

first (1st) Monday in November next succeeding the day of his election, and shall continue for the period herein specified and until his successor is elected and qualified."

SEC. 5. Section eighteen (18) of said Chapter eleven (11) is hereby amended by striking out the words "in each year," in the first line of said section.

SEC. 6. Section nineteen (19) of said Chapter eleven (11) is hereby amended by striking out the words "first (1st) Tuesday in May," wherever the same may occur, and by inserting in lieu thereof the words "first Tuesday after the first (1st) Monday in November."

SEC. 7. Section thirty (30) of said Chapter eleven (11) is hereby amended by striking out the words and figure "one (1) year," wherever the same may occur, and by inserting in lieu thereof the words and figure "two (2) years."

SEC. 8. Section forty eight (48) of said Chapter eleven (11) is hereby amended by striking out the first (1st) sentence of said section.

SEC. 9. Section fifty-seven (57) of said Chapter eleven (11) is hereby amended by inserting after the words and figures "eighteen hundred and eighty-nine (1889)," where the same occur, the words "or as soon thereafter as may be."

SEC. 10. Section ninety-eight (98) of said Chapter eleven (11) is hereby amended by striking out the words "first (1st) meeting after each annual election," where the same occur in the first (1st) and second (2d) lines of said section, and by inserting in lieu thereof the words "second (2d) regular meeting in May of each year."

SEC. 11. All acts and parts of acts inconsistent with this act are hereby repealed.

SEC. 12. This act shall take effect and be in force from and after its passage.

Approved April 7, 1891.

CHAPTER 112.

[H. F. No. 19.]

AN ACT TO AMEND "AN ACT TO ESTABLISH A MUNICIPAL COURT IN THE CITY OF TOWER," BEING CHAPTER SEVENTEEN (17) OF THE SPECIAL LAWS OF EIGHTEEN HUNDRED AND EIGHTY-NINE (1889).

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

SECTION 1. That section six (6) of Chapter seventeen (17) of the Special Laws of the state of Minnesota of the year eighteen hundred and eighty-nine (1889), be and hereby is amended so as to read as follows:

Sec. 6. *Powers of Court—Process—Forms.*—The municipal court shall have full power and authority to issue all process, civil and criminal, except summons in civil action, 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 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. All process, except summons, shall be tested in the name of the judge and issued under the seal of the court and signed by the judge or clerk. The summons shall run in the name of the state of Minnesota, and must be subscribed by the plaintiff or his attorney and directed to the defendant, requiring him to appear on the first (1st) day of any regular term of said court, which day shall be specified therein. Such summons shall state the amount claimed by the plaintiff in his complaint, and may be served by any police officer of the city of Tower, the sheriff of said county 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 the district court; *Provided*, that the period of publication shall be only four (4) weeks.

All the forms of process, except as otherwise provided for in this act, may be prescribed 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 and adapted to the style of this court and used in the discretion of the court.

SEC. 2. That section nine (9) of said chapter be and is hereby amended so as to read as follows:

Sec. 9. *Terms—Summons and Service and Return—Pleadings, etc.*—The municipal court shall hold regular terms for the trial of civil actions on Tuesday of each week at ten (10) o'clock in the forenoon, 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 shall be commenced by summons. 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 shall be presented in writing and filed with 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 must be presented in writing and filed with the judge or clerk. All pleadings shall be verified by the party, or his agent or attorney, as in courts of justice 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 may 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 two (2) days' notice and inserted in the entry of judgment. The disbursements shall be stated in detail and the statements 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 objection so certified and none other.

SEC. 3. That section ten (10) of said chapter be and hereby is amended so as to read as follows:

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 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. Writs of attachments 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 such 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. 4. That section eleven (11) of said chapter be and hereby is amended so as to read as follows:

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 an affidavit similar to the affidavit required in 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 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 (1) 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. 5. That section fifteen (15) of said chapter be and hereby is amended so as to read as follows:

Sec. 15. *Judgments—Transcripts—Executions*.—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 against the goods and chattels of the judgment debtor, returnable within thirty (30) days. Judgments may be stayed in this court the same as in 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 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, whether execution was issued out of said municipal court or not. 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. 6. That section sixteen (16) of said chapter be and hereby is amended so as to read as follows:

Sec. 16. *Garnishment*.—Proceedings against garnishees may be instituted in the same manner as in justice courts, except that the summons shall be signed by the plaintiff or his attorney, the same as summons in civil actions, and may be served in the same manner as in the district court, either by any proper officer or 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 person who served the garnishee summons or by the plaintiff or his attorney, and said notice, together with a copy of the summons, shall be served in the same manner as in district court. 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 the 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 orders 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. 7. That section eighteen (18) of said chapter be and the same hereby is amended so as to read as follows:

Sec. 18. *Salary of Judge and Clerk—Powers 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 compensation for his services; but in all proceedings had in said municipal court fees shall be charged and collected by the judge or clerk, equal to three-fourths ($\frac{3}{4}$) of the fees allowed by law to justices of the peace for similar services in proceedings and trials before them.

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 police officers in making service of any process or doing other duty in causes in said court, shall note and return to the court for collection the same fees that are allowed to constables for like services; and all fees, whether so charged by the judge or clerk or any police officer, whether due from the county in preliminary examinations or otherwise, shall be collected by the judge or clerk as costs and accounted for and paid over to the treasurer of said city. The plaintiff upon filing his complaint in civil actions shall pay to the judge or clerk of said court one (1) dollar for each one hundred (100) dollars or fraction thereof claimed in the complaint.

SEC. 8. All acts or parts of acts inconsistent with this act are hereby repealed.

SEC. 9. This act shall be in force from and after its passage.

Approved January 29. 1891.