

diction of any court of record having general jurisdiction, such as is conferred upon the district court.

SEC. 24. Title to real estate. In case it shall appear from the pleadings, or upon the trial of any cause, that the title to real estate is involved in the action, the municipal court shall not proceed further therein, but shall transfer the action to the district court of St. Louis county, and the cause shall be proceeded with in the court to which it has been transferred, as if originally commenced therein.

SEC. 25. Salary of officers — how certified. It shall be the duty of the clerk of said court, at the end of each month, to make out and certify an order for each of the officers of said court for the respective amount due each for the preceding month, and when so drawn and signed by the clerk of said court the same shall be countersigned by the mayor or acting mayor of said village, when the same may be presented to the village treasurer, who shall pay the same out of any funds belonging to said village without any other act necessary to be done in the premises, and the village treasurer may hold said order as his voucher for and to be used in settlement with the village council.

SEC. 26. All acts and parts of acts contained in the village charter of the village of Duluth, inconsistent with this act, are hereby repealed, and wherever the words "village justice" occur in the charter of said village the same shall be construed to refer to the municipal judge.

SEC. 27. This act shall take effect and be in force from and after the first (1st) day of June, A. D. one thousand eight hundred and eighty-five (1885).

Approved March 9, 1885.

CHAPTER 115.

AN ACT TO ESTABLISH A MUNICIPAL COURT IN THE CITY OF WINONA.

Be it enacted by the Legislature of the State of Minnesota:

SECTION 1. That there is hereby established in the city of Winona, in the county of Winona, a municipal court for the transaction of all business which may lawfully come before it.

SEC. 2. Said court shall be a court of record and shall have a clerk and seal, and shall have jurisdiction to hear, try and determine all actions at law where the amount in controversy does not exceed the sum of three hundred (300) dollars. Also to hear, try and determine all criminal cases and conduct all criminal examinations heretofore cognizable before a justice of the peace of the city of Winona. Said court shall not have jurisdiction of actions of divorce, nor of any action when the relief asked for in the complaint is purely equitable,

nor of any action involving the title to real estate; *Provided*, That where a counter claim in excess of three hundred (300) dollars over plaintiff's claim is interposed, or where it appears that the title to real estate is involved, the said court shall immediately cause an entry of the fact to made be of record, and cease all further proceedings in the cause, and certify and return to the district court of the county of Winona a transcript of all entries made in the record relating to the case, together with all process and other papers relating to the suit, in the same manner and within the same time as upon an appeal from justices' court, and thereupon the said district court shall proceed in the cause to final judgment and execution according to law, the same as if the said suit had been originally commenced in said court; and the costs shall bide the event of the suit, except that the plaintiff shall advance the costs of the said municipal court in the suit.

SEC. 3. There shall be elected at the general city election, in April, in the year one thousand eight hundred and eighty-five (1885), in said city, and every fourth year thereafter, a suitable person with the qualifications hereinafter mentioned, to the office of judge of said court, to be called "municipal judge," who shall enter upon the duties of his office within ten (10) days after his election and hold his office for the term of four (4) years and until his successor is elected and qualified. In case of any vacancy in the office of municipal judge occurring after such election in the year one thousand eight hundred and eighty-five (1885), the city council of said city shall appoint to fill the vacancy some person qualified as hereinafter mentioned, who shall hold his office until his successor is elected and qualified. At the next annual city election, occurring more than thirty (30) days after a vacancy in said office shall have happened, a judge of said court, qualified as aforesaid, shall be elected for the full term and until his successor is elected and qualified. In case the said vacancy shall have occurred within a period of thirty (30) days before the general city election, then the said judge shall be elected at the general city election in the year following that in which the vacancy shall have happened, for the said full term and until his successor is elected and qualified.

SEC. 4. Every judge of said court shall be a resident of the city of Winona, and a person duly admitted to practice as an attorney in the courts of this state; and before entering upon the duties of his office he shall take and subscribe an oath as prescribed by the general statutes for judicial officers, which oath shall be filed in the office of the city recorder of said city. The judge of said municipal court shall have the general powers of judges of courts of record, and may administer oaths, take and certify acknowledgments in all cases, and, as conservator of the peace, shall have all powers and authorities which are by law vested in justices of the peace or any other judicial officer.

SEC. 5. The recorder of the city of Winona shall be, *ex officio*, clerk of said municipal court. Such clerk, before he enters upon the duties of his office, shall take and subscribe an oath to support the constitution of the United States and of the state of Minnesota, and to faithfully and honestly discharge and perform the duties of his office, and shall execute to the city of Winona a penal bond in such sum

and with such sureties as the council shall direct and approve, conditioned that he will account for and pay over to the treasurer of said city, on the first (1st) Monday of every month, all fines, penalties, fees and other moneys belonging to or to go to said city, which may have come into his hands during the month next preceding, and that he will at all times pay over to all other persons, on demand, all moneys to which they may be entitled, which may have come into his hands by virtue or by reason of his office. Such oath and bond shall be filed in the office of the city treasurer of said city. Such clerk shall have power to appoint, subject to the approval of the judge, a deputy clerk with the like powers of the clerk, for whose acts the said clerk shall be responsible.

SEC. 6. The city council of said city of Winona shall appoint the city marshal of said city, or any deputy [marshal], to act as officer of said court, who, before entering upon the duties of his office, shall execute a bond to said city, to be approved by the said council, in the sum of at least five hundred (500) dollars, conditioned for the faithful performance of the duties of his office. It shall be the duty of said officer to attend said court, to execute its orders, to serve all process issued therefrom which may be delivered to him for service, and to perform such other duties as may be required by this act, or by any statute of this state relating to court officers. In case of said officer's inability to act, the said judge may appoint a police officer to act temporarily in his place and stead, who shall possess the same powers and perform the same duties as said officer. The compensation of said officer shall be fixed by the city council, and he may be removed for cause, the same as other city officers.

SEC. 7. The municipal court shall have full power and authority to issue all process, civil and criminal, necessary and proper to the exercise of the jurisdiction given it by law, and to enforce its judgments and other determinations. And it shall have and possess all the powers usually possessed by courts of record at common law, subject to modifications by the statutes of this state applicable to courts of record, except that it shall not have jurisdiction to issue writs of *habeas corpus*, *quo warranto*, *ne exeat*, *mandamus*, prohibition or injunction. It shall also have all the powers and jurisdiction conferred on justices of the peace by chapter eighty-four (84), general statutes of this state, relating to forcible entries and unlawful detainers, and the proceedings shall be the same, with the same right of appeal, as therein provided. All process shall be tested in the name of the judge, and issued under the seal of the court and signed by the clerk, who shall be styled "clerk." And all forms of process not prescribed herein may be prescribed by the court, by rule or otherwise, and any form so prescribed shall be valid and sufficient, and such forms may be changed by the court from time to time. In the absence of such prescribed forms, the forms of process in use, either in courts of record in this state or by justices of the peace, may be changed and adapted to the style of the court and used at the discretion of the court. Process shall be directed for service to the marshal of the city of Winona, or to the sheriff or any constable of said county, and shall be served the same as like process in the district court, and service by publication may be ordered and made in like manner as in justice court.

SEC. 8. The said municipal court shall be held in the city of

Winona, at some suitable place to be provided therefor by the city council. Its judge shall be the chief magistrate of the city, and shall see that the criminal laws of the state and the ordinances, regulations and by-laws of said city are observed and executed, and shall open his court every morning (Sundays and legal holidays excepted), and proceed to hear and dispose of all cases which shall be brought before him by the police officers of the city, or otherwise, either with or without process, for violation of the criminal laws of this state committed within the county of Winona, or of the ordinances, regulations or by-laws of said city. The clerk of the court shall keep a record of all proceedings, and enter all orders, judgments and sentences under the supervision of the judge, and issue commitments and executions as well as other process and writs.

SEC. 9. The clerk of the municipal court shall have the custody and care of all the books, papers and records of said court. He shall be present, by himself or deputy, at all trials and sessions of the court, and when the court is not in session he shall attend at his office at all suitable hours for the performance of such official duties as may be required of him, unless absent from sickness or by consent of the judge, and in case of the absence of both clerk and deputy, the judge may appoint some person temporarily to the position. He may swear all witnesses and jurors and administer all oaths and take acknowledgments. He shall keep minutes of all proceedings and enter all judgments and make up and keep the records of the court, under the direction of the judge, and when the judge is not present adjourn the court from day to day. He shall tax all costs and disbursements allowed in any action, subject to review by the judge, receive and collect all fines and penalties imposed by the court, and fees of every kind accruing to the court or any officer thereof, including the city marshal and police officers, and keep full, accurate and detailed accounts of the same; and shall, on the first (1st) Monday of every month, deliver over to the city treasurer of the city of Winona all moneys so received, with detailed accounts thereof, and take his receipt therefor; and all moneys so collected for fines, penalties or fees shall remain the property of said city.

SEC. 10. The municipal court shall hold regular terms for the trial of all civil actions on the first (1st) and third (3d) Tuesdays of every month, which terms shall continue from day to day with such adjournments as to the court may seem proper until the business of each term shall be finished, and the court may, by order or rule, appoint such terms to be held oftener, or upon other days than the days above mentioned.

All civil actions for the recovery of money only shall be commenced by summons or by writ of attachment to be issued by the clerk. The form of summons may be as follows:

STATE OF MINNESOTA,)	MUNICIPAL COURT,
COUNTY OF WINONA.)	CITY OF WINONA.
) ss.	

The state of Minnesota to the marshal of the city of Winona, or the sheriff, or any constable of said county:

You are hereby commanded to summon.....if
shall be found within the county of Winona to be and
 appear before the municipal court of the city of Winona at a.....
 term thereof to be holden on Tuesday the.....day of.....
A. D.....at the hour of.....o'clock in the.....noon
 and answer to.....whose complaint is on file in said
 court, and have you then and there this writ. The amount claimed by
 the plaintiff is the sum of.....dollars and.....
 cents, and interest thereon from and since the.....day of.....
A. D. 188...., at the rate of.....per cent per annum.

Witness the honorable.....municipal judge,
 this day of.....A. D. 188....

[L. S.]

Clerk of the municipal court.

And the judge of said court may, upon the request of the plaintiff, empower any suitable person, not a party to the action, to execute the same by an indorsement thereon to the following effect: "At the request and risk of the plaintiff I authorize A. B. to execute and return this writ. Judge of the municipal court," and the person so empowered shall thereupon possess all the authority of an officer in relation thereto, and be subject to the same obligations. The summons shall be served upon the defendant at least six (6) days before the term at which the same is made returnable. No summons shall issue until a written complaint in the action shall be made and filed with the clerk. If the defendant fails to appear at the time at which the summons is returnable, he shall be defaulted; if he so appear, he shall then, or at such time as the court may designate, answer the plaintiff's complaint; and if the answer contains a counter claim, the plaintiff shall reply thereto forthwith, or at such time as the court may designate. The answer or reply shall be in writing, and be filed with the clerk, and each of such pleadings shall be verified by the party, or his agent or attorney, as in courts of justices of the peace. Either party may demur to any pleadings of his adversary as in the district court, but all pleadings in this court shall be construed liberally. And the court may for good cause, in its discretion, and on such terms as it may deem equitable, open any default within six (6) months after the same is made, and may allow any amendment of any pleading at any time, and shall disregard variance between the allegations of a pleading and the evidence, unless satisfied that the adverse party is prejudiced thereby. Either party shall be entitled to a continuance of any civil action, except in the case of proceedings under the provisions of chapter eighty-four (84), general statutes of Minnesota, until the next term of the court following the term at which the summons shall be returnable; and further continuance may be granted upon sufficient cause shown, and on such terms as may be just. Said court shall also have authority to provide by rule that the plaintiff in any civil action shall, by bond, recognizance, or deposit of money with the clerk, give security for costs, in such sum as the court may designate by such rule, before any summons or other process shall issue in the action, or at any other time. The counter-claim in the defendant's answer may be such a one as could be interposed in the district court.

SEC. 11. Any creditor having a claim of ten dollars or more, and

desiring to proceed by attachment in said court, shall, by himself, his agent or attorney, make and file his complaint in writing, together with an affidavit similar to the affidavit required by law in an application for a writ of attachment in the district court, and also cause to be filed a bond in the penal sum to be fixed by the judge of the court, not less than one hundred (100) dollars, nor more than five hundred (500) dollars, with sufficient surety to be approved by the judge, and similar to the bond required on a like application in district court. The writ of attachment may be in form as follows:

STATE OF MINNESOTA, } } ss. COUNTY OF WINONA. }	CITY OF WINONA, MUNICIPAL COURT.
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The State of Minnesota to the city marshal of the city of Winona, or to the sheriff or any constable of said county :

You are hereby commanded to attach the goods, chattels, moneys, effects and credits of or so much thereof as shall be sufficient to satisfy the sum of..... dollars, with interest and costs of suit..... in whosoever hands or possession the same may be found in said county of Winona, and so provide that the same may be subject to further proceedings as the law requires; also to summon..... if to be found within said county, to be and appear before the municipal court of the city of Winona, at a term thereof to be holden on the day of A. D. 188 , at the hour of o'clock in the noon and answer to whose complaint is on file, in said court, in a civil action; and have you then and there this writ.

Witness the honorable..... municipal judge this day of..... A. D. 188 .

Clerk of municipal court.

And shall in all cases be returnable as an ordinary summons, except that in no case shall it be made returnable more than thirty (30) days from its date. In all other respects the service of the writ and other proceedings thereon shall be similar, as near as may be, to the service of such writ and proceedings in district court; *Provided, however,* That in all cases where such writ shall be served on the defendant personally, judgment may be entered in said action whether property be actually attached by virtue of said process or not.

SEC. 12. When the object of an action is to recover the possession of personal property, the plaintiff, his agent or attorney, shall make and file his complaint in writing, together with an affidavit similar to the affidavit required in a district court in a like action, and the plaintiff, or some person on his behalf, shall execute a bond with one or more sureties, to be approved by the judge, conditioned similar to like bonds in such actions in district court, and file such bond. The clerk shall thereupon issue the writ, which may be in form as follows:

STATE OF MINNESOTA, }
 COUNTY OF WINONA. } ss. CITY OF WINONA.

The state of Minnesota to the city marshall or any police officer of the city of Winona, or to the sheriff or any constable of said county:

Whereas.....complains that.....has become possessed of, and unjustly detains from the said.....the following described goods, and chattels, that is to say (describing the articles with reasonable certainty and stating their alleged value).

Therefore you are commanded that you cause the said goods and chattels to be replevined without delay, and delivered to said.....and to summon the said.....if to be found within said county, to be and appear before the municipal court of the city of Winona at a term thereof to be holden on.....the.....day of.....A. D. 18 , at the hour of.....o'clock in the.....noon and answer to.....whose complaint is on file in said court, in a civil action; and have you then and there this writ.

Witness the honorable.....municipal judge, this.....day of.....A. D. 18 .

.....
 Clerk of the municipal court.

The writ shall be served, and all proceedings thereunder had in the same manner, except as herein otherwise provided, as upon similar proceedings in district court. The officer executing the writ shall retain the property under it in his own custody for three (3) days before delivering the same to the plaintiff, and if within that time the defendant or someone in his behalf, shall execute to the plaintiff a sufficient bond with one (1) or more sureties to be approved by the judge, conditioned as in like cases in the district court, and file such bond, the clerk shall thereupon issue an order to the officer to redeliver such property to the defendant. Or the defendant may, within three (3) days after the service of the writ, serve a notice on the officer serving the same and on plaintiff or his attorney, that he excepts to the sufficiency of the surety or sureties on plaintiff's bond, and upon filing an affidavit with the clerk of the municipal court showing the service of such notice, the judge of said court shall require such surety or sureties to appear before him, at such time as he may fix, to be examined as to their sufficiency, and in case said surety or sureties fail to appear at such term, or if said judge after such examination deems them or either of them insufficient, he shall require the plaintiff to file a new bond in the same amount and containing the same conditions required by law in the bond first (1st) filed, with surety or sureties to be approved by the judge. In case plaintiff fails within the time prescribed by the court to give such bond, the action shall be dismissed and defendant have judgment for the return of the property.

SEC. 13. The clerk of the court shall, prior to each term of the

court, make up a calendar of the causes which will come up for trial or for any disposition before the court at such term, adopting such arrangement as the judge may direct, and the court shall direct the order of the trial and other disposition of causes.

SEC. 14. Jurors for said municipal court shall be provided and drawn in the following manner, to-wit: The mayor, the city clerk and the presiding judge of said municipal court shall meet during the months of April and October in each year, at the office of the city clerk of said city, and select one hundred and twenty (120) legal voters of said city as the jurors of said municipal court to serve therein when required during the six (6) months, beginning on the next ensuing first (1st) day of May or November, as the case may be, and until their successors are designated; and shall thereupon certify said names so selected to the clerk of said court, who shall thereupon write said names upon separate ballots and place the same in a box kept for that purpose, and whenever a jury is demanded by either party in said court the clerk shall draw, singly, twenty-four (24) names from the said box and make a list of the same. Each party may thereupon strike out six (6) names; in case of the refusal or neglect of either party so to strike out such names, the judge shall strike out the names for either or both. And upon such names being stricken out, a venire shall be issued, directed to the sheriff of the county or any constable of the same, or to the city marshal, of said city, requiring him to summon the twelve (12) persons whose names remain upon such list to appear before said court at the time and place mentioned therein as a jury for the trial of such action; *Provided*, That in civil actions, upon the consent of both parties entered upon the minutes, a jury of six (6) may be ordered, and in such case eighteen (18) names shall be drawn from the box and a list of the same made by the clerk, and each party may strike [out] six (6); and the said jury shall be selected, impaneled and summoned as provided in this section. The first three (3) series of twenty-four (24) or eighteen (18) ballots each so drawn from the box shall not be returned to the box until the fourth (4th) series shall have been drawn, and the same rule shall be observed in connection with subsequent drawings during each period of six (6) months; and no person selected and required to serve for a period of six (6) months, as aforesaid, shall be compelled to serve, nor, if objected to by either party, shall be eligible as a juror in said municipal court in any case during the period of six (6) months next succeeding such period for which he shall have been selected. If any of the jurors shall not attend at the time mentioned in the venire, or are excused, the officer shall summon a sufficient number of takersmen to supply the deficiency. To the takersmen so summoned either party may interpose two (2) peremptory challenges; and a challenge for cause may be entertained and allowed against any person called as a juror in any case whenever such challenge would be properly allowed in the district court; but all challenges for cause shall be decided by the judge. The jury shall take the same oath which is prescribed for jurors in the district court, and the respective functions of judge and jury upon trial of causes shall be the same as in district court, and exceptions to the rulings and decisions of the judge, and to his charges and refusals to charge, may be taken as upon trials in the district court. Each juror sworn in any civil action in said municipal court shall be entitled to fifty (50) cents as

his fee in the case, and the party demanding a jury in any civil action, or when the demand is made by both parties, the plaintiff shall, before the jury are sworn, pay the jury fee of fifty (50) cents for each juror to the clerk, who shall pay the same to the jurors when they are discharged. Whenever the judge becomes satisfied that a jury in any case before him, who have been out a reasonable time, cannot agree upon a verdict, he may discharge them; and in such case, unless both parties in a civil action, or the defendant in a criminal action, consent that judgment may be rendered by the judge on the evidence already taken, the judge shall order that a new jury be drawn and summoned to appear at such time as he may designate for a retrial of such action; but in a civil action, before such new jury is sworn, their fees shall be advanced, as above provided, by the party originally demanding a jury, or by the plaintiff if a jury shall have been demanded in the first instance by both parties. There shall be no jury trial in any civil action in said municipal court except when demanded by one or both of the parties; and trial by jury may be expressly waived by the defendant in any criminal case in said municipal court, in which event a minute of the waiver shall be made by the clerk, and the trial may thereupon be had before the court without a jury.

SEC. 15. Title eighteen (18) of chapter sixty-six (66) of the general statutes, relating to "trial by referees," title nineteen (19) of the same chapter, relating to "exceptions," and title twenty (20) of the same chapter, relative to "new trials," shall apply to said municipal court. Where not otherwise provided in this act, said municipal court is vested with all the powers which are possessed by the district courts in this state; and all laws of a general nature apply to said municipal court as far as the same can be made applicable and are not inconsistent with the provisions of this act, and the practice and mode of procedure prescribed by the general laws of this state for use in district courts shall in all cases not otherwise provided for in this act, and when not inconsistent with the provisions of this act, obtain and be followed in said municipal court; *Provided*, That the judge of said municipal court may adopt and enforce such rules of practice therein, not contravening this act or the general laws of this state, as he may deem necessary and just.

SEC. 16. Disbursements shall be allowed to the prevailing party in all civil cases in said municipal court to be taxed on such notice as the court may by rule prescribe. Costs, to be taxed as aforesaid, shall also be allowed the prevailing party in civil actions, when he appears by attorney, as follows: To the plaintiff, on judgment by default, when the amount of the judgment, exclusive of costs and disbursements, or the value of the property recovered exceeds fifty (50) dollars, five (5) dollars. To the plaintiff, on a judgment in his favor after a trial on the merits, when the amount of the judgment, exclusive of costs and disbursements, or the value of property recovered exceeds fifty (50) dollars, ten (10) dollars. To the defendant, on dismissal of the action after issue joined and before trial, when the amount claimed by plaintiff, exclusive of costs and disbursements, or the value of the property sought to be recovered, as alleged in the complaint, exceeds fifty (50) dollars, five (5) dollars. To the defendant, on a judgment in his favor after a trial on the merits, when

the amount claimed by plaintiff, exclusive of costs and disbursements, or the value of property sought to be recovered, as alleged in the complaint, exceeds fifty (50) dollars, ten (10) dollars.

SEC. 17. An appeal may be taken on questions of law alone from any final judgment in any civil action, in said municipal court, to the district court of Winona county, on compliance with the following requisites within ten days after such judgment is entered:

First—The appellant shall serve a notice of such appeal upon the opposite party, or the agent or attorney who appeared for him in the municipal court, and file such notice, with proof of service thereof, with the clerk of said municipal court. The notice shall be served by delivering a copy thereof to the person upon whom service is made, or by leaving such copy at the residence of such person with some one of suitable age and discretion residing therein, or if service is made upon the attorney, by leaving such copy at his office with his clerk or other person in charge of the office, or in some conspicuous place in the office if no such person is present.

Second—The appellant, or his agent or attorney in his behalf, shall execute to the adverse party and file with the clerk of said municipal court a bond with one or more sureties, to be approved by the judge, in a sum to be fixed by the judge sufficient to secure such judgment and costs and disbursements on appeal, and conditioned that the appellant shall prosecute his appeal with effect and abide the order or judgment of the appellate court therein.

Third—The appellant shall pay to the clerk his fees for making the return on the appeal. Any defendant convicted of any offense charged in any criminal case in said municipal court of which the court has final jurisdiction may appeal, on questions of law alone, from the final judgment therein to the district court of Winona county, on compliance with the following requisites within ten days from the entry of such judgment:

First—The appellant shall enter into and file with the clerk of the municipal court a recognizance, with one or more sufficient sureties, to be approved by judge of said municipal court, in such sum as the judge may order, conditioned that the appellant will appear before the district court of said county on the first (1st) day of the next general term thereof and abide the judgment of the appellate court on the appeal and that in the meantime he will keep the peace and be of good behavior.

Second—The appellant shall serve a notice of such appeal upon the county attorney of said county or, in case of his absence from the county, on the clerk of said district court, describing the judgment appealed from, and shall file such notice, with proof of service thereof, with the clerk of said municipal court. Upon compliance with the foregoing requisites prescribed for appeals in the respective classes of cases above mentioned, the appeal shall be allowed and the clerk of the municipal court shall make a minute of such allowance in the record of the case, and all further proceedings in the municipal court on the judgment appealed from shall be stayed until the appellate court shall otherwise order. A return on each such appeal shall be made by the clerk of the municipal court to the appellate court in the same manner in which returns are required to be made on appeals to the supreme court from final judgments in the district court, and such return shall be filed by the clerk of the municipal court in the office

of the clerk of the appellate court within twenty (20) days after the appeal is perfected; and the clerk shall minute on the return the amount of his fees for making the same and, if paid, state by which party. The matters involved in the appeal shall be heard and determined in the appellate court on the return so filed, and the appellate court may review any intermediate order of the municipal court involving the merits or necessarily affecting the judgment appealed from and may reverse, affirm or modify such judgment and cause the proper judgment to be entered in such appellate court or may, if necessary or proper, remand the case to the municipal court for a new trial or other further proceedings; but no trial of any question of fact in the case shall be had in the appellate court. An appeal in any criminal case shall be heard and decided at the next general term of the district court after the return is filed; but in civil cases the appeal may be heard at any general or special term of the district court after the return is filed on notice of ten (10) days from either party. The district court shall in civil cases award costs to the prevailing party on appeal, not less than five (5) nor more than fifteen (15) dollars in amount, and judgment shall be entered therein in favor of said party for such costs and for his disbursements on appeal, including the fees, if paid by such party, of the clerk of the municipal court for making the return as minuted thereon; and in any criminal case appealed to said district court, the defendant, if the judgment of the court below be affirmed in whole or in part, may be required to pay the costs of both courts, including the fees of the clerk of the municipal court for making the return, and such fees and all other costs properly accruing to said municipal court and all fines by it imposed shall, if collected by means of any proceedings in the district court on appeal, immediately be paid over to the clerk of the municipal court; but no costs made in the district court shall be collected from or charged to said city of Winona. The district court shall have the same power to compel a return on an amendment of a return on appeal from said municipal court, and shall in all other respects have the same powers in cases of appeal therefrom that it now possesses in cases of appeal from courts of justices of the peace, except as otherwise provided in this act.

SEC. 18. No judgment rendered in said municipal court shall attach as a lien upon real estate until a transcript thereof shall be filed in the district court, as hereinafter provided, but writs of execution thereon in civil actions may issue upon entry of judgment against the goods and chattels of the judgment debtor, returnable within thirty (30) days. Execution may be stayed in this court the same as in justices' courts. Every person in whose favor a judgment is rendered in said municipal court for an amount exceeding ten (10) dollars, besides costs and disbursements, may, upon paying the fee therefor, and all unpaid fees, payable to the clerk in such action, demand and shall receive from such clerk a transcript of such judgment duly certified, and may file the same in the office of the clerk of the district court of the county of Winona, who shall file and docket the same as in the case of transcripts of judgment from courts of justices of the peace, and every such judgment shall become a lien upon the real estate of the debtor from the filing of such transcript, to the same extent as a judgment of the said district court, and shall thereafter, so far as relates to the enforcement of the same, be exclusively under

the control of said district court, and carried into execution by its process, as if rendered in said district court. The clerk of said municipal court shall not issue such transcript while a writ of execution is in the hands of an officer, and not returned or lost, and shall note on the record of such judgment the fact that such transcript has been given, and shall not thereafter issue any writ of execution on the same judgment, but may at any time give to the same party or his representatives, a new transcript of such judgment; and it shall not be necessary, in order to entitle a party to any such transcript, that execution be first issued from said municipal court.

SEC. 19. Proceedings against garnishees may be instituted in the same manner as in justices' courts, but the summons may be served either by an officer, or if authority be given by the court as in the case of an ordinary summons, by any person not a party to the action, at any place within the state of Minnesota, and such garnishee summons may be made returnable at any term of said municipal court, not more than thirty (30) days from its date, and shall be served not less than six (6) days before the term at which it is made returnable, and the notice required to be served on the defendant in the action may be signed either by the person who served the garnishee summons, or by the plaintiff or his attorney, and shall be served upon the defendant at least three (3) days before the time specified in the summons for the appearance of the garnishee. The disclosure of the garnishee may be taken, and all further proceedings had in the same manner as if the proceedings were in a justice court.

SEC. 20. Complaints in criminal cases, where the defendant is not in custody, may be made to the court while in session, or to the judge when the court is not in session, and shall be made in writing or reduced to writing by the judge or clerk, and sworn to by the complainant, whether the offense charged be a violation of the criminal laws of the state, or of the ordinances, regulations or by-laws of said city. Warrants shall be issued by the judge or by the clerk on the order of the judge, and may be served by the marshal or any police officer of said city, or by the sheriff of Winona county, at any place within this state. And complaints, warrants and other process in criminal cases may follow substantially the same forms heretofore in use by the justices of the peace, with such alterations as may seem convenient to adapt the same to the style of said municipal court, or may be in such other form as the court may prescribe, sanction or approve. In cases where alleged offenders shall be in custody, and brought before the court without process, the clerk shall enter upon the records of the court a brief statement of the offense with which the defendant is charged, which shall stand in place of a complaint, unless the court shall direct a formal complaint to be made. The plea of the defendant shall be guilty or not guilty; in case of failure to plead the clerk shall enter a plea of not guilty, and a former acquittal or conviction of the same offense may be proved under that plea as well as if formally pleaded. In the examination of offenders charged with offenses of which the municipal court has not final jurisdiction the judge shall keep minutes of the examination and the clerk shall make the proper return to the court (as required from justices of the peace in like cases) before which the party charged with the offense may be bound to appear.

SEC. 21. The salary of the judge shall be twelve hundred dollars (\$1,200) per year, payable from the city treasury in monthly installments. And neither the judge, clerk or deputy clerk shall receive any other fee or compensation for his official services under this act.

SEC. 22. The city marshal and court officer, and, in criminal cases, the police officers of said city, are hereby vested with all the powers of constables under the statutes of Minnesota as well as at common law, and the marshal, court officer and police officers in making service of any process or writ, or doing other duty in respect to causes in said court, shall note and return to the court for collection such fees as are allowed to constables for like services in justices' courts; and all fees, whether charged by the clerk or by the marshal, court officer or any police officer, whether due from the county on preliminary examinations or otherwise, shall be collected by the clerk as costs, and by him be accounted for and paid over to the city treasurer of said city as hereinbefore provided. Service of all process and writs issued out of said municipal court, in cases triable therein that are to be served within the limits of said city, shall be made by the court officer of said court or the marshal or, in criminal cases, a police officer of said city, except when, in civil cases, service or process by private persons shall be authorized by the court as elsewhere herein provided; but the court may, in its discretion, when the circumstances of the case render such action necessary or advisable, specially authorize the making of such service by the sheriff or any constable of Winona county; and no marshal, deputy marshal or police officer of said city, nor the court officer of said municipal court, shall receive for any service by him performed in said court or in executing its orders, process warrants or writs, any other or further compensation than the regular salary paid him by said city; and if any fees shall be paid to either of said officers for any such service he shall forthwith pay the same over to the clerk of said municipal court for the use of said city.

SEC. 23. There shall be appointed each year by the city council, a special judge of said municipal court, whose powers and duties shall be the same as those of the municipal judge, except as otherwise provided in this act. At the request of the municipal judge in case of a press of business in said court, or at the request of the mayor of said city in case of the absence or sickness of the municipal judge, said special judge shall act as judge of said court, and when the special judge so acts he shall have and exercise the same powers as the municipal judge. Said special judge shall not act on the trial or examination of any case, or otherwise, except as above provided; and any special judge acting as judge of said court shall receive compensation at the rate of five dollars (\$5) per day, the same to be paid by the city of Winona; *Provided*, That all sums paid by the city to said special judge for services as such rendered during the absence of the municipal judge from the city without leave of absence by the city council, shall be deducted from the salary of the municipal judge. This section shall not incapacitate any such special judge from acting as an attorney in any case or proceeding in said court, but when such judge is acting as judge of said court he shall take no action in said case, save to adjourn the same. Nothing in this chapter shall be construed to prohibit the judge of said court from practicing as an attorney in any court in this state, save said municipal court.

SEC. 24. It shall be the duty of the city attorney of the city of Winona to prosecute all offenses in said court, in cases of which the court has final jurisdiction, arising under the ordinances of said city or the statutes of the state of Minnesota. And the county attorney of Winona county may appear in the prosecution of indictable offenses against the criminal laws of the state, and shall appear and conduct all examinations for offenses of which said court has not final jurisdiction, if requested by the municipal judge.

SEC. 25. The clerk of the municipal court, under the direction of the judge, and with the consent and approval of the city council (unless herein otherwise provided), shall from time to time procure and furnish all the necessary blanks, stationery, record books, courtroom, jury-room and office furniture, lights and fuel for the use of the court and the officers thereof, at the expense of the said city.

SEC. 26. Upon the election and qualification of the municipal judge, all causes and proceedings then pending before justices of the peace within said city, shall forthwith by said justices be transferred to said municipal court, with all papers and records concerning the same, and said municipal court shall take cognizance of such causes and proceedings and proceed therein as if the same were originally commenced in said municipal court. And the dockets, records, files and papers in the custody of any and all justices of the peace of said city shall at once be transferred and turned over to the said municipal court, which shall have full jurisdiction to finish and complete all proceedings pending before any such justice of the peace, and to enforce, by execution or otherwise, all judgments theretofore rendered by justices of the peace within the present city of Winona. And such judgments shall stand on the same footing as judgments of said municipal court; and after the election and qualification of said municipal judge, no justice of the peace within the city of Winona shall issue any process nor take cognizance of any action or proceedings, civil or criminal, but the jurisdiction of said municipal court shall within said city be exclusive in all causes heretofore cognizable before justices of the peace, except that this clause shall not affect the jurisdiction of any court of record having general jurisdiction, such as is conferred upon the district court.

SEC. 27. In all criminal cases tried in said court, whether arising under the statutes of this state or under the ordinances of said city, in which the defendant shall be convicted, he shall be required to pay the costs of prosecution, and the clerk shall tax as costs of court, in addition to all fees of witnesses for the prosecution and of the sheriff, or other officer or officers taxed in said cases, and if not paid, judgment shall be entered therefor against the defendant, the following sums, viz.: In cases where no warrant is issued and the defendant upon being arraigned shall plead guilty, two (2) dollars. In cases where warrant shall be issued and the defendant upon arraignment pleads guilty, two and one-half (2½) dollars. In cases where the defendant shall plead not guilty and shall be tried before the court, five (5) dollars. In cases where the defendant shall plead not guilty and shall be tried before a jury, ten (10) dollars. Said sums, respectively, to cover all ordinary court costs up to and including entry of judgment and the issue of committment or execution for the enforcement thereof. In any criminal case in said court, whether arising under

the statutes of this state, or under the ordinances of said city, the court shall have power, if the defendant is convicted, to commit him either to the jail of Winona county or to the city prison of said city, until any fine which the court may impose upon him and the costs of prosecution, or either, are paid; *Provided*, That such commitment shall not in any case be for a longer time than three (3) months.

SEC. 28. In all examinations held by or before said court, to inquire of offenses of which said court shall not have final jurisdiction, the clerk shall tax as costs of said court the same fees as are now allowed to justices of the peace for similar services, including a fee of two (2) dollars for the return, and collect the same from the county of Winona.

SEC. 29. On filing his complaint in any civil action in said municipal court, the plaintiff shall pay to the clerk, as court costs, the sum of two (2) dollars, which shall be retained and paid over to the city treasurer whether any further proceedings in the case are taken or not; and if the amount claimed in the complaint, or the value as therein alleged, of the property of which recovery is sought does not exceed one hundred (100) dollars, and judgment is rendered in plaintiff's favor by default or by consent of defendant without trial, or in defendant's favor on dismissal of the action without trial, no further charge for such costs shall be made, but if the amount so claimed, or the value of property so alleged, exceeds one hundred (100) dollars, there shall be charged on entry of judgment in either case above stated the further sum as such costs, of seventy-five (75) cents for each additional hundred (100) dollars or fraction thereof; *Provided*, That in actions of replevin and in actions begun by attachment, the sum to be paid on filing the complaint and retained as aforesaid, shall be three (3) dollars, and the total charge for court costs shall be one (1) dollar more than in ordinary actions as above specified. When issue is joined and a trial had in the action, there shall be charged as court costs, in every case, in addition to the charges in this section above mentioned, the sum of five (5) dollars for each day or part of a day consumed in the trial. The above prescribed charges shall cover all ordinary court costs in any civil action up to and including entry of judgment, the issue of one execution and satisfaction of judgment; *Provided, however*, That they shall not be deemed to cover court costs on motion for a new trial or in arrest of judgment or other motions not made at the trial or on the taking of an appeal from said court. In each and every civil action there shall be taxed and allowed, besides the court costs above stated, the same fees for services performed by the sheriff, city marshal or other officer, in serving process or otherwise, as are allowed by the statutes for this state to constables for like services. All sums due for court costs or fees of the city marshal, or his deputy, or the court officer in any civil case, shall be paid to the clerk before judgment shall be entered therein.

SEC. 30. The term "court costs," or "costs of court," as used in section twenty-seven (27) and twenty-nine (29) of this act, shall be construed as embracing clerk's fees; but for all services performed by the clerk in his official capacity, which are not within the provisions of said sections and are not otherwise provided for in this act, the same fees shall be charged and collected as now are or may hereafter be allowed by law to the clerk of the district court of Winona county for similar services.

SEC. 31. The territorial jurisdiction of said municipal court shall be the same as that of justices of the peace in Winona county, except as is hereinbefore otherwise provided.

SEC. 32. This act shall take effect and be in force from and after its passage.

Approved March 9, 1885.

CHAPTER 116.

AN ACT TO ESTABLISH A MUNICIPAL COURT IN THE CITY OF BRAINERD, CROW WING COUNTY, MINNESOTA.

Be it enacted by the Legislature of the State of Minnesota:

SECTION 1. There shall be established in the city of Brainerd, in the county of Crow Wing, a municipal court for the transaction of all business which may lawfully come before it. Said court shall be a court of record, and shall have a clerk and a seal, and shall have jurisdiction to hear, try and determine civil actions at law when the amount in controversy does not exceed three hundred (300) dollars, excepting causes involving title to real estate. It shall also have exclusive jurisdiction to hear all complaints and conduct all examinations and trials in criminal cases arising or triable within the city of Brainerd heretofore cognizable before a justice of the peace or police justice. It shall not have jurisdiction of actions for divorce, nor of any action when the relief asked for in the complaint is purely equitable in its nature. When no provision is otherwise made in this act, said municipal court is vested with all the powers which are possessed by the district courts of the state as to civil actions in Crow Wing county, and counties thereto attached for judicial purposes, and all laws of a general nature apply to said municipal court so far as the same can be made applicable and not inconsistent with the provisions of this act.

SEC. 2. The qualified electors of the city of Brainerd shall, at the general election to be holden on the first (1st) Tuesday of March, in the year one thousand eight hundred and eighty-five (1885), and on the day of the general city election every second (2d) year thereafter, elect a suitable person, with the qualifications hereinafter mentioned, to the office of judge of said municipal court, to be called "municipal judge," who shall hold his office for the term of two (2) years, and until his successor shall be elected and qualified; *Provided*, That in case this act shall not go into effect prior to said general election on