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THE LAWS OF 1935 OF SPECIAL INTEREST TO THE BAR

CORNELIUS YOUNG

THE 1935 regular session of the Wisconsin Legislature finally adjourned on September 27th, after acting on a total of one thousand, six hundred and sixty-two bills. Five hundred and fifty-six, or about one-third of the bills introduced were successful in hurdling the many legislative barriers and were enacted into law.

This last session will long be remembered by those members of the bar who were actively interested in promoting the Integrated Bar Bill¹ and procuring its passage through both houses of the legislature only to have it meet defeat by veto at the hands of the present Lieutenant Governor acting in the absence of the Chief Executive. However, the work of the legislative committee of the State Bar Association was not in vain since it resulted in a better understanding between members of the legislature and members of the bar. A condition perhaps peculiar to Wisconsin has long existed between members of the legislature and members of the bar that has not nor ever can be of benefit to the lawyers of this state. Many lawyers have been and still are indifferent to the legislature's consideration of measures affecting the very practice of the law and the everyday business of the lawyers. It is the hope of every lawyer member of the legislature that members of the bar of this state will in future sessions be alert to protect their interests as practitioners. The engrossment by the Assembly of the Notary Public Bill² which would have allowed every citizen who had the necessary two dollars to practice law is evidence of the need there is for lawyers to give attention to such matters which are being considered by the legislature.

No attempt can be made in this article to cover all of the bills enacted into law that are of interest to the practicing attorney, as that, of course, would necessitate a resume of all of the laws of 1935. Only those which concern more directly the practice of the law will be discussed at any length.

MORATORIUM LEGISLATION

Countless bills were introduced to extend the provision of the Donley Moratorium Law, and after much wrangling, Chapter 319 found its way to the session laws. This chapter provides a moratorium on foreclosure of mortgages on homes or farms under an existing

¹ Bill 119 S., introduced February 13, 1935; vetoed August 14, 1935.
² Bill 375 A.
emergency until April 1, 1937. A local mediation board is set up in each county consisting of three persons, two to be named by the county board and the third by the circuit court. In Milwaukee County there may be more than one such board. Unless voluntary mediation has been attempted by the debtor or creditor either of whom may apply to the board at the time of commencing an action of foreclosure, mediation is compulsory. This applies to actions heretofore commenced but in which the period of redemption has not fully expired. The period of redemption may be extended, but not beyond April 1, 1938, and this provision applies to actions pending at the effective date of the act—August 2, 1935, as well as to those commenced prior to April 1, 1937. This act, however, does not apply to mortgages held by the United States or by any agency thereof.

Chapter 449 amends Chapter 319 to the effect that if mortgaged premises are sold for less than the mortgage debt, there is no presumption of a sale for the fair value of the property and no sale is to be confirmed nor a deficiency judgment rendered until the court is satisfied that the fair value of the property sold has been credited on the mortgage debt. Chapter 547 also amends Chapter 319 by giving the local mediation boards sixty instead of thirty days in which to complete their action.

Chapter 482 provides a moratorium on foreclosure of mortgages on real estate other than homes similar to Chapter 319, until April 1, 1937. Under the provisions of Chapter 506, the taking of judgment on notes executed prior to January 1, 1935, which are secured by a mortgage where no foreclosure has been commenced, is prohibited. The judgments, however, are not to be deferred beyond March 1, 1937. This act is an attempt to replace the statute which was declared unconstitutional in the Hanauer case.\(^3\) However almost the identical statute declared unconstitutional in the Hanauer case was re-enacted into law by the provisions of sub-section 4, Section 1, of Chapter 482. Evidently the legislature desired to be doubly sure of affording this protection or relief to mortgagors. Under the provisions of Chapter 362 the courts are permitted to extend the redemption period on land contracts to three years instead of one year.

Chapter 542 creates a new section of the statutes relating to conveyances of farm or homestead property to satisfy an indebtedness. The statute provides that at the time of recording of the deed, the grantee shall also record an affidavit signed by the grantor which contains a statement setting forth the terms, representations, and agreements upon which the deed, contract, or other instrument was obtained, and this affidavit is also to contain a further statement that the grantor,

\(^3\)Hanauer v. Republic Building Co., 216 Wis. 49, 256 N.W. 784 (1934).
at the time of executing the instrument, fully understood his rights under the land contract or mortgage for which the instrument was given in satisfaction.

The sheriff at the time of sale, under the provisions of this Chapter, 542, may accept from the purchaser a deposit or down payment of not less than $100 and the balance of the sale price is to be paid to the clerk of the court by the purchaser at the time of confirmation. This chapter further amends Section 278.17 in regard to the giving of a sheriff's deed. The Judiciary Committees of the legislature discussed the suggestion that deficiency judgments be abolished. However, all bills that were introduced to that end met defeat.

Because of the continued period of economic stress, many bills were introduced to give more help to distressed debtors. Three measures were enacted making further exemptions from execution; Chapter 146 adds certain agricultural implements to the list of exempt articles, Chapter 365 exempts shares held by a member of a federal savings and loan association organized under federal law, and Chapter 492 exempts up to $150 per month money paid for partial, total, temporary, or permanent disability under an insurance policy.

COUNTY COURTS

Under the provisions of Chapter 176 various changes were made in the statutes relating to procedure in county court with respect to the probating of wills, debts of decedents, assignment of homesteads, guardianships, etc. The sections of the Wisconsin Statutes affected by this chapter were submitted by the Advisory Committee on Procedure under Section 251.18, to the supreme court which withheld its approval for the reason that the court felt that although the sections affected were in the main procedural in nature, still they dealt in some degree with substantive matters and for that reason were submitted to the legislature. The act had the support of the Board of County Judges. Under the provisions of Chapter 298, the fixing of an amount for perpetual care of graves or lots with the court's approval may be collected as part of the funeral expenses. Chapter 468 provides that the annual salary of the county judge is to be fixed at the annual county board meeting preceding the year in which he is to be elected, such salary not to be increased or diminished during his term.

Formerly the county judge could, but the county court could not act upon a petition for a writ of habeas corpus. Under Chapter 483, the court is given jurisdiction of habeas corpus proceedings.
**FEDERAL COURTS**

Chapter 68 provides that every judgment and decree requiring the payment of money rendered in a district court of the United States within this state, shall be from the docketing thereof, a lien upon the real property of the judgment debtor situated in the county in which it is so docketed, the same as a judgment of the state court. This new law also provides that a transcript of the docket may be filed with the clerk of the circuit court of any county and is to be docketed the same as judgments and decrees of the state courts and with like effect.

**COURTS IN MILWAUKEE COUNTY**

The law allowing the services of any summons of the Civil Court of Milwaukee County in any county in the state, which caused a great deal of comment by members of the bar outside of Milwaukee, was repealed. The contention of the advocates of this repeal bill have just been upheld by our supreme court in *State ex rel. Schneider v. Midland Inv. and Finance Corp.*, in which the court holds that the civil court as originally created constituted a municipal court and that Chapter 257, Laws of 1933, which provided that any summons of this court may be served in any county of the State is void for repugnance to the requirements of Article VII, Section 2, of the Wisconsin Constitution.

The technical requirement that a summons be endorsed by the attorney if his name appears on the complaint or other papers attached to the summons was also repealed. Under Chapter 442, the jurisdiction of the civil court is increased to $10,000.00, and Chapter 443 fixes the salary of the civil court judges at $7,500.00 and also provides that the salary cannot be changed until the expiration of a term, and in no case shall be less than the 1931 salary.

The salary of the judge of the District Court of Milwaukee County was increased to $7,500.00 under Chapter 513, and Chapter 523 increased the salary of the municipal judge of Milwaukee County to $8,500.00 from January 1, 1936, both of these measures providing that such salaries cannot be reduced until the expiration of the term.

**MUNICIPAL AND JUSTICE COURTS**

Chapter 16 amends the law relating to the Municipal Court of Brown County and the City of Green Bay, and Chapters 43 and 244 amend the statutes relating to the Municipal Court of Winnebago County. Chapter 337 abolishes the Municipal Court for Langdale County and confers criminal jurisdiction on the county court. Chapter 100 amends the law relating to the Municipal Court of Washburn

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4 262 N.W. 711 (Wis. 1935).
County, and Chapter 548 amends and revises the law relating to the Municipal Court of Rock County. Chapter 273 permits attorneys to sign summons returnable before a justice of the peace, and Chapter 77 gives a justice of the peace elected in a village extending into two counties jurisdiction in both counties.

ATTORNEYS—PRACTICE

Chapter 379 amends the present law prohibiting remarriage within one year after a divorce decree is entered, to one year after the decree is granted, and Chapter 25 increases the judgment fee in Milwaukee County in divorce actions to $8.20.

The only measure changing the qualifications for admittance to the Wisconsin Bar is made under Chapter 378, which allows attorneys of other states to submit proof of practice in the United States courts in meeting the requirements for admittance to practice before our state courts. Chapters 541 and 483 together with the rules recently announced by the supreme court, seems to complete the revision of procedure in a civil action, and proceedings in courts of record. Mr. Brossard, the Revisor of Statutes, states that this revision may be called the "New Civil Code." The revision covers Chapters 260 to 298 of the Statutes, and the new code with annotations, we are informed, will be published complete in the 1935 Statutes. The changes which are made and which are not effective until January 1, 1936, are not of great importance, however, a brief summary is no doubt in order.

The change of venue between circuit and municipal courts will be affected by the filing of a stipulation of the parties, no order being necessary. Formerly the plaintiff's bond in a replevin action required one or more sureties. The law is changed to read at least two sureties. After notice, the plaintiff is allowed three days to except to the defendant's sureties on a replevin bond and the sheriff must file with the clerk of the court the plaintiff's bond on replevin. Damages may be awarded to the defendant if he wins on his traverse to the attachment, and alias writs of attachment must be accompanied by a copy of the bond. Pleadings and procedure in garnishment are made the same as in ordinary actions, unless otherwise provided, and the plaintiff's bond for damages upon an injunction must have sureties. Despite the universal requirement of a receiver's bond, there is considerable doubt about the present law and the requirement of receivers to give bonds is made definite. A motion for judgment on a referee's report must be made within a year and to make a judgment a blanket lien on the debtor's lands, the docket must show the debtor's place of abode and his occupation, trade or profession. Section 271.04 is amended to provide that attorneys fees are determined by the amount involved in the action.
and not by folios and per diems. Under the change made in regard to executions which are to be signed by the clerk of the court, the new statute provides that they are also to be countersigned by the attorney. The law in regard to the homestead exemption from execution is stated more clearly under Section 273.03. The basis for the remedy supplemental to execution is also slightly changed. The time to appeal to the supreme court from a judgment under Chapter 541 is reduced to six months and the time to appeal from an order to the supreme court is extended to ninety days, and the right to appeal from the circuit court to the supreme court is extended to new remedies.

An order which denies a motion for summary judgment will be appealable after January 1, 1936, and under the change made in Section 278.10 the judgment on foreclosure should direct the payment of the proceeds of the sale only after the sale is confirmed. Hereafter the venue in actions on claims against the State will be determined by Section 261.01 (9). Money penalties may be recovered in civil actions unless the offense is also punishable by imprisonment and forfeitures imposed by county ordinances may be recovered by civil action. The proceeds of sale on foreclosure of a mechanic's lien hereafter are not to be disbursed until the sale is confirmed.

Under the provision of Chapter 363, the law relating to the investment of trust funds by executors, administrators, guardians and trustees is rewritten and a new chapter is added to the statutes which will be numbered 320. This new law sets out in detail the ways in which executors, administrators, guardians, and trustees may invest the funds of their trust in accordance with the provisions pertaining to such investments contained in the instrument under which they are acting, or in the absence of any such provisions, then the new law sets out in detail the securities in which investments may be made.

Numerous other measures of interest to the bar were before the legislature for consideration but they either failed to win approval of both houses or were hopelessly entangled in parliamentary snares at the time of final adjournment. Bill 143S sought to amend Section 221.045 of the statutes to the end that the defense of assumption of risk shall not bar recovery, but shall be apportioned in the same manner as provided for the apportionment of contributory negligence. This bill met defeat in the Senate by a vote of sixteen to thirteen. Bill 915 sought to amend the law in regard to special verdicts to the extent that in the argument to the jury in every case it would be permissible for counsel to state the claimed effect the answers to the verdict would have on the ultimate result of the case and that upon request at any time before the jury retires to deliberate, the court must state to the jury the claims of the parties. The bill also met defeat in the Senate.
The provisions of Bill 314A provided that the comparative negligence law be amended to the extent that the liability of any party held liable shall be, for his percentage of negligence, applied to the total damages as found. The Assembly Judiciary Committee reported the bill without recommendation because of a tie vote and after much debate, for and against, the bill was finally postponed indefinitely after first securing the approval of the Assembly.

An attempt to provide for non-partisan election of district attorneys at the spring election failed to find much support and this proposal was defeated by a three to one vote. The famous heart balm bill that has been approved and enacted into law in several states, while being successful in passing the Senate, did not receive a very warm welcome in the Assembly and it went down to a very speedy and definite defeat.

The writer would again like to stress the necessity for the Bar Association's adopting a definite program with respect to proposed legislation while the legislature is still in session. The appearance of one lone member of the bar, and in many instances no appearance by any member, before the Judiciary Committees of the legislature when bills of great importance to the bar are being publicly discussed does not show the interest in legislative affairs that is expected of the lawyers of the state. It is true, however, that because of the Integrated Bar Bill there was shown during the last session more interest than usual on the part of the members of the bar in the functioning of the legislature and it is hoped that in the future the lawyers of the state will take an even more active interest in all matters being considered by the Assembly and the Senate.