

SEC. 17. All acts and parts of acts inconsistent herewith are hereby repealed, and this act shall take effect and be in force from and after its passage.

Approved, March 21st, 1889.

CHAPTER 14.

[S. F. No. 280.]

AN ACT TO AMEND AN ACT ENTITLED "AN ACT TO ESTABLISH A MUNICIPAL COURT IN THE CITY OF WINONA;" APPROVED MARCH NINTH (9th) A. D. ONE THOUSAND EIGHT HUNDRED AND EIGHTY-FIVE (1885), AND SUBSEQUENT ACTS AMENDATORY THEREOF.

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

SECTION 1. The certain act entitled "an act to establish a municipal court in the city of Winona," approved March ninth (9th) A. D. one thousand eight hundred and eighty-five (1885) as amended by subsequent acts, be and the same is hereby amended as follows to wit: Section nine (9) of said act shall be amended so that said section shall read as follows: "The clerk of the municipal court shall have the custody and care of all the books, papers and records of said court. He shall be present by himself or deputy, at all trials and sessions of the court, and when the court is not in session he shall attend at his office at all suitable hours for the performance of such official duties as may be required of him, unless absent from sickness or by consent of the judge. And in case of the absence of both clerk and deputy, the judge may appoint some person temporarily to the position. He may swear all witnesses and jurors, and administer all oaths and take acknowledgments. He shall keep minutes of all proceedings and enter all judgments and make up and keep the records of the court, under the direction of the judge, and when the judge is not present adjourn the court from day to day. He shall tax all costs and disbursements allowed in any action, subject to review by the judge, receive and collect all fines and penalties, imposed by the court, and fees of every kind accruing to the court or any officer thereof, including the city marshal and police officers, and keep full, accurate and detailed accounts of the same; and shall on the the first (1st) Monday of every month, deliver over to the city treasurer of the city of Winona all moneys so received, with detailed accounts thereof, and take his receipt therefor; but all penalties collected for the forfeiture of any bond, recognizance or bail given in said court shall be paid to the Winona Bar Association to be applied to the support of the law library of said association, and the receipt of the treasurer of said association to said clerk shall be a sufficient voucher for such sums so paid; *provided*, that the said Winona Bar Association shall by proper

action grant the free use of its said library and the books therein to any and all judges of courts of record of the state of Minnesota."

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

district court. Each juror sworn in any civil action in said municipal court shall be entitled to one (1) dollar as his fee in the case, and a party demanding a jury in any civil action, or when the demand is made by both parties, the plaintiff, shall, before the jury are sworn, pay the clerk a jury fee of three (3) dollars if a jury of six (6) is drawn, and six (6) dollars if a jury of twelve (12) is drawn. Either party, may, however, request a trial by a jury of six (6) only, and if the opposite party refuses to consent to go to trial with that number, and a jury of twelve (12) is drawn, then and in that case the party requesting a jury of six (6) only, shall before the jury is sworn pay to the clerk the sum of three (3) dollars, and the opposite party shall also pay to the clerk the sum of three (3) dollars which sums shall be the jury fee, the successful party to tax as costs the amount so paid by him. The jurors shall be paid out of the city treasury at the end of the trial on the certificate of the clerk of the court. Whenever the judge becomes satisfied that a jury in any case before him, who have been out a reasonable time, cannot agree upon a verdict, he may discharge them and in such case, unless both parties in a civil action, or the defendant in a criminal action, consent that judgment may be rendered by the judge on the evidence already taken, the judge shall order that a new jury be drawn and summoned to appear at such time and place as he may designate for a re-trial of such action; but in a civil action before such new jury is sworn, the jury fee shall be advanced as above provided, in the manner, and by the party or parties above specified. There shall be no jury trial in any civil action in said municipal court, except when demanded by one or both of the parties, and trial by jury may be expressly waived by the defendant in any criminal case in said municipal court, in which event a minute of the waiver shall be made by the clerk, and the trial may thereupon be had before the court without a jury, and when a civil case is so heard before the court without a jury, the judge presiding shall in every case file his findings of fact and conclusions of law within twenty (20) days from the time of the final submission of the case to him."

SEC. 3. Section seventeen (17) of said act shall be amended so that said section shall read as follows:

"Section 17. An appeal may be taken on questions of law alone from any final judgment in any civil action in said municipal court, to the district court of Winona county, on compliance with the following requisites within ten (10) days after such judgment is entered:

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

Second—The appellant, or his agent or attorney in his behalf, shall execute to the adverse party, and file with the clerk of said municipal

court, a bond, with one or more sureties to be approved by the judge, in a sum, to be fixed by the judge, sufficient to secure such judgment and costs and disbursements on appeal, and conditioned that the appellant shall prosecute his appeal with effect, and abide the order of judgment of the appellate court therein.

Third—The appellant shall pay to the clerk his fees for making the returns of the appeal, which shall not exceed six (6) cents per folio of one hundred (100) words.

Any defendant convicted of any offense charged in any criminal action in said municipal court, of which the court has final jurisdiction, may appeal on questions of law alone, from the final judgment therein, to the district court of Winona county, on complying with the following requisites within ten (10) days from the entry of such judgment.

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

Second—The appellant shall serve the notice of such appeal upon the county attorney of said county, or, in case of his absence from the county, on the clerk of said district court, describing the judgment appealed from, and shall file such notice with the proof of service thereof with the clerk of the said municipal court. Upon complying with the foregoing requisites prescribed for appeal in the respective classes of cases above mentioned, the appeal shall be allowed, and the clerk of the municipal court shall make minute of such allowance in the records of the case, and thereafter the proceedings in the municipal court on the judgment appealed from shall be sustained until the appellate court shall otherwise order. A return on such appeal shall be made by the clerk of the municipal court to the appellate court, in the same manner in which returns are required to be made on appeal to the supreme court on final judgment in the district court, and such return shall be filed by the clerk of the municipal court in the office of the clerk of the appellate court within twenty (20) days after the appeal is perfected, and the clerk shall minute on the returns the amount of his fees for making the same, and if paid, state by which party. The matter involved in the appeal shall be heard and determined in the appellate court on the return so filed, and the appellate court may review any intermediate order of the municipal court involving the merits or necessarily effecting the judgment appealed from, and may reverse, affirm or modify such judgment and cause the proper judgment to be entered in such appellate court, or may, if necessary or proper remand the case to the municipal court for a new trial or further proceedings, but on appeal on questions of law alone no trial on any question of fact in the case shall be had in the appellate court. An appeal in any criminal case shall be heard and decided at the next general term of the district court after the return is filed unless other-

wise agreed upon, or ordered by the appellate court; but in civil cases the appeal may be heard at any general or special term of the district court after the return is filed on notice of eight (8) days from either party.

The district court shall in civil cases, award costs to the prevailing party on appeal, not less than five (5) dollars nor more than fifteen (15) dollars in amount, and judgment shall be entered therein in favor of said party for such costs and his disbursements on appeal, including the fees, if paid by such party, of the clerk of the municipal court for making the return as minuted thereon; and in any criminal case appealed to said district court, the defendant, if the judgment of the court below be affirmed in whole or in part, may be required to pay the fees of the clerk of the municipal court for making the return, and such other fees and all other costs accruing to said municipal court, and all fines by it imposed, shall, if collected by means of any proceedings in the district court on appeal, immediately be paid over to the clerk of the municipal court; but no costs made in the district court shall be collected from or charged to said city of Winona.

Any person aggrieved by any judgment rendered in the municipal court when the judgment exceeds twenty-five (25) dollars and in actions of replevin when the value of the property as sworn to in the affidavit exceeds twenty-five (25) dollars, or when the amount claimed in the complaint in any action exceeds twenty-five (25) dollars, or when the amount of any counter-claim set up in the answer in any action exceeds twenty-five (25) dollars, may appeal by himself or agent to the district court of Winona county on questions of law and fact by complying with the requisites hereinafter prescribed; but this does not apply to actions of forcible entry and unlawful detainer, and does not in any way effect appeals on questions of law alone.

To entitle a party to appeal on questions of law and fact the following requisites must be complied with within ten (10) days after the entry of judgment.

First—An affidavit shall be filed with the clerk of the municipal court stating that the appeal is made in good faith and not for the purpose of delay.

Second—A bond shall be executed by the party appealing, his agent or attorney, to the adverse party in a sum sufficient to secure the costs of appeal, with one (1) or more sureties to be approved by the judge, conditioned that the appellant shall prosecute his appeal with effect and abide the order of the court therein.

Third—The party appealing shall serve notice upon the opposite party, his agents or attorneys who appeared for him in the action in the same manner as in appeal from justice court upon questions of law and fact, and the original with proof of service shall be filed with the clerk of the municipal court within ten (10) days after said service is made.

Fourth—The party appealing shall pay to the clerk his fees for making the return, if demanded, which shall not exceed six (6) cents per folio of one hundred (100) words.

Upon compliance with the foregoing requisites the appeal shall be allowed, and the clerk of the municipal court shall make a minute of

such allowance in the docket of the municipal court, and all further proceedings in the municipal court on the judgment appealed from shall be suspended by the allowance of the appeal. Within ten (10) days after the notice of the appeal is filed and before the first (1st) day of the next term of the district court, the clerk of municipal court shall file or cause to be filed in the office of the clerk of the district court of Winona county a transcript of all entries in the docket of the municipal court relating to the case, and copies of all process and pleadings, relating to the action which are properly filed in the municipal court and any other papers on file which the party appealing may desire certified, and to such return shall attach his certificate showing the same to be correct, and shall make a minute of such return and filing in the docket of the municipal court. Upon the filing of such return, with the clerk of the district court, the judgment in the municipal court shall be vacated and the district court shall become possessed of the action and the same shall be tried in the same manner as actions originally commenced in the district court, and all further proceedings shall be had the same as on appeal on questions of law and fact from justice court. The district court shall have the same power to compel the return of an amendment of a return on appeal from said municipal court, and shall in all other respects have the same powers in cases of appeal therefrom that it now possesses in cases of appeal from courts of justices of the peace, except as otherwise provided in this act.

SEC. 4. Section twenty-three (23) of said act shall be amended so that said section shall read as follows: "Section 23. At the regular city election in said city on the first Monday in April, one thousand eight hundred and eighty-nine (1889), there shall be elected a special judge of the municipal court, who shall be a resident of said city, and a person duly admitted to practice in the courts of this state, and whose term of office shall begin on the third Monday in April in the year of his election and continue for four (4) years, and until his successor shall be elected and justified; any vacancy occurring in the office of the special judge shall be filled in the same manner hereinafter prescribed in case of vacancy in the office of municipal judge. At the request of the municipal judge in the case of a press of business in said court, or at the request of the mayor of said city in the case of the absence or sickness of the municipal judge, said special judge shall act as judge of said court, and when the special judge so acts he shall have and exercise the same powers as the municipal judge; said special judge shall not act, except as above, in the trial or examination of any case, only as hereinafter provided. If at any time prior to the day fixed in the summons for the appearance of the defendant, or in case an adjournment is had by either party, at any time prior to the day on which the case is set for trial, or to which the first adjournment is had after the return day, in any action or proceeding, civil or criminal, either party, his agent or attorney, makes a request in writing setting forth that he desires the cause to be tried before such special judge, the clerk shall, on such written request being filed with him, and upon receipt of the sum of five (5) dollars, make an entry in the docket transferring said cause to the jurisdiction of the special judge, whom he shall immediately notify thereof. The

special judge shall upon being so notified, appear at the return day on which the case is set, at the hour specified or as soon thereafter as may be; or if the case has been adjourned, at the hour specified on the adjourned day or as soon thereafter as may be, and take charge of the case and shall have the same powers and duties in proceeding with the same as the judge of the court would have had. Whenever a cause or proceeding is removed from the judge to the special judge, as above provided, the special judge shall for his services receive from the city treasury, the sum of five (5) dollars for each day or part of day, spent in the actual trial of such case; *provided*, that two (2) half days shall be counted as a day. If the trial continue longer than one (1) day, so reckoned, the party removing the case shall pay to the clerk an additional five (5) dollars, and so on for additional days. If the party removing the case shall finally prevail he may tax the sum or sums so paid and include them in his disbursements. In civil cases so removed, as hereinbefore last provided, to the jurisdiction of, and tried before the special judge, the court fee of three (3) dollars specified in section twenty-nine (29) of the municipal court act shall not be required to be paid, nor shall the prevailing party tax the same as an item of disbursements. Any special judge acting as judge of said court at the request of the municipal judge or mayor as above provided shall receive compensation at the rate of five (5) dollars per day, the same to be paid by the city of Winona. *Provided*, that all sums paid by the city to said special judge for services as such, rendered during the absence of the municipal judge, without leave of the mayor, shall be deducted from the salary of the municipal judge. This section shall not incapacitate any special judge from acting as an attorney in any case or proceeding in such court, but when such special judge is acting as judge of said court he shall take no action in said case, save to adjourn the same. Nothing in this chapter shall be construed to prohibit the judge of said court from practicing as an attorney in any court in this state save said municipal court."

SEC. 5. Section twenty-nine (29) of said act shall be amended so that said section shall read as follows: "Section 29. On filing his complaint in any civil action in said municipal court the plaintiff shall pay to the clerk, as court costs, the sum of two (2) dollars, which shall be retained and paid over to the city treasurer, whether any further proceedings are taken in the case or not. When an issue is joined and a trial had in the action there shall be charged as court costs in every case, except in the instance mentioned in section twenty-three (23), in addition to the charges in this section above mentioned, the sum of three (3) dollars for each day or part of day consumed in the trial. The above prescribed charges shall cover all ordinary court costs in any civil action up to and including entry of judgment, the issue of one (1) execution and satisfaction of judgment; *provided*, that they shall not be deemed to cover court costs on motion for a new trial or in arrest of judgment, or other motions not made at the trial, or on the taking of an appeal from said court. In each and every civil action there shall be taxed and allowed, beside the court costs above stated, the same fees for service performed by the sheriff, chief of police or other officers, in serving process or otherwise, as are allowed by the statutes of this state to constables for like services. All

sums due for court costs or fees of the chief of police or his deputies, or the court officer or any other officer in any civil case shall be paid to the clerk before judgment shall be entered therein."

SEC. 6. Section thirty (30) of said act shall be amended so that said section shall read as follows: "Section 30. The term 'court costs' or 'costs of court' as used in section twenty-seven (27) and twenty-nine (29) of this act shall be construed as embracing clerk's fees; but for all services performed by the clerk in his official capacity, which are not within the provisions of said sections, and are not otherwise provided for in this act, the same shall be charged and collected as now are or hereafter may be allowed by law to the clerk of the district court of Winona county for similar services; *provided*, that the clerk of the municipal court shall in no case charge more than six (6) cents per folio of one hundred (100) words for copies and transcripts of his records."

SEC. 7. This act shall take effect and be in force from and after its passage.

Approved March 19, 1889.

CHAPTER 15.

[H. F. No. 863.]

AN ACT ENTITLED AN ACT ESTABLISHING A MUNICIPAL COURT IN THE CITY OF SAUK CENTRE.

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

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

SEC. 2. Said court shall be a court of record and shall have a seal, and shall have jurisdiction to hear, try and determine all actions at law where the amount in controversy does not exceed the sum of three hundred (300) dollars. Also to hear, try and determine all criminal cases and conduct all criminal examinations that are now or hereafter may be cognizable before a justice of the peace of the county of Stearns or the city of Sauk Centre. Said court shall not have jurisdiction of actions of divorce nor of any action when the relief asked for in the complaint is purely equitable, nor of any action involving the title to real estate; *provided*, that where a counter claim in excess of three hundred (300) dollars over plaintiff's claim is interposed, or where it appears that the title to real estate is involved, the said court shall immediately cause an entry of the fact to be made of record and cease all further proceedings in the cause, and certify and return to the district court of the county of Stearns a transcript of all entries made in the record relating to the case, together with all process and other papers relating to the suit in the same manner and within the same time as upon appeal from justices.