

COUNTY COURT.

CHAPTER 43.

[S. B. No. 70.]

PRACTICE DEFINED—COMPENSATION.

AN ACT Defining the Practice in County Courts Having Increased Jurisdiction; Fixing the Terms of Court, Compensation of Judges and Clerks and Their Duties.

Be it Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. GENERAL PROVISION TO APPLY.] The general provisions of law which may at any time be enforced relating to the district courts, and to civil and criminal proceedings therein shall relate also to the county courts having increased jurisdiction and the rules of practice of district courts shall be in force in said county courts, unless inapplicable and except as herein otherwise provided.

§ 2. TERMS OF COURT.] The regular term of the county court shall be held at the county seat, commencing at 9 o'clock A. M. on the first Tuesday of each calendar month for the trial of such civil and criminal actions as may be brought before such court.

§ 3. CALENDAR.] The county judge shall, on the first day of each term, or as soon thereafter as may be, prepare a calendar of the causes standing for trial at such term, placing the causes upon such calendar in the order in which the same are numbered on the docket, and setting the causes for trial upon convenient days during such term; *Provided* That no cause shall be set for trial upon the first day of said term without the consent of all parties thereto.

§ 4. APPEALS FROM COUNTY COURT.] In all actions brought under the provisions of this act an appeal may be taken to district court of said county or to the State Supreme Court, and if said appeal is to the district court it shall be taken in the same manner as appeals from justice court and if said appeal is to the Supreme Court it shall be taken in the same manner and pursuant to the same rules as appeals from the district court; *Provided* that in civil actions where the amount in controversy, exclusive of costs, is less than \$250.00 an appeal to the district court only shall lie; and *Provided further*, That an appeal to the district court shall not be effectual for any purpose unless an undertaking be filed, with two or more sureties, in a sum equal to the amount in controversy or the value of the specific property in controversy plus one hundred dollars.

§ 5. CONCURRENT JURISDICTION ON APPEAL.] Said county courts shall have concurrent jurisdiction with district courts in appeals from all final judgments of justices of the peace, police, city or township justices, and the proceedings on such appeals shall be the same as now or may hereafter be provided for appeals from judgments of justices of the peace to district courts.

§ 6. CAUSE CERTIFIED TO DISTRICT COURT—WHEN.] In any civil or criminal cause of which this court has jurisdiction, whenever at any time before said cause is called for trial it shall appear to the court by affidavit, or if the court shall so order upon other testimony, that a fair and impartial trial cannot be had in such court by reason of the bias or prejudice of the judge or otherwise, the court shall thereupon direct said cause and all papers and documents connected therewith to be certified to the district court of the county wherein said county court is held; and said papers shall be delivered to the clerk of the district court, at least one day before the first day of the next term thereof and shall be placed upon the trial calendar and stand for trial the same as cases originally commenced in said district court.

§ 7. MANNER OF SELECTING JURY.] Juries in the county court shall be selected by the county judge and summoned in the same manner as is now provided by law for selecting juries before justices of the peace; *Provided*, That each party shall be entitled to the same number of challenges as now or may hereafter be allowed in district court in like actions.

§ 8. NEW TRIALS.] The county court shall have authority to grant new trials, affirm, modify or set aside judgments in actions tried in such court, upon a statement of cases prepared and settled in the manner provided in the Code of Civil Procedure.

§ 9. MAY ISSUE PROCESS.] The several county courts shall have power to issue all summonses, citations, subpoenas, executions, warrants and processes authorized by law which may be necessary to carry into effect any order, judgment or decree thereof, to compel the attendance of witnesses or to carry into execution the powers with which they are vested.

§ 10. SERVICE IN OTHER COUNTY.] All writs, summons and other process may be executed and served as the case may require only in the county; *Provided*, That where there is more than one defendant, and one of such defendants has been served in the county, service may be made on the other defendants in any county in this State.

§ 11. CONTINUED CAUSES.] When for any cause the county judge fails to attend at the commencement of any regular term, or at the time when any cause is assigned for trial or at the time to which any cause is assigned for trial or at the time to which any cause may be continued, the parties shall not be obliged to wait more than one hour, and if he does not attend within the hour, and no other disposition of the case is made by said judge the parties in attendance shall be required to attend at 9 o'clock A. M.

of the following day, and if such judge shall not attend at that time, the cause shall stand continued until the first day of the next regular term.

§ 12. ADJOURNMENT.] The time for which any civil action, may be adjourned shall be regulated by the county judge, in the exercise of a reasonable discretion; *Provided*, That such action cannot be adjourned over more than three regular terms of such court upon the application of either party without the consent of the other. In criminal actions if the defendant has been committed to jail he must be tried at the first term of such court held after such commitment. If the defendant in a criminal action has given bail for his appearance, his trial must not be postponed longer than until the third term after such bail is given.

§ 13. BAILIFF.] The judge of the county court may appoint a competent person as bailiff of said court, who shall hold his office at the pleasure of the judge. Said bailiff shall have the same powers as a constable and shall receive for his services the same fees as are prescribed for constables and bailiffs.

§ 14. CRIMINAL JURISDICTION.] Concurrent jurisdiction, power and authority with the district court is hereby conferred and imposed upon county courts having increased jurisdiction of all criminal offenses of which the district court of said county has jurisdiction, below the grade of felony, and if any person accused thereof, and to hear, try, determine, pronounce judgment and sentence and take and have all necessary proceedings concerning or relating thereto as provided by law. The necessary jurisdiction, power and authority in the premises is hereby conferred and imposed upon the county court.

§ 15. DEFENDANT BOUND OVER TO.] In any criminal action or proceeding for any criminal offense of which the county court has jurisdiction, any justice of the peace or other examining magistrate having jurisdiction must admit to bail, bind over or commit for trial the accused to the county court of such county, and the information shall be filed in such county court. If any person accused of a criminal offense is so bailed, bound over or committed for trial to the county court for crime of which such court has not jurisdiction, such proceeding shall not abate and such county court shall not lose jurisdiction of such person and proceeding, but shall certify the same to the district court of such county and such proceedings shall thereupon be tried in the district court with the same force and effect as if such action or proceedings had been originally commenced therein. If any examining magistrate shall at any time bind over a defendant to the district court for an offense of which the county court has jurisdiction, or if it shall appear by evidence or otherwise at any time to the judge of the district court that the offense with which the defendant is or should be charged is triable in the county court, the judge of the district court may certify such cause, and all proceedings relative to any person accused of such offense, to the

county court of such county for trial, determination and adjudication, and thereupon the same and all the papers and files therein shall be transferred by the clerk of the district court to the county court without any further order or certificate, and such cause shall thereupon be tried in the county court, with the same force and effect as if such cause had originally been commenced therein.

§ 16. JURY TRIAL.] In civil actions, when the value in controversy, or sum demanded exceeds fifty dollars, either party may demand a jury trial, but such demand shall be made on or before the first day of the term upon the calendar of which said cause appears. In criminal actions, where defendant is arraigned he shall be informed by the court of his right to trial by jury and if he waives his right to a jury trial an entry to that effect shall be made upon the court minutes.

§ 17. WARRANT OF ARREST.] The county court in term time or the judge in vacation may issue warrants of arrest for persons against whom an information has been filed, shall fix the amount of bail to be required of the accused, and the clerk shall endorse the same upon the warrant, except where the warrant is issued in term time, when the same may be returnable forthwith and it shall thus not be necessary to fix the amount of bail until the accused is brought into court.

§ 18. RECEIVE PLEA AND PASS JUDGMENT.] The court may receive the plea of guilty and pass judgment in term time or vacation, or if the accused waives a jury he may be tried by the court without a jury in term time; upon notice being first given to the state's attorney.

§ 19. PRELIMINARY EXAMINATION.] No preliminary examination shall be necessary before trial in criminal actions in county court.

§ 20. ASSIGNMENT OF COUNCIL.] In all criminal cases triable in the county court where it is satisfactorily shown to the court that the defendant has no means, and is unable to employ counsel, the court shall in such cases assign counsel for the defense and allow and direct, to be paid by the county in which said court is held a reasonable and just compensation to the attorney or attorneys so assigned for such services as they may render; *Provided, however,* that such compensation shall not exceed twenty-five dollars in any one case.

§ 21. SUMMONS.] The summons shall require the defendant to file a copy of his pleading with the clerk of the county court within ten days after the service of the summons exclusive of the day of service.

§ 22. COMPLAINT FILED—WHEN.] The complaint in any civil action, together with one copy for each defendant, must be filed, with the clerk of the county court within five days after the issuance or the summons in such action and any action in which the complaint shall not have been filed in accordance with the provisions of this section shall be dismissed on motion of the defendant.

In no case shall the defendant or his attorney be entitled to have a copy of the complaint served upon him.

§ 23. ANSWER OR DEMURRER.] The defendant must file his answer or demurrer with the clerk of the county court within ten days after the service of the summons.

§ 24. TIME OF TRIAL.] When the time to answer does not expire at least ten days before the first day of the next term of court the cause shall stand for trial at the next succeeding term thereafter without further notice to defendant.

§ 25. JUDGMENT LIEN.] Any person having a judgment rendered by the county court may cause an abstract thereof to be filed in the office of the clerk of the district court in any county in the State, and when such abstract is filed in the office of the clerk of the district court and docketed as a judgment, such judgment shall be lien upon all real estate in the county belonging to any of the defendants against whom such judgment is rendered. Execution on any judgment shall issue out of the county court attested in the name of the judge and sealed with the seal of the court. Execution may be issued to any county where an abstract of such judgment shall have been docketed, but before such execution shall be levied it shall have endorsed thereon by the clerk of the district court of such county, the day and hour when such abstract was filed, and the amount due thereon.

§ 26. CLERK OF DISTRICT COURT—EX-OFFICIO CLERK OF COUNTY COURT.] In all counties having county courts with civil and criminal jurisdiction, having a population of less than 18,000 inhabitants, the clerk of the district court shall be clerk of the county court in the same county, and shall have the care and custody of all books and papers belonging to such county court which relate to or have any connection with any actions or proceedings commenced in such court by reason of its having increased civil and criminal jurisdiction conferred upon it. Such clerks of the district court and their deputies shall perform all the duties of the clerks of such courts, in all actions and proceedings commenced in the county courts by virtue of its enlarged jurisdiction, in the same manner as they are required to perform the duties of the clerks or deputy clerks of the district courts, so far as the provisions of law relating to that subject are applicable, and may demand and receive the same fees and compensation therefor, except that they shall be entitled to receive no per diem for attendance in court. The judge of the county court, having increased jurisdiction, in counties having a population of 18,000 or more, shall have power to appoint a clerk of such court, whose duties and powers shall be as nearly as may be the same as those of clerks of district courts. Such clerk shall hold his office during the pleasure of the judge appointing him, and shall receive a salary of \$1,200 a year. He shall charge and receive for all acts performed by him the same fees and commissions as are allowed

to clerks of the district courts. He shall keep a true account of all fees and commissions received by him in a book of record to be kept for that purpose, and on the first of each calendar month shall pay the same to the treasurer of the county.

§ 27. POPULATION—HOW DETERMINED.] The county auditor or county clerk shall determine the population of his respective county by multiplying by five the total vote cast in the last general election of county officers and the result shall be taken as the population of such county.

§ 28. SALARY OF JUDGE.] As compensation for their services under this act there shall be allowed and paid to the judges of county courts having civil and criminal jurisdiction, in all counties having a population of 18,000 inhabitants the sum of \$2,500 per annum, and in counties having less than 18,000 inhabitants the sum of \$2,000 per annum payable monthly by such county.

§ 29. PROCESS—BY WHOM SERVED AND COMPENSATION.] All writs and process in county court may be served by a constable as well as a sheriff, and when served by a constable he shall be entitled to the same fees as the sheriff receives for like service.

§ 30. COURT STENOGRAPHER.] The judge of any county court having civil or criminal jurisdiction is authorized in his discretion to appoint a court stenographer of such court. Such stenographer shall qualify in the same manner and his duties and compensation shall be the same as the court stenographer of a district court; such compensation shall be paid in the same manner as that of court stenographer of the district court; *Provided*, That such court stenographer shall not be appointed in any county having less than 8,000 inhabitants, unless the board of county commissioners shall first authorize such appointment.

§ 31. REPEAL.] All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

§ 32. EMERGENCY.] *Whereas* an emergency exists that there is no provision of law for an appeal from county court to the Supreme Court; *Therefore* this act shall take effect and be in force from and after its passage and approval.

Approved, March 4, 1895.