

CHAPTER 66—H. F. No. 737.

AN ACT to amend Sections 2, 5, 7, 9, 10, 14, 15, 17, 19, 21, 22 and 23, of Chapter 59, of the Special Laws of Minnesota for the year 1891, the same being the act entitled, "An Act establishing a municipal court, in the City of Ely."

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

Section 1. Municipal court judge in Ely to hold office for two years.—That Section 2 of Chapter 59 Special Laws of Minnesota 1891, be amended so as to read when amended as follows :

Sec. 2. Judge to appoint clerk.—The qualified electors of the City of Ely, St. Louis County, Minnesota, shall at the general election held in and for the election of officers for said city, elect a suitable person with the qualifications hereinafter mentioned, to the office of judge of the municipal court of said city, to be called municipal judge, who shall hold his office *until the next general election to be held in and for said city. That thereafter the term of office of the municipal judge, who shall be a resident and qualified elector, shall be two years and until his successor is elected and qualifies.*

Before entering upon the duties of his office said judge shall subscribe to an oath as prescribed by the General Laws for judicial officers, which oath shall be filed as required by the law. He shall have the general powers of judges of courts of record, and may administer oaths, take acknowledgments in all cases, and, as conservator of the peace, shall have the powers and authority over all actions or judgments arising in his court, where no other provision is otherwise made, in this act, which is by law vested in district courts of this state, or other judicial officers.

In case of a 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 *regular city election, at which time an election may be had to fill the unexpired term of the person who has vacated the office, after which time a judge shall be elected for the full term of two years.*

Sec. 2. Judge to appoint clerk.—That Section 5, of Chapter 59 of the Special Laws of Minnesota for the year 1891, be amended so as to read when amended, as follows :

Sec. 5. Said municipal court, shall have a clerk, who shall be appointed or removed at the pleasure of the municipal judge, and by an order entered in the *files of the court and a certified copy thereof filed with the clerk of the City of Ely.* Before entering upon the duties of his office such clerk shall take the oath *of office as required by the clerk of court of the district court,* and shall execute a bond in a penal sum, and with such sureties as the city council of the said city shall direct and approve, and conditioned that he will at all times pay over to persons,

on demand, all moneys to which they may be entitled, which may come to his hands by virtue of his office, and will, also, on each day of each month, pay over to the treasurer of the City of Ely, all fines, fees and other moneys belonging or to go to the city, which may come to his hands by virtue of his office. Such oath and bond shall be filed *as required by law*. The salary of the clerk shall be paid out of the *proper* funds of the City of Ely. Such clerk shall have power to appoint a deputy clerk, subject to the approval of the judge, such deputy to have like powers as the clerk and for whose acts the clerk shall be responsible. *And said deputy before entering upon the duties of his office shall subscribe to and file a like oath of office as required of the clerk.*

Sec. 3. **Court to be held in Ely—Extension of powers.**—That section 7 of chapter 59 of the Special Laws of the year 1891 of the State of Minnesota, be amended so as to read when amended, as follows:

Sec. 7. The said municipal court shall be held in the City of Ely, at some suitable place to be provided therefor by the municipal judge, and at the expense of the city. Its judge shall see that the criminal laws of the 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 A. M., and proceed to hear and dispose of all actions and proceedings arising under the penal laws of the State of Minnesota, and hear and dispose of in a summary manner of all cases that shall be brought to him by the police officers of the city, either with or without process for violations of the ordinances, laws, regulations or by-laws of said city. The clerk shall have the care and custody of all books, files, records and papers of said court.

He shall be present at all trials and proceedings in court. He shall swear witnesses and juries and administer oaths, and shall keep the record of the court, all of which shall be done under the supervision of the judge. In the absence of the judge, adjournments may be made by the clerk. He shall tax all costs and disbursements allowed in any action and do all things and other acts 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 and keep full, accurate and detailed accounts of the same and on the first secular day of each month *file a copy of the same and a detailed statement of the same with the receipts of the treasurer of the city, with the city clerk.*

Sec. 4. **Trial of civil actions.**—That section 9 of Chapter 59, of the Special Laws of the State of Minnesota for the year 1891, be amended so as to read when amended as follows:

Section 9. The municipal court shall hold regular terms

of court for the trial of civil actions, on *the second and fourth Tuesdays of each month* at ten o'clock A. M., which term shall continue from day to day, with such adjournments as the court may deem proper, until the business of each term shall be *disposed of*, and the court may by rule or order appoint such *special terms* to be held upon other days than the days mentioned above.

All civil actions in this court shall be commenced by service of summons and shall run in the name of the State of Minnesota, the summons, except when not otherwise provided in this act, must be subscribed by the plaintiff or his attorney and directed to the defendant, requiring him to answer the complaint and serve a copy of his answer on the person whose name is subscribed to the summons, and at a place within the state therein specified in which there is a post office, and within ten (10) days after the service of such summons, exclusive of the day of service. It shall not be necessary for a party to set forth in a pleading in a civil action in said court, the items of an account therein alleged, but he shall deliver to the adverse party within *eight (8) days* after a demand therefor in writing, a copy of the account verified by his own oath, or that of his agent or attorney; if verified by his agent or attorney, *it shall be to the effect that he believes it to be true*, or be precluded from giving evidence thereof, and the court or judge may order a further and more particular bill.

The notice to be contained in the summons, the manner of service of summons, pleadings, notices, and *appearances*, and the *manner of commencing civil actions* shall be the same as required by law in district courts, of this state, except as otherwise provided in this act, and the provisions of *Chapter seventy-seven (77) and seventy-nine (79) General Statutes of the State of Minnesota for the year 1913*, and acts amendatory and supplementary thereto so far as the same may be practicable and not contravene the provisions of this act, *shall apply to this court*. If the defendant appears within four (4) days after service of summons *where no pleading was served with the summons*, the plaintiff must serve a copy of the pleadings if demanded on the other party, or his attorney as the case may be, within four (4) days after notice and demand, and the other party shall have at least five (5) days thereafter to answer the same.

When the answer contains new matter constituting a counterclaim, the plaintiff may, within five (5) days, reply thereto and such counterclaim may, be such as could be interposed in the district court, or justice courts of this state. Either party may demur to the pleadings of his adversary, as in the district court. After the decision of the demurrer the court may if it appears that the demurrer was interposed in good faith, allow the party demurring to withdraw the same or amend the same or plead over again, at any time within five (5) days from the date of filing the

decision in the demurrer, or, if the demurrer is sustained, may allow the pleading demurred to to be amended on such terms as may be just. When a notice is necessary to be given of a motion to be heard by the court, it must be served *at least* five (5) days before the hearing or the time appointed, but the judge may, by order to show cause, prescribe a shorter time. All attempts to commence an action in this court shall be followed by the service of the summons or first publication thereof within *sixty days (60)* from the date of issuing the same. Each party shall, on or before the day of the trial of any issue and for which any cause is noticed file his pleadings with the *clerk*. Notice of trial may be given at any time by either party after issue joined, and *must be* at least four days before the term, and the party giving the notice shall furnish the clerk, at least one (1) day before the term, with a note of issue containing the title of the action and the names of the attorneys, if any.

When any such summons or other process or paper in any civil action shall have been delivered to any person for service, he shall as soon as practicable thereafter, make return to the said court or clerk, whether said summons, process or *other* paper shall have been served or not and if not served, the reason therefor.

The pleadings in said court shall be the same as in the district courts, of this state, subject to such modifications as *herein prescribed*.

The court may for good cause shown, in its discretion and on such terms as may be just and equitable, open any default at the term at which it occurred or at any time within *six (6) months* thereafter, or *may* allow any amendment to any pleading at any time during the trial of an action, and shall disregard variances between the allegations of the pleadings and evidence unless satisfied that the adverse party is prejudiced thereby.

Continuance shall be *had* on such terms and subject to the same rules as obtain in the district courts of this state.

In civil actions the following costs shall be taxed when the party is entitled to recover costs, appears and prosecutes by an attorney at law duly admitted to practice in the district courts of this state. In favor of the plaintiff, upon default by the defendant, when a judgment is entered, five (5) dollars; to the plaintiff on a dismissal without the entry of judgment, three (3) dollars; upon determinations of demurrer on motion, to the prevailing party such sums as the court may order not exceeding ten (10) dollars; upon a trial on the merits costs shall be taxed in favor of the prevailing party in the sum of five (5) dollars where the amount is less than fifty (50) dollars; when the amount of judgment is fifty (50) dollars or more than ten (10) dollars.

Costs may be taxed in favor of the plaintiff on the entry of judgment against the garnishee in any action, in the sum of three (3) dollars, to be paid and become part of the amount of judgment to be paid by the defendant or out of the property of the defendant in the hands of the garnishee.

Costs and disbursements shall be taxed and allowed in the first instance by the clerk of the court upon two days' notice by either party and inserted in the entry of judgment. The disbursements shall be in detail and verified by the affidavit of *the party or his attorney*, which shall be filed. The party objecting to any item of costs, shall specify in writing the ground of objection and the same shall be heard *on appeal to the court, after action thereon by the clerk*, and shall be determined upon the objection so made, and none other.

Sec. 5. **Attachment proceedings.**—That section ten (10) of chapter 59, of the Special Laws of Minnesota for the year 1891, be amended so as to read when amended as follows:

Sec. 10. Any creditor desiring to proceed by attachment in said court, may, at the time of commencing the action, or thereafter at any time while the action is pending, *and before the entry of judgment*, by himself, his agent or attorney, make and file an affidavit *as required by law* in an application for a writ of attachment in a justice court, and cause a bond to be filed with one or more sureties to be approved by the court or clerk and similar to the bond required in like applications in a justice court, except the limit of liability therein shall not exceed the sum of two hundred and fifty (250) dollars. Upon filing of bond and the approval of the same, the said clerk or judge shall issue the writ.

The service of the writ and the subsequent proceedings *thereunder* shall as near as may be, be similar to the service of such writs and proceedings *in district courts, except*, that writs of attachments to be vacated *must be under the provisions of laws relating to justice courts of the state.*

Whenever on the return of the 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 of the territorial jurisdiction of the court, naming the place, thereupon the judge of said court upon the motion of the plaintiff or attorney, shall make an order reciting the facts and direct the summons and a copy of such order, *with a copy of the writ to be served on the defendant at any place he may be found within the state.*

The summons and copy of the order and copy of the writ may be served upon the defendant at any place out of the territorial jurisdiction of the court by an officer or indifferent person.

Sec. 6. **Drawing of jurors and per diem for same.**—That section fourteen (14) of chapter fifty-nine (59) of the Special Laws of Minnesota for the year 1891, be amended so as to read when amended as follows:

Sec. 14. Jurors of said municipal court shall be provided and drawn in the manner following, to-wit: the city council and clerk shall at its first meeting in the months of April, August and December of each year select and designate fifty (50) *electors* of said city as jurors of said municipal court to serve therein when drawn and required, during the succeeding four months *and* until their successors are drawn, certified and designated, and the city clerk shall certify the names so drawn to the *clerk* of said court, who shall thereupon write said names on separate ballots or *slips* and place the same in a box kept for that purpose and whenever a jury is demanded by either party *to an action* in said court, the judge or his clerk shall draw, by *ballot* eighteen names from the box and make a list of the same. Each party may thereupon strike out three names. In case of refusal or neglect of either party to so strike out such names, the judge or clerk shall *do so*. Upon such being stricken out a venire shall be issued and directed *as other process issued out of said court, requiring such officers* to summon twelve men whose names remain on such lists to appear before the 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, may be ordered, and in such cases, twelve names shall be drawn from the box and a list made by the clerk, and the parties may strike out three names each, and said jury be selected, impaneled and summoned as provided in this section. *The names of the jurors whose names are stricken shall not be placed in the box again, and the names of the persons who may serve on the jury shall be kept apart from those who have not served until all names have been drawn from the box, when they shall all be replaced and drawn on other juries.* The same rules that obtain in the district courts of this state as to the challenge of jurors, talesmen, oath to jurors and the respective functions of the court and jury, exceptions to the rulings of the court or judge thereof and his charges and refusal to charge, shall apply to this court.

When no other provision is otherwise made in this act, said court is vested with all the powers which are possessed by the district courts of the state and all laws of a general nature shall *apply* to said municipal court as far as the same *may* be applicable and not inconsistent with the provisions of this act.

Jurors in said municipal court shall be entitled to receive *two (2) dollars* per day on the trial of all civil actions. The jury shall be demanded on the call of the calendar on the first day of the term. *If the jury is not demanded before the commencement of the trial of the action after the case is set for trial the jury shall be considered waived and the action shall be tried by the court without a jury, provided, that if a jury is demanded on the call of the calendar, the jury may be waived by agreement of the parties at any time before the jury is drawn.*

Jurors in criminal cases shall be entitled to like fees as jurors in civil actions, which fees shall attach as part of the costs of the case.

The party desiring a jury in any civil action shall be required to pay a jury fee of three (3) dollars for a jury of six persons or less and the sum of five (5) dollars for a jury in excess of six persons, which amount shall be paid into the court fund of the city, and shall be paid before the jury is sworn. The jurors shall be paid out of the proper fund upon the certificate of the clerk of the municipal court, who shall deliver to each juror attending, such certificate, indicating the number of days attended and for which he is entitled to receive compensation.

Such certificate of the clerk shall be a sufficient voucher after being filed with the city clerk, who shall issue a warrant drawn on the proper fund directed to the city treasurer to pay the amount such juror is entitled to receive.

Sec. 7. **Appeal from decisions.**—That section 15 of chapter 59 of the Special Laws of Minnesota, for the year 1891, be amended so as to read when amended as follows:

Sec. 15. That section 4 of Chapter 27 of the General Statutes of Minnesota 1878, and acts amendatory and supplementary thereto relative to the reports of the Supreme Court and the distribution of the reports of said court, shall apply to this court and an appeal may be taken to the district court of the county in which this court is situated and as follows. *In any cause in which a judgment or order shall be rendered in said municipal court, and from which a party is entitled to an appeal, such party may if he so elects cause the same to be removed to the said district court of the county, upon the same grounds and in like manner and proceedings, and with like effect as now or hereafter may prevail in case of an appeal from justice's courts, and may also appeal from an order of the court, sustaining or overruling a demurrer to a pleading, any order made on an objection to the taxation of costs and disbursements, or an order made on application to vacate a judgment.*

Appeals from orders other than orders upon which a judgment has been entered may be taken at any time within ten (10) days after notice of the filing of the order.

Notice of appeal shall be served as in other cases and a bond shall be furnished and filed with the court with sufficient surety, by the appellant or some one in his behalf and of not less than fifty (50) dollars, conditioned that the appellant will pay all costs and charges, which may be awarded against him on appeal not exceeding the penalty of the bond, or may deposit with the clerk of court in lieu of such surety on the bond, the amount of the bond, to abide the judgment of the appellate court, but such bond may be waived by consent of the respondent and such appeal when taken from an order shall stay all proceedings thereon, and save all rights affected thereby.

The clerk of the municipal court shall collect a fee of one (1) dollar, for certifying and returning the record to the district court and a fee of one (1) dollar for receiving and docketing such appeal shall be paid to the clerk of the district court, which said fees shall be paid by the party appealing and may be taxed by him if successful as a disbursement: the clerk of the district court shall receive one (1) dollar for the remittitur and certifying and returning the records and proceedings on the appeal to the municipal court, to be paid by the party obtaining the same and which fees shall cover all charges of said respective clerks of court subsequent to taking such appeal, except as otherwise provided herein.

Said appeals may be brought on for hearing at any time or any special term of the court on eight days' notice given by either party after said record shall have been returned to the district court. Said district court upon such appeal shall have power in civil actions to affirm, reverse or modify the order of the court appealed from, and in case of a reversal, order a new trial, or do any other act that to the court may seem proper and upon determination of a demurrer or order appealed from, requiring further action by the court from which the appeal is taken, remand the same to the municipal court for the performance by it of the requirements of such determination.

The successful party on any such appeal shall be entitled to tax his actual disbursements, and in addition thereto the sum of ten (10) dollars, as statute costs of such appeal.

In case of any appeal to said district court herein provided for, the clerk of said court shall, with the remittitur transmit to the clerk of said municipal court, the record theretofore transmitted to him by the municipal court clerk or certified copies thereof, had on appeal, and after receipt thereof, said municipal court shall, upon written request of either party take such proceedings as directed by the order of the district court.

When an appeal is taken to the district court from a judgment or order made by the court, in an action for the violation of an ordinance, or by-law of the city, or a criminal action in which the city attorney shall prosecute the same or whose duty it is to prose-

cute, pursuant to the provisions of this court, or the city charter of the City of Ely, or any law of the state, the notice of appeal shall be served upon the city attorney, or the person who may prosecute the matter in its behalf, in the trial of the action, provided, that in an action under the statutes of the state, notice shall also be served upon the county attorney of the county.

Sec. 8. Transcript of judgment to be filed with clerk of district court.—That section 17 of chapter 59 of the Special Laws Minnesota, for the year 1891, be amended so as to read when amended as follows:

Sec. 17. No judgment rendered in said court shall attach or become a lien upon real estate until a transcript thereof shall be filed in the district court as hereinafter provided for, but writs of execution thereon in civil actions may issue upon the entry of judgment against the personal property of the debtor, returnable in sixty (60) days. Every person in whose favor a judgment is rendered in said court for an amount exceeding ten (10) dollars may, upon the payment of all costs, if any, remaining unpaid, receive on demand a transcript of such judgment, duly certified, and file the same in the office of the clerk of the district court of the county, who shall file and docket the same as in cases of transcripts of judgments from court of justices of the peace, and every such judgment shall become a lien on the real estate of the judgment debtor from the time of filing of such transcript to the same extent as a judgment of said district court; and upon a transcript of such docket being filed with the clerk in any other county, such clerk shall docket the same. From the time of such docketing the judgment shall be a lien, to the amount unpaid thereon, upon all real estate in the county, then or thereafter owned by the judgment debtor, and thereafter so far as it relates to the enforcement of the same against the property of the judgment debtor (except as to personal property, within the counties of St. Louis, Lake and Cook, Minnesota), be exclusively under the control of said district court and be carried into execution by its processes the same as if entered in the district court of such county. In case of loss of the transcript of such judgment first issued, a new transcript of such judgment may be issued. The clerk of said municipal court, shall note on the record that such transcript has been given, but said municipal court may at any time thereafter, take proceedings to enforce judgment against the personal property of the judgment debtor, the same as if such transcript had not been issued; and the judge thereof, of said court, is hereby vested with all power and jurisdiction in relation to the examination of debtors as otherwise vested in said district court, and the judges thereof. Upon the satisfaction, or partial satisfaction of any judgment in the municipal court, wherein a transcript of such judgment has been

issued, it shall be the duty of said court to give to the judgment debtor or creditor on demand a certified copy of the instrument of satisfaction or partial satisfaction which may be filed in the district court and such satisfaction or partial satisfaction entered upon the dockets thereof. Upon the satisfaction or partial satisfaction of any such judgment in the district court by proceedings upon such transcripts or otherwise, it shall be the duty of the judgment creditor to file a certified copy of the instrument of satisfaction, or a duplicate thereof, in the municipal court.

Sec. 9. Salary of judge and clerk.—That section 19, of Chapter 59, of the Special Laws of the State of Minnesota for the year 1891, be amended so as to read when amended as follows :

Sec. 19. The judge of said court shall receive a salary of twelve (12) hundred dollars per year and the clerk of said court shall receive such compensation as the city council of the City of Ely, shall allow to be paid out of the proper fund of the city in equal monthly installments.

The judge of said court shall not practice as an attorney in said municipal court while holding the office of *municipal judge*, neither the judge or the clerk shall receive any fees or other compensation other than his salary for his services, but in all proceedings had in said court the fees collected and charged by the judge and the clerk shall be the same as are allowed by law in courts of justices of the peace, except as otherwise herein provided, for similar services in proceedings and trials brought before it.

Police officers of said city are hereby vested with all powers of constables under the Statutes of Minnesota, as well as the common law and the police officers making services of processes or other doing or duty in respect to causes in said court shall note and return on such processes, summons, or other papers in civil actions, the fees that are allowed to constables for like services. All fees belonging to the court, charged by the clerk of the court for services rendered by him in any court proceeding and all fines and penalties collected by the court in any criminal case, or action under the ordinances, or by-laws of the city, except as is otherwise expressly provided by law, shall be collected, paid over and credited to the proper court fund of the City of Ely.

The plaintiff upon filing his complaint in all civil actions shall pay to the clerk of said court one (1) dollar which shall be paid into the city treasury with such further costs that may accrue to the court in the proceedings and become the property of the city and belong to said fund.

Sec. 10. Council to furnish police officers and judge to appoint court officer.—That section 21 of chapter 59 of the Special Laws of Minnesota for the year 1891, be amended so as to read when amended as follows :

Sec. 21. It shall be the duty of the city council of the City of Ely, to see that sufficient number of police officers are always in attendance upon said court and in readiness to obey its orders and mandates and to serve processes and to preserve order in the proceedings.

The municipal judge may appoint one or more persons as a court officer for special duty and attendance for duty in said court irrespective of the general rules or regulations relative to the qualifications of policemen if the city council shall fail to so appoint some one to perform such duties and for which he shall be paid his services upon the order of the court from the proper court fund, and may appoint such officer for special duty in the absence or inability of an officer appointed by the city council for such duties.

All policemen or court officers however appointed before entering upon their duties shall take the oath of office required by such officers pursuant to the laws of the State of Minnesota.

Sec. 11. **Trials involving title to real property to be transferred to district court.**—That section 22, Special Laws Minnesota for the year 1891 be amended so as to read when amended as follows:

Section 22. In case it shall appear upon the trial of any civil action *from the evidence of either party* that the title to real estate is involved in the action, *which title is disputed by the other party*, the municipal court shall not proceed further with the action but shall transfer the same to the district court of the county and the case shall be proceeded with within the court to which it shall be transferred as if originally commenced therein.

Sec. 12. **City attorney to represent city and state.**—That section 23, of chapter 59, of the Special Laws of Minnesota for the year 1891, be amended so as to read when amended as follows:

Sec. 23. The city attorney of the City of Ely, *or such person who may represent the city, or be employed by the city to perform its legal business*, shall have charge of all proceedings arising under the ordinances, rules, by-laws or misdemeanors under the general laws of the State of Minnesota, and in all civil actions in which the city is interested before said municipal court, and his compensation for such services shall be paid by the City of Ely.

Sec. 13. This act shall take effect and be in force from and after its passage.

Approved March 31, 1915.