

No. 460, A.]

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CHAPTER 526.

AN ACT to establish a municipal court of Dane county, to be known as the "Small Claims Court for Dane County," and to prescribe its jurisdiction and powers.

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

SECTION 1. NAME OF COURT; MAINTENANCE AND RECEIPTS. There is hereby created and established in and for the county of Dane, a municipal court to be designated "Small Claims Court for Dane County," which court shall be established and maintained at the expense of Dane county, Wisconsin. All receipts of said court shall be paid to Dane county treasurer as hereinafter provided.

SECTION 2. COURT OF RECORD; SEAL. Such small claims court for Dane county shall be a court of record and shall have an official seal, which shall have such design as the first judge shall prescribe, and on which shall be engraved the words "Small Claims Court for Dane County, State of Wisconsin."

SECTION 3. SEAT OF COURT; PROCESS AND JURISDICTION COUNTY WIDE. The principal seat of said small claims court for Dane county shall be the city of Madison, in said county, and the process and jurisdiction of said court shall extend throughout Dane county. The board of supervisors for Dane county shall provide in one central location in the city of Madison suitable accommodations, equipment, supplies, records, stationery, blanks, and such other supplies as may be necessary in the due operation of said court. Upon motion of one or both of the parties, or upon its own motion, the court may in its discretion hold court in any other city or village in the county, for the convenience of parties and their witnesses, when proper facilities have been provided by such city or village.

SECTION 4. JURISDICTION, POWERS, DUTIES.

(1) Said small claims court for Dane county shall have such jurisdiction, powers and duties as are now given, or which may hereafter be given, to justices of the peace, excepting that said small claims court or judge thereof:

(a) Shall have no jurisdiction over criminal actions or proceedings;

(b) Shall have no jurisdiction under Chapter 166, Wisconsin statutes, as now in force or as hereafter amended, or any other provision of law relating to illegitimacy proceedings;

(c) Shall have no jurisdiction under any prosecution by the city of Madison, or other town, village or city or by Dane county for breach of the charter or of any ordinance or by-law of the city of Madison, or other town, village or city or of Dane county;

(d) Shall not be required and shall not have the power or authority to perform any of the duties directed by the following provisions of law as they now read or may hereafter be amended or renumbered;

1. Sections 95.31, 95.32 and 95.37, relating to claims arising from the condemnation of diseased animals;

2. Chapter 170, Wisconsin statutes, relating to appraisal of stray animals or lost goods which have been found;

3. Chapter 171, Wisconsin statutes, relating to unclaimed property;

4. Chapters 172 and 173, Wisconsin statutes, relating to distrained animals running at large;

5. Sections 235.35 to 235.37, Wisconsin statutes, relating to proof of execution of conveyances where the grantor refuses to acknowledge the instrument;

6. Chapter 362, Wisconsin statutes, relating to security to keep the peace;

7. Chapter 366, Wisconsin statutes, relating to inquests of the dead.

(2) It is the intent of this section that all provisions of law now in force or which may hereafter be enacted relating to the jurisdiction, powers, or duties, of justices of the peace in civil actions or proceedings shall be applicable to the small claims court for Dane county and judge of said court, except as otherwise provided in this act. It is further the intent of this section to exclude the small claims court for Dane county and the judge of said court from all jurisdiction, powers, duties, or requirements now or hereafter conferred upon, given to, or required of justices of the peace in all matters other than such civil actions or proceedings. The above enumeration of exceptions in subsection (1) shall not be considered exclusive, and if there are now or hereafter any other provisions of law by which justices of the peace are given jurisdiction, powers, or duties, in addition to their jurisdiction, powers, and duties in civil actions and pro-

ceedings, such provisions of law shall not be applicable to the small claims court for Dane county, or the judge thereof.

SECTION 5. PRACTICE AND PROCEDURE.

(1) SAME AS JUSTICE COURT WITH EXCEPTIONS; COURT RULES.

The practice and procedure of said small claims court for Dane county shall be the same as now or hereafter provided by law in civil actions or proceedings before justices of the peace except as otherwise provided by this act. The judge of said court shall have the power to make such rules governing such practice and procedure as shall not be inconsistent with this act. Any rule adopted by said judge shall be in writing and shall not become effective until filed with the clerk of said court for a period of at least 10 days.

(2) FORMS. The form of summons, warrants, writs, process, judgments, executions, or other documents or papers, which shall be used in said small claims court for Dane county, shall be the same as is now or may hereafter be prescribed by law for use in civil actions and proceedings before justices of the peace, with such changes as the judge of said court, in his discretion, may deem necessary to adapt them for use in said small claims court.

(3) ISSUANCE OF SUMMONS BY ATTORNEY. The judge of said court may sign, in blank, any summons, and deliver the same to any attorney duly authorized to practice law in Wisconsin, to be issued by such attorney as occasion may require. No fee shall be charged therefor, excepting that a reasonable charge shall be made by the clerk, at the time of delivery, in an amount to be determined by the clerk of said court, necessary to defray the actual cost of printing and distributing said summons.

(4) RETURN DATE. Every summons 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 in the manner provided by this act other than by mail. If service is made by mail, the summons shall be made returnable not less than 8 nor more than 17 days from the date of mailing. If a summons is issued by an attorney, it may be made returnable on any day of the week excepting Sunday and Saturday, and excepting Wednesday afternoon, at any time of the day between the hours of 9:00 o'clock and 11:45 o'clock a. m., both inclusive, and 1:30 o'clock and 3:30 o'clock p. m., both inclusive. If service is made

by mailing, the clerk shall make the summons returnable at intervals throughout the hours of the day on the days specified, to the end that cases may be heard with as little delay as possible.

(5) SERVICE OF SUMMONS. Any summons shall be served as follows:

(a) By service on individuals or corporations, in the manner in which summons issued by justices of the peace now are or may hereafter be served. Every person serving any summons or other process of said 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 said court.

(b) By mailing; service by mail may be made by leaving the original and necessary copies of the summons with the clerk of said 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 the clerk. Service of said 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 said court.

(6) DOCKETING OF ACTIONS. The clerk shall docket every summons at the time the summons is left with the clerk for service by mail. The clerk shall docket every summons served otherwise, after it has been returned to him by the person serving it, at least 72 hours before the time when said summons is returnable. Such docket entry shall, in the event said summons was issued in blank, have the same force and effect as if made at the time said summons was issued.

(7) TRIAL BY COURT. The parties shall, in all cases, join an issue of law or of fact, at the time when said summons is returnable. The court, at that time, may order the case tried immediately or may, in its discretion, adjourn the trial until such time and place as he shall see fit. Failure to adjourn a case to a day or a place certain shall not deprive or oust the court of jurisdiction, or render any judgment void. No adjournment shall be granted until issue shall have been joined as herein provided, unless the court directs otherwise.

(8) TRIAL BY JURY. Trial by jury may be had in such small claims court for Dane county in the same manner as in

courts of justices of the peace, as now or hereafter provided by law.

(9) FEES AND COSTS.

(a) *Docketing fee.* At the time of docketing every summons, the plaintiff shall pay, to the clerk of said court, a docket fee of 50 cents, plus a state tax of 10 cents.

(b) *Fees on entering money judgments.* At the time of entering any money judgment, the prevailing party shall pay, to the clerk, an additional fee as follows:

Amount involved in action, including interest	Fee
\$ 0 to \$ 50	\$.50
50 to 100	.75
100 to 150	1.00
150 to 200	1.25

(c) *Fees on entering judgments other than money judgments.* At the time of entering any judgment other than a money judgment, the prevailing party shall pay, to the clerk, such fees as shall now or hereafter be provided by law for entering such judgment in justice court.

(d) *Limitation of fees.* Except as may be otherwise specifically provided in this act, no party shall be required to pay any other or further fees in any civil action or proceeding, in said court.

(e) *Fees transmitted to county treasurer.* All sums received by the clerk, as mailing or docket fees or for entering judgment, shall be paid monthly to the treasurer of Dane county, and shall be used to defray the expenses of said court. The amounts received by the clerk as state tax shall be paid, by the clerk, to the county treasurer to create a fund to be applied to the payment of the salary of such judge.

(f) *Costs.* In every action or proceeding, except as may be otherwise herein provided, the judge shall without any other or further notice to the parties tax and insert in the judgment as costs in favor of the party recovering judgment the following:

1. Amounts paid by such party as the mailing fee, docket fee, garnishee fee, state tax, and fee for entering judgment.
2. Lawful fees or charges of the sheriff, constable, or other officer for serving the summons or any other document.
3. Amounts necessarily paid out for witness fees, including travel.

4. Attorneys' fees as in civil actions before a justice of the peace, provided that such fees in the discretion of the court, may be disallowed.

(g) *Costs in attachment, replevin, and unlawful detainer action.* In actions commenced by warrant of attachment or warrant of replevin, or in actions of unlawful detainer, costs, including attorneys' fees, shall be allowed to the prevailing party as in such civil actions before a justice of the peace.

(10) **TRANSCRIPTS OF JUDGMENTS TO CIRCUIT COURT; JUDGMENT LIEN.** The clerk of the circuit court for Dane county shall upon payment of the sum of 25 cents forthwith file a transcript of any judgment rendered in said small claims court for Dane county and docket the same, in the same manner as transcripts of judgments rendered by justices of the peace may be filed and docketed with the clerk of the circuit court. Upon filing and docketing said transcript of judgment, said judgment shall be deemed a judgment of the circuit court for Dane county and be equally under the control thereof and be carried into execution and shall be a lien upon real estate in the same manner and with like effect as judgments of said circuit court, except that no action can be brought upon the same as a judgment of said circuit court, nor execution issued thereon after the expiration of the time said judgment is a lien on real property.

(11) **FAILURE OF ACTUAL NOTICE OF SUIT BY MAIL.**

(a) In any action where service of summons was made by mailing as provided in this act, the defendant, at any time within 10 days of his actual knowledge of the pendency of the suit or of the entry of judgment against him (if judgment has been entered), may petition the court, in writing, for opportunity to be heard upon the merits. If the court finds there is reasonable ground to believe that the defendant did not receive the process mailed to him or did not receive the mailed process in time to give him reasonable opportunity to appear on the return date or on the adjourned date, if the adjourned date was known to the defendant, then the court shall set the matter for hearing, or if judgment has been entered shall stay all proceedings on the judgment and shall set the matter for hearing, at such time as will give the defendant reasonable opportunity to be heard. At the time of such hearing the question of the defendant's actual receipt of the pro-

cess by mail or the receipt by mail in time to give reasonable opportunity to so appear, shall first be heard and determined by the court. If the court finds that the defendant did not receive the process by mail and within such time as gave him reasonable opportunity to be heard, the court shall proceed to try the matter upon the merits, or if judgment has been entered, shall vacate the judgment and proceed to try the matter upon the merits. If the court finds that the defendant did receive the process by mail and within such time as would have given him reasonable opportunity to be heard, the court shall revoke its order staying proceedings on the judgment, and if a judgment had not been entered, the court in its discretion, may give the defendant opportunity to be heard upon the merits.

(b) The provisions of this subsection shall not apply where service is made by mail but where the defendant actually appeared and submitted to the jurisdiction of the court without filing application as provided in paragraph (a) above.

(12) APPEALS. Appeals from the small claims court for Dane county may be had to the circuit court for Dane county. Such appeals shall be taken in the same manner as provided by law for appeals from courts of the justices of the peace, excepting that the time for appeal where judgment has been entered by default shall begin to run at the time of entry of judgment and not at the time of the service of notice of entry of judgment.

(13) GARNISHMENT ACTIONS. Practice and procedure in garnishment actions shall be the same as prescribed by law for such actions before justices of the peace except as altered by this act and except as follows:

(a) The garnishee summons shall be signed by the judge of the small claims court for Dane county and not by the sheriff or constable.

(b) The garnishee or his authorized agent may answer by letter directed to the judge of said court, which letter shall have the same force and effect as an answer made in the manner provided by law in garnishment actions in justice of the peace courts. Said 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 event issue be taken upon an answer made by letter, all further proceedings shall be the same as in garnishment actions before a justice of the peace and the prevailing party shall be entitled to receive costs as in civil actions before

justices of the peace. Nothing herein shall be construed as prohibiting a garnishee from answering in all garnishment actions in the manner now or which may hereafter be prescribed in garnishment actions before justices of the peace.

(c) A garnishee shall be entitled to a fee of 50 cents and shall not be required to answer unless such fee be first paid. In the event the garnishee summons is served by mail, such fee shall be mailed with the summons. Such garnishee fee shall be advanced by the plaintiff to the clerk of said court before mailing.

SECTION 6. DOCKET. The judge of said court shall keep a docket for all cases of which it has jurisdiction. All docket entries shall be made and kept so far as practicable in the same manner as is now or may hereafter be required in courts of justices of the peace, with such modifications as may be necessary by reason of any provision of this act. The judge may in his discretion require that the docket entries be made by the clerk or any other employe of said court. Any irregularity, omission or failure of the judge, clerk or other person designated by the judge to keep the docket, in keeping said docket shall not operate to oust said judge or court of jurisdiction or render a judgment of the court void. The judge shall have power at any time to correct or amend said docket or supply any omission therein if the error or omission is satisfactorily made to appear to said judge.

SECTION 7. DISABILITY OF JUDGE. In case of the absence, sickness or temporary disability of said judge, he may, by order in writing to be filed in said court, appoint a justice of the peace or a court commissioner of said county, to discharge the duties of such judge during such absence, sickness or disability, who shall have all the powers of such judge while administering such office. Said justice of the peace or court commissioner, while presiding in said court, shall receive such per diem as may be fixed by the county board.

SECTION 7a. JUDGE MAY SIT FOR COUNTY JUDGE AND SUPERIOR COURT JUDGE UPON REQUEST. In case of the sickness, absence, or disability arising from any cause, of the county judge of Dane county or of the superior court judge of Dane county; or when any such judge, for any cause, deems it improper for him to hear or try any proceeding in the county court or in the superior court for Dane county, or before him as judge of said court, he, the county judge or the superior court judge, may request the

judge of the small claims court for Dane county to hold court and hear and try any matter or proceeding as court or as a judge of either of said courts; and the judge of said small claims court is authorized and empowered, upon such request from the county judge or the superior court judge, to perform any act as judge of either of said courts as fully as the said county judge or superior court judge is authorized or empowered to do.

SECTION 8. REMOVAL FROM SMALL CLAIMS COURT. No action or other proceeding before such court shall be removed from said court but whenever, prior to joining issue in any action, it shall appear by affidavit that from prejudice such judge will not decide impartially in the matter or that he is interested pecuniarily in the action or proceeding or is a material witness or is within the forbidden degree of consanguinity, he shall notify any qualified justice of the peace in Dane county, to forthwith appear in said court to try and hear said cause. And it shall be the duty of the justice of the peace so designated to forthwith appear in said court and discharge the duties of said judge in the trial or hearing of said cause in the same manner and with like effect as said judge would if not disqualified to act. Said justice of the peace while presiding in said court shall receive such per diem as may be fixed by the county board.

SECTION 9. CASES REMOVED FROM JUSTICE COURT. If any case shall have been removed to said small claims court, from a justice court, pursuant to the provisions of section 301.245, or pursuant to any other provision of law, said small claims court shall proceed to hear, try, and determine the case with the same power, authority, and jurisdiction as if said action had been commenced in said court.

SECTION 10. CLERK OF SMALL CLAIMS COURT. The clerk of the circuit court for Dane county ex officio shall be the clerk of the small claims court for Dane county and shall have the care and custody of all books and papers belonging to said small claims court. The clerk of circuit court, with the advice and written consent of the judge of said small claims court, shall in writing appoint a deputy clerk who shall be assigned exclusively to the small claims court. The salary of said deputy clerk shall be fixed by the county board. Such deputy clerk, together with such other assistants, including a court reporter, in said court, if any, as shall be provided for by the county board and as shall be appointed by the said clerk with the advice and written con-

sent of said judge, shall handle all the clerical matters arising in such small claims court. If a court reporter is authorized by the county board, he shall be appointed by the judge of said court. Said clerk and deputy clerk shall, before entering upon the duties of their offices, take an oath faithfully and honestly to discharge the duties of such offices, and shall each give an official bond in the sum of \$2,000 for the faithful performance of his duties, in such form and with such sureties as shall be approved by the judge of said court, such oath and bond to be filed with the county clerk.

SECTION 11. SHERIFF'S AND CONSTABLES' POWERS. The sheriff and constables of Dane county shall have the same duty and the power to serve and execute any process of said court as of courts of justices of the peace and shall be subject to the same liability and penalty.

SECTION 12. JUDGE; ELECTION; TERM; COMPENSATION. On the first Tuesday of April, 1947, and every 4 years thereafter, there shall be elected, in the same manner as county judges are elected, a judge for said small claims court for Dane county. No person shall be eligible to the office of judge of said court except an attorney of a court of record and such judge shall hold no other county office during the term he is judge thereof. He shall hold his office for a term of 4 years from the first Monday of July next following his election and until his successor is elected and qualified. Such judge shall receive a salary of \$4,800 per annum, although the county board may increase this amount as it sees fit. He shall not be entitled to any fees paid into such court. Whenever a vacancy shall occur in the office of a judge of said court, the same shall be filled for the unexpired term, by appointment of some qualified person, by the governor of the state, and the person so appointed shall hold such office until his successor is duly elected and qualified.

SECTION 13. SEVERABILITY. If any provision of this act, or the application thereof to any person or circumstances, is held invalid, the remainder of this act and the application of such provisions to other persons or circumstances, shall not be affected thereby.

Approved August 1, 1945.