

CHAPTER 17.

[H. F. No. 577.]

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

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

SECTION 1. There is hereby established in the city of Tower, in the county of St. Louis a municipal court for the transaction of all business that 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 where the amount in controversy does not exceed five hundred dollars (\$500), 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 under the ordinances, rules and by-laws of said city. It shall have jurisdiction of all actions and proceedings both civil and criminal, now or hereafter cognizable before justices of the peace under the general laws of the state of Minnesota. It shall not have jurisdiction of actions for divorce, nor of any action where the relief asked for in the pleadings is purely equitable in its nature. The territorial jurisdiction of said court shall be coextensive with the present limits of St. Louis and Lake counties.

SEC. 2. *Election and Qualification of Judge. Vacancy.* The qualified electors of the city of Tower shall, at the first general city election to be held in and for said city, and at the general city election every 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 one (1) year and until his successor shall be elected and qualified. The judge of said court shall be a resident and qualified elector of the city of Tower, a person learned in the law and duly admitted to practice as an attorney in the courts of this state.

Before entering upon his office, he shall take and subscribe an oath as prescribed in the general statutes for judicial officers, which oath shall be filed in the office of the city recorder. He 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 power and authority which is by law vested in justices of the peace or any other judicial officer. In case of any vacancy in the office of municipal judge, the governor of the state of Minnesota shall appoint some qualified person to said office until the next annual city election, when a judge shall be elected for the full term of one (1) year.

SEC. 3. *Special Judge.* There shall be one special judge of said municipal court, whose manner of election, term of office, powers, duties and qualifications shall be the same as those of the municipal judge, except as otherwise provided in this act, and his successor shall be elected, and vacancies in his office filled in like manner. In

case the municipal judge is a party in interest in an action or proceeding, or in case of the absence or sickness of the municipal judge, the said special judge shall act as judge of said court. This section shall not incapacitate such special judge from acting as attorney in any case in said court, but when so acting as attorney he shall take no action as judge in such case, save to adjourn the same.

SEC. 4. *Special Judge to Act in Certain Cases.* If at any time before the trial or hearing of any action or proceeding in said court, either party to the action or proceeding, or his agent or attorney shall make an affidavit to the effect that he believes that the municipal judge is a material witness or near of kin to either party to the action or or proceeding, or that from prejudice, bias or other cause, he will not be impartial in the trial or hearing of such action or proceeding, thereupon such municipal judge shall take no further action in such action or proceeding except to continue the same and forthwith notify the special judge of the action taken. Such special judge shall thereupon proceed with the trial or hearing of such action or proceeding, as in other cases.

The special judge acting as judge of said court shall receive compensation from said city at the rate of four dollars (\$4) per day, and when so acting on account of the judge being a party in interest, or in case of the absence or sickness of the judge the amount paid as compensation to the special judge shall be deducted from the salary of the judge.

SEC. 5. *Clerk. Oath. Bond.* The city recorder of said city shall be ex-officio clerk of the 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 Tower a penal bond in such sum and with such sureties as the council shall direct and approve, conditioned that he will account to and pay over to the treasurer of said city on the first (1st) secular day of each month, all fines, penalties, fees and other moneys belonging to or to go to said city, which may have come to his hands by virtue of his office. Such oath and bond shall be filed and kept in the office of the treasurer of said city.

SEC. 6. *Powers of Court. Process. Forms.* The municipal court shall have full power and authority to issue all process, civic and criminal, necessary or proper to carry into effect the jurisdiction given it by law and its judgments and other determinations; and it shall have and possess all the powers usually possessed by courts of record or common law, subject to the 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. All process shall be tested in the name of the judge, and issued under the seal of the court and signed by the judge or clerk. And the forms of process may be described by the court, by rule, and such forms may be changed by the court, from time to time. In the absence of such prescribed forms, the forms in use either in courts of record in this state, or by justices of the peace, may be changed or adapted to the style of this court

and used in the discretion of the court. *Provided*, that every summons shall state the amount claimed by the plaintiff in his complaint. Process may be directed for service to any police officer of the city of Tower, or to the sheriff or any constable of said county or city and may be served the same as in district court, and service by publication may be ordered and made in the same cases and in the same manner as in district court. *Provided*, that the period of publication shall be only four (4) weeks.

SEC. 7. *Place of Holding Court. Judge as Criminal Magistrate.*—The said municipal court shall be held in the city of Tower, at some suitable place to be provided therefor by the city council. Its judge shall be the chief magistrate of the city, and he shall see that the criminal laws of this state and the ordinances, laws, regulations and by-laws of the city are observed and executed, and for that purpose shall open his court every morning (Sundays and legal holidays excepted) at nine (9) o'clock, and proceed to hear and dispose of all actions and proceedings arising under the penal laws of the state of Minnesota, and to hear and dispose of in a summary manner, all cases that shall be brought to him by the police officers of the city, either with or without process for violation of the ordinances, laws, regulations or by-laws of said city.

SEC. 8. *Duties of Judge.* The judge of the municipal court shall have the custody and care of the books, papers and records of said court. He shall keep the minutes of all the proceedings, and enter all judgments, and make up and keep the records of the court. He shall tax all costs and disbursements, allowed in any action, and do all other acts and things necessary and proper to the enforcing and carrying out of the jurisdiction of the municipal court. He shall receive and collect all fines, penalties and fees of every kind accruing to the court or any officer thereof, including police officers, and keep full, accurate and detailed accounts of the same, and shall on the first (1st) secular day of each month pay over to the city treasurer of the city of Tower all moneys so received, with detailed accounts thereof, and take his receipts therefor. He shall, before entering upon the duties of his office execute a bond similar to that required of the clerk.

SEC. 9. *Terms, Summons and Service and Return, Pleadings, &c.* The municipal court shall hold regular terms for the trial of civil actions on Tuesday of each week at ten (10) o'clock a. m., which term shall continue from day to day with such adjournments as the judge may deem proper until the business of each term shall be finished. All civil actions for the recovery of money only shall be commenced by summons, writ of attachment or other proper process to be issued by the clerk or judge.

The summons shall be served upon the defendant at least six (6) days before the term at which the same is returnable. No summons shall be issued until the complaint in the action shall be filed with the court. The complaint may be presented in writing, to be filed, or may be made orally and reduced to writing by the judge or clerk. If the defendant fails to appear at the opening of the court on the day at which the summons is returnable, he shall be defaulted; if he so appear, he shall then, or within three (3) days thereafter, answer the plaintiff's complaint, and if the answer contain a counter claim, the

plaintiff may reply thereto on or before the first (1st) day of the next general term of said court; the answer or reply may be presented in writing and filed or made orally and reduced to writing by the judge or clerk. All pleadings shall be verified by the party or his agent or attorney as in courts of justices of the peace. Counter claims may be such as could be interposed in district or justice court; either party may demur to any pleading of his adversary, as in district court, but all pleadings in this court shall be construed liberally, and the court may for cause, in its discretion and on such terms as may be just, open any default within three (3) months after the same is made, and may allow any amendment of any pleading, at any time, and shall disregard variances between the allegations of any pleading and the evidence, unless the variance is such that the adverse party is prejudiced thereby. Either party shall be entitled to a continuance of any civil action (except actions for forcible entry and unlawful detainer) until the next term of the court following the term at which the summons is returnable, and further continuances may be granted for sufficient cause shown and on such terms as may be just. Said court shall have authority to require that the plaintiff in any civil action shall, by bond, recognizance, or deposit of money, give security for costs in such sum as will be sufficient to cover the probable costs of the action, before any summons or other process shall issue in the action, or at any other time. Costs shall be allowed to the prevailing party in actions commenced in said court, as follows: To the plaintiff, upon a judgment of fifty (50) dollars or over, or in actions of replevin, when the value of the property is fifty (50) dollars or over, five (5) dollars.

To the defendant, when the amount claimed in the complaint is fifty (50) dollars or over, when judgment is rendered in his favor, five (5) dollars, and upon determination of demurrer on motion to the prevailing party, such sum as the court may order, not exceeding five (5) dollars.

Costs and disbursements shall be taxed and allowed on one (1) day's notice and inserted in the entry of judgment. The disbursements shall be stated in detail and the statement sworn to and filed. The party objecting to any item shall specify in writing the grounds of objection, and the same in case of appeal shall be certified to the court and the appeal shall be heard and determined upon the objections so certified, and none other.

SEC. 10. *Attachment.* Any creditor desiring to proceed by attachment in said court, may, at the time of commencing the action, or thereafter, while the action is still pending, by himself, his agent or attorney, make and file an affidavit similar to the affidavit required by law in an application for a writ of attachment in justice courts, and also cause to be filed a bond with sufficient surety to be approved by the judge or clerk and similar to the bond required on a like application in a justice court, except that the limit of the liability therein shall not exceed two hundred and fifty (250) dollars.

The service of the writ and subsequent proceedings shall be similar, as near as may be, to the service of such writs and proceedings in justice courts. *Provided*, however, that in all cases where such writ contains the substance of a summons and has been served on the de-

fendant, personal judgment may be entered in said action whether property be actually attached by virtue of such process or not. Writs of attachment may be vacated by the judge upon proper showing, the same as in district courts of this state.

Whenever on the return of a writ of attachment the return of the officer shall show that personal property of the defendant has been attached by virtue thereof and that the defendant cannot be found within the territorial jurisdiction of said court, and the plaintiff, his agent or attorney shall make and file an affidavit to the effect that the defendant is a resident of this state, but that he resides outside the territorial jurisdiction of said court (naming his place of residence); thereupon the judge of said court, upon motion of the plaintiff, his agent or attorney, shall make an order reciting the alleged facts and directing that a summons and copy of such order shall be served on the defendant anywhere within this state; the judge shall then continue such action till the return day named in such summons. The summons and copy of order shall be served on the defendant at least eight (8) days before the return day named in such summons, at any place within the state of Minnesota, by any proper officer or indifferent person.

SEC. 11. *Replevin.* When the object of the 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 justice court in a like action. The plaintiff, or some one in his behalf shall execute a bond with sureties, to be approved by the judge or clerk conditioned similar to bonds in such actions in justice courts, and file such bond; and an action may be maintained on such bond as on similar bonds filed in like actions in justice courts, not exceeding in amount the sum of six hundred (600) dollars.

The writ and proceedings thereunder shall be executed (except as to the time and forms of trial) in the same manner as in justice courts, but the officer executing the writ shall retain the property taken 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 some one in his behalf shall execute to the plaintiff a sufficient bond with one or more sureties, to be approved by the judge, conditioned as in like cases in district court, and file such bond; the court shall thereupon issue an order to the officer to deliver such property to the defendant.

SEC. 12. *Calendar.* The judge shall, prior to each term of 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 arrangements as he may think best; and the court shall direct the order of the trial and other disposition of the causes.

SEC. 13. *Jury Trial—Drawing of Jurors.* Jurors for said municipal court shall be provided and drawn in the following manner, to-wit; the city council shall at its first meetings in the months of April and October in each year, select and designate fifty (50) legal voters of said city, as the jurors of said municipal court to serve therein when required and drawn during the succeeding six (6) months, and until their successors are designated and certified, and

shall thereupon certify said names so selected to the judge 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 judge shall by lot draw eighteen (18) names from the said box and make a list of the same. Each party may thereupon strike out three (3) names; in case of the refusal or neglect of either party so to strike out such names, the judge shall strike out the names of either or both, and upon such names being stricken out a venire shall be issued and directed to either the sheriff or constable of the county or city, or to any police officer of said city, directing him to summon the twelve (12) whose names remain upon such list to appear before said court at the time and place named therein as a jury for the trial of such action, *provided*, that upon the consent of both parties entered upon the minutes, a jury of six (6) may be ordered and in such cases twelve (12) names shall be drawn from the box and a list of the same made by the judge, and each party may strike out three (3) names, and said jury shall be selected, impaneled and summoned as provided in this section. The names of the jurors stricken from the list as aforesaid, shall be replaced in the box. The same challenges may be made as are allowed in the district court. 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 talesmen to supply the deficiency. To the talesmen so summoned either party may interpose two peremptory challenges and challenges for cause may be entertained and allowed whenever such challenge would be properly allowed in the district court. Jurors shall take the same oath which is prescribed for jurors in district court and the respective functions of the judge and jury upon the trial of causes shall be the same as in district courts, and exceptions to the rulings and decisions of the judge and his charges and refusals to charge, may be taken as upon trials in the district court. When no other provisions are otherwise made in this act, said municipal court is vested with all powers which are possessed by the district courts in the state and all laws of a general nature shall be applied to the said municipal court as far as the same can be made applicable and not inconsistent with the provisions of this act.

Jurors in said municipal court shall be entitled to fifty (50) cents per day on the trial of civil actions to be collected and paid in same manner as in justice courts; but the party demanding a jury in any civil action shall be required to advance the jury fee before the jury is sworn. Jurors in criminal cases shall be entitled to like fees as jurors in civil cases, which said fees shall attach as part of the cost of the case.

SEC. 14. *Referees, Exceptions, New Trials and Appeals.* Title eighteen (18) of chapter sixty-six (66) of the general statutes relative to trials by referees; title nineteen (19) of the same chapter relative to exceptions, and title twenty (20) relative to new trials shall apply to said municipal court, and section four (4) of chapter twenty-seven (27) of the general statutes relative to the reporter of the supreme court and the distribution of the supreme court reports shall apply to the judge of the said municipal court; and all cases may be

removed from said municipal court to the supreme court of the state of Minnesota in the same manner and upon like proceedings and with like effect as from district courts; and said municipal court shall have jurisdiction of actions of forcible entry and unlawful detainer and may fix return days for such actions other than the regular term days of said court, and the general laws of the state of Minnesota relative to forcible entry and unlawful detainer shall apply to said municipal court.

SEC. 15. *Judgments, Transcripts, Executions.* No judgments 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 action may issue against the goods and chattels of the judgment debtor, returnable within thirty (30) days. Judgment may be stayed in this court the same as in the justice courts. Every person in whose favor a judgment is rendered in said municipal court for an amount exceeding ten (10) dollars may upon paying the fee therefor and all unpaid fees payable in such action, demand and shall receive a transcript of such judgment duly certified, and may file the same in the office of the clerk of the district court of said county of St. Louis, who shall file and docket the same as in cases of transcripts of judgments from the courts of justices of the peace; and every such judgment shall become a lien on the real estate of the debtor from the time of filing such transcript to the same extent as a judgment of said district court and shall thereafter be exclusively under the control of said district court and carried into execution by its process as if rendered in said district court. No such transcript shall be issued while a writ of execution is outstanding in the hands of an officer or otherwise, and a statement shall be made in the record of such judgment that such transcript has been issued, giving the date on which it was issued and thereafter no writ of execution shall be issued out of said municipal court on such judgment; but in case of the loss of the transcript first issued, a new transcript of such judgment may be issued.

SEC. 16. *Garnishment.* Proceedings against garnishees may be instituted in the same manner as in justice courts, but the summons may be served either by any officer or any indifferent person at any place within the state of Minnesota; and the summons may be returnable at any term of said municipal court held not less than six (6) days after such service and the notice required to be served on the defendant in the action shall be signed either by the judge or clerk of the person who served the garnishee summons, or by the plaintiff or his attorney. The disclosure of the garnishee may be taken and all further proceedings had in the same manner as if the proceedings were in the district court. Whenever on the return day of the summons, in an action in which the garnishee summons has been issued and served and property of defendant has thereby been attached in the hands of the garnishee, it shall appear from the return thereon that the defendant cannot be found within the territorial jurisdiction of the court; and the plaintiff, his agent or attorney shall make an affidavit that such defendant is a resident of the state of Minnesota, but resides outside of the territorial jurisdiction

of this court, then the judge, upon motion of the plaintiff, his agent or attorney, shall make an order reciting the alleged facts, and directing that the summons in said action, together with a notice to the defendant (stating the time and place at which the garnishee disclosure will be made) and a copy of such order shall be served on the defendant anywhere within this state. The judge shall then continue such action and all proceedings therein (including the disclosure of the garnishee), till the return day named in such summons.

The summons, notice to the defendant and a copy of such order shall be served on the defendant at least eight (8) days before the return day named in said summons, at any place within the state of Minnesota, by any proper officer or indifferent person.

SEC. 17. *Proceedings in Criminal Cases.* Complaints in criminal cases, where the defendant is not in custody may be made to the court when in session, or to the judge or clerk when 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 offence be a violation of the criminal laws of the state or of the ordinances, regulations or by-laws of said city; and the clerk, as well as the judge is hereby made a conservator of the peace and vested with the same authority, discretion and power to act in receiving complaints and issuing warrants of said court in criminal cases. The complaints, warrants and all other processes in criminal cases may be substantially in the forms in use by justice of the peace, with such alterations as may be proper to adapt the same to the style of said municipal court; or may be in such other form as the court may prescribe or sanction and approve.

In cases where alleged offenders shall be in custody and brought before the judge or clerk without process, a complaint shall be made, which the judge or clerk shall reduce to writing, and the party be required to plead thereto, as to warrants in other cases, and the person or persons so arrested may be proceeded against in the same manner as if the arrest had been made by warrant.

In the examinations of offenders charged with the indictable offences, the judge shall keep minutes of the examination and shall make the proper return to the court before which the party charged with the offence may be bound to appear.

SEC. 18. *Salary of Judge and Clerk, Power of Officers.* The judge of said court shall receive a salary of one thousand (1,000) dollars per year, and the clerk of said court shall receive such compensation as the city council of said city shall by resolution allow, payable from the city treasury of Tower in monthly installments. Neither said judge nor clerk shall receive any other fee or compensation for his service, but in all proceedings had in said municipal court, one and one half (1½) times the fees shall be charged and collected by the judge or clerk as are allowed by law to justices of the peace for similar services in proceedings and trials brought before them.

Police officers of said city are hereby vested with all the powers of constables under the statutes of Minnesota, as well as common law, and police officers in making service of any process or doing other duty in respect to causes in said court, shall note and return to the

court for collection one and one half ($1\frac{1}{2}$) times the fees that are allowed to constables for like services, and all fees whether so charged, by the judge or any police officer, whether due from the county in preliminary examinations or otherwise shall be collected by the judge as costs, and by him be accounted for and paid over to the city treasurer of said city.

The plaintiff, upon making his complaint in all civil actions shall pay to the judge or clerk of said court one dollar (\$1.00) for each one hundred (100) dollars or fraction thereof claimed in the complaint.

SEC. 19. *Police Officers in Attendance on Court.* It shall be the duty of the city council to see that a sufficient number of police officers are always in attendance upon said court, and in readiness to obey its mandates and to serve its process and preserve order in the proceedings. Police officers of said city shall hereafter receive for their services no other compensation than the salary paid them by said city, except as otherwise provided for in this act, and if any fee shall be paid to any police officer for any services, he shall forthwith pay the same over to the judge or clerk of said municipal court for the use of said city, and the failure to do so shall be a misdemeanor punishable by fine not exceeding one hundred (100) dollars, or by imprisonment not exceeding thirty (30) days. The city council shall have the power in its discretion to appoint one or more persons approved by the municipal judge as policemen for special attendance and duty in said court irrespective of the general rules or legal regulations and enactments relative to the qualifications of policemen; such persons shall receive the same but no greater compensation, unless the council direct greater compensation, as ordinary police, and all policemen attending said court may be required to give bonds to said city in such sums as the council shall direct for the performance of their duties, for the use of all persons interested. *Provided, however, that the above shall not effect the powers and duties of the general police in said court.*

SEC. 20. *Titles to Real Estate.* In case it shall appear from the pleadings or upon the trial of any civil action 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 said county, and the case shall be proceeded within the court to which it shall be transferred, as if originally commenced therein.

SEC. 21. *Attorney—Prosecuting Officers.* The city attorney of the city of Tower shall have charge of all proceedings arising under the ordinances, rules and by-laws of the said city, before said municipal court.

The county attorney of the county of St. Louis, shall have charge of the prosecution of all offences against the criminal laws of the state.

SEC. 22. *Clerk to Procure Supplies for the Court.* The clerk of the municipal court shall, under the direction of the judge, and with the consent of the city council, from time to time procure and furnish all necessary blanks, stationery, record books, court room, jury room and office furniture, light and fuel for the use of the court and officers thereof, at the expense of said city.

SEC. 23. *Justice of the Peace Superseded.* Upon the election and qualification of the municipal judge, all causes and proceedings then pending before justices of the peace of the former village of Tower, shall forthwith by said justice be transferred to said municipal court with all papers and records concerning the same, and said municipal court shall take cognizance of such actions and proceedings and proceed therein, as if the same were originally commenced in said municipal court. And all the dockets, records, files and papers in custody of all justices of the peace of said former village of Tower shall at once be transferred and turned over to said municipal court, which shall have full jurisdiction to finish and complete all proceedings pending before any justice of the peace, and when forced by execution or otherwise, all judgments theretofore rendered by a justice of the peace within said village of Tower, and said 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 former village of Tower, or any justice of the peace, within the present city of Tower 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 a justice of the peace, except that this clause shall not effect the jurisdiction of any court of record having general jurisdiction, such as is conferred upon the district court.

SEC. 24. *Stenographer.* The judge of said court shall have power with the approval of the city council to appoint a stenographer for said court, whose duty it shall be to keep accurate minutes in shorthand of all proceedings and causes tried in said court, whenever requested to do so by said judge, and extend the same into long hand at the request of either party to such action.

Said stenographer shall receive pay at the rate of five (5) dollars per day for each day actually employed in said court; the same to be certified and paid out of the city treasury of the city, in the same manner as other officers of said court are certified and paid. He shall receive pay for extending his shorthand minutes into longhand from the party ordering the same at the rate of ten (10) cents per folio, for the first copy, and five (5) cents per folio for all other copies.

It shall be the duty of the clerk of said court in all cases where the services of said stenographer are used, to tax in the costs of said action, five (5) dollars for the use and benefit of the city of Tower, to be collected in the same manner as other costs are taxed and collected.

SEC. 25. This act shall take effect and be in force from and after its passage.

Approved March 19, 1889. •