

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

said first (1st) Tuesday of March, A. D. one thousand eight hundred and eighty-five (1885), and in case of any vacancy in the office of municipal judge, the city council of said city shall, at a meeting to be called for that purpose, appoint some qualified person to said office until the next annual city election, when a judge shall be elected for a full term of two (2) years; *Provided*, That the notice of call of such meeting shall state the purposes for which the same is to be held.

SEC. 3. The judge of the municipal court shall be a resident of the city of Brainerd, and a qualified elector therein, a person learned in the law and duly admitted to practice as an attorney in this state. Before entering upon the duties of 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 treasurer of said city. He shall have the general powers of judges of courts of record, and all the powers of a justice of the peace for Crow Wing county, and may administer oaths and take and certify acknowledgments in all cases, and as a conservator of the peace shall have all power and authority which is by law vested in the justices of the peace or any other judicial officer. There shall be one (1) special judge of said municipal court, whose manner of election, term of office, powers, duties and qualifications shall be the same as those of municipal judge, except as otherwise provided in this act, and his successor shall be elected and vacancies in his office filled in like manner. At the request of the municipal judge, or in case of the absence, sickness or disqualification of the municipal judge, the said special judge shall act as judge of said court. When the special judge so acts the said special judge and the municipal judge may each have and exercise the powers of said court. The said special judge shall not act on the trial or examination of any case except as above provided, and such special judge acting as judge of said court shall receive compensation at the rate of three (3) dollars per day for each day that said special judge shall so act, which shall be paid to him by said municipal judge. This section shall not incapacitate such special judge from acting as attorney in said court; but when such special judge is acting as judge of said court he shall take no action in such case, save to adjourn the same. Nothing in this act shall be so construed as to disqualify or prevent the municipal judge from practicing as an attorney in any court of this state, except in said municipal court. The judge of said municipal court shall hold no other office created or existing under or by virtue of the charter, ordinances or by-laws of the city of Brainerd; and said municipal judge while holding said office shall have no law partner; but this provision shall not apply to the special judge of said court, but when said special judge is acting as judge of said court his law partner shall not practice before him; *Provided*, That said municipal judge shall not act as attorney in any court in any case previously tried in said municipal court.

SEC. 4. The city clerk of the city of Brainerd shall be *ex officio* clerk of said court. Such clerk shall be styled "clerk of the municipal court," and 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 Brainerd a penal bond, in the sum of one thousand (1,000) dol-

lars, with two (2) sureties, approved by the city council of said city of Brainerd, conditioned that he will well and truly account for, and monthly pay over to the treasurer of said city, all fines and penalties belonging to said city which have come into his hands during the month preceding; *Provided*, That such accounting and payment shall be made not later than the eighth (8th) day of each and every month. Such oath and bond shall be filed in the office of the city treasurer of said city. Said clerk shall receive compensation at the rate of two hundred and fifty (250) dollars per year for such time as he may and shall act as clerk of said court, which shall be paid to him by the municipal judge.

SEC. 5. The municipal court shall have full power and authority to issue all process, civil and criminal, necessary or proper to carry into effect the jurisdiction given to 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 of 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 nor injunction. All process shall be tested in the name of the judge, and issued under the seal of the court, and signed by the clerk or judge; and the forms of process 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 or clerk. Process may be directed for service to any police officer of the city of Brainerd, or to the sheriff, or any constable in said county.

SEC. 6. The municipal court shall be held in the city of Brainerd, at some suitable place to be provided therefor by the city council. Its judge shall be chief magistrate of the city, and shall see that the criminal laws of the state, and the ordinances, laws, regulations and by-laws of said city are observed and executed, and for that purpose shall open his court every morning (Sundays and legal holidays excepted), and proceed to hear and dispose of, in a summary manner, all cases which shall be brought before him by the police officers of the city or otherwise, either with or without process, for violations of the criminal laws of this state, committed within the county of Crow Wing and counties thereto attached for judicial purposes, or of the ordinances, laws, 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 all other process.

SEC. 7. 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 at all trials, unless absent by reason of sickness or with the consent of the judge; and in case of his absence the judge of said court may appoint some person temporarily in his place or may himself perform the duties of clerk. The clerk may swear all witnesses and jurors, administer all oaths and affirmations, and take acknowledgments. He shall keep minutes of all proceedings and enter all judgments and make up and keep the record of the court under the

direction of the judge. He shall tax all costs and disbursements allowed in any action, subject to review by the judge, and do all other things and acts necessary or proper to the enforcing and carrying out of the jurisdiction of the municipal court. He shall receive 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 account for and pay over the same as hereinafter provided.

SEC. 8. The municipal court shall hold regular terms for the trial of civil actions on the first (1st) and third (3d) Tuesday 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 rule or order, 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 to be issued by the clerk. The summons may be in any form which the court may by rule prescribe, and shall be served upon the defendant not less than six (6) nor more than thirty (30) days before the term at which the same is made returnable. The manner of service shall be the same as that required by law for the service of summons in courts of justices of the peace in this state; and a summons issued out of said municipal court may be served by publication in like manner as provided in sections fourteen (14) and fifteen (15) of title two (2) of chapter sixty-five (65) of the general statutes of one thousand eight hundred and seventy-eight (1878) of this state, relating to service of summons by publication. The complaint shall be presented in writing, and shall, on the return day of the summons, and within one hour after the opening of the court, be filed by the clerk. If the defendant fail to appear at the opening of the court, or within one hour thereafter, on the day 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 contain a counter claim the plaintiff shall reply thereto forthwith, or at such time as the court may designate. The answer or reply shall be reduced to writing and filed with the clerk, and each of such pleadings shall be verified by the party or his agent or attorney, either as in courts of justices of the peace or in the district courts of this state. Either party may demur to any pleading of his adversary, as in the district court, but all pleadings of this court shall be construed liberally, and merely technical objections shall be disregarded, and the court may, for good cause, in its discretion and on such terms as it may deem equitable, open any default at the same term at which it occurred, or allow any amendment of any pleading at any time, and shall disregard variance between the allegation 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 actions (except actions for forcible entry and unlawful detainer) until the next term of the court following the term at which the summons shall be made returnable; and further continuances may be granted, upon sufficient cause shown, and on such terms as may be just; *Provided*, That the judge may, in his discretion, allow to the party adverse to such adjournment, and order the moving party to pay to such adverse party the sum of five

dollars (\$5), as a condition for any such adjournment subsequent to the first hereinbefore provided for. 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. Costs are allowed to the prevailing party in actions commenced in said municipal court as follows: To the plaintiff, upon a judgment in his favor of fifty (50) dollars or more, or in actions in replevin when the value of the property is fifty (50) dollars or more, when no issue of fact or law is joined, five dollars (\$5); when issue is joined, ten dollars (\$10). To the defendant, when the amount claimed in the complaint is fifty (50) dollars or more, upon discontinuance or dismissal, except in case of dismissal or discontinuance by the plaintiff, five dollars (\$5); when judgment is rendered in his favor, on the merits, ten dollars (\$10). Costs and disbursements shall be taxed and allowed in the first (1st) instance, by the clerk, upon two (2) days' notice by either party, and inserted in the entry of judgment. The disbursement shall be stated in detail and verified by affidavit, which shall be filed. The party objecting to any item shall specify in writing the ground of objection, and same, in case of appeal, shall be certified to the court by the clerk; and the appeal shall be heard and determined upon the objection so certified and none other.

SEC. 9. Any creditor desiring to proceed by attachment in said court, may, at the time of commencing the action, or thereafter, and while said action is still pending, by himself, his agent or attorney, make and file with the clerk an affidavit similar to the affidavit required by law in applications for writ of attachment in justice courts, and also cause to be filed a bond, with sufficient surety, to be approved by the judge, and similar to the bond required on a like application in justice courts, except the limit of liability thereon shall be mentioned therein as not exceeding the sum of one hundred and fifty (\$150) dollars. The writ of attachment may be in any form that the court may by rule prescribe. In all other respects the service of the writ and other proceedings thereon shall be similar as may be to the service of such writ and proceedings in justice court; *Provided*, That a motion to vacate any attachment in said court may be made at any time as provided by section one hundred and fifty-eight (158) of title nine (9), of chapter sixty-six (66) of the general statutes of one thousand eight hundred and seventy eight (1878), upon three (3) days' notice to the adverse party, which notice shall be served as provided for service of notices of motions in district court.

SEC. 10. 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 justice court in a like action. The plaintiff, or some person on his behalf, shall execute a bond, with sureties, to be approved by the judge, conditioned similar to bonds in such actions in justice courts, and file such bond with the clerk of said court; and an action may be maintained on such bond as upon similar bonds filed in like actions in justice courts. The clerk shall thereupon issue the writ, which writ may be in such form as the court may by rule prescribe. The writ shall be served, and all proceedings thereunder

had, in the same manner (except as to times and forms of pleading and trial) as upon similar proceedings in justices courts; *Provided* That at any time after the service of such writ, and before the trial and determination of any issue raised by the pleadings in said action the defendant, or some one in his behalf, may execute to the plaintiff a bond in double the value of the property claimed, with two or more sureties, to be approved by the judge and filed with the clerk, conditioned as in like cases in the district court; and the clerk shall thereupon issue an order, under the seal of the court, to the officer to redeliver such property to the defendant.

SEC. 11. 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. All civil processes shall be returned into court by the officer serving the same at least one (1) day before the opening of the term to which the same is made returnable.

SEC. 12. Trial by jury in the municipal court shall in all respects except as herein otherwise provided, be conducted as in the district courts of this state; and all laws of a general nature applicable to jury trials in said district courts shall apply to said municipal court. Jurors for said municipal court shall be provided and drawn, however, in the following manner, to-wit: the presiding judge of said municipal court, together with the senior alderman from each ward of the said city of Brainerd, or in case of the failure of any of said aldermen to act the judge and any two (2) of them shall, on the first (1st) Monday of February, May, August and November in each year, at the office of the clerk of said court, meet and from the legal voters of said city select and designate seventy-two (72) legal voters of said city as the jurors of said municipal court to serve therein when required and drawn during the succeeding three months, and until their successors are selected and certified, and shall thereupon certify said names so selected to the clerk of said municipal court, who shall thereupon write said names upon separate ballots, and place the same in a wheel, or box, and whenever a jury is required in said court shall thereupon, by lot, draw thirty (30) ballots, or, in case a jury of six (6) is agreed upon by both parties to the pending action, in the same manner as in the justice courts, he shall draw twenty-four (24) ballots therefrom, and shall make a list thereof, from which list each party shall strike off nine (9) names, in the same manner as in striking a jury in courts of justices of the peace in this state, and in case of the neglect or refusal of either or both parties so to strike, the judge shall strike out the names for either or both. The twelve (12), or in case of jury of six (6), the six (6) persons whose names remain on said list shall be summoned to attend the trial of the cause wherein they are drawn and shall constitute the jury, unless some of said jurors shall be excused or successfully challenged for cause, in which case the clerk shall successively draw the names of other jurors from the wheel or box until the jury is full, allowing, however, to each party as many peremptory challenges to such additionally drawn jurors as there shall remain, after said first striking, jurors to be drawn. When said drawing shall be finished, those jurors last drawn shall be summoned

and if any of the last drawn jurors are excused or successfully challenged others shall be drawn and summoned in like manner, until the jury is full, allowing to each party in each drawing as many peremptory challenges as at said drawing there shall remain jurors to be drawn. No talesmen shall be summoned in any cause in said court until the regular panel shall all have been exhausted. After the jury shall be complete the clerk shall return to the box or wheel the names of all persons, except those who constitute the jury as finally struck. The names of those who serve as jurors shall not be returned to the wheel or box until all the names in said box are drawn. The persons selected by the judge and aldermen to serve as jurors as aforesaid shall not again be eligible for one year from their said selection, and the failure to select and designate the said jurors at the time herein provided, shall not be available as a cause of challenge to the panel of said jurors; *Provided*, That any juror who has not served as such in the trial of a cause during the term for which he was selected may be selected upon any subsequent panel; *Provided further*, That until the first drawing of jurors as herein provided, jurors shall be drawn in the same manner as in justice's court.

SEC. 13. Title eighteen (18) of chapter sixty-six (66) of the general statutes one thousand eight hundred and seventy-eight (1878), relative to trial 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, relating to reporter of the supreme court, and the distribution of the supreme court reports, shall apply to the judge of said municipal court; and all causes may be removed to the district court of Crow Wing county upon appeal in the manner provided for appeals from justices of the peace; *Provided*, That the supreme court of the state of Minnesota shall have concurrent jurisdiction with said district court of all cases on appeal from said municipal court upon questions of law alone. The said municipal court shall have jurisdiction of actions of forcible entry and unlawful detainer, and may fix return days for said actions other than the regular return days of said court; and chapter eighty-four (84) of said general statutes, relating to forcible entry and unlawful detainer, shall apply to said municipal court.

SEC. 14. 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, as in justice court. Every person in whose favor a judgment is rendered in said municipal court, for an amount exceeding ten (10) dollars, besides costs, may, upon paying the fee therefor, and all unpaid costs in such action, demand and shall receive from the clerk a transcript of such judgment, duly certified, and may file the same in the office of the clerk of the district court of said Crow Wing county, who shall file and docket the same, as in the case of transcript 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 filing of 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. The clerk of said municipal court shall not issue said transcript while a writ of execution is outstanding, in the hands of an officer or otherwise, 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 said judgment, in case of the loss of the transcript first given; *Provided*, That garnishment proceedings may be brought upon such judgment in said municipal court for the enforcement of said judgment after a transcript thereof has been filed in the office of the clerk of said district court.

SEC. 15. 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 made returnable at any term of said municipal court not later than thirty (30) days after the commencement of such proceedings which may be named therein; and the notice required to be served on the defendant in the action may be signed either by the clerk or judge of said court, or 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 in courts of justices of the peace, except that such disclosure may be taken either by the judge or clerk.

SEC. 16. Complaints in criminal cases, when 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 offense charged 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—discretionary power to act in receiving complaints and issuing the warrants of said court in criminal cases. And complaints, warrants, and all other process in criminal cases may follow substantially the same forms heretofore in use by justices of the peace, with such alterations as may seem convenient to adopt 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 when alleged offenders shall be in custody, and brought before the court or clerk 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 the 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 for the same offense may be proved under that plea as well as if formally pleaded. On the examination of offenders charged with indictable offenses, the clerk shall keep such minutes of the examination as the court may direct, and shall make the proper return to the court, before which the party charged with the offense may be bound to appear.

SEC. 17. In all proceedings had in said municipal court like fees

shall be charged and collected by the municipal judge or clerk, as and for the compensation of the municipal judge, as are allowed by law to justices of the peace for similar services, and out of which said fees the municipal judge shall pay the salary of the clerk when acting as such. Said municipal judge shall be entitled to receive from the county of Crow Wing the same fees in criminal actions or proceedings as are allowed to justices of the peace for similar services. On appeal from said municipal court to the supreme court of the state of Minnesota, the same fees shall be paid to said judge as are allowed by law to clerks of the district court for like services; for all other services required by law to be performed by the judge or clerk of said court, respectively, and for which no compensation is provided by law, such fees as compare favorably with the rates herein prescribed, which may be established by rule and order of the court. It shall be the duty of the police officers of said city to serve all process issued by said court which may be delivered to them for service, except final process, and the fees for such service shall be the same as are allowed by law to constables for service of like process in justice courts.

SEC. 18. It shall be the duty of the mayor and chief of police of said city to see that a sufficient number of police officers are always in attendance upon said court, and in readiness to obey its mandates, and serve its process, and preserve order in its proceedings. Police officers of said city shall hereafter receive for their services no other compensation than the salary paid them by said city; and if any fee, gratuity or reward shall be paid to any police officer for any services he shall forthwith pay the same over to the 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.

SEC. 19. 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 for said county, and the cause shall be proceeded with in the court to which it shall be transferred as if originally commenced therein.

SEC. 20. The city attorney of the city of Brainerd shall have charge of the prosecution of all criminal proceedings before said municipal court for violation of any ordinance, law or by-law of said city; and the county attorney of the county of Crow Wing shall act in the prosecution of offenders charged with offenses against the criminal laws of the state when required by law to prosecute in like cases before a justice of the peace.

SEC. 21. The clerk of the municipal court shall, under the direction of the judge and with the consent of the city council of said city (unless otherwise provided), from time to time procure and furnish all the necessary blanks, stationery, record books, seals, court room, jury room and office furniture, lights and fuel for the use of the court and the officers thereof, at the expense of said city.

SEC. 22. Upon the election and qualification of the municipal judge, all causes and proceedings then pending before the police justices of said city shall forthwith, by said police justices, be transferred to said municipal court, with all papers and records concerning the same; and the 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. The dockets, records, files and papers in the custody of all police justices of said city shall be at once transferred and turned over to the said municipal court, which shall have full jurisdiction to finish and complete all proceedings pending before any police justice, and to enforce, by execution or otherwise, all judgments theretofore rendered by police justices within the city of Brainerd; 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 police justice or justice of the peace within the city of Brainerd shall issue any process nor take cognizance of any action or proceeding, civil or criminal; but the jurisdiction of said municipal court shall, within said city, be exclusive in all cases heretofore cognizable before police justices and 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. 23. The city clerk of the city of Brainerd shall not act as clerk of said court until he shall be thereto requested in writing by the municipal judge; *Provided*, That upon such request in writing such city clerk shall thereafter, and until his then present term of office shall terminate by expiration or otherwise, act as clerk of said court, as and for the compensation hereinbefore provided, and his successor in office as city clerk shall, if thereto requested as hereinbefore provided, but not otherwise, act as clerk of said court from and after such request, in the same manner until his term shall expire or terminate. And until said city clerk shall be so requested to act as aforesaid, the municipal judge shall perform all the duties of the clerk of said court, and he shall be deemed to perform such duties as judge and not as clerk, and shall be under the same liabilities and obligations as are imposed upon the clerk by the provisions of this act, until said city clerk shall act as clerk of said court as hereinbefore provided.

SEC. 24. The present existing charter of the city of Brainerd is hereby amended by inserting in the place of the words "police justices," wherever the same shall occur, the words "municipal court," except in the provision relating to the election of police justices, and all acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

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

Approved March 2, 1885.