

A BILL

FOR AN ACT TO AMEND CHAPTER FIVE, TITLE THREE OF THE CODE OF EIGHTEEN HUNDRED AND SEVENTY-THREE, RELATING TO CIRCUIT AND DISTRICT COURTS, AND FOR THE ESTABLISHMENT OF COUNTY COURTS, AND THE ELECTION OF JUDGES THEREOF, AND DEFINING THE POWERS OF SUCH JUDGES AND THE JURISDICTION OF SAID COUNTY COURTS.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. That County Courts are hereby established throughout the State of Iowa as follows: That in each county of the State there shall be elected by the qualified voters of such county at the general election in the year eighteen hundred and eighty-six, and every two years thereafter, a county judge, the votes for whom shall be on the same ballots with that of State officers, and shall be counted, returned, and certified in the same manner as in case of county returns of the vote of State officers. And the County Auditor shall give the person elected to said office a certificate, under seal, of his election; and shall also certify and transmit to the Secretary of State within ten days after such canvass, a duplicate of such certificate. And the person so elected shall qualify by taking the oath of office required by law, which oath shall be entered in the records of said County Court, and a certified copy of the same shall be sent to the Secretary of State by the clerk of said court, and said certificate of election and qualification, shall be, to the Governor and Secretary of State, conclusive evidence of the election and qualification of said county judges.

SEC. 2. The judges of said court shall possess the requisite legal qualification, shall hold office for the term of four years, from and after the first Monday in January, one thousand eight hundred and eighty-seven, and until their successors are elected and qualified; but in case of a vacancy, for any cause, occurring in any county, the Board of Supervisors shall appoint a judge who shall hold office until the next general election, and until his successor shall be elected and qualified. And such appointment and qualification shall be certified, by the Auditor and clerk, to the Secretary of State, and shall have the same force and effect as in case of an election of such officer.

SEC. 3. The County Court shall be considered, in law, as always open, but for the transaction of business requiring notice, there shall be a regular session of said court, on the first Monday of each month; except when any other State court is to sit in a county on the first Monday of a month, then the County Court for that month shall be held on the Monday preceding; and it is further excepted, that in any city where there is a Superior Court, the County Court shall be held in such city, provided it is a county seat, on the second

7 Monday of the month; and it is further provided, that in counties having two county seats,
8 or places of holding courts, said County Court shall be held in such places alternately, be-
9 ginning at the place where courts have been the longest established; and the judge of said
10 court shall have power and authority to appoint and hold special terms of said court for
11 the transaction and disposal of any general or special business, including the trial of cases
12 already commenced; and all business and proceedings had at such special terms shall have
13 all the force and legal effect as if transacted at a general term. And it is hereby made the
14 duty of the judge of said court to appoint and hold sessions of said court for the purpose
15 of settling pleadings and issues in litigated cases and to assign jury cases for trial.

SEC. 4. The jurisdiction of the District Court shall be and remain as now prescribed by
2 law, except the said District Court shall not have or entertain jurisdiction in any civil case,
3 in law or equity, wherein the amount claimed shall be five hundred dollars, or less. And if
4 an amount greater than that shall be demanded, and judgment thereon rendered for a sum
5 less than five hundred dollars, the party entitled shall have the benefit of such judgment
6 and the plaintiff shall be required to pay the costs which accrued in the case, and the de-
7 fendant shall have judgment therefor. And the County Court shall have concurrent juris-
8 diction with the District Court, in all civil cases, in law and equity, to the extent of five
9 thousand dollars. And said court shall have original and exclusive jurisdiction in the fol-
10 lowing matters, proceedings and actions:

11 *First.* Of all civil actions, in law and equity, in which the amount involved shall not
12 exceed the sum of five hundred dollars.

13 *Second.* Of the probate of wills, and the appointment of executors, administrators or
14 trustees as may be required to carry the same into effect; of the settlement of the estate
15 of deceased persons, and of the person and estates of minors, insane persons and others
16 requiring guardianship, including applications for the sale of real property, belonging
17 to any such estates or persons. And all of the provisions of Title XVI of the Code,
18 and all other provisions of said Code relating to the property or estates of minors, in-
19 sane, idiotic, or feeble-minded persons, and of all matters now conferred exclusively by
20 law upon the Circuit Court or the judge thereof in reference hereto shall be applicable
21 to, and conferred upon said County Court or the judge thereof. And the value of any
22 real estate sold under proceedings in said court, or the amount involved in any claim
23 against an estate, or an order of the payment thereof, or an action thereon, and judg-
24 ment therefor, shall not be effected by the limitation of civil actions herein provided.
25 And said court shall have jurisdiction thereof, regardless of the amount in controversy.

26 *Third.* The County Court shall have concurrent jurisdiction with the District Court
27 in actions of partition, or for the assignment of dower, and in cases of divorce, regard-
28 less of the value of the property involved.

29 *Fourth.* And said County Court shall have exclusive jurisdiction of all appeals and
 30 writs of error in civil cases from Justice's and Mayor's Courts, and all other inferior
 31 boards and tribunals. And an appeal or writ of error from any such court, board or
 32 tribunal shall be allowed in all cases. And of all appeals in special proceedings for the
 33 assessment of damages on the establishment or re-location of highways, railroads and
 35 other public improvements or the taking of private property for public use, the subject
 36 matter thereof shall be the test of jurisdiction.

37 *Fifth.* The county court shall have the same power and authority in regard to in-
 38 junctions, writs, orders, cases of habeas corpus, and of the final hearing of the same, as
 39 is now possessed by the District court, or the judge thereof in vacation.

SEC. 5. The County court shall be a court of record, and all statutes in force respecting
 2 the venue process, and the effect and lien of judgments, and the enforcement thereof shall
 3 be the same as that applicable to the District court, and shall have the same force and ef-
 4 fect.

SEC. 6. The judge of the County court shall be allowed to receive a salary of two thous
 2 and dollars per annum, and to be paid, in fees, as hereinafter provided ; but in no case shall
 3 such salary, or any part thereof, be chargeable to or paid by the County or State ; if the
 4 fees collected do not amount to as much as the salary. And if such fees exceed the amount
 5 of the salary the excess shall be paid into the county treasury. And there shall be kept a
 6 fee book in which shall be entered and kept a faithful account of all services rendered
 7 by said judge for which fees are allowed, and shall quarterly make out an itemized account
 8 thereof, and attach a sworn statement thereto of the correctness of the charges, and that
 9 the account so rendered contains all the fees charged and collected by him, and shall file
 10 the same with the County Auditor.

SEC. 7. The said judge shall have an office in the court house of his county, or such other
 2 place as the Board of Supervisors may provide and without expense to him ; and he shall
 3 be furnished by the county all necessary books and stationery. And when not holding a
 4 term of court, the judge or the clerk of said court shall keep such office open during busi-
 5 ness hours for the transaction of any business pertaining to said office.

SEC. 8. The clerk of the district court shall be the clerk of the county court, and, in the
 2 absence of the judge, it shall be the duty of the clerk at all times, when not otherwise offi-
 3 cially engaged, to attend to the office and clerical duties of said judge, appoint adminis-
 4 trators and guardians make settlement with administrators and guardians, and charge and
 5 receive the same fees therefor.

SEC. 9. At the special term and at the time the issues in a cause are settled, it is hereby
 2 made the duty of any party deserving a jury trial, to then demand the same, and upon the
 3 execution of a bond with sufficient security to secure the payment of jury fees, the court

4 shall order such cause to be tried by jury, provided such bond shall be given before the
5 cause shall be reached for trial. And the court shall in all cases fix the time, within which
6 such bond shall be filed. The successful party shall recover judgment for such fees, as the
7 costs may be awarded by the court. And if costs are awarded against a party giving bond
8 for such fees, the court shall enter judgment on such bond on the termination of the trial,
9 against the principal and sureties. But it is herein expressly provided that in any case tri-
10 able by jury, if either party desiring a jury shall make affidavit of the fact, or otherwise
11 satisfactorily make it appear to the court or judge that such party has a meritorious cause
12 of action or defense; as the case may be, and is unable to pay or secure a jury fee, then it
13 shall be the duty of the judge to order a jury trial, without requiring bond, and the county
14 shall pay the jury fees therein, and shall have the right to recover the same back off of the
15 losing party, and judgment therefor shall be rendered in favor of the county.

SEC. 10. The jury in the County Court shall consist of six persons only, and shall be se-
2 lected and drawn as now provided by law; unless the party requesting a jury as aforesaid,
3 shall at the time demand a jury of twelve persons, and in such case the party making the
4 demand shall deposit with the clerk a sufficient amount in money to pay for the services of
5 such jury. But it shall be presumed that the parties have consented to a trial by six jurors
6 unless twelve are especially demanded in writing. And in every case the right to trial by
7 jury shall be considered waived by the parties, unless expressly demanded in writing as pro-
8 vided for in section nine hereof, and that the parties have elected to try the case to the
9 court. And all the rules in reference to trial by jury contained in the Code and prescribed
10 for the District Court in civil cases, shall be applicable to the County Court, except either
11 party are limited to two peremptory challenges; unless the jury shall consist of twelve,
12 then there shall be allowed one additional challenge on either side. But jury trials are al-
13 lowed only at the regular term of court, unless by consent, then at any time.

SEC. 11 The judge of the County Court, in all business heretofore done by the clerk,
2 shall hereafter be allowed the same fees therefor as are allowed to the clerk, except as
3 otherwise herein changed. And he shall be allowed to charge the following fees in the
4 cases enumerated, viz: twenty-five cents for an order of payment of a claim against an
5 estate; fifty cents for issuing citations allowed by law; a trial fee of two dollars per day in
6 all litigated cases; one dollar for each application for a writ of injunction whether
7 granted or refused, and when such application shall be heard on motion and resisted, or on
8 motion to vacate injunction three dollars in each case, whether allowed or refused. He is
9 authorized to administer oaths, take acknowledgements, solemnize marriages, and charge
10 therefor the fees fixed by law. The Circuit Court shall have a seal containing the names of
11 the County Court and the County and State of Iowa, and the seal of the court shall be the
12 Judges seal of office when evidence of the seal is required. The Judge of the County Court

13 shall have the docket fees in all original actions by petition. And for entering of record
14 reports and settlements twenty cents for every one hundred words; and twenty-five cents
15 for each claim filed; and ten cents for each voucher in probate cases. And all matters now
16 transacted by the Clerk in probate proceedings may be done by the Judge, as well as the
17 Clerk, and when by him, he may charge the same fees as are allowed the Clerk, and when
18 the Clerk performs such duty he shall charge the same fees as herein provided, and as fixed
19 by law.

SEC. 12. Any party desiring it may have the testimony in any case taken down by a short-
2 hand reporter, and the compensation of such reporter is hereby fixed at four dollars per day
3 of six hours; and the party requiring the service shall pay for the same in advance, if re-
4 quired by the reporter, but such fees therein shall be taxed to the losing party, as other costs
5 are taxed. And in no case shall the County be required to pay the same, unless the County
6 is a party to the action.

SEC. 13. Judges of the County Court shall have the right to exchange with and hold
2 Courts for each other, and any such Judge may, at any time, at the request of another,
3 hold Court in the place of such other Judge.

SEC. 14. Changes of the venue are allowed as now provided by law, except when the
2 place of trial shall be in some County other than the one where the suit was commenced
3 the party applying for the change shall, within ten days thereafter, give bond with ap-
4 proved security for the payment of the costs which has or may thereafter accrue in the
5 case, or deposit money in lieu of such bond; and the change of venue shall not be granted
6 until such bond has been filed or deposit made; and the application for the change must
7 be made before the time fixed for trial, if the grounds therefor then existed and as known
8 to the party; and if not known, the application may be made afterwards.

SEC. 15. Parties shall have the right to an appeal from the County Court to the Supreme
2 Court of the State from all judgments or orders, and in all matters or proceedings in which
3 an appeal is allowed by law.

SEC. 16. All acts, parts of acts, and laws now in force and consistent with this act are
2 hereby retained and declared applicable hereto. And all acts, parts of acts and laws incon-
3 sistent to, or in conflict with this act, are hereby repealed and declared inoperative and
4 void; and as effectually repealed as if specifically referred to herein by section, chapter
5 and title.