

No. 326, S.]

[Published June 23, 1911.]

CHAPTER 425.

AN ACT to amend chapter 549 of the laws of 1909, entitled, "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. Section 5 of chapter 549 of the laws of 1909 is amended to read as follows: Section 5. 1. The said civil court shall have jurisdiction and cognizance of the actions and proceedings set forth and enumerated in section 3572 and subdivisions 2 and 4 of section 3573 of the statutes and the acts amendatory thereof when the amount claimed or involved in such actions or proceedings does not exceed the sum of * * * two thousand dollars; provided that said court shall have jurisdiction of any action founded on an account when the amount claimed shall not exceed two thousand dollars: and of the actions and proceedings mentioned in chapter 145 of the statutes entitled, "Of forcible entry and unlawful detainer," and the acts amendatory thereof; 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 * * * possessed by justices of the peace in the * * * county of Milwaukee * * * on the first day of January, 1909; * * * and shall have territorial jurisdiction co-extensive with the county of Milwaukee.

2. * * * The judges of said court shall have the powers and jurisdiction heretofore possessed by justices of the peace in the county of Milwaukee in bastardy proceedings, and the said civil court shall have jurisdiction and cognizance in bastardy cases concurrent with and equal to that possessed by the circuit court of said county; and all examinations, recognizances, and commitments by said judges in bastardy cases shall be certified and returned either to said circuit court or to said civil court.

SECTION 2. Subdivision 8 of section 9 of said chapter 549 is hereby repealed.

SECTION 3. Subdivision 5 of section 12 of said chapter 549 is amended to read as follows: Section 12. 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; and a garnishee defendant shall be deemed to be an additional defendant for the purpose of determining said fees, and no charge shall be made for the service of the garnishee summons on the defendant in the principal action when the garnishee summons is re-

turnable at the same time as the summons or other process in the principal action, except in garnishments in aid of execution.

SECTION 4. Subdivision 1 of section 13 of said chapter 549 is amended to read as follows: 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.

SECTION 5. Subdivision 4 of section 13 of said chapter 549 is hereby repealed.

SECTION 6. Section 14 of said chapter 549 is amended to read as follows: Section 14. 1. The process, service of the same, appearance, practice, pleadings, * * * 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 justice 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 and by chapter 145 of the statutes entitled, "*Of forcible entry and unlawful detainer,*" and the acts amendatory thereof. 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 said action shall exceed the sum of two hundred dollars, except actions * * * of 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 which any proceedings shall be had shall be governed by the provisions of this act and of said Title XXVIII so far as applicable; and provided, further, that in the trial of bastardy cases, the practice, pleadings, trials, judgments, and proceedings thereafter shall be governed by the provisions of law relating to circuit courts and proceedings therein.

SECTION 7. Subdivision 1 of section 15 of said chapter 549 is amended to read as follows: 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, except as otherwise herein provided, substantially in the form and return-

able within the * * * 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; *provided that a garnishee summons, except in aid of execution, may be issued either at the time of the issuing of the summons or warrant of attachment or at any time thereafter before final judgment, and be made returnable not less than six nor more than fifteen days from the date of the issue of said garnishee summons.* 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, *as amended, except as to time of filing.*

SECTION 8. Section 16 of said chapter 549 is amended to read as follows: 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 * * * *two* other judges of said court whom he believes will not decide impartially in the matter.

SECTION 9. Section 17 of said chapter 549 is amended to read as follows: Section 17. * * * *The defendant may demur to the * * * complaint * * * on any of the grounds specified in section 2649 of the statutes * * *. And the plaintiff may demur to the answer or to any defense or counterclaim therein upon any of the grounds specified in section 2658 of said statutes. When the allegations of a pleading are so indefinite or uncertain that the precise nature of the charge or defense is not apparent, the court or presiding judge may require the pleading to be made definite and certain by amendment.*

SECTION 10. Subdivision 1 of section 19 of said chapter 549 is hereby amended by striking therefrom the figures and words "2544a to 2540" where the same occur in the second and third lines of said subdivision, and inserting in lieu thereof the figures and words "2533a to 2544."

SECTION 11. Subdivision 2 of section 19 is amended to read as follows: Section 19. 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. * * *

2m. When a trial by a jury of six is duly demanded, ten jurors shall be drawn and from the first ten persons 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, each party shall be entitled to two peremptory challenges to be made alternately by the parties, one at a time, the plaintiff beginning; and when either party shall decline to challenge in his turn, such challenge shall be made by the clerk by lot, and the six remaining jurors shall be sworn and constitute the jury to try the issues. Likewise, when a jury of twelve shall be duly demanded, eighteen jurors shall be drawn, and from the first eighteen persons 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, each party shall be entitled to three peremptory challenges to be made alternately by the parties, one at a time, the plaintiff beginning; and when either party shall decline to challenge in his turn, such challenge shall be made by the clerk by lot, and the twelve remaining jurors shall be sworn and constitute the jury to try the issues.

2n. Defendants who must sever in their defenses, each having a distinct issue to maintain, are each to be considered a "party" entitled to peremptory challenges, in which case there shall be drawn and called a sufficient number of jurors to constitute a jury of six or twelve, as the case may be, after each party entitled thereto has exercised the peremptory challenges herein provided for. Except as herein otherwise provided, a jury in any action in said civil court shall be impaneled 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.

SECTION 12. Subdivision 4 of section 19 of said chapter 549 is amended by inserting after the words "in said civil court" where the same occur in line seven of said subdivision, the words: "except in actions of forcible entry and unlawful detainer."

SECTION 13. Subdivision 1 of section 21 of said chapter 549 is amended to read as follows: 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 to grant new trials and other relief. 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. A judgment in all actions, motions, and proceedings must be rendered by the court within ten days after the same has been finally submitted.

SECTION 14. Subdivision 1 of section 23 of said chapter 549 is amended to read as follows: 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, * * * *fifty cents*; 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 * * * *one hundred dollars or less*, and one dollar where the amount demanded is more than * * * *one hundred dollars*; for the trial of an action * * * if issue is joined, and the amount * * * is twenty-five dollars or less, * * * *one dollar*; where the amount claimed is more than *twenty-five dollars but does not exceed two hundred dollars, two dollars and fifty cents*; and five dollars where the amount claimed or involved is more than * * * *two hundred dollars*, the foregoing to be paid by the plaintiff in such action; * * * 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.

SECTION 15. Subdivision 2 of section 23 of said chapter 549 is amended to read as follows: Section 23. 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 * * * upon the debtor, and that such pay-

ment has been refused, and should 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, endorse on such affidavit directions to the clerk or deputy clerks to waive such advance payment * * * *of sheriff and court fees in favor of such person.*

SECTION 16. Subdivision 3 of section 23 of said chapter 549 is amended to read as follows: Section 23. 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; and, upon due cause shown, the court may direct the clerk to remit fees which may have been paid for the process of said court where the same has been paid for and not served, or for other good and sufficient reason.

SECTION 17. Section 25 of said chapter 549 is amended to read as follows: Section 25. * * * *All judgments, orders, and decrees made and entered in said civil court in all actions and proceedings shall have the same force, effect, and lien, and shall be docketed 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 said civil court.*

SECTION 18. Section 26 of said chapter 549 is hereby repealed.

SECTION 19. Subdivision 1 of section 27 of said chapter 549 is amended to read as follows: 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 of 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 * * * at

*the time and place expressed in such summons * * * not less than six nor more than fifteen days from the date thereof, 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.*

SECTION 20. Subdivision 1 of section 28 of said chapter 549 is amended to read as follows: Section 28. 1. * * * *The orders, judgments, and decrees of said civil court in all bastardy cases, may be examined and reviewed by the supreme court in the same manner that the orders, judgments, and decrees of the circuit court may be examined and reviewed. Except in bastardy cases, and except as herein otherwise 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 within twenty days after the entry of the judgment or order appealed from, and the returns and amended returns upon such appeals 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 said clerk shall include in the return only so much of the record and testimony in * * * such action as shall be necessary to determine the questions raised by such appeal.*

SECTION 21. All acts and parts of acts inconsistent or in conflict with provisions of this act are hereby repealed.

SECTION 22. This act shall take effect and be in force from and after its passage and publication.

Approved June 21, 1911.

No. 471, S.]

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CHAPTER 426.

AN ACT to authorize the city of Sturgeon Bay to construct and maintain a toll bridge across the waters of Sturgeon Bay from a point on the northerly side of said waters, in the city of Sturgeon Bay, to a point on the southerly side of said waters in the city of Sturgeon Bay, county of Door, and State of Wisconsin.

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

SECTION 1. The city of Sturgeon Bay, in the county of Door and State of Wisconsin, is hereby authorized and empowered to