall be governed by the provisions of chapter 160 of the statutes relating to appeals from justices' courts and judgments of justices of the peace so far as such provisions may be applicable thereto.

SECTION 29. Any of the associate judges of said civil court may exercise the powers and perform the duties of the judge of the district court of Milwaukee county in the same manner and to the same extent as such powers and duties have heretofore been exercised and performed by the justices of the peace of the city of Milwaukee, pursuant to chapter 218 of the laws of Wisconsin for 1899.

SECTION 30. All acts or parts of acts inconsistent or in conflict with the provisions of this act are hereby repealed.

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

Approved June 17, 1909.

No. 162, S.]

[Published June 23, 1909.

CHAPTER 550.

AN ACT to create sections 524m—1, 524m—2, 524m—3, 524m—4, 524m—5, 524m—6 and 524m—7 of the statutes, providing for inspection of public school buildings.

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

SECTION 1. There are added to the statutes seven new sections to read: Section 524m—1. The inspector of rural schools, the inspectors of state graded schools, and the inspector of high schools of the state, in addition to their other