

GENERAL STATUTES  
OF THE  
STATE OF MINNESOTA

36

IN FORCE

JANUARY 1, 1889.

---

COMPLETE IN TWO VOLUMES.

---

VOLUME 1, the General Statutes of 1878, prepared by GEORGE B. YOUNG, edited and published under the authority of chapter 67 of the Laws of 1878, and chapter 67 of the Laws of 1879.

VOLUME 2, Supplement.—Changes effected in the General Statutes of 1878 by the General Laws of 1879, 1881, 1881 Extra, 1883, 1885, and 1887, arranged by H. J. HORN, Esq., with Annotations by STUART RAPALJE, Esq., and others, and a General Index by the Editorial Staff of the NATIONAL REPORTER SYSTEM.

---

VOL. 2.

SUPPLEMENT, 1879-1888,

WITH

ANNOTATIONS AND GENERAL INDEX TO BOTH VOLUMES.

---

ST. PAUL:  
WEST PUBLISHING CO.  
1888.

## CHAPTER 63.

## SUPREME COURT.

## § 1. General powers.

Except in such special proceedings as the statute has provided for, this court acquires jurisdiction only by writ of error or appeal. Parties cannot confer it by stipulation. *Rathbun v. Moody*, 4 Minn. 364, (Gil. 273.) See, also, *Ames v. Boland*, 1 Minn. 365, (Gil. 268.)

The writ of *certiorari* will issue to an inferior tribunal not acting according to the course of the common law, to bring to this court for review the record, the proceedings in the nature of a record, the rulings upon the admission or rejection of evidence, the instructions given and refused to the jury, the exceptions taken, and so much of the testimony as may be proper to show the bearing of such rulings and instructions and the prejudice to the petitioner. *Minnesota Central Ry. Co. v. M'Namara*, 13 Minn. 508, (Gil. 468.)

The jurisdiction of the supreme court to issue writs of *mandamus* was not affected by c. 18, Laws 1862. *Crowell v. Lambert*, 10 Minn. 369, (Gil. 295.) The act of March 7, 1881, (Laws, 1881, c. 40,) amending c. 80, § 13, *infra*, takes from the supreme court original jurisdiction in *mandamus*, except in cases then pending, and cases where the writ is to be directed to a district court, or a judge thereof in his official capacity. *State v. Burr*, 23 Minn. 40, 8 N. W. Rep. 899.

A proceeding by information, in the nature of *quo warranto*, under this section, is not the action provided for in c. 79, *infra*. In the absence of legislation, or any controlling consideration to the contrary, such proceeding is governed as respects procedure by common-law rules. The *onus probandi* is therefore upon the respondent. It is for the attorney general to determine whether the public good requires him to institute and conduct such proceeding. If he deems it best to proceed, notwithstanding any conduct of the relator, at whose instance he moves, it would be a very extraordinary case, if any, in which his determination would be overruled. *State v. Sharp*, 27 Minn. 38, 6 N. W. Rep. 408. The supreme court has jurisdiction by *quo warranto* to enforce the forfeiture of the charter of a corporation. *State v. Railroad Co.*, 35 Minn. 222, 28 N. W. Rep. 245. As to *quo warranto* as a means of determining a contested election for city alderman, where a city charter provides that the city council shall be the judges of the qualification and election of its members, see *State v. Gates*, 35 Minn. 385, 28 N. W. Rep. 927.

## \*§ 1a. Number of judges.

The supreme court shall consist of one chief justice and four associate justices. (1881, c. 141, § 1.)

## CHAPTER 64.

## DISTRICT COURT.

## TITLE I.

## POWERS AND JURISDICTION.

## § 1. Original and appellate jurisdiction.

The district court is a court of general jurisdiction, without regard to the amount in controversy, unless where the constitution directs actions to be brought elsewhere. *Agin v. Heyward*, 6 Minn. 110, (Gil. 53;) followed, *Cressey v. Gierman*, 7 Minn. 407, (Gil. 316;) *Thayer v. Cole*, 10 Minn. 215, (Gil. 173.)

Justices of the peace have (with the exceptions stated in the statute) exclusive original jurisdiction of all matters where the amount in controversy does not exceed \$100.

The district courts have original jurisdiction only where justices have not. *Castner v. Chandler*, 2 Minn. 86, (Gil. 68.)

Where, in the case of an express trust to sell property and pay debts, the debts were \$3,500, and the property sufficient to pay them, a creditor, whose claim is less than \$100, may bring the action in behalf of himself and the others, in the district court. *Goncelier v. Foret*, 4 Minn. 13, (Gil. 1.)

A provision in a city charter that no appeal shall be allowed from the judgment of the city justice in cases of assault, where the judgment or fine imposed, exclusive of costs, is less than \$25, prevails over the general statute allowing appeals in all cases of convictions before justices of the peace. *Tierney v. Dodge*, 9 Minn. 166, (Gil. 153.)

## § 2. Equity jurisdiction.

Any equities in favor of a defendant in an action at law, upon which a court of equity before the blending of the two jurisdictions would have prevented a recovery at law, may now be set up in defense, and such relief may be given in the action as either or both courts could have given on the same facts and equities. *Gates v. Smith*, 2 Minn. 31, (Gil. 21.)

## § 3. Power to issue writs.

The said courts in term-time, and the said judges thereof in vacation, have power to award throughout the state, returnable to the proper county, writs of injunction, *ne exeat*, *certiorari*, and all other writs or processes necessary to the perfect exercise of the powers with which they are vested, and the due administration of justice. (*As amended 1881, Ex. Sess. c. 8.*)

An injunction ought not to be granted except to prevent irreparable injury, and such injury must be real and substantial, not merely nominal. *Goodrich v. Moore*, 2 Minn. 61, (Gil. 49.)

## § 4. Judge—Disqualification from interest.

The only cause of disqualification reached by this section is a pecuniary interest in the event of the action to be tried. Gen. St. c. 116, § 19, as amended by Laws 1878, c. 24, § 1, (Gen. St. 1878, c. 116, § 19,) has no application to district judges. *Sjoberg v. Nordin*, 26 Minn. 501, 5 N. W. Rep. 677.

The judge of a court of record is not disqualified, by this section, from sitting in a cause by reason of his relationship, by consanguinity, to the guardian *ad litem* of an infant defendant. *Bryant v. Livermore*, 20 Minn. 313, (Gil. 271.)

A search-warrant issued by a justice of the peace, commanding search to be made for certain property of such justice, alleged to have been stolen, is void, and the fact that the property to be searched for is the property of the justice appearing upon the face of the warrant, the warrant furnishes no protection to the constable who executes the same. *Jordan v. Henry*, 22 Minn. 245.

## § 5. Judge may act in other districts.

If, in the enactment of these sections, (4 and 5,) it was the intention to deal with causes of disqualification other than an interest, direct or indirect, in the action, it is difficult to understand why the provisions which were adopted in respect to a change of venue and to calling in another judge were thus carefully restricted to cases of disqualification arising from interest alone. *Sjoberg v. Nordin*, 26 Minn. 503, 5 N. W. Rep. 677.

Where the judge of a district in which an action is pending is disqualified to act, a motion in such action may be made before the judge of an adjoining district, regardless of the distance of the residence of the judge of the district in which such action is pending. The provisions of this section are in this regard unaffected by § 4, c. 67, Laws 1867. *Commissioners Mower Co. v. Smith*, 22 Minn. 97.

The judge of a district court in one district may approve a bond required to be filed by an assignee for the benefit of creditors, which is to be filed in a county in another district. *Ingram v. Conway*, 36 Minn. 129, 30 N. W. Rep. 447. Where the bond shows that the obligors and judge reside in the same place, it is a sufficient showing that convenience requires his acting. *Id.*

## § 13. Sealing and signing process.

Under this section the seal of the court and the signature of the clerk are essential to the validity of a writ of attachment. *Wheaton v. Thompson*, 20 Minn. 196, (Gil. 175.)

A document purporting to be a warrant of attachment, issued by a court commissioner in 1865, and signed by him, but not signed by the clerk, or sealed with the seal of the court, was void. *O'Farrell v. Heard*, 22 Minn. 189.

An execution should be dated as of the day when it issued from the clerk's office, and not as of the day of its delivery to the sheriff. *Mollison v. Eaton*, 16 Minn. 426, (Gil. 383.)

### § 15. Adjournments during term—Adjourned and special terms.

See c. 66, § 218, *infra*, and note.

### § 17. Special venires.

Under § 32, p. 239, Rev. St., a special *venire* may be issued, although the whole of the original panel has been discharged. *Steele v. Maloney*, 1 Minn. 347, (Gil. 257.)

All the petit jurors of a regular panel were discharged from further attendance. Held, that there was an entire absence of jurors of the regular panel, and the issuance of a special *venire*, under this section, was proper. *State v. McCartney*, 17 Minn. 76, (Gil. 54.)

Where a challenge to the regular panel of jurors is allowed, it is proper to draw a jury to try the cause from the names of jurors who have been summoned by special *venire*. *Dayton v. Warren*, 10 Minn. 233, (Gil. 185.)

A special *venire*, under this section, need not state the names of the jurors to be summoned. *State v. Stokely*, 16 Minn. 282, (Gil. 249.)

See *State v. Froiseth*, 16 Minn. 316, (Gil. 280.)

#### DISTRICT COURT FOR FIRST DISTRICT.\*

### \*§ 17a. Judges in First district—Application of laws.

There shall be elected in the First judicial district two judges of the district court of such district, either one of whom shall have and exercise the powers of the court, as now prescribed by law, relative to the present judge of said court, except as otherwise provided by this act; and all laws now in force, whether general or special, as to the qualifications, election, canvass of votes, oaths and term of office, and commencement of such term, compensation, jurisdiction, duties, authority, and powers of the present judge of said district court, shall apply to each of the judges of said court, and their successors shall be elected and vacancies in their offices filled as now provided in relation to the said judge of said court: *provided, however, that the present judge of said court shall be the judge of said court for the unexpired term for which he was elected and qualified, and until his successor is elected and qualified.* (1881, *Ex. Sess. c. 85*, § 1.)

### \*§ 17b. Joint session—Process.

The said judges may act in joint session for the trial or determination of any matter before the court, including the trial of jury cases; and when so acting, the judge senior in office, or, if neither be senior in office, the judge senior in age, shall preside; if there is a division of opinion, the opinion of the presiding judge shall prevail. Process may be tested in the name of either of said judges. (*Id.* § 2.)

### \*§ 17c. Division of business—Separate action.

The business of said court may be divided between said judges, and otherwise regulated as they may direct, by rule or otherwise, and each of the said judges may separately try court or jury cases, during the same term and at the same time. (*Id.* § 3.)

\*"An act to create an additional judge for the First judicial district of the state of Minnesota." Approved November 19, 1881. § 4 provided for the appointment by the governor of an additional judge, to hold until his successor should be elected and qualified.

## DISTRICT COURT FOR SECOND DISTRICT.\*

**\*§ 20a. Judges—Application of laws.**

There shall be elected in the Second judicial district of this state four judges of the district court of such district, any one or more of whom shall have and exercise the powers of the court, as now prescribed by law, relative to the present judges of said court, except as otherwise provided by this act; and all laws now in force, whether general or special, as to the qualifications, election, canvass of votes, oath and term of office, and commencement of such term, compensation, jurisdiction, duties, authority, and powers of the present judges, or of any of the same, of said district court, shall apply to all the judges of said court, and their successors shall be elected, and vacancies in their offices filled, as now provided in relation to the judges of said court: *provided, however*, that each of the present judges of said court shall be one of the judges thereof for the unexpired term for which he, respectively, was elected and qualified, and until his successor is elected and qualified. (1887, c. 104, § 1.†)

**\*§ 20b. Joint session—Testing process.**

The said judges, or any number of them, may act in joint session for the trial or determination of any matter before the court, including the trial of jury cases; and when so acting, the judge senior in office, or, if neither be senior in office, the judge senior in age, shall preside, and the decision of the majority of the judges so acting shall be the decision of the court. If, however, only two of the said judges are so acting, and there is a division of opinion, the opinion of the presiding judge shall prevail. Process may be tested in the name of any one of said judges of said court. (*Id.* § 2.)

**\*§ 20c. Division of business.**

The business of said court may be divided between the said judges, and otherwise regulated, as they may direct, by rule or otherwise, and each of said judges may separately try court or jury cases during the same term or at the same time. (*Id.* § 3.)

**\*§ 20d. Judge pro tempore.**

Upon the passage and approval of this act the governor of this state shall appoint an additional judge for said district court, who shall hold his office until the next general election, and until a successor is elected and qualified. (*Id.* § 4.)

**§ 23. Appeals.**

Appeals from judgments of the justices of the peace in the city of St. Paul should be taken to the district court, and not to the municipal court. *McClung v. Manson*, 25 Minn. 374, followed. *State v. Hanft*, 26 Minn. 264, 3 N. W. Rep. 343. But see *post*, §§ 107, 107a.

\* Chapter 376, Sp. Laws 1887, provides as follows:

§ 1. That there shall be paid annually, by the county of Ramsey, out of the county funds of said county, to each of the judges of the district court of said county, the sum of \$1,500, payable quarterly, beginning April 1, 1887.

§ 2. Chapter 189 of the Special Laws of this state, for the year 1872, is hereby repealed, such repeal to take effect April 1, 1887.

† "An act to create the office, and to prescribe the duties, of an additional judge for the Second judicial district of the state of Minnesota." Approved February 25, 1887.

## DISTRICT COURT FOR FOURTH DISTRICT.\*

**\*§ 29a. Judges—Application of laws.**

There shall be elected in the Fourth judicial district of said state four judges of the district court of said district, any one or more of whom shall have and exercise the powers of the said court, as now prescribed by law, relative to the present judges of said court, except as otherwise provided by this act; and all laws now in force, whether general or special, as to the qualifications, election, canvass of votes, oath and term of office, and commencement of such term, compensation, jurisdiction, duties, authority, and powers of the present judges of said district court, shall apply to all the judges of said court, and their successors shall be elected, and vacancies in their offices shall be filled, as now provided in relation to the present judges of the said district court: *provided, however,* that the present judges of the said district court shall be judges of the said court for the unexpired terms for which they were elected. (1881, *Ex. Sess. c. 84, § 1, as amended 1887, c. 102, § 1.*†)

**\*§ 29b. Judge pro tempore.**

That immediately upon the passage of this act, the governor of said state shall appoint a competent person to be one of the judges of said district court, who shall immediately thereafter qualify and enter upon the duties of said office, and shall hold the said office until a successor shall have been elected and qualified, which said successor shall be elected at the first general election that occurs more than thirty days after the passage of this act.‡ (1887, *c. 102, § 2.*)

**\*§ 29c. Joint session—Testing process.**

The said judges, or a majority of them, may act in joint session for the trial or determination of any matter before the court, including the trial of jury cases, and, when so acting, the judge senior in office, or, if neither be senior in office, the judge senior in age, shall preside, and the decision of the majority shall be the decision of the court. If, however, only two of the said judges are so acting, and there is a division of opinion, the opinion of the presiding judge shall prevail. Process may be tested in the name of either one of the said judges. (1881, *Ex. Sess. c. 84, § 3.*)

**\*§ 29d. Division of business.**

The said judges, or a majority of them, may divide the business of the said court between the said judges, and may otherwise regulate said business by rules or otherwise; and each of the said judges may separately try court or jury cases during the same term, or at the same time. (*Id.* § 4.)

## DISTRICT COURT FOR SEVENTH DISTRICT.

**\*§ 36a. Judges—Application of laws.**

There shall be elected in the Seventh judicial district two judges of the district court of such district, either one of whom shall have and exercise the powers of the court as now prescribed by law relative to the present judge of

\*The following are the provisions of c. 368, Sp. Laws 1887:

§ 1. That there shall be paid annually by the county commissioners of Hennepin county, out of the county funds, to the judges of the district court of the Fourth judicial district, in addition to the salaries allowed them by the General Laws of the state of Minnesota, the sum of \$1,000 each, payable quarterly.

§ 2. That the special act of the legislature, entitled "An act for compensation to the judges of the district court of the Fourth judicial district," approved February 24, 1885, is hereby repealed.

†Repeals all inconsistent laws and parts of laws. § 5.

‡A similar provision was made by the act of 1881, *Ex. Sess. c. 84, § 2.*

said court, except as otherwise provided by this act; and all laws now in force, whether general or special, as to the qualification, election, canvass of votes, oaths and terms of office, and commencement of such term, compensation, jurisdiction, duties, authority, and powers of the present judge of said district court, shall apply to each of the judges of said court, and their successors shall be elected, and vacancies in their offices filled, as now provided in relation to said judges of said court: *provided, however*, that the present judge of said court shall be judge thereof for the unexpired term for which he was elected and qualified, and until his successor is elected and qualified. (1885, c. 141, § 1.\*)

**\*§ 36b. Joint session—Testing process.**

The said judges may act in joint session for the trial or determination of any matter before the court, including the trial of jury cases; and when so acting, the judge senior in office, or, if neither be senior in office, the senior in age, shall preside. If there is a division of opinion, the opinion of the presiding judge shall prevail. Process may be tested in the name of either of said judges. (*Id.* § 2.)

**\*§ 36c. Division of business.**

The business of said court may be divided between said judges, and otherwise regulated as they may direct by rule or otherwise; and each of said judges may separately try court or jury cases during the same term and at the same time. (*Id.* § 3.)

DISTRICT COURT FOR ELEVENTH DISTRICT.

**\*§ 36d. Judges—Application of laws.**

There shall be elected in the Eleventh judicial district two judges of the district court of such district, either one of whom shall have and exercise the powers of the court as now prescribed by law relative to the present judge of said court, except as otherwise provided by this act; and all laws now in force, whether general or special, as to the qualifications, election, canvass of votes, oaths and term of office, and commencement of such term, compensation, jurisdiction, duties, authority, and powers of the present judge of said district court, shall apply to each of the judges of said court, and their successors shall be elected and vacancies in their offices filled as now provided in relation to the said judge of said court: *provided, however*, that the present judge of said court shall be a judge of said court for the unexpired term for which he was elected and qualified, and until his successor is elected and qualified. (1885, c. 140, § 1.†)

**\*§ 36e. Joint session—Testing process.**

The said judges may act in joint session for the trial or determination of any matter before the court, including the trial of jury cases, and when so acting, the judge senior in office, or if neither be senior in office, the judge senior in age, shall preside. If there is a division of opinion, the opinion of the presiding judge shall prevail. Process may be tested in the name of either of said judges. (*Id.* § 2.)

\*“An act to create the office, and to prescribe the duties, of an additional judge for the Seventh judicial district.” Approved February 26, 1885. § 4 provides: “Upon the passage and approval of this act, the governor of this state shall appoint an additional judge for said district court, who shall hold his office until the next general election, and until his successor is elected and qualified.”

†“An act to create an additional judge for the Eleventh judicial district of the state of Minnesota.” Approved February 17, 1885. § 5 provides: “Upon the passage and approval of this act, the governor of this state shall appoint a second judge for said district court, who shall hold his office until the next general election, and until his successor is elected and qualified.”

**\*§ 36f. Division of business.**

The business of said court may be divided between said judges, and otherwise regulated as they may direct, by rule or otherwise, and each of the said judges may separately try court or jury cases during the same and at the same time. (*Id.* § 3.)

**\*§ 36g. Judges—Designation—Residence—Election.**

The present judge of said district, and his successors in office, shall, for the purposes of appointment, election, and successors, be known and designated as first judge of said district, and shall, during their respective terms of office, reside east of the west line of Wadena county; and the judge to be appointed under this act, and his successors, shall, for the same purposes, be known and designated as second judge of said district, and shall during their respective terms of office reside west of said line, and at all elections for judges of the district court for the Eleventh judicial district. Successors to the present judge of said district shall be voted for as "First judge, Eleventh judicial district," and successors of the judge to be appointed under this act shall be voted for as "Second judge, Eleventh judicial district." (*Id.* § 4.)

## RULES OF PRACTICE—SHORT-HAND REPORTERS.\*

**\*§ 38. Appointment of short-hand reporters.**

Each of the judges of the district court and of the courts of common pleas in this state is hereby authorized, in his discretion, to employ and appoint a short-hand writer, to make, in short-hand writing, a true record or report of the proceedings and evidence taken upon the trial of issues of fact in the several courts held in his district; and, when required by the court, or either of the parties to any such trial, to transcribe such record or report into the words which shall be represented by the characters used by him in reporting such proceeding and evidence as the same shall occur: *provided, however*, that no such reporter shall be appointed in any county containing less than five thousand inhabitants, whose board of county commissioners shall not first authorize such appointment: *provided, further*, that the provisions of this act shall not apply to the county of Ramsey, or be construed as repealing the special act relating thereto. (1874, c. 88, § 1, *as amended* 1877, c. 53, § 1, 1883, c. 56, § 1.)

## TITLE 2.

## JUDICIAL DISTRICTS.

[The several judicial districts are composed as follows, the substance only of the enactments being given, except \*§§ 55a-55i, which are printed in full:]

**§ 42. (Sec. 18.) First district.**

The counties of Goodhue, Dakota, Washington, Chisago, Pine, and Kanabec constitute the First judicial district. (*As amended* 1870, c. 81, § 1.)

**§ 43. (Sec. 19.) Second district.**

The county of Ramsey constitutes the Second judicial district. (*Id.*)

**§ 44. (Sec. 20.) Third district.**

The counties of Winona, Olmsted, and Wabasha constitute the Third judicial district. (*As amended* 1870, c. 81, § 1; 1872, c. 50, § 1.)

\*Phonographic reporter for Hennepin county, see Sp. Laws 1883, c. 298; Sp. Laws 1885, c. 113; Sp. Laws 1887, c. 112. Same for Ramsey county. Sp. Laws 1883, c. 78; Sp. Laws 1887, c. 107.

**§ 45. (Sec. 21.) Fourth district.**

The counties of Hennepin, Wright, Anoka, and Isanti constitute the Fourth judicial district. (*As amended* 1870, c. 81, § 1.)

**§ 46. (Sec. 22.) Fifth district.**

The counties of Rice, Steele, Waseca, and Dodge constitute the Fifth judicial district. (*Id.*, and 1872, c. 50, § 2.)

**§ 47. (Sec. 23.) Sixth district.**

The counties of Blue Earth, Faribault, Martin, and Watonwan constitute the Sixth judicial district. (*As amended* 1870, c. 81, § 1; 1885, c. 139.)

**§ 48. (Sec. 24.) Seventh district.**

The counties of Stearns, Sherburne, Benton, Morrison, Douglas, Todd, Mille Lacs, Otter Tail, and Pope constitute the Seventh judicial district. (*As amended* 1870, c. 81, § 1; 1874, c. 90, § 2; 1887, c. 106.)

**Eighth district.**

The counties of Le Sueur, Scott, Carver, Sibley, and McLeod constitute the Eighth judicial district. (*As amended* 1870, c. 81, § 1.)

**Ninth district.**

The counties of Nicollet, Redwood, Brown, Renville, Lincoln, and Lyon constitute the Ninth judicial district. (*As amended* 1869, c. 94, § 1; 1870, c. 81, § 1; 1875, c. 79, § 4.)

**\*§ 49. Tenth district.**

The counties of Houston, Fillmore, Mower, and Freeborn constitute the Tenth judicial district. (1872, c. 50, § 3.)

**\*§ 51. Eleventh district.**

The counties of Saint Louis, Carlton, Cook, and Lake constitute the Eleventh judicial district. (1874, c. 90, §§ 1, 2; 1874, c. 100, §§ 1, 11; 1887, c. 100.)

**\*§ 55. Twelfth district.**

The counties of Meeker, Kandiyohi, Swift, Chippewa, Lac qui Parle, and Yellow Medicine constitute the Twelfth judicial district. (1875, c. 79, § 4; 1887, c. 106, § 1.)

**\*§ 55a. Thirteenth district.**

That the counties of Jackson, Nobles, Rock, Pipe Stone, Murray, and Cottonwood be, and the same are hereby, detached from the Sixth judicial district, and are hereby created into a judicial district, to be known and designated the Thirteenth Judicial District of Minnesota. (1885, c. 139, § 1.)

**\*§ 55b. Same—Judge.**

A district judge shall be elected therefor at the next general election, and the governor is hereby authorized to appoint a district judge for said district, to serve until his successor be elected. (*Id.* § 3.)

**\*§ 55c. Counties detached from Eleventh district.**

That the counties of Aitken, Crow Wing, Cass, Itasca, Wadena, Becker, Beltrami, Hubbard, Clay, Norman, Polk, Marshall, and Kittson be detached from the Eleventh judicial district for judicial purposes: *provided*, that the time for holding court in said counties is not changed hereby. (1887, c. 100, § 1.)

**\*§ 55d. Fourteenth district.**

That the counties of Becker, Clay, Norman, Polk, Marshall, Kittson, and Beltrami be, and the same are hereby, constituted the Fourteenth judicial district of the state of Minnesota. (*Id.* § 2.)

**\*§ 55e. Fifteenth district.**

That the counties of Aitken, Crow Wing, Cass, Itasca, Wadena, and Hubbard be, and the same are hereby, constituted the Fifteenth judicial district of the state of Minnesota. (*Id.* § 3.)

**\*§ 55f. Judge in Fourteenth district.**

That the second judge of the Eleventh judicial district shall perform all the duties of, and be styled "Judge of the Fourteenth Judicial District," during the unexpired term for which he was elected and qualified, and there shall not be any appointment or election of judge in said Fourteenth judicial district for any term to commence before the expiration of the term of the present Second judge of the Eleventh judicial district. (*Id.* § 4.)

**\*§ 55g. Judge in Fifteenth district.**

A district judge shall be elected for said Fifteenth judicial district at the next general election, and the governor is hereby authorized to appoint a judge to fill the vacancy in said district, until such election and the qualification of such elected judge according to law. (*Id.* § 5.)

**\*§ 55h. Sixteenth district.**

That the counties of Big Stone, Stevens, Traverse, and Wilkin be, and the same are hereby, detached from the Twelfth judicial district, and that the county of Grant be, and the same is hereby, detached from the Seventh judicial district, and are hereby created into a judicial district, to be known as the "Sixteenth Judicial District of Minnesota." (1887, c. 106, § 1.)

**\*§ 55i. Same—Judge.**

A district judge shall be elected therefor at the next general election, and the governor is hereby authorized to appoint a district judge for said district, to serve until the next general election. (*Id.* § 3.)

## TITLE 3.

## GENERAL TERMS.

**\*§ 61. Terms in Watonwan county.**

There shall hereafter be two terms of the district court in said county of Watonwan in each year. One of said terms shall be held on the first Tuesday in May, and the other term on the first Tuesday in October of each and every year, but no grand jury shall be summoned for the May term in said county, unless the judge of the said Sixth judicial district shall make and file with the clerk of the court of said Watonwan county, at least twenty days before such term, an order directing the summoning of such grand jury. (1887, c. 111, § 2.†)

**\*§ 61a. Terms in Martin county.**

That hereafter there shall be two terms of the district court in Martin county, one of which shall be held on the third Tuesday of June and the other on the third Tuesday of December of each and every year; but no grand jury shall be summoned for the June term aforesaid, unless the judge of said court shall make and file with the clerk thereof, at least fifteen days before such term, an order directing the summoning of such grand jury. (1887, c. 107, § 1.)

†\*§ 61 is in terms amended so as to read as above. § 4 repeals all inconsistent acts and parts of acts. Compare \*§ 61, c. 64, Gen. St. 1878.

**\*§ 62a. Stearns county—Adjourned terms.**

The judges of the district court are hereby authorized to adjourn each and every general term of said court held at St. Cloud, in said county of Stearns, to a suitable place in the village of Sauk Centre in said county, for the trial of all such cases as are pending in said court, either for the convenience of the parties, or by their consent. (1887, c. 112, § 1.)\*

**\*§ 62b. Same—Jurors—Notice.**

On adjourning any term of said court to meet at Sauk Centre at a future day, the court shall direct the panel of jurors drawn for said term, or any part of them, to be and appear at the court-room, Sauk Centre, at such day and hour as he may designate, which shall be a sufficient notice to said jurors to attend. (*Id.*)

**\*§ 62c. Same—Jurors—Mileage.**

Jurors attending said adjourned term shall receive mileage from their homes to said village of Sauk Centre. (*Id.* § 3.)

**\*§ 62d. Same—Witnesses.**

Witnesses subpoenaed to attend said adjourned term shall receive mileage from their places of residence to the village of Sauk Centre. (*Id.* § 4.)

**\*§ 62e. Same—Officers.**

All officers serving subpoenas or any other process returnable at said adjourned term shall receive mileage only from said village of Sauk Centre, instead of from St. Cloud, the county-seat. (*Id.* § 5.)

**\*§ 62f. Same—Court-room.**

The village of Sauk Centre shall provide suitable rooms for the holding of said terms of court in said village, free of expense to the county of Stearns. (*Id.* § 6.)

**\*§ 62g. Otter Tail county—Adjourned terms.**

The judges of the district court are hereby authorized to adjourn each and every general term of said court held at Fergus Falls, in said county of Otter Tail, to a suitable place in the village of Perham, in said county, for the trial of all such cases as are pending in said court, either for the convenience of the parties or by their consent. (1887, c. 105, § 1.)

**\*§ 62h. Same—Jurors.**

On adjourning any term of said court to meet at Perham at a future day, the court shall direct the panel of jurors drawn for said term, or any part of them, to be and appear at the court-room in Perham at such day and hour as he may designate, which shall be sufficient notice to said jurors to attend. (*Id.* § 2.)

**\*§ 62i. Same.**

Jurors attending said adjourned term shall receive mileage from their homes to said village of Perham. (*Id.* § 3.)

**\*§ 62j. Same—Witnesses.**

Witnesses subpoenaed to attend such adjourned term shall receive mileage from their places of residence to the village of Perham. (*Id.* § 4.)

**\*§ 62k. Same—Officers.**

All officers serving subpoenas or any other process returnable at said adjourned term shall receive mileage only from said village of Perham, instead of from Fergus Falls, the county-seat. (*Id.* § 5.)

**\*§ 62l. Same—Court-room.**

The village of Perham shall provide suitable rooms for the holding of said terms of court in said village, free of expense to the county of Otter Tail. (*Id.* § 6.)

**\*§ 65a. Freeborn county—Adjourned and special terms.**

That the judge of said court\* may and he is empowered to adjourn any term of said court from time to time during any term thereof, and to order and to hold special terms of said court in said county for the trial and determination of both civil and criminal business and causes, or either, and said judge may direct grand and petit jurors to be drawn and summoned for any adjourned or special term of said court in the manner prescribed by law, and he may and is empowered to order and direct the issuing of special *venires* and the summoning of petit jurors at any time for the trial of civil or criminal actions and causes at any special or adjourned term of said court: *provided*, that notice of the time of holding any such special term shall be given at least twenty days previous to the holding thereof, by publishing such notice in a newspaper printed and published in said county; but said judge is authorized and empowered, by an order made by him at any general term of said court, to appoint and fix the time of holding any special term herein provided without such printed notice being given. (1885, c. 136, § 2.)

**\*§ 67a. Dispensing with trial jury.**

The court may by order dispense with the trial jury at one of the terms in each year in each of the counties of Big Stone, Lac qui Parle, Traverse, and Wilkin, whenever in its judgment the amount of business is such in either as to render it inexpedient to call such jury. Such order, if made, shall be so made thirty days or more before such term, and no *venire* for such jury shall be issued more than thirty days prior to any term. But nothing herein shall be so construed as to prevent the issuance of a special *venire* for trial jurors, as now provided by law; and the said court may issue such special *venire* in case of emergency or necessity, even after such order has been made. (1887, c. 101, § 2.)

## TIMES AND PLACES FOR HOLDING GENERAL TERMS.

[The following are the times and places for holding general terms of the district court, with reference to the acts prescribing the same:]

**First judicial district.**

Goodhue county, Red Wing, second Tuesday in March; fourth Tuesday in October. (1885, c. 135, § 1.)

Dakota county, Hastings, first Tuesday in June; first Tuesday in December. (1887, c. 108, § 1; *former provisions*, 1885, c. 135.)

Washington county, Stillwater, fourth Tuesday in May; second Tuesday in November. (1885, c. 135, § 1.)

Pine county, Pine City, first Tuesday in October. (1885, c. 135, § 1.)

Chisago county, Centre City, third Tuesday in October. (1885, c. 135, § 1.)

Kanabec county, Mora, time to be fixed by the judge. (1881, *Ex. Sess.*, c. 87, § 3.)

**Second judicial district.**

Ramsey county, St. Paul, second Tuesday in January; first Tuesday in May; and last Tuesday in September. (1878, c. 66, § 1.)

\* *Viz.*, the district court in Freeborn county.

**Third judicial district.**

Olmsted county, Rochester, first Monday in June; first Monday in December. (1879, c. 60, § 1.)

Wabasha county, Wabasha, third Monday in May; second Monday in November. (1879, c. 60, § 1.)

Winona county, Winona, second Monday in March; second Monday in October. (1879, c. 60, § 1.)

**Fourth judicial district.**

Anoka county, Anoka, first Monday in February; second Monday in September. (1881, c. 66, § 1.)

Hennepin county, Minneapolis, third Tuesday in April; second Tuesday in September; first Tuesday in December. (1885, c. 132, § 1; *former provision*, 1881, c. 66.)

Isanti county, Cambridge, fourth Monday in September. (1881, c. 66, § 1.)

Wright county, Buffalo, first Monday in June; first Monday in December. (1885, c. 134, § 1; *former provision*, 1881, c. 66.)

**Fifth judicial district.**

Dodge county, Mantorville, first Monday in March; first Tuesday in October. (1873, c. 77, § 1.)

Rice county, Faribault, first Tuesday in May; second Tuesday after first Monday in November. (1873, c. 77, § 1.)

Steele county, Owatonna, first Tuesday in June; first Tuesday in December. (1873, c. 77, § 1.)

Waseca county, Waseca, third Tuesday in March; third Tuesday in October. (1874, c. 97, § 1.)

**Sixth judicial district.**

Blue Earth county, Mankato, first Tuesday in December; third Tuesday in May. (1868, c. 99, § 1.)

Faribault county, Blue Earth City, first Tuesday in January; first Tuesday in June. (1870, c. 83, § 1.)

Martin county, Fairmont, third Tuesday of June; third Tuesday of December. (1887, c. 107, § 1; *former provisions*, 1883, c. 22; 1885, c. 127.)

Watonwan county, St. James, first Tuesday in May; first Tuesday in October. (1887, c. 111, § 2; *former provisions*, 1881, *Ex. Sess.*, c. 19.)

**Seventh judicial district.**

Benton county, Sauk Rapids, second Monday in January. (1885, c. 68, § 1.)

Douglas county, Alexandria, first Monday in May; first Monday in October. (1885, c. 68, § 1; *former terms*, 1881, *Ex. Sess.*, c. 31, § 1.)

Mille Lacs county, Princeton, fourth Monday in January. (1885, c. 68, § 1.)

Morrison county, Little Falls, first Monday in March; third Monday in September. (1885, c. 68, § 1; *former terms*, 1883, c. 55.)

Otter Tail county, Fergus Falls, third Monday in May; second Monday in November. (1885, c. 137, § 1; *former provisions*, 1885, c. 68.) Judge may adjourn general term of court to village of Perham. (*Ante*, \*§ 62g.)

Pope county, Glenwood, second Monday in March; third Monday in October. (1885, c. 133, § 1; *former provisions*, 1885, c. 68.)

Sherburne county, Elk river, first Monday in February. (1885, c. 68, § 1.)

Stearns county, St. Cloud, second Monday in June; first Monday in December. (1885, c. 68, § 1.) Judge may adjourn general terms to village of Sauk Centre. (*Ante*, \*§ 62a.)

Todd county, Long Prairie, third Monday in February. (1885, c. 68, § 1.)

**Eighth judicial district.**

Carver county, Chaska, second Monday in March; second Monday in September. (1885, c. 130, § 1; *former terms*, 1881, c. 83, § 1.)

Le Sueur county, Le Sueur Center, second Monday in April; first Monday in October. (*Id.*)

McLeod county, Glencoe, second Monday in May; second Monday in November. (*Id.*)

Scott county, Shakopee, second Monday in June; second Monday in December. (*Id.*)

Sibley county, Henderson, fourth Monday in May; fourth Monday in November. (*Id.*)

#### **Ninth judicial district.**

Renville county, Beaver Falls, second Tuesday in April; second Tuesday in October. (1887, c. 103, § 1; *former terms*, 1881, cc. 20, 87, 89; 1883, c. 27; 1885, c. 131.)

Lyon county, Marshall, fourth Tuesday in April; fourth Tuesday in October. (1887, c. 103, § 1; *former terms*, 1881, cc. 87, 89; 1883, cc. 27, 84; 1885, c. 131.)

Redwood county, Redwood Falls, second Tuesday in May; second Tuesday in November. (1887, c. 103, § 1; *former terms*, 1879, c. 61; 1881, c. 87; 1883, c. 27; 1885, c. 131.)

Brown county, New Ulm, fourth Tuesday in May; fourth Tuesday in November. (1887, c. 103, § 1; *former terms*, 1881, c. 87; 1883, c. 27; 1885, c. 131.)

Nicollet county, St. Peter, second Tuesday in June; second Tuesday in November. (*Id.*)

Lincoln county, Lake Benton, first Tuesday after the fourth day of July. (*Id.*)

#### **Tenth judicial district.**

Fillmore county, Preston, first Tuesday in June; second Tuesday in November. (1876, c. 61, § 1.)

Freeborn county, Albert Lea, fourth Tuesday in November; third Tuesday in May: "*provided*, that in case the business at said May term shall not be completed for any cause prior to holding any other term of court in said district, said May term shall be adjourned to the second Monday in July following, for the transaction of such unfinished business." (1885, c. 136, § 1; *former provisions*, 1879, c. 59; 1881, c. 98.)

Houston county, Caledonia, first Tuesday in May; third Tuesday in October. (1876, c. 61, § 1.)

Mower county, Austin, third Tuesday in March; third Tuesday in September. (*Id.*)

#### **Eleventh judicial district.**

Carlton county, Northern Pacific Junction, second Monday in April; fourth Monday in October. (1887, c. 109, § 1; *former terms*, 1881, c. 82; 1885, c. 138.)

St. Louis county, (includes Lake and Cook,) Duluth, first Monday after first day of January; last Monday in April; and first Monday in September. (*Id.*)

#### **Twelfth judicial district.\***

Chippewa county, Montevideo, fourth Tuesday in March; third Tuesday in October. (1887, c. 101, § 1; *former terms*, 1881, c. 88.)

\* The proviso to § 1, c. 101, Gen. Laws 1887, (approved January 18th,) prescribing times for holding general terms in the counties composing the Twelfth and Sixteenth districts, (except Grant county,) is as follows: "*Provided*, that whenever the times so prescribed shall fall on the twenty-second day of February, or on a general election day, in any year, neither parties, witnesses, nor jurors shall be required to attend until the day following." The proviso is not contained in c. 106, Gen. Laws 1887, (approved March 8th,) relating to terms in the Sixteenth district.

Kandiyohi county, Willmar, first Tuesday in June; first Tuesday in December. (1887, c. 101, § 1; *former terms*, 1879, c. 61; 1881, c. 88.)

Lac qui Parle county, Lac qui Parle, first Tuesday in May; first Tuesday in November. (1887, c. 101, § 1; *former terms*, 1881, c. 88.)

Meeker county, Litchfield, fourth Tuesday in May; fourth Tuesday in November. (1887, c. 101, § 1; *former terms*, 1879, c. 61; 1881, c. 88.)

Swift county, Benson, third Tuesday in February; third Tuesday in September. (1887, c. 101, § 1; *former terms*, 1881, c. 88.)

Yellow Medicine county, Granite Falls, on Tuesday next following fourth Tuesday in March; fourth Tuesday in October. (1887, c. 101, § 1; *former terms*, 1879, c. 61; 1881, c. 88.)

### Thirteenth judicial district.

Cottonwood county, Windom, third Tuesday in June and November. (1887, c. 113, § 1, *former terms*, 1879, c. 58, § 1.)

Jackson county, Jackson, first Tuesday in June and December. (1885, c. 139, § 2.)

Murray county, Currie, third Tuesday in April and October. (1885, c. 139, § 2; *former terms*, 1881, c. 65, § 1.)

Nobles county, Worthington, first Tuesday in March and November. (1885, c. 139, § 2.)

Pipe Stone county, Pipe Stone City, third Tuesday in May and December. (1885, c. 139, § 2; *former provisions*, 1881, c. 86, § 2.)

Rock county, Luverne, third Tuesday in March and September. (1885, c. 139, § 2; *former provisions*, 1881, c. 69, § 2.)

### Fourteenth judicial district.

Becker county, Detroit, fourth Monday in January; first Monday after fourth day of July. Includes Beltrami county. (1887, c. 109, § 1; *former terms*, 1881, c. 82; 1885, c. 138.)

Clay county, Moorhead, first Tuesday after first day of January; third Monday in June. (1887, c. 109, § 1; *former terms*, 1881, c. 82; 1885, c. 138.)

Norman county, Ada, first Monday in May; first Wednesday after first Monday in November. (*Id.*)

Polk county, Crookston, first Monday after the 29th day of May; first Monday in December. (*Id.*)

Marshall county, Warren, third Monday of May; third Monday of November. (*Id.*)

Kittson county, Hallock, fourth Monday in March, (1887, c. 109, § 1; fourth Monday in May and November, (1887, c. 92, § 1.)

[Chapter 92, approved March 7, 1887, amended, c. 138, Gen. Laws 1885, so as to provide for holding terms in Kittson county, as last above. Chapter 109, Gen. Laws 1887, approved March 3, 1887, repealed c. 138, Gen. Laws 1885, and provided for the term as first above. *Former provisions*, 1881, cc. 82, 90; 1881, *Ex. Sess.*, c. 83; 1885, c. 138.]

### Fifteenth judicial district.

Aitkin county,\* (includes Itasca,) Aitkin, second Monday in October. (1887, c. 109, § 1.)

\* Gen. Laws 1885, c. 142, organizing Aitkin county for judicial purposes, provides for two terms of court therein in each year, at times to be fixed by the judge, and "that a grand jury shall be summoned only at the first term of each year, unless otherwise ordered by the judge of the district court." Gen. Laws 1887, c. 109, *supra*, provides that "general terms in the district court in and for the Eleventh judicial district of this state shall be held as follows: In the county of Aitkin, on the second Monday in October in each year; \* \* \*" and repeals all inconsistent acts and parts of acts. This act was approved March 3d, and repealed c. 138, Gen. Laws 1885, which latter act was amended by c. 28, Laws 1887, approved March 7th, by inserting after the provision for terms of court in Aitkin county the following: "Provided, the judge of said court may, by order made and filed with the clerk of said court at least forty days prior to the fourth Monday in March in each year, convene said court in general term on the fourth Monday in March of each year."

Crow Wing county, (includes Cass county,) Brainerd, third Monday in March; third Monday in September. (1887, c. 109, § 1; *former terms*, 1881, c. 82; 1885, c. 138.)

Wadena county, Wadena, fourth Monday in May; fourth Monday in November. (1887, c. 109, § 1; *former terms*, 1881, c. 82; 1883, c. 20; 1885, c. 138.)

Hubbard county, Park Rapids. Time to be fixed by judge or judges of the Eleventh district, upon forty days' notice. (1887, c. 110, § 2.)

#### Sixteenth judicial district.\*

Stevens county, Morris, third Tuesday in May and November. (1887, c. 106, § 2; *former terms*, 1881, c. 88.)

Big Stone county, Ortonville, first Tuesday in May and December. (*Id.*)

Traverse county, Wheaton, second Tuesday in March and October. (1887, c. 106, § 2; *former terms*, 1883, c. 83; 1887, c. 101.)

Wilkin county, Breckenridge, first Tuesday in March and October. (1887, c. 106; *former terms*, 1881, c. 88; 1887, c. 101.)

Grant county, Elbow Lake, fourth Tuesday in May and September. (1887, c. 106; *former terms*, 1885, c. 68.)

### TITLE 4.

#### COUNTIES ATTACHED TO OTHERS FOR JUDICIAL PURPOSES.†

#### § 69. (Sec. 33.) Enumeration.

[The counties attached to others for judicial purposes are as follows:

The county of Beltrami is attached to the county of Becker. (*Sp. Laws* 1871, c. 75, § 1.)

The county of Cass is attached to the county of Crow Wing. (*Sp. Laws* 1871, c. 75, § 1; *Sp. Laws* 1876, c. 208, § 2.)

The counties of Cook and Lake are attached to the county of St. Louis. (1884, c. 100, § 11; *Gen. St. c. 64, § 33, as to Lake county.*)

The county of Itasca is detached from Crow Wing county and attached to Aitkin county. (1887, c. 264.)

The following counties have been detached and organized for judicial purposes since 1878:

Aitkin county, organized for judicial purposes. (1885, c. 142.)

Big Stone county. (*See Gen. Laws* 1881, c. 106, and c. 130, § 5.)

Grant county, organized for judicial purposes. (1883, c. 82.)

Hubbard county, organized for judicial purposes. (1887, c. 110.)

Kanabec county, organized for judicial purposes. (1881, *Ex. Sess.*, c. 87.)

Kittson county, organized for judicial purposes. (1881, c. 90.)

Lincoln county, organized for judicial purposes. (1881, c. 85.)

Marshall county, detached from the county of Polk. (1881, c. 82, § 1.)

Murray county, declared organized for judicial purposes. (1879, c. 57.)

Pipestone county, organized for judicial purposes. (1881, c. 86.)

Polk county, organized for judicial purposes. (1879, c. 64.) The act also attaches Kittson county to Polk county for judicial purposes. (*See Kittson County, supra.*)

\*See note to Twelfth district, *supra*.

†Gen. Laws 1879, c. 103, provided for the apportionment of the court expenses of Crow Wing county between that county and Wadena and Aitkin counties, so long as the last two should remain attached to the first.

See, as to transcribing certain records in Benton county, *Sp. Laws* 1887, c. 209; same, Blue Earth county, *Sp. Laws* 1881, c. 202; same, Crow Wing county, *Sp. Laws* 1885, c. 184; same, Goodhue county, *Sp. Laws* 1879, c. 203; same, Hennepin county, *Sp. Laws* 1883, c. 269; same, Kandiyohi county, *Sp. Laws* 1885, c. 202; same, Rice county, *Sp. Laws* 1885, c. 170; same, Stearns county, *Sp. Laws* 1887, c. 248.

Traverse county. (*See Gen. Laws 1881, c. 130, and c. 106, § 3.*)

Wadena county, organized for judicial purposes. (1881, c. 131.)

Applied, *State v. Stokely*, 16 Minn. 232, (Gil. 249;); *State v. McCarty*, 17 Minn. 76, (Gil. 54;); *Young v. Young*, 18 Minn. 90, (Gil. 72.)

Where the county in which the judgment debtor resides is attached to another for judicial purposes under this section, the execution required by § 299, c. 66, Gen. St., as preliminary to supplementary proceedings, may properly be issued to the sheriff of the county to which the one in which the debtor resides is attached. *Beebe v. Fridley*, 16 Minn. 518, (Gil. 467.)

#### MUNICIPAL COURT OF ST. PAUL.

##### \*§ 81. Municipal court established.

The municipal court of St. Paul has the same power and jurisdiction in proceedings under c. 84, *infra*, as a justice of the peace, and the mode of proceeding must be the same. *Petsch v. Biggs*, 31 Minn. 392, 18 N. W. Rep. 101.

##### \*§ 82. Clerk—Seal—Jurisdiction.

Said court shall have a clerk and a seal, and shall have, in addition to the jurisdiction and powers now conferred by said act upon the city justice of said city, cognizance of, and jurisdiction to hear, try, and determine, civil actions or proceedings, where the amount in controversy does not exceed two hundred dollars, or where, in case the action is for the recovery of personal property, the value of such property does not exceed two hundred dollars: *provided, however*, that such cognizance and jurisdiction shall only extend to actions of the same nature and character, save as to amount now or hereafter cognizable before a justice of the peace: *and provided, further*, that where a counter-claim in excess of two hundred dollars over plaintiff's claim, or where any equitable defense or ground for equitable relief, of a nature not cognizable before a justice of the peace, 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 court of common pleas of [the] said county 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 an appeal from justice court; and thereupon the said court of common pleas shall proceed in the cause to final judgment and execution, or transfer the same to the district court of said county, according to law, the same as if the said suit had been originally commenced in said court of common pleas, and the costs shall abide the event of the suit, except that the plaintiff shall advance the costs of the said municipal court in the suit. (*Sp. Laws 1875, c. 2, § 3; Sp. Laws 1876, c. 211, § 1, repealed; Sp. Laws 1881, c. 378, saving actions then pending, and also providing for their removal in certain cases.*)

The municipal court cannot try a question of title of real estate. Its jurisdiction in this respect is no greater than that of a justice of the peace, and it has all the authority, powers, and rights of a justice of the peace. *Steele v. Bond*, 28 Minn. 275, 9 N. W. Rep. 772.

Where the court refuses to certify a case involving the title to real estate, but goes on to try the same, prohibition is not the proper remedy; appeal, error, or *certiorari* should be resorted to. *State v. Municipal Court*, 26 Minn. 162, 163, 2 N. W. Rep. 166.

##### \*§ 82a. Forcible entries, etc.

The municipal court of the city of Saint Paul shall have full jurisdiction and power to hear and determine all questions that may arise in actions before it, brought under chapter eighty-four of the General Statutes relating to "forcible entries and unlawful detainers" of lands and tenements, whether involving the title to real estate or otherwise, subject, however, to the right of appeal by either party to the supreme court of the state, as provided for appeals to the supreme court in said act establishing said municipal court, and acts amendatory thereof. (1881, *Sp. Laws, c. 373.*)

**\*§ 83a. Election of judge.**

That the judge of the municipal court, and the two special judges created by the act of March eighth, one thousand eight hundred and seventy-five, shall hold their offices for the terms for which they are respectively elected, and until their successors are elected and qualified. That on the first Tuesday in May, one thousand eight hundred and eighty-five, a successor shall be elected to the municipal judge elected at the annual election in one thousand eight hundred and eighty, and that the election of said judge at the annual election held in November, one thousand eight hundred and eighty, be, and the same is, legalized, and in all respects validated; and that the successors to the present special judges of said court shall be elected at the general city election on the first Tuesday in May, one thousand eight hundred and eighty-three. That the term of office of said judge and special judges shall be four years, and until successors are elected and qualified: *provided*, that any vacancy in the office of either of said judges, by death, removal, resignation, or otherwise, may be filled as now provided by law, and that all elections for judges of said court hereafter to be held shall be at the annual spring election for officers of said city. (*Sp. Laws 1876, c. 86, § 11, as amended Sp. Laws 1881, c. 109.*)

**\*§ 86a. Clerk—Reports.**

That the clerk of the municipal court of the city of Saint Paul be, and he is hereby, required to make a daily report under oath to the city treasurer of all fines and moneys collected by him for the city of Saint Paul, and a similar report, under oath, to the common council on the first Tuesday of each and every month, and that all moneys, fines, and costs received by said municipal clerk for the city of St. Paul shall be paid over to the city treasurer on the first Monday in each and every month. (1887, *Sp. Laws, c. 377.*)

**\*§ 87. Powers of court—Process—Forms.**

The "Northwestern Reporter" is not a proper *newspaper* in which to publish the process of the court. *Beecher v. Stephens, 25 Minn. 146.*

In an action in the municipal court of St. Paul, under the chapter on forcible entries and detainers, the plaintiff, to entitle himself to judgment of restitution, must prove his case. Such judgment cannot properly be rendered simply upon defendant's default. *Hennessey v. Pederson, 28 Minn. 461, 11 N. W. Rep. 63.* See, also, *Steele v. Bond, 23 Minn. 272, 9 N. W. Rep. 772.*

**\*§ 90. Terms—Summons—Pleadings.**

The want of a verification to a complaint, filed with the clerk of the court for commencing an action therein under the provisions of this section, is not a jurisdictional defect for which the action will be dismissed, after summons issued thereon and duly served. *McMath v. Parsons, 26 Minn. 246, 2 N. W. Rep. 703.*

The provision of *Laws 1879, c. 15*, requiring a reply to an answer containing new matter, is not applicable to this court. The rule for that court is specially prescribed by this section, and requires a reply only when the answer contains a counter-claim. *Webb v. O'Donnell, 28 Minn. 370, 10 N. W. Rep. 140.*

**\*§ 94. Jurors.**

The judge and clerk of said court, in connection with the city attorney, shall, on the last Saturday of each month in each year, meet at the municipal court-room in said city of St. Paul, and from the electors of said city select and designate forty-eight of said electors of said city as the jurors of said municipal court, to serve therein, when required and drawn, during the succeeding month, and until their successors are selected. The clerk of said municipal court shall thereupon write said names upon separate slips, and place the same in a wheel or box, and whenever a jury is required in said court, he shall thereupon by lot draw for a jury of sixteen jurors—for a jury of twelve—twenty jurors. The jurors so drawn shall be summoned to attend the trial of the case wherein they were drawn. The first six or twelve so drawn shall constitute the jury, unless some of said jurors are excused, in which case the

clerk shall call so many of the remaining jurors as shall be required to fill the place of the jurors excused. And in the event that a jury cannot, for any cause, be filled and sworn from the jurors so summoned, then the clerk shall draw other names from said box or wheel, and summon the same, until the jury is full. The jury shall be sworn as in the district court, and the functions of judge and jury in the trial of causes shall be the same as in the district court; and exceptions to the rulings and decisions of the judge, and his charges and his refusals to charge, may be taken as upon trials in the district court; and said court is vested with all powers over cases within its jurisdiction which are possessed by district courts of this state over cases within their jurisdiction; and all laws of a general nature shall apply to said municipal court so far as the same can be applicable, and not inconsistent with the provisions of this act and other laws not inconsistent herewith. Jurors in said municipal court shall be entitled to like fees in the trial of civil actions as jurors in justices' courts, but the party demanding a jury in any civil action in said court shall be required to advance the fees for such jury, and the summoning thereof. (*Sp. Laws 1875, c. 2, § 15; as amended 1876, Sp. Laws, c. 211, § 6; 1881, Ex. Sess. Sp. Laws, c. 63.*)

**\*§ 98. Proceedings in criminal cases.**

The provision giving the clerk power to receive complaints and issue warrants is constitutional. *City of St. Paul v. Umstetter, 33 N. W. Rep. 115.*

**\*§ 99a. Judge's salary.**

That the salary of the municipal judge of the city of St. Paul shall be two thousand eight hundred dollars per annum, which shall be paid monthly out of the city treasury. (*1885, Sp. Laws, c. 247.*)

**\*§ 105. Justices of the peace in St. Paul.**

Appeals from judgments of the justices of the peace in the city of St. Paul should be taken to the district court, and not to the municipal court. *McClung v. Manson, 25 Minn. 374, followed. State v. Hanft, 26 Minn. 264, 3 N. W. Rep. 343. See Hoffman v. Parsons, 27 Minn. 236, 6 N. W. Rep. 797.*

**\*§ 107. Appeals from justices of the peace.**

All appeals hereafter taken from the judgment of any justice of the peace now existing in said city, shall be taken to the said municipal court, and not to the district court or court of common pleas; and title eleven of chapter sixty-five, as amended, shall, save as to the court to which the appeal is to be taken, apply to the said appeal, and, as far as applicable, to the said municipal court, in becoming possessed of any proceeding upon said appeal, and in all other respects, except that the appellant shall cause to be served on the respondent, or his attorney, a notice of trial at least eight days before the term at which said appeal is to be heard. (*Sp. Laws 1875, c. 2, § 26, as amended by Sp. Laws 1876, c. 211, § 10; Gen. Laws 1885, c. 43.*)

**\*§ 107a. Appeals from justices' courts.**

All appeals from judgments of justices of the peace in the city of St. Paul shall be taken to the municipal court of the said city, and said municipal court shall have the same powers in such cases now possessed by the district court; and all laws applicable to appeals to the district court are hereby made applicable to appeals to said municipal court. (*Sp. Laws 1881, c. 407.*)

**\*§ 108. Unlawful detainers — Summons by justice of the peace.**

A justice of the peace of a town in Ramsey county may properly, within his own town, issue a summons and entertain proceedings in forcible entry and detainer, though the parties to the proceedings reside in St. Paul, and the premises which are the subject of the proceedings are within the limits of such city. *Hoffman v. Parsons, 27 Minn. 236, 6 N. W. Rep. 797.*

## MUNICIPAL COURT OF MINNEAPOLIS.\*

**\*§ 109. Jurisdiction—Clerk—Seal.**

There shall be established in the city of Minneapolis, in the county of Hennepin, 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, where the amount in controversy does not exceed the sum of five hundred 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 Minneapolis, heretofore cognizable before a justice of the peace; and also of all civil actions and proceedings heretofore cognizable before a justice of the peace, the defendant or garnishee in which resides within the limits of the city of Minneapolis. It shall not have jurisdiction of actions for divorce, nor of any action where the relief asked for in the complaint is purely equitable in its nature. Where 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; 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; and the jurisdiction of said court shall be co-extensive with the limits of said Hennepin county. (*Sp. Laws 1874, c. 141, § 1, as amended 1878, Sp. Laws, c. 65, § 1; 1883, c. 43, § 1; 1885, c. 74, § 2.*)

The amendment of 1885 is constitutional. *Burke v. Railroad Co.*, 85 Minn. 172, 23 N. W. Rep. 190.

A justice of the peace has no jurisdiction to try a criminal case where the title to real estate is involved; nor has this court; but as soon as it appears that such title is involved, it should transfer the case to the district court. *State v. Cotton*, 29 Minn. 187, 12 N. W. Rep. 529.

See *Flanigan v. City of Minneapolis*, 36 Minn. 406, 31 N. W. Rep. 359; *State v. Sweeney*, 33 Minn. 23, 24, 21 N. W. Rep. 847; *Shatto v. Latham*, 33 Minn. 36, 21 N. W. Rep. 338; *Gray v. Hurley*, 28 Minn. 388, 10 N. W. Rep. 417.

**\*§ 109a. Jurisdiction.**

The municipal court of said city shall have exclusive cognizance and jurisdiction of all trials and examinations within said city cognizable before a justice of the peace under the laws of the state, and of all suits, prosecutions, and proceedings for the recovery of all forfeitures, fines, and penalties, or inflictions of punishments, for the breach of any by-laws, regulation, or ordinance of said city, and of all offenses against the same. And in all cases of convictions for assaults, batteries, and affrays, disorderly conduct, breach of the peace, keeping or frequenting disorderly houses, or houses of ill fame, the municipal court may, in addition to any fine or punishment authorized or imposed, or without such fine or other punishment, compel the accused to give security to keep the peace and be of good behavior for a period not exceeding six months, and in a sum not exceeding five hundred dollars. The judge and special judges of said court shall have powers of justices of the peace as conservators of the peace and in all ministerial and *ex parte* matters, and it shall have all the powers of justices of the peace to take depositions to be used in other courts. All fines and penalties imposed by said court shall belong to and be a part of the revenue of said city. Said court shall also have power in all criminal actions within its jurisdiction, when the punishment is by imprisonment, or by imprisonment in default of payment of fine, to sentence any offender to hard labor in any workhouse established by the city for that purpose, or, in case of male offenders, to sentence them to labor on any pub-

\*See, as to short-hand reporter for the municipal court of Minneapolis, *Sp. Laws 1887, c. 384.*

lic work or improvement, in like manner, and under the same qualifications, as hereinafter provided in case of offenses against city ordinances. (*Sp. Laws 1881, c. 76, subc. 3, § 23.*)

**\*§ 110. Judge—Election—Term.**

The qualified electors of the city of Minneapolis shall, at the general city election to be held on the first Tuesday in April, in the year one thousand eight hundred and eighty-three, and on the day of the general city election every sixth 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 six years, and until his successor shall be elected and qualified. In case of any vacancy in the office of municipal judge, the governor of the state of Minnesota shall appoint some qualified person to said office until the next annual city election, when a judge shall be elected for a full term of six years. (*Sp. Laws 1874, c. 141, § 2, as amended 1883, Sp. Laws, c. 48, § 2; Sp. Laws 1885, c. 74, § 3.*)

The amendment of 1885 is constitutional. *State v. Bailey, 33 N. W. Rep. 778.*

**\*§ 111. Judge—Qualifications—Powers—Special judge.**

The judge of the municipal court shall be a resident of the city of Minneapolis, a person learned in the law, and duly admitted to practice as an attorney in the courts of 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 clerk of said city. He shall have the general powers of the judges of courts of record, and may administer oaths, take and certify acknowledgments in all cases, and, as a conservator of the peace, shall have all power and authority which is, or may hereafter be, vested in justices of the peace, or any other judicial officer. There shall be one special judge of said municipal court, whose manner of election, term of office, powers, duties, and qualifications shall be the same as those of municipal judge. And his successors shall be elected, and vacancies in his office filled, in like manner. (*Sp. Laws 1874, c. 141, § 3, as amended 1877, Sp. Laws, c. 178, § 1; Sp. Laws 1878, c. 65, § 2; 1879, Sp. Laws, c. 87; Sp. Laws 1883, c. 48, § 3; Sp. Laws 1885, c. 74, § 4.*)

**\*§ 112. Clerk—Appointment—Removal—Oath—Bond.**

There shall be a clerk of said municipal court, who shall be appointed by the judge of said court, with the advice and consent of the city council of the city of Minneapolis, and the judge shall have power to remove said clerk at pleasure, or he may be removed by a two-thirds vote of the whole number of aldermen elected to the city council. Such clerk, before he enters upon the duties of his office, shall take and subscribe an oath to support the constitution of the United States and of the state of Minnesota, and to faithfully and honestly discharge and perform the duties of his office, and shall execute to the city of Minneapolis a penal bond in such sum and with such sureties as the council shall direct and approve, conditioned that he will account to and pay over to the treasurer of said city, on the first Monday of every month, all fines, penalties, fees, and other moneys belonging to or to go to said city, which may have come into his hands during the month next preceding, and that he will at all times pay over to all other persons, on demand, all moneys to which they may be entitled, which may have come into his hands in virtue or by reason of his office; and at the end of his term of office he will forthwith pay over to the city of Minneapolis all moneys to which said city shall then be entitled, and to his successor in office all other moneys then remaining in his hands, and which shall have come into his hands in virtue or by reason of his office. Such oath and bond shall be filed in the office of the city clerk of said city. (*Sp. Laws 1874, c. 141, § 4, as amended by Sp. Laws 1883, c. 48, § 4.*)

**\*§ 115. Clerk—Powers and duties—Deputies—Release of prisoners on paying fines.**

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 from sickness, or with the consent of the judge, and in case of his absence the judge may appoint some person temporarily in his place. The clerk of said municipal court is hereby vested with all the powers and authority now possessed by notaries public and clerks of the district courts of this state in taking acknowledgments and administering oaths and affirmations and swearing witnesses. 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. 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 including also witness fees in criminal cases, and keep full, accurate, and detailed accounts of the same, and shall, on the first Monday of every month, deliver over to the city treasurer of the city of Minneapolis all moneys so received, or proper vouchers therefor, as herein provided, 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 Minneapolis 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 Minneapolis 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. The clerk of said municipal court shall also make detailed monthly reports of all persons who are committed to the county jail of the county of Hennepin under sentence of said municipal court, and of all who are committed in default of bail to await the action of the grand jury, which reports, as to all persons convicted of an offense under the state laws, and as to all committed in default of bail, shall be made to the county auditor of Hennepin county, and as to all persons convicted of an offense under the ordinances of said city shall be made to the city comptroller of said city, and shall in each case be made on the first day of each month, or on the second, if the first day comes on Sunday, or on a legal holiday; and shall show the name of every person committed during the previous month and since the last report, the nature and cause of the commitment, the length of time for which committed, the offense for which committed, the date of commitment in each case, and whether committed by virtue of a prosecution under the state laws or under the ordinances of said city; and shall also show the names of all persons discharged from said jail since the last report by order of said municipal court, the cause of said discharge, and the date thereof. In all cases where the judge of said municipal court remits a fine, or suspends a sentence after commitment to the county jail, and in all cases where a person committed to said jail secures his release by the payment of a fine in default of which he was committed, the person imprisoned shall not be released except upon the order of said municipal court, and the presentation to the sheriff of said county or to the jailer a written transcript of said order, authenticated by the clerk of said court under its seal, which transcript, in the case of the payment of a fine, shall not be issued or given until the actual payment to the clerk of said municipal court of the amount of the fine so paid. The sheriff of said county shall be held strictly accountable as for a breach of official duty if in any of the cases above named a prisoner be released without the presentation of the written evidence above required. The clerk of said court may, when author-

ized so to do by the city council of the city of Minneapolis, if in their discretion they deem the appointment necessary, with the sanction of the judge of said court, appoint one or more deputy-clerks of said municipal court, for whose acts the said clerk of said court shall be responsible; and said deputy or deputies shall be appointed under the hand of said clerk and seal of said court, with the sanction of said judge indorsed on the back of such appointment; and before any deputy-clerk of said court shall enter upon the duties of his office he shall take and subscribe the same oath prescribed and required to be taken by the clerk of said court, and execute a bond to be approved by said clerk, which oath, together with the appointment of such deputy-clerk, and such bond, shall be filed in the office of the city clerk of said city of Minneapolis; and the clerk of said court or the judge thereof may at any time remove any deputy appointed under the provisions of this act. The said clerk of the municipal court, and any deputy-clerk, shall not act as attorney in any case in said court. The deputy-clerks appointed under the provisions of this act may administer oaths, take acknowledgments, and perform all the duties pertaining to the office of clerk of said municipal court. (*Sp. Laws* 1874, c. 141, § 7, *as amended* 1875, *Sp. Laws*, c. 4, § 1; 1883, *Sp. Laws*, c. 48, § 5, and c. 49, § 1; 1885, *Sp. Laws*, c. 74, § 5; 1887, *Sp. Laws*, c. 21, § 2.)

See *Flanigan v. City of Minneapolis*, 31 N. W. Rep. 359.

**\*§ 116. Terms—Summons—Pleadings—Costs.**

The municipal court shall hold regular terms for the trial of civil actions on the first and third Tuesday of every month, except during the months of July and August, 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. Civil actions in said court shall be commenced by the service of a summons, as hereinafter provided. The summons 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, at a place within the state therein specified in which there is a post-office, within ten days after the service of the summons, exclusive of the day of service. It shall not be necessary for a party to set forth in a pleading in any civil action in said court the items of an account therein alleged; but he shall deliver to the adverse party, within five 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 within the personal knowledge of said agent or attorney, to the effect that he believes it to be true, or he be precluded from giving evidence thereof. The court or judge thereof may order a further or more particular bill. The notice to be contained in the summons, the manner of service of summons, pleadings, notices, and appearances, shall be the same as that required by law in the district courts of the state; and the provisions of title, one, two, three, five, six, seven, eight, nine, ten, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, and twenty-three, of chapter sixty-six, General Statutes of one thousand eight hundred and seventy-eight, so far as the same may be applicable, except that the time for demurrer and reply shall be ten days, and except as the same may be modified, changed, or altered by this act, shall apply to said municipal court. No police officer of said city shall serve, or attempt to serve, any summons, process, or paper in any civil action in said court unless the complaint in such action shall have been previously filed with the clerk of said court; and in any case wherein such complaint is so filed, the said clerk shall, when requested so to do, note or indorse the fact of such filing upon the back of said summons or process; and whenever any such summons, process, or paper in any civil action shall have been delivered to any police officer for service, he shall as

soon as practicable thereafter make proper return to said clerk, whether said summons, process, or paper shall have been served or not, and, if not served, the reason therefor. The pleadings in civil actions in said court shall be the same as in the district courts of the state, subject to such modifications as the court may by rule prescribe, 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 within the term next following thereafter, or allow any amendment of any pleading at any time, and shall disregard variances between the allegations of a pleading and the evidence, unless satisfied that the adverse party is prejudiced thereby. 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, when the action is brought to recover compensation for manual labor or services, five dollars; in all other cases to the plaintiff, upon a judgment in his favor upon a trial upon the merits, when the amount thereof, or the value of the personal property recovered, exclusive of costs and disbursements, exceeds fifty dollars, and is less than one hundred dollars, five dollars; to the defendant, when judgment is rendered in his favor on the merits after trial of an issue of fact, when the amount claimed in the complaint, or value of personal property in replevin, is less than one hundred dollars, five dollars; to the plaintiff, upon a judgment in his favor of one hundred dollars or more, or, in action of replevin, when the value of the property is one hundred dollars or more, when no issue of fact or law is joined, five dollars; when an issue is joined, ten dollars; to the defendant, when the amount claimed in the complaint is one hundred or more, upon discontinuance or dismissal, five dollars; when judgment is rendered in his favor on the merits, ten dollars. Costs and disbursements shall be taxed and allowed in the first instance by the clerk, upon two days' notice by either party, and inserted in the entry of judgment. The disbursements 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 the same in case of appeal shall be certified to the court by the clerk, and the appeal shall be heard and determined upon the objections so certified, and none other. (*Sp. Laws* 1874, c. 141, § 8, as amended 1875, *Sp. Laws*, c. 4, § 2; 1878, *Sp. Laws*, c. 65, § 3; 1883, *Sp. Laws*, c. 48, § 6; 1885, *Sp. Laws*, c. 74, § 6; 1887, *Sp. Laws*, c. 21, § 3.)

The summons by which *Sp. Laws* 1883, c. 48, § 6, requires civil actions for the recovery of money only to be commenced in this court, must be served in Hennepin county. *Shatto v. Latham*, 33 Minn. 36, 21 N. W. Rep. 838.

### \*§ 117. Attachment.

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 an application for a writ of attachment in the district courts of the state, or in justices' 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 the district courts of the state, or in justice's court, except that the limit of liability thereon shall be mentioned therein as not exceeding the sum of two hundred and fifty dollars. The writ of attachment may be in form as follows:

# MINNESOTA STATUTES 1888 SUPPLEMENT

570

DISTRICT COURT.

[Chap.

State of Minnesota, }  
County of Hennepin, } ss.

City of Minneapolis,  
Municipal Court.

The state of Minnesota, to any police officer of the city of Minneapolis, or to the sheriff or any constable of said county:

You are hereby commanded to attach the goods, chattels, moneys, effects, and credits of \_\_\_\_\_, or so much thereof as shall be sufficient to satisfy the sum of \_\_\_\_\_, with interest and costs of suit, in whosoever hands or possession the same may be found in said county of Hennepin, and so provide that the same may be subject to further proceedings as the law requires, and make due return of this writ.

Witness the Honorable \_\_\_\_\_, judge of said court, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 187—.

\_\_\_\_\_, Clerk.

—Or the writ may be in any other 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 near as may be, to the service of such writ and proceedings in the district courts of the state, or in justices' courts. (*Sp. Laws* 1874, c. 141, § 9, as amended by *Sp. Laws* 1878, c. 65, § 4; *Sp. Laws* 1883, c. 48, § 7.)

## \*§ 118. Replevin.

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 the district courts of the state, or in a justice's court in a like action. The plaintiff, or some person in his behalf, shall execute a bond, with sureties, to be approved by the judge, conditioned similar to bonds in such actions in the district courts of the state, or in justices' court, and file such bond. And an action may be maintained on such bond as upon similar bonds filed in like action in the district courts of the state, or in justices' courts. The clerk shall thereupon issue the writ, which may be in form as follows:

State of Minnesota, }  
County of Hennepin, } ss.

Municipal Court,  
City of Minneapolis.

The state of Minnesota, to any police officer of the city of Minneapolis, or to the sheriff or any constable of said county:

Whereas, \_\_\_\_\_ complains that \_\_\_\_\_ has become possessed of and [any] unjustly detains from \_\_\_\_\_ the said \_\_\_\_\_ the following described goods and chattels, that is to say:

Therefore you are hereby commanded that you cause the same goods and chattels to be replevined without delay, or in case the defendant, or some one in his behalf, does not file a bond in this court for the delivery of such property, as provided by law, approved by said court within three days from said taking, then to deliver to said \_\_\_\_\_.

Witness the Honorable \_\_\_\_\_,  
Municipal Judge.

This \_\_\_\_\_ day of \_\_\_\_\_, A. D. 188—.

\_\_\_\_\_,  
Clerk of the Municipal Court.

(*Sp. Laws* 1874, c. 141, § 10, as amended 1883, *Sp. Laws*, c. 48, § 8; 1885, *Sp. Laws*, c. 74, § 7.)

## \*§ 119. Notices of trial—Calendar.

Notices of trial shall be served, as in the district courts of the state, at least three days before the term; and notes of issue, as required in the district courts of the state, shall be filed with the clerk at least one day before the term, subject to such modifications as the court may by rule prescribe.

The clerk of the court shall, prior to each term of the court, make up a calendar of 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. (*Sp. Laws* 1874, c. 141, § 11, *as amended* 1883, *Sp. Laws*, c. 48, § 9; *Sp. Laws* 1885, c. 74, § 8.)

### § 120. Juries and jurors.

Trial by jury in the municipal court shall in all respects be conducted as in the district courts of said 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 mayor, or president of the city council, of the city of Minneapolis, the city clerk, and presiding judge of said municipal court, shall, on the second Monday of February, May, August, and November in each year, at the office of the city clerk of said city, meet, and from the legal voters of said city select and designate sixty-four 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 elected and certified, and shall thereupon certify said names so elected 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 twenty ballots, the persons named upon which shall, if practicable, be summoned to attend the trial of the cause wherein they were drawn, and the first twelve so summoned and attending shall constitute the jury unless some of said jurors shall be challenged or excused, in which case the clerk shall consecutively call the remaining jurors so summoned and attending until the panel so drawn shall be exhausted. If any person duly drawn and summoned to attend as a juror in said court neglects to attend without sufficient excuse, he shall pay a fine not exceeding thirty dollars, which shall be imposed by the court, and imprisonment until such fine is paid, not exceeding thirty days. No talesman shall be summoned or sit in any cause in said court. At the first and second series of twenty ballots each so drawn shall not be returned to said box or wheel until the third series shall have been drawn from said box; and whenever deemed necessary, said court shall have power to issue a special venire. The persons selected to serve as aforesaid shall not be obliged to serve upon any other jury during the year in which they may have been selected. Jurors so summoned and attending as aforesaid in said municipal court in the trial of any action shall be entitled to like compensation as jurors in the district court of Hennepin county, and shall be paid out of the county treasury of said county of Hennepin. The clerk of said municipal court shall deliver to each juror a certificate for the number of days' attendance and service, and miles traveled, for which he is entitled to receive compensation. This certificate of the clerk for service rendered as such juror in the municipal court shall be filed with the county auditor, who shall issue his warrant to the treasurer of the county for the amount due, which certificate shall be a proper and sufficient voucher for the issuance of such warrant; and the party demanding a jury in any civil action shall be required to advance and pay to the clerk of said court on the day when such action is set for trial a jury fee of three dollars; and unless such jury is demanded upon the calling of the calendar on the first day of term at which the same is set for trial it shall be considered to be, and the same shall be, waived, and said action be tried by the court. Any juror who has been regularly summoned to attend in said court, and who shall actually attend said court at the time named in such summons, shall be entitled to his per diem and mileage, whether he shall actually have been sworn as a juror or not. (*Sp. Laws* 1874, c. 141, § 12, *as amended* 1877, *Sp. Laws*, c. 178, § 2;

# MINNESOTA STATUTES 1888 SUPPLEMENT

572

DISTRICT COURT.

[Chap.

*Sp. Laws* 1878, c. 65, § 5; *Sp. Laws* 1883, c. 48, § 10; *Sp. Laws* 1885, c. 74, § 9; *Sp. Laws* 1887, c. 21, § 4.)

## \*§ 121. Distribution of Reports—Removal of causes—Motion for new trial—Forcible entries, etc.

Section four of chapter twenty-seven of the General Statutes, relative to reporter of 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 from the said municipal court to the supreme court of the state of Minnesota in the same manner, and upon like proceedings, and with like effect, as from the district courts: *provided, however*, that when a motion for a new trial is made upon the minutes of the judge, or upon the minutes of the stenographic reporter, where there is such a reporter, it may be heard at the term of court next succeeding the term at which the trial is had, or the verdict or decision rendered. And said municipal court shall have jurisdiction of actions of forcible entries and unlawful detainers, and may fix return-days for such actions on other than the regular return of said court; and chapter eighty-four of the General Statutes, relative to forcible entries and unlawful detainers, shall apply to said municipal court; and the summons issued by the clerk in such actions may be in the form as follows:

State of Minnesota,	}	ss.	Municipal Court,
County of Hennepin,			City of Minneapolis.

State of Minnesota, to any police officer of the city of Minneapolis, to the sheriff or any constable of the county aforesaid:

Whereas, \_\_\_\_\_, of \_\_\_\_\_, in \_\_\_\_\_, has filed in the office of the clerk of the above-named court complaint against \_\_\_\_\_, of the \_\_\_\_\_, in the county of Hennepin and state aforesaid, for that the said \_\_\_\_\_, now does \_\_\_\_\_, at \_\_\_\_\_, in said Hennepin county, wrongfully and unlawfully detain from the said \_\_\_\_\_, complainant, the possession \_\_\_\_\_ of the following described premises lying and being in the \_\_\_\_\_, in the county of Hennepin, aforesaid, viz.: \_\_\_\_\_

Wherefore \_\_\_\_\_, complainant, asks that he have judgment against the said \_\_\_\_\_ for the restitution of the premises hereinbefore described according to law, and for the costs and disbursements of this action.

Therefore, you are hereby commanded to summon the said \_\_\_\_\_, if he be found in said county, to appear before said court at the municipal courtroom in the city of Minneapolis, in said county of Hennepin, on \_\_\_\_\_ day the \_\_\_\_\_ day of \_\_\_\_\_, 188—, at nine o'clock in the forenoon, then and there to make, answer to, and defend against the \_\_\_\_\_, complainant aforesaid, and further to deal with according to law, and make due return to said court of this summons, with your doings thereon.

Witness the honorable municipal judge, at the city of Minneapolis, this \_\_\_\_\_ day of \_\_\_\_\_, in the year one thousand eight hundred and eighty \_\_\_\_\_.

\_\_\_\_\_  
Clerk of the Municipal Court.

(*Sp. Laws* 1874, c. 141, § 13, as amended 1875, c. 4, § 3; 1885, *Sp. Laws*, c. 74, § 10; 1887, c. 21, § 5.)

In forcible entry and detainer cases in this court, an appeal can only be taken from the final judgment. *Gray v. Hurley*, 28 Minn. 388, 10 N. W. Rep. 417.

## \*§ 123. Garnishments.

Proceedings against garnishees may be instituted in the same manner as in the district courts of the state, or in justices' courts; but the summons may be served, either by an officer or any indifferent person, at any place within the state of Minnesota, and the service shall in all cases be personal. The

summons shall require the garnishee to appear before the said court, or the judge thereof, at a time and place mentioned therein, not less than 10 days from the service thereof, and answer touching his indebtedness to the defendant, and any property, money, or effects of the defendant in his possession or under his control; and the summons may be made returnable at any term of said municipal court 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 of said court or the person who served the garnishee summons, or by the plaintiff or his attorney, and shall be served on the defendant at least three days before the time specified in the same for the appearance of the garnishee. 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. (*Sp. Laws* 1874, c. 141, § 15, as amended 1883, *Sp. Laws*, c. 48, § 11; *Sp. Laws* 1885, c. 74, § 11.)

**\*§ 124. Proceedings in criminal cases.**

Complaints in criminal cases may be made to the clerk when the court is 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, discretion, and power to act in receiving complaints and issuing the warrants of said courts in criminal cases. And complaints, warrants, and 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 adapt 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 where alleged offenders shall be in custody, and brought before the court or the clerk without a 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 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 a 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. In 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. In cases where the offense charged is bastardy, proceedings shall be as near as may be substantially as provided in chapter seventeen, General Statutes of one thousand eight hundred and seventy-four. (*Sp. Laws* 1874, c. 141, § 16, as amended 1883, *Sp. Laws*, c. 48, § 12; *Sp. Laws* 1885, c. 74, § 12.)

**\*§ 125. Salaries—Service of process—Fees.**

The judge and special judge of said court shall each receive a salary of twenty-five hundred dollars per year, and the clerk of said court a salary of eighteen hundred dollars per year, and to the deputy-clerks who may be appointed to assist the clerk in the discharge of the duties of his office, as follows: To the first deputy the sum of twelve hundred dollars per year, and to the second deputy the sum of eight hundred dollars per year, payable from the city treasury of the said city of Minneapolis, in quarterly installments; and neither the said judge nor clerk shall receive any other fee or compensation for his services. But in all proceedings had in said municipal court, like fees shall be charged and collected by the clerk, as costs, as are allowed by law to the clerk of the district court of Hennepin county, or to justices of the

peace in proceedings and upon trials before them for similar services. It shall be the duty of the chief of police of said city of Minneapolis to serve, or cause to be served forthwith, and it shall be the duty of the police officers of said city to serve, all processes issued by said court, except as otherwise provided in this act. Police officers, in making service of any process, or doing other duty in respect to causes in said court, shall note and return to the court for collection such fees for such services as are allowed to constables for the like services in justice's court. And all fees so charged by the clerk or by any police officer shall be collected by the clerk as costs, and by him be accounted for and paid over to the city treasurer of said city, as hereinbefore provided. The clerk shall pay witnesses in criminal actions the fees to which they may be entitled, when no other provision shall be made by law for such payment, taking receipts therefor in such form as the court may direct, which receipts shall be sufficient vouchers for the payment of the sums therein named, which said sums shall be noted upon the monthly reports of said clerk, and deducted from the amount therein otherwise shown to be due to the city, and all witness fees collected by the clerk and not paid to witnesses as aforesaid shall be paid over to the city the same as other fees accruing to the city, and all balances of deposits for costs remaining in the hands of said clerk for one month after the termination of any action, or for a like period after an abandonment of or failure to prosecute the same, and all other deposits or money arising from bail-bonds, recognizances, and payment of penalties thereon or otherwise shall be paid over to the city on the first Monday of the month following: *provided*, that in the event that the party or parties who may be entitled to receive said balance of deposits or other moneys, or any portion thereof, may demand the same of said clerk at any time thereafter, and, upon giving a receipt therefor to the clerk, he shall pay over the same, and said receipt shall be sufficient voucher for the same, in like manner as provided herein in the case of receipts for witness fees. No fees shall be charged against either city, county, or state. (*Sp. Laws 1874, c. 141, § 17, as amended 1883, Sp. Laws, c. 43, § 13; Sp. Laws 1885, c. 74, § 13; Sp. Laws 1887, c. 21, § 6.*)

**\*§ 126. Police officers attending court.**

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 service, 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 dollars, or by imprisonment not exceeding thirty days. And it shall be the duty of the chief of police, or clerk of the municipal court, or any other official of said city who may have knowledge of such failure so to pay over said fees, to forthwith cause complaint to be made against said police officer: *provided*, that this section shall not be so construed as to require any officer or officers so to pay over said fees in cases in which said officers, being regularly or specially appointed, designated, or detailed for detective duty, and being in pursuit of any person or persons charged with any crime or misdemeanor, shall, under the advice or with the consent of the county attorney of the county of Hennepin, or of the city attorney of the city of Minneapolis, pursue said alleged offender or offenders beyond the limits of said city of Minneapolis, in which event said officer or officers shall be entitled to receive for his or their own use and benefit all fees for such pursuit, and all rewards offered for the apprehension of such offenders. (*Sp. Laws 1874, c. 141, § 18, as amended 1883, Sp. Laws, c. 43, § 14.*)

**\*§ 127. Absence of judge — District judge to hold court—  
Actions involving title to realty.**

In the case of sickness or absence of the judge of the municipal court, and of the special judge, either of the judges of the district court for the county of Hennepin may, and hereby is authorized and empowered to, hold said municipal court, and perform all the duties and exercise all the functions of municipal judge, and either of said judges of said district court may, upon request of the municipal judge, act as the judge of said municipal court in the trial of any particular case pending therein. 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 of said county, and the cause shall be proceeded with in the court to which it shall be transferred as if originally commenced therein. (*Sp. Laws 1874, c. 141, § 19, as amended by Sp. Laws, 1878, c. 65, § 6; Sp. Laws 1883, c. 48, § 15.*)

This section and § 37, c. 65, *infra*, should be held to apply to civil actions and proceedings exclusively, and not to those of a criminal character, and whenever a question of title to real estate is involved in criminal proceedings in either court for obstructing a highway, the further proceedings should be had under c. 65, § 169. *State v. Sweeney, 33 Minn. 23, 21 N. W. Rep. 847.*

**\*§ 128. Prosecuting officers.**

The city attorney of the city of Minneapolis shall have charge of the prosecution of all criminal proceedings before said municipal court except the trial of persons charged with having committed, within the county of Hennepin but without the city of Minneapolis, offenses against the criminal laws of the state, and except the preliminary examination of all persons charged with offenses against the criminal laws of the state, which cases the county attorney of the county of Hennepin shall have charge of and prosecute. (*Sp. Laws 1874, c. 141, § 20, as amended 1883, Sp. Laws, c. 55.*)

**\*§ 130. Justices of the peace superseded.**

Upon the election and qualification of the municipal judge all causes and proceedings then pending before justices of the peace within said city shall forthwith by said justices be transferred to said municipal court, with all papers and records concerning the same, and 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. And the dockets, records, files, and papers in the custody of any and all justices of the peace of said city shall at once be transferred and turned over to said municipal court, which shall have full jurisdiction to finish and complete all proceedings pending before any justice of the peace, and to enforce, by execution or otherwise, all judgments theretofore rendered by justices of the peace within the present city of Minneapolis, 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 justice of the peace within the city of Minneapolis shall issue any process, nor take cognizance of any action or proceedings, civil or criminal, but the jurisdiction of said municipal court shall, within said city, be exclusive in all cases heretofore cognizable before justices of the peace, except that this act shall not affect the jurisdiction of any court of record having general jurisdiction such as is conferred upon the district court. And no justice of the peace shall have jurisdiction to issue any summons or process in any civil action excepting executions to be served within said city of Minneapolis, and any service of any such summons or process from a justice of the peace made within said city shall be void. (*Sp. Laws 1874, c. 141, § 22, as amended 1885, Sp. Laws, c. 74, § 14.*)

As to constitutionality of the last clause, see *Burke v. Railroad Co., 35 Minn. 172, 23 N. W. Rep. 190.*

See *Shatto v. Latham*, 33 Minn. 37, 21 N. W. Rep. 838; *Higgins v. Beveridge*, 35 Minn. 285, 28 N. W. Rep. 506.

## MUNICIPAL COURT OF STILLWATER.

**\*§ 131. Establishment continued.**

The court of record heretofore established in the city of Stillwater, called "Municipal Court," is hereby continued for the transaction of all business which may lawfully come before it. (1881, *Sp. Laws*, c. 92, *subc.* 12, § 1.)

**\*§ 131a. Court legally created.**

The municipal court of the city of Stillwater, Washington county, Minnesota, heretofore created by chapter two hundred of the Special Laws of the year one thousand eight hundred and seventy-six, and continued by chapter ninety-two of the Special Laws of the year one thousand eight hundred and eighty-one, is hereby declared legally created and constituted, and shall be governed by, and possess all the power and jurisdiction conferred upon it by, said chapter ninety-two of the Special Laws of the year one thousand eight hundred and eighty-one. (*Sp. Laws* 1885, c. 118.)

**\*§ 131b. Jurisdiction — Powers of judge — Disposition of fines.**

The municipal court of said city shall have exclusive cognizance and jurisdiction of all trials and examinations within said city, cognizable before a justice of the peace under the laws of the state, and of all suits, prosecutions, and proceedings for the recovery of all forfeitures, fines, and penalties or inflictions of punishments for the breach of any by-laws, regulations, or ordinances of said city, and of all offenses against the same, and in all cases of convictions for assaults, batteries, and affrays, disorderly conduct, breach of the peace, keeping or frequenting disorderly houses or houses of ill fame, the municipal court may, in addition to any fine or punishment authorized or imposed, or without such fine or other punishment, compel the accused to give security to keep the peace and be of good behavior for a period not exceeding six months, and in a sum not exceeding five hundred dollars. The judge and special judge of said court shall have powers of justices of the peace as conservators of the peace, and in all ministerial and *ex parte* matters, and shall have all the powers of justices of the peace to take depositions to be used in other courts. All fines and penalties imposed by said court for infractions of the by-laws, regulations, or ordinances of the city shall belong to and be a part of the revenue of said city. Said court shall also have power in all criminal actions within its jurisdiction, when the punishment is by imprisonment, or by imprisonment in default of payment of fine, to sentence any offender to hard labor in any workhouse established by the city for that purpose, or, in cases of male offender, to sentence him to labor on any public work or improvement, in like manner and under the same qualifications as hereinafter provided in case of offenses against city ordinances. (1881, *Sp. Laws*, c. 92, *subc.* 3, § 13, as amended 1887, *Sp. Laws*, c. 6, § 10.)

**\*§ 132. Jurisdiction—Clerk—Seal.**

Said court shall have a clerk and a seal, and shall have, in addition to the jurisdiction and powers now conferred by the general laws of this state upon justices of the peace, and the powers conferred by this charter, cognizance of and jurisdiction to hear, try, and determine civil actions or proceedings where the amount in controversy does not exceed five hundred dollars, or where, in case the action is for the recovery of personal property, the value of such property, as alleged in the complaint or answer, does not exceed five hundred dollars: *provided, however*, that such cognizance and jurisdiction shall only extend to actions of the same nature and character, save as to amount, now or

hereafter cognizable before a justice of the peace: *and provided, further*, that where a counter-claim in excess of five hundred dollars over plaintiff's claim, or where any equitable defense or grounds for equitable relief, of a nature not cognizable before a justice of the peace, is interposed, or where it appears on the trial of any action, from the evidence of either party, that the title to real estate is involved, which title is disputed by the other party, 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 Washington 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 an appeal from justice's court, and thereupon the said district court shall proceed in the cause to final judgment and execution, according to law, the same as if the said suit had been originally commenced in said court, and the costs shall abide the event of the suit, except that the plaintiff shall advance the costs of the said municipal court in the suit. (*Sp. Laws 1881, c. 92, subc. 12, § 2, as amended 1887, Sp. Laws, c. 6, § 46.*)

Where title comes in issue in an action of forcible entry and detainer, the court loses jurisdiction, and should certify the cause to the district court. *Bassett v. Fortin*, 30 Minn. 27, 14 N. W. Rep. 56.

**\*§ 133. Election of judge—Vacancies.**

There shall be elected at the general city election in the year one thousand eight hundred and eighty-six, in said city, and every fourth year thereafter, a suitable person, with the qualifications hereinafter mentioned, to the office of judge of said court, to be called "Municipal Judge," who shall hold his office for the term of four years, and until his successor is elected and qualified. In case of any vacancy in the office of municipal judge, occurring after such election in the year one thousand eight hundred and eighty-six, the governor of the state of Minnesota shall appoint to fill the vacancy some person qualified, as hereinafter mentioned, who shall hold his office for the unexpired term, or until his successor is elected and qualified. At the next annual city election, occurring more than thirty days after a vacancy in said office shall have happened, a judge of said court, qualified as aforesaid, shall be elected for a full term and until his successor is elected and qualified. In case the said vacancy shall have occurred within a period of thirty days before the general city election, then the said judge shall be elected at the general city election in the year following that in which the vacancy shall have happened, for the said full term, and until his successor is elected and qualified. (*Sp. Laws 1881, c. 92, subc. 12, § 3, as amended Sp. Laws 1885, c. 72.*)

Cited, *Carli v. Rhener*, 27 Minn. 293, 7 N. W. Rep. 139.

**\*§ 134. Judge—Qualifications—Powers.**

Every judge of said court shall be a resident of the city of Stillwater, and a person duly admitted to practice as an attorney in the courts of this state; and before entering upon the duties of his office he shall take and subscribe an oath as prescribed by the General Statutes for judicial offices, which oath shall be filed in the office of the city clerk of said city. The judge of said municipal court shall have the general powers of judges of courts of record, and may administer oaths, take and certify acknowledgments in all cases, and as conservator of the peace shall have all powers and authority which is by law vested in justices of the peace or any other judicial officer. (*Id.* § 4.)

**\*§ 135. Clerk—Oath—Bond—Deputy.**

The city clerk of said city shall be *ex officio* clerk of the said municipal court. Such clerk, before he enters upon the duties of his office, shall take and subscribe an oath to support the constitution of the United States and of the state of Minnesota, and to faithfully and honestly discharge and perform the duties

of his office, and shall execute to the city of Stillwater a penal bond, in such sum and with such sureties as the council shall direct and approve, conditioned that he will account and pay over to the treasurer of said city, on the first Monday of every month, all fines, penalties, fees, and other moneys belonging to or to go to said city which may have come into his hands during the month next preceding, and that he will at all times pay over to all other persons, on demand, all moneys to which they may be entitled which may have come into his hands in virtue or by reason of his office. Such oath and bond shall be filed in the office of the treasurer of said city. Such clerk shall have power to appoint, subject to the approval of the council, a deputy-clerk, with the like powers of the clerk, for whose acts the said clerk shall be responsible. Such deputy-clerk shall hold his office during the term of office of the clerk so appointing him, or until his appointment is revoked by such clerk, or until removed by a two-thirds vote of all the aldermen elected to the city council, and, when so removed, shall not be again appointed. (*Sp. Laws 1881, c. 92, subc. 12, § 5, as amended 1887, Sp. Laws, c. 6, § 47.*)

**\*§ 136. Powers of court—Process.**

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 it shall not have jurisdiction to issue writs of *habeas corpus, quo warranto, ne exeat, mandamus*, prohibition, or injunction. It shall also have the powers and jurisdiction conferred on justices of the peace by chapter eighty-four, General Statutes, and the proceeding shall be the same as therein provided, except that no appeal shall be allowed except to the supreme court. All process shall be tested in the name of the judge, and issued under the seal of the court, and signed by the clerk, who shall be styled "clerk;" 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 records 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 Stillwater, or to the sheriff or any constable of said county, and may be served the same as a summons in the district court, and service by publication may be ordered and made in like manner. (*Id. § 6.*)

**\*§ 136a. Process—Place of service.**

That the municipal court of the city of Stillwater is hereby prohibited from sending any summons, process, or writ outside of the boundaries of the county of Washington, and all summons, process, or writ of said court outside of the county of Washington, and the service thereof outside of said county, is hereby declared to be absolutely null, void, and of no effect, and the jurisdiction of said municipal court outside of said Washington county is hereby abolished. (*Sp. Laws 1879, c. 341.*)

**\*§ 137. Court-room—Duties of judge and clerk.**

The said municipal court shall be held in the city of Stillwater, at some suitable place to be provided therefor by the city council. Its judge shall be the 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 sum-

# MINNESOTA STATUTES 1888 SUPPLEMENT

mary manner all cases which shall be brought before him by the police officers of the city or otherwise, either with or without process, for violation of the ordinances, laws, regulations, or by-laws of said city, and in the manner provided by law proceed to hear, examine, try, and dispose of all cases which may be brought before him for violation of the criminal laws of this state committed within the county of Washington. 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. (*Sp. Laws 1881, c. 92, subc. 12, § 7, as amended 1887, Sp. Laws, c. 6, § 48.*)

**\*§ 138. Duties of clerk.**

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, 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 affidavits, 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, and do all other things and acts necessary or proper to the enforcing and carrying out the jurisdiction of the municipal court. He shall receive and collect all fines, penalties, and fees of every kind accruing to the court, or any officer thereof, including police officers, and keep full, accurate, and detailed accounts of the same; and shall, on the first Monday in every month, deliver over to the city treasurer of the city of Stillwater moneys so received, with detailed accounts thereof, and take his receipt therefor. (*Id.* § 8.)

**\*§ 139. Terms—Summons—Service—Pleadings—Practice.**

The municipal court shall hold regular terms for the trial of civil actions on the first and third Tuesdays 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 or by writ of attachment to be issued by the clerk. The form of summons may be as follows:

State of Minnesota, County of Washington,	} ss.	Municipal Court, City of Stillwater.
--	-------	---

The state of Minnesota, to any police officer of the city of Stillwater, or the sheriff or any constable of said county:

You are hereby commanded to summon \_\_\_\_\_; if \_\_\_\_\_ shall be found within the county of Washington, to be and appear before the municipal court of the city of Stillwater, at a term thereof to be holden on Tuesday, the \_\_\_\_\_ of \_\_\_\_\_, A. D. 18--., at the opening of the court and to answer to \_\_\_\_\_, whose complaint is on file in said court; and have you then and there this writ. The amount claimed by the plaintiff in said complaint is the sum of \_\_\_\_\_ dollars and \_\_\_\_\_ cents, and interest thereon from and since the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18--., at the rate of \_\_\_\_\_ per cent. per annum.

Witness the Honorable \_\_\_\_\_, municipal judge, this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18--.

\_\_\_\_\_  
Clerk of the Municipal Court.

The summons may be served by any indifferent person, or the summons may be in any other form which the court by rule prescribe, and shall be

# MINNESOTA STATUTES 1888 SUPPLEMENT

served upon the defendant at least six days, including the day of service and excluding the return-day, before the term at which the same is made returnable. No summons shall issue until the complaint in the action shall be made in writing, and filed with the clerk. If the defendant fail 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 at some [future] 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 presented in writing, and filed with the clerk. All of such pleadings shall be verified by the party or his agent or attorney to the effect that the same is true as he verily believes. Either party may demur to any pleading of his adversary, as in the district court, but all pleadings in this court shall be construed liberally, and the court may, for good cause, in its discretion, and on such terms as it may deem equitable, open any default within six 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 a pleading and the evidence, unless satisfied that the adverse party is prejudiced thereby. Either party shall be entitled to any continuance of any civil action, except in the case of proceedings under the provisions of chapter eighty-four, General Statutes of Minnesota, until the next term of the court following the term at which the summons shall be returnable; and further continuance may be granted upon sufficient cause shown, and on such terms as may be just. 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 cost in such sum as the court may designate by such rule, before any summons or other process shall issue in the action, or at any other time; and the clerk may demand and receive payment of all court costs before a party to any action shall be entitled to an execution therein. The counter-claim in the defendant's answer may be such a one as could be interposed in the district court. (*Sp. Laws 1881, c. 92, subc. 12, § 9, as amended 1887, Sp. Laws, c. 6, § 49.*)

**\*§ 140. Attachment.**

Any creditor desiring to proceed by attachment in said court shall, by himself, his agent or attorney, make and file his complaint in writing, together with an affidavit similar to the affidavit required by law in an application for a writ of attachment in justice's court, and also cause to be filed a bond or undertaking with sufficient surety to be approved by the judge, and similar to the bond or undertaking required on a like application in justice's court, except that the limit of liability thereon shall be mentioned therein as not exceeding one hundred dollars, and the court may thereafter require an additional bond to be filed in such further sum as shall be just in the premises. The writ of attachment may be in form as follows:

State of Minnesota, County of Washington,	}	ss.	Municipal Court, City of Stillwater.
--	---	-----	---

The state of Minnesota, to any police officer of the city of Stillwater, or the sheriff or any constable of said county:

You are hereby commanded to attach the goods, chattels, moneys, effects, and credits of \_\_\_\_\_, or so much thereof as shall be sufficient to satisfy the sum of \_\_\_\_\_ dollars, with interest and costs of suit, such in whosoever hands or possession the same may be found, in said county of Washington, and so provide that the same may be subject to further proceedings as the law requires, and also to summon, \_\_\_\_\_, the said \_\_\_\_\_, if to be found within said county, to be and appear before the municipal court of the city of Stillwater at a term thereof to be holden on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, A.

# MINNESOTA STATUTES 1888 SUPPLEMENT

64.]

DISTRICT COURT.

581

D. 18—, at the opening of the court, and answer to ———, whose complaint is on file in said court, in a civil action; and have you then and there this writ.

Witness the Honorable ———, municipal judge, this ——— day of ———, A. D. 18—.

\_\_\_\_\_  
Clerk of the Municipal Court.

—Or the writ may be in any other form that the court may by rule prescribe, and shall in all cases be returnable as an ordinary summons. The defendant may at any time before the time for answering expires, or at any time thereafter, when he has answered, and before trial, apply to the court on notice to vacate the writ of attachment. If the motion is made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits in addition to those on which the writ of attachment was allowed. In all other respects the service of the writ, and other proceedings thereon, shall be similar, as near as may be, to the service of such writ and proceedings in justice court: *provided, however*, that in all cases where such writ shall be served on the defendant, personal judgment may be entered in said action, whether property be attached by virtue of such process or not. (*Id.* § 10, as amended 1887, *Sp. Laws*, c. 6, § 50.)

**\*§ 141. Replevin.**

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 justice court in a like action. The plaintiff, or some person on his behalf, shall execute a bond or undertaking, with surety to be approved by the judge, conditioned similar to bonds or undertakings in such actions in justice court, and file such bond or undertaking, and an action may be maintained upon such bonds or undertakings as upon similar bonds or undertakings filed in like actions in justice courts. The clerk shall thereupon issue the writ, which may be in form as follows:

State of Minnesota, County of Washington, }	ss.	Municipal Court. City of Stillwater.
--	-----	---

The state of Minnesota to any police officer of the city of Stillwater, or to the sheriff or any constable of said county:

Whereas, ——— complains that ——— has become possessed of and unjustly detains from the said ——— the following described goods and chattels, that is to say, (describing the articles with reasonable certainty, and stating their alleged value:) Therefore you are hereby commanded that you cause the same goods and chattels to be replevied without delay, and delivered to said ———, and to summon the said ———, if to be found within said county, to be and appear before the municipal court of the city of Stillwater, at a term thereof to be holden on ———, the ——— day of ———, A. D. 18—, at the opening of the court, and answer to ———, whose complaint is on file in said court, in a civil action; and have you then and there this writ.

Witness the Honorable ———, municipal judge, this ——— day of ———, A. D. 18—.

\_\_\_\_\_  
Clerk of the Municipal Court.

—Or the writ may be in any other form that the court may by rule prescribe. The writ shall be served, and all proceedings thereunder had, in the same manner (except as to the times and forms of pleading and trial) as upon similar proceedings in justice court. But the officer executing the writ shall retain the property taken under it in his own custody for three 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 or undertaking, with one or more sureties, to be approved by the judge, conditioned as in like cases in the district court, and file such bond, the clerk shall thereupon issue an order to the officer to redeliver such property to the defendant. (*Sp. Laws 1881, c. 92, subc. 12, § 11, as amended Sp. Laws 1887, c. 6, § 51.*)

**\*§ 142. Calendar.**

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. (*Id.* § 12.)

**\*§ 143. Jury trial—Jurors.**

Trial by jury may be had in the municipal court as in courts of justices of the peace, and the jury shall be selected in the same manner as in justices' court, and *venires* therefor be issued by the clerk, and talesmen may be selected in the usual manner, but no person shall be compelled to serve as a juror in said court oftener than once in each month, nor shall any person who has served as a juror in said court be eligible as a juror or talesman in any cause that may be tried in said court within one month thereafter if objected to by either party. Three peremptory challenges of talesmen may be made by either party. 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 the district court, and exceptions to the rulings and decisions of the judge, and his charges and refusals to charge, may be taken as upon trials in the district court. Where no other provisions are otherwise made in this act, said municipal court is vested with all the powers which are possessed by the district courts in this state, and all laws of a general nature apply to the said municipal court, so far as the same can be made applicable, and not inconsistent with the provisions of this act. Jurors in said municipal court shall be entitled to one dollar, in the trial of civil actions, per day, to be collected and paid in the same manner as in justices' courts; but the party demanding a jury in any civil action shall be required to advance the jury fee of one dollar for each juror before the jury is sworn. Jurors in criminal cases shall be entitled to like fees as jurors in civil cases, which said fees shall be taxed as a part of the costs in the case. (*Id.* § 13.)

**\*§ 144. Referees—Costs—Appeals.**

Title eighteen of chapter sixty-six of the General Statutes, relative to "trial by referees," title nineteen of the same chapter, relative to "exceptions," and title twenty of the same chapter, relative to "new trials," shall apply to the said municipal court. Disbursements shall be allowed the prevailing party in said municipal court, and cost to be taxed forthwith without notice. Such costs shall be as follows: To the plaintiff upon a judgment in his favor, five dollars. To the plaintiff upon a judgment in his favor upon a trial on the merits, where the amount thereof, or the value of personal property recovered, exclusive of his disbursements, exceeds fifty dollars, an additional five dollars. To the defendant, upon a discontinuance or dismissal after issue joined, five dollars; and when judgment is rendered in his favor on the merits, after trial of an issue of fact, five dollars; and if the amount of money or value of property claimed in the complaint exceeds fifty dollars, an additional five dollars. Appeals from this court shall be in all cases to the supreme court, where they lie in similar cases from judgments and orders of the district court. (*Id.* § 14, as amended 1887, c. 6, § 52.)

**\*§ 145. Judgment—Transcript—Lien—Execution.**

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 upon entry of judgment against the goods and chattels of the judgment debtor, returnable within thirty days. Judgment may be stayed in this court the same as in justices' courts. Every person in whose favor a judgment is rendered in said municipal court for an amount exceeding ten dollars besides costs may, upon paying the fee therefor, and all unpaid fees payable to the clerk in such action, demand and shall receive from such clerk a transcript of such judgment duly certified, and file the same in the office of the clerk of the district court of the county of Washington, who shall file and docket the same as in the case of transcripts of judgment from courts of justices of the peace; and every such judgment shall become a lien upon the real estate of the debtor from the filing of such transcript to the same extent as a judgment of the said district court, and shall thereafter, so far as relates to the enforcement of the same, 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 such transcript while a writ of execution is in the hands of an officer, and not returned or lost, and shall note on the records 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 such judgment, in case of the loss of the transcript first given. (*Id.* § 15.)

**\*§ 146. Garnishment.**

Proceedings against garnishees may be instituted in the same manner as in justices' courts, but the summons may be served either by an 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 which may be named therein, not less than six days, and the notice required to be served on the defendant in the action may be signed either by the clerk 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 if the proceedings were in the district court. (*Id.* § 16.)

**\*§ 147. Criminal proceedings.**

Complaints in criminal cases, where the defendant is not in custody, may be made to the court while in session, or to the judge or special judge when not in session, and shall be made in writing, or reduced to writing by such judge, 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 is hereby vested with full authority and power to issue the warrants of said court in criminal cases on filing such complaints; and complaints, warrants, and other process in criminal cases may follow substantially the same forms heretofore in use by the justices of the peace or the city justice, 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 where alleged offenders shall be in custody and brought before the court 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 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 a failure to plead, the clerk shall enter a plea of not guilty, and a former acquittal or con-

viction for the same offense may be proved under that plea as well as if formally pleaded. In the examination of offenders charged with indictable offenses the judge shall keep minutes of the examination, and the clerk shall make the proper return to the court before which the party charged with the offense may be bound to appear. (*Sp. Laws 1881, c. 92, subc. 12, § 17, as amended 1887, Sp. Laws, c. 6, § 53.*)

**\*§ 148. Salaries—Fees.**

The salary of the judge of said court shall be fixed by the city council at the beginning of each term, which shall not be less than one thousand dollars nor greater than two thousand dollars per year; and the clerk of said court a salary of six hundred dollars per annum, payable from the treasury of the city of Stillwater, in monthly installments. Said judge may be, by the city council, granted leave of absence for not more than thirty days in any year, and no deduction shall be made from his salary on account of such absence. Neither the said judge, clerk, nor deputy-clerk of said court shall receive any fee or compensation for his services other than his salary as fixed by law. In all proceedings had in said municipal court, like fees shall be charged and collected by the clerk, as costs, as are allowed by law to justices of the peace in proceedings and upon trials before them, or for similar services. 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 respect to causes in said court, shall note and return to the court for collection such fees as are allowed to constables for the like services in justice courts; and all fees, whether so charged by the clerk or any police officer, whether due from the county on preliminary examinations or otherwise, shall be collected by the clerk as costs, and by him be accounted for and paid over to the city treasurer of said city, as hereinbefore provided for. (*Id. § 18, as amended, Sp. Laws 1887, c. 6, § 54.*)

**\*§ 149. Officers attending court.**

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 the proceedings. Police officers of said city shall hereafter receive for their services no other compensation than the salary paid them by said city, except as otherwise provided in this act, [to which this is amendatory;] and if any fee shall be paid to any police officer for any service he shall forthwith pay the same over to the clerk of said municipal court, for the use of said city, and any failure to do so shall be a misdemeanor, punishable by a fine not exceeding one hundred dollars, or by imprisonment not exceeding thirty days. The mayor of said city shall have the power in his discretion to appoint one or more persons, approved by the city council, as policemen for special attendance and duty in said court, irrespective of the general or special rules or legal regulations and enactments relative to the qualifications of policemen; but such persons shall receive the same but no greater compensation, unless the council direct greater compensation, as ordinary police, and all policemen attending said court may be required to give bonds to said city, in such sum as the council shall direct, for the performance of their duties, for the use of all persons interested: *provided, however,* that the above shall not affect the powers and duties of the general police in said court. (*Id. § 19, as amended, Sp. Laws 1887, c. 6, § 55.*)

**\*§ 150. Special judge—Judge may practice as attorney.**

There shall be one special judge of said municipal court, whose manner of election, term of office, powers, and duties shall be the same as those of the

municipal judge, except as otherwise provided in this section, and his successors shall be elected, and vacancies in his office filled, in like manner, and he shall receive a salary of one hundred dollars per year, payable from the treasury of said city. In case of a press of business in said court, or in case of the absence or sickness of the municipal judge, on receiving the notice hereinafter provided for, the said special judge shall act as judge of said court; and when the special judge so acts at the request of the municipal judge, the said special judge and the municipal judge shall each have and exercise the powers of said court. If, on the return of process, or at any time before the trial commences, in any action or proceeding, civil or criminal, either party shall make it appear by affidavit that the judge is a material witness in the case, or shall make it appear by affidavit that from prejudice or other cause he has good cause to believe that the judge will not decide impartially in the matter, and shall, before making the transfer as hereinafter provided, in all civil actions, deposit with the clerk the sum of five dollars, as payment of one day's salary of said special judge, the said municipal judge shall forthwith turn over the said cause, with all the papers and records therein, to the special judge, who shall thereafter, on receiving notice of such transfer as hereinafter provided, act as judge in said case, with full powers as judge of said court. If at any time the municipal judge shall require the special judge to sit as judge of said court by reason of the intended absence of said judge, or the transfer of any case or proceeding to said special judge, as above provided or otherwise, said judge shall file a written notice with the clerk of said court stating such fact, and said clerk shall thereupon cause a copy of such notice to be delivered to said special judge; and in any case of the absence of said municipal judge from said court without having filed such notice, the said clerk shall cause notice in writing of such absence to be given to said special judge, and on receipt of any of such notices said special judge shall, during the time in such notice specified, and until the return of the municipal judge, act as judge of said court, with full powers as such. Said special judge shall file all such notices received by him with the city clerk, with the certificate of said special judge indorsed thereon stating the number of days he shall have acted as judge of said court in pursuance thereof. Said special judge shall not act on the trial or examination of any case or proceeding except as above specified, save to complete any trial, proceeding, or examination which may be partly completed and pending before him; but said special judge may at all times exercise all of the powers of a judge of said court at chambers. Any such special judge, acting as judge of said court, shall receive a compensation, in addition to the salary fixed by this act, at the rate of five dollars per day; the same to be paid by the city of Stillwater, and deducted from the salary of the municipal judge, except that when the same shall be for services performed by said special judge when the said municipal judge is absent, with the consent of the city council, or when the special judge is called in to assist the said municipal judge, during an unusual press of business, in which cases the said special judge shall be paid by the city, and the same shall not 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 said court, but when such judge is acting as judge in said court, he shall take no action in said case or proceeding, save to adjourn the same. Nothing in this chapter shall be construed to prohibit the judge of this court from practicing as an attorney in any court in this state save said municipal court. (*Id.* § 20, as amended 1887, *Sp. Laws*, c. 6, § 56.)

**\*§ 151. Prosecuting officers.**

The city attorney of the city of Stillwater shall have charge of the prosecution of all criminal cases before said municipal court where the offense charged is for an infraction of the by-laws or ordinances of the city; and the county

attorney of the county of Washington shall have charge of and act in the prosecution of offenders before said court, charged with offenses under the laws of the state of Minnesota. (*Sp. Laws 1881, c. 92, subc. 12, § 21, as amended 1887, Sp. Laws, c. 6, § 57.*)

**\*§ 152. Blanks, furniture, etc.**

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, court-room, jury-room, and office furniture, lights and fuel for the use of the court and the officers thereof, at the expense of the said city. (*Id.* § 22.)

**\*§ 153. Justices of the peace superseded.**

All causes and proceedings pending before justices of the peace within the said city at the time of the passage of this act shall forthwith by said justices be transferred to said municipal court, with all papers and records concerning the same; and said municipal court shall take cognizance of such causes and proceedings as if the same were originally commenced in said municipal court, and the dockets, records, files, and papers in the custody of any and all justices of the peace of said city shall at once be transferred and turned over to the said municipal court, which shall have full jurisdiction to finish and complete all proceedings pending before any justice of the peace, and to enforce, by execution or otherwise, all judgments theretofore rendered by justices of the peace within the present city of Stillwater, and such judgment shall stand on the same footing as judgments of said municipal court. And from and after the passage of this act no justice of the peace within the city of Stillwater shall issue any process, or 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 causes arising within said city, and heretofore cognizable before the city justice, except that this clause shall not affect the jurisdiction of any court of record having general jurisdiction such as is conferred on the district court. (*Id.* § 23, as amended *Sp. Laws 1885, c. 73.*)

**\*§ 154. Same—Custody of books, etc.—Pending actions.**

The term of office of each justice of the peace now existing in said city shall cease at the end of the two years for which he was elected, and shall not continue until his successor is elected and qualified. The said municipal court shall have the custody and possession of all dockets, records, files, and papers of all justices in said city whose terms have expired, except where the same are lawfully in the possession of existing justices; and each justice of said city, upon the termination of his office as herein provided for, or other termination of his office, shall forthwith transfer all pending cases, and all dockets, records, files, and papers in his custody to the said municipal court, which shall have full jurisdiction to finish and complete all proceedings pending, when transferred, before any justice of the peace, and to enforce, by execution or otherwise, all judgments existing on such dockets, thus transferred or in his possession, of such court; and such judgments shall stand on the same footing as judgments of the said municipal court. The jurisdiction of said municipal court shall within said city be exclusive in all causes hereafter cognizable before justices of the peace, save as above excepted as to existing justices during their present terms of office, and 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. (*Id.* § 24.)

**\*§ 155. Transfer of actions.**

Where any transfer of any action before a justice of the peace now existing in said city is made under section eighteen of chapter sixty-five of the General

Statutes, such transfer, with all papers appertaining to the action, shall be made to the said municipal court, and not to another justice; and the said municipal court shall thereupon proceed to hear and determine the said action, and act thereupon in the same manner as if the same had been originally commenced therein. (*Id.* § 25.)

**\*§ 156. Appeals from justice's court.**

All appeals hereafter taken from the judgment of any justice of the peace now existing in said city shall be taken to the said municipal court, and not to the district court; and title eleven of chapter sixty-five, as amended, shall, save as [to] the court to which the appeal is to be taken, apply to the said appeal, and as far as applicable to the said municipal court in becoming possessed of any proceeding upon said appeal, and in all other respects. (*Id.* § 26.)

**\*§ 157. Costs in criminal cases.**

In all criminal cases tried in said court in which the defendant shall be convicted, the clerk shall tax as costs of court, and, if not paid, judgment shall be entered therefor against the defendant in the following sums, viz.: In cases where no warrant is issued, and the defendant upon being arraigned shall plead guilty, two dollars; in cases where warrants shall be issued, and the defendant upon arraignment pleads guilty, two and one-half dollars; in case where the defendant shall plead not guilty and shall be tried before the court, five dollars; in case where the defendant shall plead not guilty, and be tried before a jury, ten dollars. Said sums, respectively, to be in addition to all costs of witnesses, jurors, and other costs taxed in said actions, or either of them. (*Id.* § 27.)

**\*§ 158. Costs in examinations.**

In all examinations held by or before said court, to inquire of offenses of which said court shall not have final jurisdiction, the clerk shall tax as costs of said court for making each examination the same fees as are now allowed to justices of the peace for similar services, and fifty per cent. additional thereto. (*Id.* § 28.)

**\*§ 159. Deposit by plaintiff.**

The plaintiff, upon making his complaint, in all civil actions, shall pay to the clerk of said court one dollar for each one hundred dollars or fraction thereof claimed in the complaint. (*Id.* § 29.)

**\*§ 160. Attorneys.**

No person shall appear in any action or proceeding in said municipal court, to maintain or defend the same, unless previously admitted to practice as an attorney, as provided by chapter eighty-eight of the General Statutes of One Thousand Eight Hundred and Seventy-Eight. (*Added 1887, Sp. Laws, c. 6, § 58.*)

**\*§ 161. Territorial jurisdiction.**

The territorial jurisdiction of said court shall be equal to and co-extensive with that of justices of the peace under the general laws of this state. (*Sp. Laws 1881, c. 92, subc. 12, § 30.*)

**\*§ 162. Judge—Expiration of term—Incapacity—Pending actions.**

That any judge of said court before whom any trial or proceeding shall have been had, and whose term of office shall expire before a determination of such trial or proceeding, shall have full power and authority to decide and determine the same at any time within ten days after the expiration of his said term of office. In case any judge of said court before whom any trial or proceeding in said court has been commenced shall, before determination thereof,

for any reason become incapacitated from taking further proceedings therein, such cause or proceeding shall, on motion of either party thereto, be placed on the calendar of said court, and tried as though no steps had been taken therein. (*Added 1887, Sp. Laws, c. 6, § 59.*)

## MUNICIPAL COURT OF MANKATO.\*

**\*§ 163. Jurisdiction—Clerk—Seal—Removal of causes.**

There is hereby established in the city of Mankato, in the county of Blue Earth, 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, where the amounts in controversy does not exceed five hundred dollars. 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 Mankato, heretofore cognizable before a justice of the peace. It shall not have jurisdiction of actions for divorce; nor of any action where the relief asked for in the complaint is purely equitable in its nature; nor cases involving the title to real estate; nor for false imprisonment, libel, slander, malicious prosecution, criminal conversations, or seduction, or upon a promise to marry; nor for an action against an executor or administrator as such. And when in any cause pending in said court a counter-claim in excess of five hundred dollars over plaintiff's claim, or an equitable defense or ground for equitable relief, is interposed, or whenever it shall appear from the pleadings or upon the trial of any cause that the title to real estate is involved, the said court shall immediately cause an entry of the facts to be made of record, and cease all further proceedings in the cause, and order the clerk to certify and return to the district court in and for the county of Blue Earth a transcript of all entries made in the record relating to the cause, together with all process and papers relating to the cause, and the clerk shall, within ten days after being so ordered, make such certificate and return; and thereupon said district court shall proceed in the cause to final judgment and execution, the same as if said cause had been commenced in said district court, as near as may be, and the costs shall abide the event of the action: *provided*, the clerk of said municipal court shall not make said certificate or return until the costs chargeable by the clerk in favor of the city have been paid. (*Sp. Laws 1885, c. 119, § 1.*)

**\*§ 164. Judge—Election—Term—Vacancy.**

The qualified electors of the city of Mankato shall, at the general city election to be holden on the first Tuesday in April, in the year one thousand eight hundred and eighty-five, and on the day of the general city election every third 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 three years, and until his successor shall be elected and qualified. In case of any vacancy in the office of municipal judge the governor of the state of Minnesota shall appoint some qualified person to said office until the next annual city election, occurring more than thirty days after the vacancy shall have happened, when a judge shall be elected for a full term of three years. (*Id. § 2.*)

**\*§ 165. Judge — Qualifications — Oath — Powers — Special judge.**

The judge of the municipal court shall be a resident of the city of Mankato, and a qualified elector therein, a person learned in the law, and duly admitted

\*"An act to establish a municipal court in the city of Mankato, Blue Earth county, Minnesota." Approved March 7, 1885

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 recorder of said city. He shall have the general powers of judges of courts of record, 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 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 at the request of the municipal judge, 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 from the city at the rate of three dollars per day; and when said special judge shall act for any other cause than the sickness or disqualification of said municipal judge, three dollars per day for each day that said special judge shall so act shall be deducted from the salary of said municipal judge. This section shall not incapacitate such special judge from acting as attorney in said court; but, when such 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 or counselor in any court of this state, except in said municipal court. In all actions or proceedings in the district court of Blue Earth county wherein the judge of said court may enter a trial of said actions or proceedings, the same may be referred to the said municipal judge to hear, try, and determine, or report the evidence thereon, as may be ordered or agreed upon, and said judge so acting as referee shall be entitled to the same fee for [said] services as other referees. He may accept said reference with all the powers of a referee. (*Id.* § 3.)

**\*§ 166. Clerk—Oath—Bond.**

The city recorder of the city of Mankato shall be *ex officio* clerk of said court. Such clerk, before he enters upon the duties of his office, shall take and subscribe an oath to support the constitution of the United States and of the state of Minnesota, and to faithfully and honestly discharge and perform the duties of his office; and shall execute to the city of Mankato a penal bond in the sum of one thousand dollars, with two sureties, approved by the mayor of said city of Mankato, conditioned that he will account to and pay over to the said city, on the first Monday of every month, all fines, penalties, fees, and other moneys belonging to or to go to said city, which may have come into his hand during the month next preceding, and that he will at all times pay over to all [other] persons, on demand, all moneys to which they may be entitled, which have come into his hands in virtue or by reason of his said office. Such oath and bond shall be filed in the office of the city treasurer of said city. (*Id.* § 4.)

**\*§ 167. Powers of court—Process.**

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 its 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 attested in the name of the judge, and issued under the seal of the court, and signed by the clerk, who shall be styled "Clerk of the Municipal Court;" 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 form may be changed by the court from time to time in the absence of such prescribed forms of process in use either in courts of record of 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 Mankato, or to the sheriff or any constable of said Blue Earth county. (*Sp. Laws* 1885, c. 119, § 5.)

**\*§ 168. Court-room—Duties of judge and clerk.**

The municipal court shall be held in the city of Mankato, at some suitable place to be provided therefor by the city council. Its judge shall be the 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 causes 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 Blue Earth, or of the ordinances, laws, regulations, or by-laws of said city. The clerk of said court shall keep a record of all its 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. (*Id.* § 6.)

**\*§ 169. Clerk—Duties—Deputy.**

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 from sickness or with the consent of the judge; and in case of his absence the judge may appoint some person temporarily in his place. He may swear all witnesses and jurors, and administer all oaths and affidavits, 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 directions 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, and, when the judge is not present, adjourn the court from day to day. He shall receive all fines and penalties and all fees of every kind according to the court or clerk, and keep full, accurate, and detailed accounts of the same; and shall, on the first Monday of every month, deliver and pay over to the city treasurer of the city of Mankato all moneys so received, with detailed accounts thereof, under oath. The clerk of said court may, when he deems the same necessary, appoint, with the sanction of the judge, a deputy-clerk of said municipal court, for whose acts the said clerk shall be responsible; and said deputy shall be appointed under the hand of said clerk and seal of said court, with the sanction of said judge indorsed on the back of such appointment; and before any deputy-clerk of said court shall enter upon the duties of his office he shall take and subscribe the same oath prescribed and required to be taken by the clerk of said court, which oath, together with the appointment of such deputy-clerk, shall be filed in the office of the city treasurer of the city of Mankato; and the clerk of said court or the judge thereof may at any time remove any deputy appointed under the provisions of this act. The deputy-clerk of said court shall receive no compen-

sation from the city of Mankato. The said deputy-clerk may administer oaths, take acknowledgments, and perform all the duties pertaining to the office of clerk of said municipal court. (*Id.* § 7.)

**\*§ 170. Terms—Summons—Procedure—Costs.**

The municipal court shall hold regular terms for the trial of civil actions on the second 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 form of the summons may be as follows:

State of Minnesota,	}	ss.	City of Mankato,
County of Blue Earth,			Municipal Court.

The state of Minnesota to any police officer of said city, or to the sheriff or any constable of said county:

You are hereby commanded to summon \_\_\_\_\_, if he shall be found within the county of Blue Earth, to be and appear before the municipal court of the city of Mankato at the term thereof to be holden on the \_\_\_\_\_ day of \_\_\_\_\_, 18—, at the hour of \_\_\_\_\_ o'clock in the forenoon, and answer to \_\_\_\_\_, whose complaint is on file in said court; and have you then and there this writ. The amount claimed by the plaintiff in said complaint is the sum of \_\_\_\_\_ dollars and \_\_\_\_\_ cents, and interest thereon from and since the \_\_\_\_\_ day of \_\_\_\_\_, 18—, at the rate of \_\_\_\_\_ per cent. per annum.

[L. s.] Witness the Honorable \_\_\_\_\_, municipal judge, this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

\_\_\_\_\_  
Clerk of Municipal Court.

—Or the summons may be in any other form which the court may by rule prescribe, and shall be served upon the defendant at least six days before the commencement of the term at which the same is made returnable. The summons in this court shall be served in the same manner as prescribed by statute for service of summons in district court in all cases or classes of cases whereof this court has jurisdiction, except that in case of service of summons by publication the period of such publication shall be three consecutive weeks, instead of six. No summons shall be issued until the complaint in the action shall have been filed with the clerk. All pleadings in said municipal court shall be in writing. If the defendant fail to appear at the opening of the court on the day on which the summons is made returnable, judgment may be entered against him for an amount not exceeding that mentioned in the summons, and for costs and disbursements, except that when the action is for unliquidated damages or relief the plaintiff shall obtain such judgment only as he shall show himself entitled to by evidence and proof. If he so appear, he shall then, or at such time as the court may designate, by rule or otherwise, answer the complaint; and if the answer contain a counter-claim or new matter, the plaintiff shall reply thereto forthwith, or at such time as the court may, by rule or otherwise, designate. The answer and reply shall be in writing, and filed with the clerk, and each pleading shall be verified by the party, 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, except that the demurrer to any pleading shall be filed within the same time allowed for filing an answer or reply to such pleading. All pleadings of this court shall be construed liberally, and, where technical, objections shall be designated. 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 an amendment of any

pleading at any time, and shall disregard variance between the allegations of a pleading and the evidence, unless satisfied that the adverse party is prejudiced thereby. Either party shall be entitled to continuance of a 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 made returnable; and further continuance may be granted upon sufficient cause shown, and on such terms as may be just. Said court shall have authority to provide that the plaintiff in any civil action in which a justice of the peace would have jurisdiction, and when the amount is beyond the jurisdiction of a justice of the peace, when the plaintiff is a non-resident of this state, shall, by bond, recognizance, or deposit of money with the clerk, give security for costs in such sum as the court may designate. When the plaintiff in any cause shall neglect or refuse to give such security when so ordered, within a time to be designated by the court, the court may dismiss such cause at the cost of said plaintiff. Costs are allowed to the prevailing party in actions determined in said municipal court as follows: To the plaintiff, upon a judgment in his favor of one hundred dollars or more, or in actions of replevin when the value of the property is one hundred dollars or more, when no issue of fact or law is joined, five dollars; when an issue is joined, ten dollars. To the defendant, when the amount claimed in the complaint is one hundred dollars or more, upon discontinuance or dismissal, five dollars; when judgment is rendered in his favor upon the merits, ten dollars. Costs and disbursements shall be taxed and allowed in the first instance by the clerk, upon two days' notice in writing by either party, unless notice is waived by stipulation, and inserted in the entry of judgment. The disbursements shall be stated in detail, and verified by affidavit, unless otherwise stipulated by the parties. The party objecting to any item shall specify in writing the ground of objection; and the same, in case of appeal, shall be certified to the court by the clerk; and the appeal shall be heard and determined upon the objections so certified, and none other. All papers specified in this section shall be filed with the clerk. (*Sp. Laws 1885, c. 119, § 8.*)

**\*§ 171. Attachment.**

Any creditor desiring to proceed by attachment in said court may, at the time of commencing the action, or thereafter, and while the 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 an application for a writ of attachment in justices' court, and also cause to be filed with the clerk a bond, with sufficient sureties, to be approved by the judge, and similar to the bond required on like applications in justice's court, except that in cases not within the jurisdiction of a justice court the limit of liability thereon shall be mentioned therein as not exceeding the sum of two hundred and fifty dollars. The writ of attachment may be in form as follows:

State of Minnesota, County of Blue Earth,	} ss.	City of Mankato, Municipal Court.
--	----------	--------------------------------------

The state of Minnesota to any police officer in the city of Mankato, or to the sheriff or any constable of said county:

You are hereby commanded to attach the goods, chattels, moneys, effects, and credits of \_\_\_\_\_, or so much thereof as shall be sufficient to satisfy the sum of \_\_\_\_\_, with interest and costs of suit, in whosoever hands or possession the same may be found in said county of Blue Earth, and so provided that the same may be subject to further proceedings as the law requires; and make due return of this writ.

Witness the Honorable \_\_\_\_\_, judge of said court, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18\_\_\_\_.

\_\_\_\_\_  
Clerk.

—Or the writ may be in any other form that the court may prescribe by rule. In all other respects, save as in this act otherwise provided, the service of the writ and other proceedings thereon shall be similar, as near as may be, to the service of such writ and proceedings in justices' courts. (*Id.* § 9.)

**\*§ 172. Same—Vacating.**

The defendant may at any time before the time for answering expires, or at any time thereafter when he has answered, and before the trial, apply to the court, on five days' notice, to vacate the writ of attachment. If the motion is made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same with affidavits in addition to those on which the writ of attachment was allowed. (*Id.* § 10.)

**\*§ 173. Replevin.**

The plaintiff in an action to recover the possession of personal property may, at the time of the issuing of the summons, or at any time before answer, claim the immediate delivery of such property. The plaintiff, his agent or attorney, shall make and file an affidavit similar to the affidavit required in the justice court in like actions. 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 justices' courts as required by the General Statutes of A. D. one thousand eight hundred and seventy-eight, near as may be, and file such bond. And an action may be maintained on such bond, as upon similar bonds filed in like actions in justices' courts. The clerk shall thereupon issue the writ, which may be in form as follows:

State of Minnesota,	}	ss.	City of Mankato,
County of Blue Earth.			Municipal Court.

The state of Minnesota to any police officer of the city of Mankato, or to the sheriff or any constable of said county:

Whereas, \_\_\_\_\_ complains that \_\_\_\_\_ has become possessed of and unjustly detains from \_\_\_\_\_ the following described goods and chattels, that is to say: (Particularly describing the articles and value.) Therefore you are hereby commanded to cause the same goods and chattels to be replevied without delay, and deliver to the said \_\_\_\_\_, and return this writ to said court within \_\_\_\_\_ days, together with the return of the proceedings thereon.

Witness the Honorable \_\_\_\_\_, municipal judge, this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

[L. s.]

\_\_\_\_\_  
Clerk of Municipal Court.

—Or the writ may be in any other form that the court may by rule prescribe. The writ shall be served, and all proceedings thereunder had, in the same manner, as near as may be consistent with the practice of this court in proceedings of replevin in justices' court; but the times and forms of pleadings and trial shall be the same as in other actions in this court. The officer executing the writ shall retain the property taken under it in his own custody for three days before delivering the same to the plaintiff; and if within that time the defendant, or some one on his behalf, shall execute to the plaintiff a sufficient bond with sureties, to be approved by the judge, conditioned as in like cases in the district court, and file such bond, the clerk shall thereupon issue an order to the officer to deliver such property to the defendant. (*Id.* § 11.)

**\*§ 174. Same—Exception to sureties.**

The defendant may except to the sufficiency of the plaintiff's sureties within the same time and in the same manner as in proceedings of claim and delivery of personal property in district court; and when defendant so excepts the same proceedings shall be had as in like actions in district court, except that

the jurisdiction of sureties shall be had before the judge of said municipal court, or the special judge thereof, and no other. The qualifications of sureties shall be the same as required for sureties in like actions in district court. (*Sp. Laws* 1885, c. 119, § 12.)

**\*§ 175. Calendar.**

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 trial, and other disposition of causes. (*Id.* § 13.)

**\*§ 176. Jury trials—Jurors.**

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 Mankato, or, in case of the failure of any of said aldermen to act, any two of them shall, on the first 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 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 elected and certified; and shall thereupon certify said names so elected 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 ballots, or in case a jury of six is agreed upon by both parties to the pending action, in the same manner as in justice court, he shall draw twenty-four ballots therefrom, and shall make a list thereof, from which list each party shall strike off nine 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, or, in case of a jury of six, the six, persons whose names remain on said list shall be summoned to attend the trial of the cause wherein they were 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 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 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 box until all the names in said box shall be drawn. The persons selected by the judge and aldermen to serve as jurors as aforesaid shall not again be selected for six months from and after the expiration of said term of three months for which they were drawn, 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, except to a party who shall

show himself to be prejudiced thereby. Jurors in this court, when serving as such on the trial of an action, shall receive the same compensation as jurors in justices' court. (*Id.* § 14.)

**\*§ 177. Application of laws—Removal of causes—Forcible entries, etc.**

Title eighteen of chapter sixty-six of the General Statutes of one thousand eight hundred and seventy-eight, relative to trial by referees, title nineteen of the same chapter, relative to exceptions, and title twenty, relative to new trials, shall apply to said municipal court; and section four of chapter twenty-seven of the General Statutes of one thousand eight hundred and seventy-eight, relating to reporter of the supreme court, and the distribution of *Supreme Court Reports*, shall apply to the judge of said municipal court; and all causes may be removed from said municipal court to the supreme court of the state of Minnesota, in the same manner, and upon like proceedings, and with like effect, as from the district court; and said municipal court shall have jurisdiction of actions of forcible entries and unlawful detainers, and may fix return-days for such actions, other than the regular term-days of said court, in the discretion of the judge; and chapter eighty-four of the General Statutes of one thousand eight hundred and seventy-eight, relative to forcible entries and unlawful detainers, shall apply to said municipal court, and the practice shall be the same in such cases, as near as may be, to similar proceedings in justices' courts. (*Id.* § 15.)

**\*§ 178. Judgment—Execution—Transcript.**

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 may issue against the goods and chattels of the judgment debtor, returnable within thirty days, as in justices' courts. The provisions for renewals of executions in district court shall apply to this court except that such renewal shall extend the life of the execution for only thirty days from the date of such renewal, and except that no renewal of such execution shall be made by the clerk until the fee of twenty-five cents therefor shall have been paid. Every person in whose favor a judgment is rendered in said municipal court, for an amount exceeding five dollars besides costs, may, upon paying the fee therefor, demand, and shall receive from such clerk, a transcript of the docket entries of such judgment, duly certified, and may file the same in the office of the clerk of the district court in and for the county of Blue Earth, who shall file and docket the same as in the case of transcripts of judgments from courts of justices of the peace. And every such judgment shall become a lien upon the real estate of the debtor from the filing of such transcripts, 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 said judgment had been rendered in said district court. The clerk of said municipal court shall not issue such transcript while a writ of execution is outstanding in the hands of an officer, or otherwise, and shall note on the record of said 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 after the first transcript is issued give to any party applying therefor, upon such party paying the clerk's fee therefor, a new transcript, and the clerk shall note the record of each transcript given upon such judgment. (*Id.* § 16.)

**\*§ 179. Garnishments.**

Proceedings against garnishees may be instituted in the same manner as in justices' courts; but the summons may be served either by any officer authorized by this act to serve process, or by any person not a party to the ac-

tion, at any place within the state of Minnesota; and the summons may be made returnable at any term of said municipal court 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 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 if the proceedings were in the district court, except that the examination of the garnishee shall be before the acting judge of said court. (*Sp. Laws* 1885, c. 119, § 17.)

**\*§ 180. Criminal proceedings.**

Complaints in criminal cases where the defendant is not in custody may be made [to the] judge or clerk 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 this state or of the ordinances, regulations, or by-laws of said city; and the clerk shall issue a warrant only upon the order of the judge indorsed upon the complaint; 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 adapt 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 where alleged offenders shall be in custody and brought before the court 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 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. In 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. (*Id.* § 18.)

**\*§ 181. Salaries—Fees.**

The judges of said court shall receive a salary of twelve hundred dollars per annum, to be paid in equal monthly installments from the treasury of the city of Mankato, in like manner as other officers of said city. The clerk of said court shall receive as salary, besides the salary received as city recorder, two hundred dollars per annum, to be paid by the city of Mankato out of the treasury of said city, in monthly installments, in like manner as other officers of said city are paid, and the clerk shall receive no other fee or compensation as such clerk for his services, but in all proceedings had in said court like fees shall be charged and collected by the clerk, as costs, as are allowed by law to justices of the peace in proceedings and upon trials before them, or for similar services. The clerk shall not enter any judgment in any cause, nor perform any services required of him in any cause as such clerk after the entry of judgment therein, until his fees therefor shall have been paid. Said clerk shall be liable to the city of Mankato on his bond for all sums accruing to him as fees or costs on any entered by him, or for any services rendered by him in any cause for any party thereto after the entry of judgment. Said clerk, upon appeal to the supreme court, shall receive the same fees allowed by law to clerks of the district court for like services. For any services to be performed by the clerks of this court for which no fee is provided, the judge of said court shall prescribe a fee by rule. The judge of said court for performing the ceremony of marriages shall receive the same fee as is allowed to justices of the peace for the same services. Whenever the moneys paid into the city treasury of the city of Mankato, under and by virtue of this act, whether paid into said

treasury by the clerk of this court or by the county of Blue Earth, excepting, however, all moneys received by said city for fines enforced by said municipal court, shall exceed the sum of one thousand dollars in any one year, then such excess shall by said city be applied toward payment of the deficiency, if any, in the salary of the several judges of said court under the act approved November twenty-second, one thousand eight hundred and eight-one, entitled "An act to establish a municipal court in the city of Mankato, Blue Earth county, Minnesota," and as the same has existed prior to the passage of this act. (*Id.* § 19, *as amended* 1887, *Sp. Laws*, c. 78.)

**\*§ 182. Judge not to hold other office—Law partner.**

The judge of said municipal court shall hold no other office created or existing under or by virtue of the laws of the state of Minnesota, or created or existing under the charter, ordinances, or by-laws of the city of Mankato; and said municipal judge, while holding said office, shall have no law partner; but this section 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. (*Id.* § 20.)

**\*§ 183. Prosecuting officers.**

The city attorney of the city of Mankato shall have charge of the prosecution of all criminal cases before said municipal court wherein the defendant is charged with the violation of the city charter, or any ordinance or by-law of the city of Mankato; and the county attorney of [the county of] Blue Earth shall act in the prosecution or examination of offenders charged with other offenses, when required by law to prosecute in like cases before a justice of the peace. (*Id.* § 21.)

**\*§ 184. Costs in criminal cases.**

In all criminal cases tried in said municipal court, and in all examinations of persons therein charged with crime, the clerk shall tax as costs and fees the same fees as are now allowed by law to justices of the peace for like services; and when the said court has final jurisdiction, and the defendant is convicted, the clerk shall tax the said costs as part of the costs against the defendant, and include the same in the judgment to be entered against him. And in all examinations of persons charged with crime under the laws of this state, and in all trials of criminal cases, when the defendant is acquitted, and when he is convicted and does not pay his fine and costs within ninety days after the final determination of said cause, the clerk of said court shall make out an itemized bill of the costs accruing to the clerk in such case or examination, certified to under his hand and the seal of said court; and said clerk shall file such bill so certified with the city treasurer of the city of Mankato; and the said city treasurer shall, at least once in every three months, present all such bills so on file in his office to the county auditor of the county of Blue Earth, who shall upon such presentation file the same in his office, and draw his warrant upon the county treasurer of the county of Blue Earth for the amount of the bill or bills so presented in favor of the said city treasurer of the city of Mankato, and the said city treasurer shall present the said warrant to the said county treasurer, who shall pay the same. (*Id.* § 22.)

**\*§ 185. Removal from district court.**

Whenever any civil action is pending in the district court of Blue Earth county of which the municipal court would have jurisdiction, such action may be tried by the said municipal court, if the parties so agree, and the district judge so orders, and thereupon such action shall be transferred to and tried in said municipal court as though the said action was originally commenced in said municipal court, and for such action so tried and determined by a jury in said municipal court in which the amount in controversy exceeds one hun-

dred dollars, the county of Blue Earth shall pay to the city of Mankato the sum of five dollars, and the clerk of said court shall, on the first legal day of each month, make a list of such causes determined in said court during the month preceding, which shall contain the names of the parties to each cause, the date of the filing of each decision, and the amount in controversy in each case, and certify the same under his hand and the seal of the court, which list, so certified, shall be by said clerk filed with the city treasurer of the city of Mankato, and said city treasurer shall at least once in every three months present all such lists so on file with him to the county auditor of the county of Blue Earth, who shall file the same in his office, and draw his warrant forthwith upon the county treasurer of the county of Blue Earth, for the amount of such list or lists, and the said city treasurer shall present such warrant to the said county treasurer, who shall pay the same. (*Sp. Laws 1885, c. 119, § 23.*)

**\*§ 186. Disposition of fines.**

All fines and penalties imposed by said municipal court for a violation of any ordinance of said city, or of any law of this state, shall, when collected, be paid by the clerk of this court into the city treasury and belong to said city of Mankato. (*Id. § 24.*)

**\*§ 187. Blanks, furniture, etc.**

The clerk of the municipal court shall, under the direction of the [city] council, from time to time procure and furnish all necessary blanks, stationery, record-books, and office furniture for the use of the court and the officers thereof, at the expense of the city of Mankato. (*Id. § 25.*)

**\*§ 188. Present officers.**

The judge, special judge, and clerk of the municipal court of said city now holding said offices shall continue and hold the same and be judge, special judge, and clerk of the municipal court as hereby established until the second Tuesday in April in the year one thousand eight hundred and eighty-five, and until his successor is elected and qualified. (*Id. § 26.*)

**\*§ 189. Justices of the peace—Former municipal court.**

No justice of peace shall be elected after the passage of this act within the city of Mankato, and the justice's dockets, together with all books and papers, shall be transferred to this court, and all judgments entered by any justice of the peace of the city of Mankato shall be enforced and carried out by said municipal court in the same manner as if the same were originally entered therein, as near as may be. The dockets, together with all books and papers of the municipal court of the city of Mankato, established by the act approved November twenty-second, A. D. one thousand eight hundred and eighty-one, shall be transferred to this court, and all judgments entered therein, and all actions commenced therein, all unfinished business or proceedings therein, or appeals therefrom, shall be enforced and carried on by this court hereby established in the same manner as if the same were originally entered or commenced therein. And the said municipal court, as established by said act of A. D. one thousand eight hundred and eighty-one, is hereby declared a legal and valid court from the twenty-second day of November, A. D. one thousand eight hundred and eighty-one, to the time of the approval of this act, and all its acts and judgments are hereby declared legal and valid. And it is hereby declared to be the effect of this act that everything in the said municipal court of Mankato, as now existing or pertaining or to appertain thereto, or which may arise therefrom, shall be acted on, disposed of, and accomplished as fully and completely in the court hereby created as if originally the same therein were, whether it be specially or not in the act mentioned. (*Id. § 27.*)

**\*§ 190. Summons—Place of service.**

No summons issued by or out of this court shall be served in any county other than the county of Blue Earth, except in actions where property of the defendant has been attached, and it appears by affidavit that the defendant resides in another county in this state, the summons may be served upon defendant in the same manner as the summons is served under like circumstances in district court. (*Id.* § 28.)

**\*§ 191. Repeal—Saving clause.**

All acts or parts of acts inconsistent herewith are hereby repealed, and the act establishing a municipal court in the city of Mankato, Blue Earth county, Minnesota, approved November twenty-second, one thousand eight hundred and eighty-one, is hereby repealed, saving all rights [acquired] thereunder. (*Id.* § 29.)

## MUNICIPAL COURT OF MOORHEAD.\*

**\*§ 192. Jurisdiction.**

There shall be established in the city of Moorhead, in the county of Clay, a municipal court for the transaction of all business that may lawfully come before it. Said court shall be a court of record, and shall have a clerk and a seal, and shall have jurisdiction to hear, try, and determine civil actions at law where the amount in controversy does not exceed five hundred dollars, 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 Moorhead heretofore cognizable before a justice of the peace. It shall not have jurisdiction of actions for divorce, nor of any actions where the relief asked for in the complaint is purely equitable in its nature. (*Sp. Laws* 1883, c. 10, § 1.)

**\*§ 193. Election of judge—Vacancies.**

The qualified electors of the city of Moorhead shall, at the general city election to be holden on the twentieth of March, in the year one thousand eight hundred and eighty-three, and on the day of the general city election every third 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 three years, and until his successor shall be elected and qualified. In case of any vacancy in the office of municipal judge, the governor of the state of Minnesota shall appoint some qualified person to said office until the next annual city election, when a judge shall be elected for a full term of three years. (*Id.* § 2.)

**\*§ 194. Qualifications of judge—Special judge.**

The judge of the municipal court shall be a resident of the city of Moorhead, a person learned in the law, and duly admitted to practice as an attorney in the courts of 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 recorder of said city. He shall have the general powers of judges of courts of record, and may administer oaths, take and certify acknowledgments in all cases, and as a conservator of the peace shall have all power and authority which is by law vested in justices of the peace or any other judicial officer. There shall be one special judge of said municipal court, whose manner of election, term of office, powers, duties, and qualifications shall be the same as those of municipal

\* "An act to amend an act entitled 'An act to incorporate the city of Moorhead, Clay county, Minnesota,' approved February twenty-fourth, one thousand eight hundred and eighty-one, providing for a municipal court therein." Approved February 27, 1883.

judges, except as otherwise provided in this act, and his successor shall be elected and vacancies in his office filled in like manner. In case of a press of business in said court, at the request of the municipal judge, or in case of the absence or sickness of the municipal judge, the said special judge shall act as judge of said court; and when the said special judge so acts at the request of the municipal judge, 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 from the city at the rate of five dollars per day. This section shall not incapacitate such special judge from acting as attorney in any case in said court; he shall take no action in such case save to adjourn the same. (*Sp. Laws 1883, c. 10, § 3.*)

**\*§ 195. Qualifications of clerk—Deputy.**

The city recorder of said city shall be *ex officio* clerk of the said municipal court. Such clerk, before he enters upon the duties of his office, shall take and subscribe an oath to support the constitution of the United States, 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 Moorhead a penal bond in such sum and with sureties as the council shall direct and approve, conditioned that he will account to and pay over to the treasurer of said city, on the first Monday of every month, all fines, penalties, fees, and other moneys belonging to or to go to said city, which may have come into his hands by virtue or by reason of his office. Such oath and bond shall be filed in the office of the treasurer of said city. Such clerk shall have power to appoint, subject to the approval of the judge, a deputy-clerk, with the like powers of the clerk, for whose acts the said clerk shall be responsible. (*Id. § 4.*)

**\*§ 196. Powers of court—Process—Forms.**

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 records, except that it shall not have jurisdiction to issue writs of *habeas corpus, quo warranto, ne exeat, mandamus*, prohibition, or injunction. It shall also have all the powers and jurisdiction conferred on justices of the peace by chapter eighty-four, General Statutes, and the proceedings shall be the same as therein provided, except that no appeal shall be allowed except to the supreme court. All process shall be tested in the name of the judge, and issued under the seal of the court, and signed by the clerk, who shall be styled "clerk." 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 form, 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 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 Moorehead, or to the sheriff or any constable of said county, and may be served the same as a summons in the district court, and service by publication may be ordered and made in like manner. (*Id. § 5.*)

**\*§ 197. Place of holding court—Judge as criminal magistrate.**

The said municipal court shall be held in the city of Moorhead, at some suitable place to be provided therefor by the city council. Its judge shall be

# MINNESOTA STATUTES 1888 SUPPLEMENT

the 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 violation of the criminal laws of this state, committed within the county of Clay, 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. (*Id.* § 6.)

**\*§ 198. Duties of clerk.**

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, 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 jurors, and administer all oaths and affidavits, 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, and do all other things and acts necessary and proper to the enforcing and carrying out the jurisdiction of the municipal court. He shall receive and collect all fines, penalties, and fees of every kind accruing to the court or any officer thereof, including police officers, and keep full, accurate, and detailed accounts of the same; and shall, on the first Monday of every month, deliver over to the city treasurer of the city of Moorhead all moneys so received, with detailed accounts thereof, and take his receipt therefor. (*Id.* § 7.)

**\*§ 199. Terms—Summons and service — Return — Pleadings, etc.—Cost and security therefor.**

The municipal court shall hold regular terms for the trial of civil actions, on the first and third Tuesdays of every month, which terms shall continue from day to day, with such adjournments as the court may deem proper, until the business of each term shall be finished; and he 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 form of the summons may be as follows:

State of Minnesota, } County of Clay,     }	ss.	City of Moorhead, Municipal Court.
--	-----	---------------------------------------

State of Minnesota to any police officer of the city of Moorhead, or to the sheriff or any constable of said county:

You are hereby commanded to summon \_\_\_\_\_, if \_\_\_\_\_ shall be found within the county of Clay, to be and appear before the municipal court of the city of Moorhead, at a term thereof to be holden on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—, at the opening of the court, and answer to \_\_\_\_\_, whose complaint is on file in said court; and have you then and there this writ. The amount claimed by the plaintiff in said complaint is the sum of \_\_\_\_\_ dollars and \_\_\_\_\_ cents, and interest thereon from and since the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—, at the rate of \_\_\_\_\_ per cent. per annum.

Witness the Honorable \_\_\_\_\_, municipal judge, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—.

[L. s.]

Clerk of the Municipal Court.

—Or the summons may be in any other form which the court may by rule prescribe, and shall be served upon the defendant at least six 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 twelve and thirteen of title two of chapter sixty-five of the General Statutes of one thousand eight-hundred and sixty-six, of this state, relating to service of summons by publication. No summons shall issue until the complaint in the action shall be filed with the clerk. The complaint may be presented in writing, to be filed, or may be made orally and reduced to writing by the 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 at such time as the court may designate, answer the plaintiff's complaint; and if the answer contains 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 the state. Either party may demur to any pleadings of his adversary, as in the district court, but all pleadings in 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 allegations 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 action (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 continuance may be granted upon sufficient cause shown, and on such terms as may be just. 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 dollars or more, or in actions of replevin when the value of the property is fifty dollars or more, when no issue of facts of law is joined, five dollars; when an issue is joined, ten dollars. To the defendant, when the amount claimed in the complaint is fifty dollars or more, upon discontinuance or dismissal, five dollars; when judgment is rendered in his favor on the merits, ten dollars; and upon determination of demurrer and motion to the prevailing party, such sum as the court may order, not exceeding ten dollars. Costs and disbursements shall be taxed and allowed in the first instance by the clerk, upon two days' notice to either party, and inserted in the entry of judgment. The disbursements 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 objections so certified, and none other. (*Sp. Laws* 1883, c. 10, § 8.)

**\*§ 200. Attachments.**

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 an application for a writ of attachment in justice's court, and also cause to be filed a bond with sufficient

# MINNESOTA STATUTES 1888 SUPPLEMENT

surety, to be approved by the judge, and similar to the bond required on a like application in justice's court, except that the limit of liability therein shall be mentioned therein as not exceeding the sum of two hundred and fifty dollars. The writ of attachment may be in form as follows:

State of Minnesota, } County of Clay, } ss.	City of Moorhead, Municipal Court.
--	---------------------------------------

The state of Minnesota to any police officer of the city of Moorhead, or to the sheriff or any constable of said county:

You are hereby commanded to attach the goods, chattels, moneys, effects, and credits of \_\_\_\_\_, or so much thereof as shall be sufficient to satisfy the sum of \_\_\_\_\_, with interest and costs of suit, in whosoever hands or possession the same may be found, in said county of Clay, and so provide that the same may be subject to further proceedings as the law requires; and make due return of this writ.

Witness the Honorable \_\_\_\_\_, judge of said court, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—.

—Or the writ may be in any other form that the court may by rule prescribe. In all other respects the service of the writ, and other proceedings therein, shall be similar, as near as may be, to the service of such writ and proceedings in justices' courts. (*Id.* § 9.)

**\*§ 201. Replevin.**

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 court, and file such bonds; and an action may be maintained on such bonds as upon similar bonds filed on like actions in justice's courts. The clerk shall thereupon issue the writ, which may be in form as follows:

State of Minnesota, } County of Clay, } ss.	City of Moorhead, Municipal Court.
--	---------------------------------------

The state of Minnesota to any police officer in the city of Moorhead, or to the sheriff or any constable of said county:

Whereas, \_\_\_\_\_ complains that \_\_\_\_\_ has become possessed of, and unjustly detains from \_\_\_\_\_, the said \_\_\_\_\_, the following described goods and chattels, that is to say: (particularly describing the articles and the value.) Therefore you are hereby commanded that you cause the same goods and chattels to be replevied without delay, and to hold the same subject to the further orders of the court, and to summon the said \_\_\_\_\_, if to be found within said county, to be and appear before the municipal court of the city of Moorhead, at a term thereof to be holden in \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—, at the opening of the court, and answer to \_\_\_\_\_, whose complaint is on file in said court, in a civil action; and have you then and there this writ.

Witness the Honorable \_\_\_\_\_, municipal judge, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—.

[L. s.] \_\_\_\_\_, Clerk of the Municipal Court.

—Or the writ may be in any other form that 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 pleadings and trial) as upon similar proceedings in justice courts. But the officer executing the writ shall retain the property taken under it in his own custody, subject to the order of the court. (*Id.* § 10.)

**\*§ 202. Calendar.**

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. (*Sp. Laws 1883, c. 10, § 11.*)

**\*§ 203. Jury trial—Drawing of jurors—Laws applicable to court.**

Trial by jury in the municipal court shall in all respects be conducted as in the district court of said state; and all laws of 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 mayor or the president of the city council of the city of Moorhead, the city recorder, and the presiding judge of said municipal court shall, on the second Monday of February, May, August, and November in each year, at the office of the city recorder of said city, meet, and from the legal voters of said city select and designate sixty-four 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 elected 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 eighteen ballots, the persons named upon which shall be summoned to attend the trial of the cause wherein they were drawn; and the first twelve so drawn shall constitute the jury, unless some of said jurors shall be challenged or excused, in which case the clerk shall consecutively call the remaining six jurors so drawn, until the panel so drawn shall be exhausted. No talesmen shall be summoned or sit in any cause in said court. And the first and second series of eighteen ballots each so drawn shall not be returned to said box or wheel until the third series shall have been drawn from said box. The persons selected to serve as aforesaid shall not again be eligible during the year in which they may have been elected. Where 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; 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. Jurors in said municipal court shall be entitled to like fees in the trial of civil actions as jurors in justices' courts, to be collected and paid in the same manner; but the party demanding a jury in any civil action shall be required to advance the jury fee before the commencement of the trial. (*Id. 12.*)

**\*§ 204. Referees—Exceptions—New trials—Appeals—Removals from justices of the peace, etc.**

Title eighteen of chapter sixty-six of the General Statutes, relative to trials by referees, title nineteen of the same chapter, relative to exceptions, and title twenty, relative to new trials, shall apply to said municipal court; and section four of chapter twenty-seven 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 cases may be removed from the said municipal court to the supreme court of the state of Minnesota, in the same manner, and upon like proceedings, and with like effect, as from the district court; and said municipal court shall have jurisdiction of actions of forcible entries and unlawful detainer, and may fix return-days for such actions other than the regular term-days of said court; and

chapter eighty-four of the General Statutes, relative to forcible entries and unlawful detainers, shall apply to said municipal court. (*Id.* § 13.)

**\*§ 205. Judgments—Transcripts—Executions.**

No judgment rendered in said municipal court shall attach as a lien upon real estate until 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 days, as in justices' courts. Every person in whose favor a judgment is rendered in said municipal court for an amount exceeding ten dollars, besides costs, may, upon paying the fee therefor, and all unpaid fees payable to the clerk in such actions, demand and shall receive from such 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 Clay county, who shall file and docket the same, as in case 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 filing of such transcript, to the same extent as a judgment of the 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 such transcript while a writ of execution is outstanding in the hands of an officer or otherwise, and shall note in 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 such judgment, in case of the loss of the transcript first given. (*Id.* § 14.)

**\*§ 206. Garnishments.**

Proceedings against garnishees may be instituted in the same manner as in justices' 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 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 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 if the proceedings were in the district court. (*Id.* § 15.)

**\*§ 207. Proceedings in criminal cases.**

Complaints in criminal cases, where the defendant is not in custody, may be made to the court when in session, or to the judge or clerk when not in session, and shall be made in writing, or reduced to writing by the judge or clerk, and sworn to by the complainant, whether the 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, discretion, and 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 be substantially the same forms heretofore in use by justices of the peace, with such alterations as may seem convenient to adapt 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 case where alleged offenders shall be in custody, and brought before the court or the 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 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. In 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. (*Sp. Laws* 1883, c. 10, § 16.)

**\*§ 208. Salary of judge and clerk—Police officers.**

The judge of said court shall receive a salary of one thousand dollars per year, and the clerk of said court a salary of three hundred dollars per year, exclusive of his salary as city recorder, payable from the city treasury of Moorhead, in monthly installments. Neither said judge, clerk, nor deputy-clerk shall receive any other fee or compensation for his services; but in all proceedings had in said municipal court double the fees shall be charged and collected by the clerk as costs as are allowed by law to justices of the peace in proceedings and upon trials before them, as for similar services. 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 respect to causes in court, shall note and return to the court for collection such fees as are allowed to sheriffs for the like services; and all fees, whether so charged by the clerk or any police officer, whether due from the county in preliminary examinations or otherwise, shall be collected by the clerk as costs, and by him be accounted for and paid over to the city treasurer of said city, as hereinbefore provided for. (*Id.* § 17.)

**\*§ 209. Police officers in attendance on court.**

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 the proceedings. Police officers of said city shall hereafter receive for their services no other compensation than the salary paid them by said city, except as otherwise provided in the act to which this is amendatory; and if any fee shall be paid to any police officer for any service, 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 dollars, or by imprisonment not exceeding thirty days. The mayor of said city shall have the power, in his discretion, to appoint one or more persons, approved by the municipal judge, as policemen for special attendance and duty in said court, irrespective of the general or special rules, or legal regulations and enactments, relative to the qualifications of policemen; but such persons shall receive the same, but no greater, compensation, unless the council direct greater compensation, as ordinary police; and all policemen attending said court may be required to give bonds to said city, in such sum as the council shall direct, for the performance of their duties, for the use of all persons interested: *provided, however*, that the above shall not affect the powers and duties of the general police in said court. (*Id.* § 18.)

**\*§ 210. Titles to real estate.**

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 of said county, and the cause shall be proceeded with in the court to which it shall be transferred as if originally commenced therein. (*Id.* § 19.)

**\*§ 211. Prosecuting officers.**

The city attorney of the city of Moorhead shall have charge of the prosecution of all criminal proceedings before said municipal court; but the county

attorney of the county of Clay may, at his discretion, act in the prosecution of offenders charged with offenses against the criminal laws of the state. (*Id.* § 20.)

**\*§ 212. Clerk to procure supplies for court.**

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, court-room, jury-room, and office furniture, lights, and fuel for the use of the court and the officers thereof, at the expense of the said city. (*Id.* § 21.)

**\*§ 213. Justices of the peace superseded.**

Upon the election and qualification of the municipal judge, all causes and proceedings then pending before justices of the peace within said city shall forthwith by said justices be transferred to said municipal court, with all papers and records concerning the same; and 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; and the dockets, records, files, and papers in the custody of [any] and all justices of the peace of said city shall at once be transferred and turned over to said municipal court, which shall have full jurisdiction to finish and complete all proceedings pending before any justice of the peace, and to enforce, by execution or otherwise, all judgments theretofore rendered by justices of the peace within the present city of Moorhead; and such judgment shall stand on the same footing as judgments of said municipal court. And after the election and qualification of said municipal judge, no justice of the peace within the city of Moorhead 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 causes heretofore cognizable before 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. (*Id.* § 22.)

**\*§ 214. Costs in criminal cases.**

In all criminal cases tried in said court in which the defendant shall be convicted, the clerk shall tax, as costs of court, and, if not paid, judgment shall be entered therefor against the defendant, in the following sums, viz.: In cases where no warrant is issued, and the defendant, upon being arraigned, shall plead guilty, two dollars; in cases where warrants shall be issued, and the defendant, upon arraignment, pleads guilty, two and one-half dollars; in cases where the defendant shall plead not guilty, and shall be tried before the court, five dollars; in cases where the defendant shall plead not guilty, and be tried before a jury, ten dollars. Said sums, respectively, to be in addition to all costs of witnesses, jurors, and other costs taxed in said actions, or either of them. (*Id.* § 23.)

**\*§ 215. Costs on examinations.**

In all examinations held by or before said court to inquire of offenses of which said court shall not have final jurisdiction, the clerk shall tax, as costs of said court for making such examinations, the same fees as are now allowed to justices of the peace for similar services, and fifty per cent. additional thereto. (*Id.* § 24.)

**\*§ 216. Security for costs.**

The plaintiff, upon making his complaint, in all civil actions, shall give such security for costs as the judge or the clerk shall direct. (*Id.* § 26.)

## MUNICIPAL COURT OF BRAINERD.\*

**\*§ 217. Clerk—Seal—Jurisdiction.**

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 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: *provided*, that jury trials shall not be allowed for offenses against the ordinances of said city in prosecutions for violation of said ordinances now or hereafter in force. (*Sp. Laws, 1885, c. 116, § 1, as amended 1887, Sp. Laws, c. 100.*)

**\*§ 218. Judge—Election—Term.**

The qualified electors of the city of Brainerd shall, at the general election to be holden on the first Tuesday of March, in the year one thousand eight hundred and eighty-five, and on the day of the general city election every second 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 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 Tuesday of March, A. D. one thousand eight hundred and eighty-five; 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 years: *provided*, that the notice of call of such meeting shall state the purposes for which the same is to be held. (*Id. § 2.*)

**\*§ 219. Judge—Qualifications—Special judge.**

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 special judge of said municipal court, whose manner of election, term of office, powers, duties, and qualifications shall be the same as those of

\*An act to establish a municipal court in the city of Brainerd, Crow Wing county, Minnesota." Approved March 2, 1885. § 3 repealed, 1887. *Sp. Laws, c. 101, § 3.* By § 4 the charter of Brainerd is amended by inserting the words "municipal court" in place of "police justices," except in the provisions relating to the election of police justices; and all acts and parts of acts inconsistent with said act are repealed.

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 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. (*Id.* § 3.)

**\*§ 220. Clerk—Oath—Bond.**

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 of office, and shall execute to the city of Brainerd a penal bond in the sum of one thousand dollars, with at least two sureties, to be approved by the council of said city, conditioned that he will well and truly account for and monthly pay over to the city treasurer before the eighth day of each and every month, all fines, penalties, and moneys belonging to said city which have come into his hands during the calendar month preceding. Such oath and bond shall be filed in the office of the city treasurer. Said clerk shall also execute to the board of county commissioners of the county of Crow Wing a penal bond in the sum of five hundred dollars, with sureties, to be approved by the said county commissioners, conditioned that he will well and faithfully account for and pay over to said county for all fines, penalties and moneys which may come into his hands belonging to said county. (*Id.* § 4, *as amended*, *Sp. Laws* 1887, c. 101, § 1.)

**\*§ 221. Jurisdiction—Process.**

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. (*Sp. Laws* 1885, c. 116, § 5.)

**\*§ 222. Court-room—Duties of judge and clerk.**

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. (*Id.* § 6.)

**\*§ 223. Clerk—Powers and duties.**

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. (*Id.* § 7.)

**\*§ 224. Terms—Process—Practice.**

The municipal court shall hold regular terms for the trial of civil actions on the first and third 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 nor more than thirty 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 and fifteen of title two of chapter sixty-five of the General Statutes of one thousand eight hundred and seventy-eight, 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 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 dollars or more, or in actions in replevin when the value of the property is fifty dollars or more, when no issue of fact or law is joined, five dollars; when issue is joined, ten dollars. To the defendant, when the amount claimed in the complaint is fifty dollars or more, upon discontinuance or dismissal, except in case of dismissal or discontinuance by the plaintiff, five dollars; when judgment is rendered in his favor, on the merits, ten dollars. Costs and disbursements shall be taxed and allowed in the first instance, by the clerk, upon two 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. (*Id.* § 8.)

### \*§ 225. Attachment.

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 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 of title nine of chapter sixty-six of the General Statutes of one

thousand eight hundred and seventy-eight, upon three days' notice to the adverse party, which notice shall be served as provided for service of notices of motions in district court. (*Sp. Laws 1885, c. 116, § 9.*)

**\*§ 226. Replevin.**

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. (*Id.* § 10.)

**\*§ 227. Calendar.**

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 process shall be returned into court by the officer serving the same at least one day before the opening of the term to which the same is made returnable. (*Id.* § 11.)

**\*§ 228. Jury trial—Jurors.**

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 of them shall, on the first 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 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 ballots, or, in case a jury of six is agreed upon by both parties to the pending action, in the same manner as in the justice courts, he shall draw twenty-four ballots therefrom, and shall make a list thereof, from which list each party shall strike off nine 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, or in case of a jury of

six, the six, 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. Jurors in said municipal court shall be entitled to like fees in the trial of civil actions as jurors in justice court, to be collected and paid in the same manner; but the party demanding a jury in any civil action shall be required to advance the jury fee before the commencement of the trial. (*Id.* § 12, *as amended Sp. Laws 1887, c. 101, § 3.*)

**\*§ 229. Application of laws—Forcible entries, etc.**

Title eighteen of chapter sixty-six of the General Statutes one thousand eight hundred and seventy-eight, relative to trial by referees, title nineteen of the same chapter, relative to exceptions, and title twenty, relative to new trials, shall apply to said municipal court; and section four of chapter twenty-seven 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 of said General Statutes, relating to forcible entry and unlawful detainer, shall apply to said municipal court. (*Id.* § 13.)

**\*§ 230. Judgment—Execution—Transcript.**

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 days, as in justice court. Every person in whose favor a judgment is rendered in said municipal court for an amount exceeding ten 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. (*Sp. Laws 1885, c. 116, § 14.*)

**\*§ 231. Garnishments.**

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 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. (*Id.* § 15.)

**\*§ 232. Criminal proceedings.**

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. (*Id.* § 16.)

**\*§ 233. Salaries—Fees.**

The judge of said court shall receive a salary, payable monthly, at the rate of one thousand dollars per year, and the clerk shall receive a salary of three hundred dollars, payable monthly, which shall be exclusive of his salary and fees as clerk of the city of Brainerd; and neither said judge nor clerk shall receive any further consideration for his services. But in all proceedings had in said municipal court like fees shall be charged and collected by the clerk as costs as are allowed by law to justices of the peace in proceedings and trials had before them, or for similar services. 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 such police officers, in making service of any writ or process, or doing other duty in respect to causes in said court, shall note and return to the clerk of said court for collection such fees as are allowed to constables for like services; and all fees whether so charged by the clerk or police officer, whether due from the county of Crow Wing on preliminary examinations or otherwise, both civil and criminal, shall be collected by the clerk as costs, and by him paid over to the city treasurer. On appeal from said municipal court to the supreme court of the state of Minnesota, the same fees shall be allowed and paid to said court as are allowed 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, and for which no other fee is herein provided for, such fees as are reasonable may be fixed by rule or order of said court. (*Id.* § 17, *as amended* 1887, *Sp. Laws*, c. 101, § 2.)

**\*§ 234. Officers to attend court.**

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 dollars, or by imprisonment not exceeding thirty days. (*Id.* § 18.)

**\*§ 235. Actions involving title to realty.**

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. (*Id.* § 19.)

**\*§ 236. Prosecuting officer.**

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. (*Id.* § 20.)

**\*§ 237. Blanks, furniture, etc.**

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. (*Id.* § 21.)

**\*§ 238. Police justices superseded.**

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. (*Sp. Laws 1885, c. 116, § 22.*)

## MUNICIPAL COURT OF DULUTH.\*

**\*§ 239. Jurisdiction—Clerk—Seal.**

There shall be established in the city of Duluth, in the county of St. Louis, 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 seal, and shall have jurisdiction to hear, try, and determine civil actions at law, where the amount in controversy does not exceed the sum of three hundred dollars, excepting causes involving title to real estate. It shall have exclusive jurisdiction to hear all complaints and conduct all examinations and trials within the city of Duluth. It shall not have jurisdiction of actions for divorce, nor of any action where the relief asked for in the complaint is purely equitable in its nature. Where 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 this state; 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; and the jurisdiction of said court shall be co-extensive with the limits of St. Louis, Lake, and Cook counties. (*Sp. Laws 1887, c. 323, § 1.*)

**\*§ 240. Jurisdiction and powers—Disposition of fines.**

The municipal court of said city shall have exclusive cognizance and jurisdiction of all trials and examinations within said city, cognizable before a justice of the peace under the laws of the state, and of all actions, prosecutions, and proceedings for the recovery of all forfeitures, fines, and penalties or inflictions of punishment for the breach of any by-laws, regulation, or ordinance for said city, and of all offenses against the same, and in all cases of conviction for assault, batteries, and affrays, disorderly conduct, breach of the peace, keeping or frequenting disorderly houses, or houses of ill fame, the municipal court may, in addition to any fine or punishment authorized or imposed, or

\*"An act to establish a municipal court in the city of Duluth." Approved February 26, 1887. Municipal court for village of Duluth established by *Sp. Laws 1885, c. 114*. As to application of jurisdiction of municipal court for village of Duluth, see *Sp. Laws 1887, c. 2, subc. 12, § 14*. As to election of judge and municipal judge, see *Id. subc. 2, § 1*. For prosecutions in municipal court, see *Id. subc. 12, §§ 10, 11, 12*.

without such fine or other punishment, compel the accused to give security to keep the peace and be of good behavior for a period not exceeding six months, and in a sum not exceeding five hundred dollars. The judge and special judge of said court shall have all the powers of justices of the peace, under the general laws of this state. All fines and penalties imposed by said court shall belong to and be a part of the revenue of said city. Said court shall also have power in all criminal actions within its jurisdiction, when the punishment is by imprisonment, or by imprisonment in default of payment of fine, to sentence any offender to hard labor in any workhouses that may be established by the city for that purpose, or, in case of male offenders, to sentence them to labor on any public works or improvements in like manner and under the same qualifications as hereinafter provided in case of offenses against city ordinances. (*Sp. Laws 1887, c. 2, subc. 3, § 11.*)

**\*§ 241. Judge—Election—Vacancy.**

The qualified electors of the city of Duluth shall, at the general city election to be holden on the first Tuesday in February in the year one thousand eight hundred and eighty-nine, and on the day of the general city election every third 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 three years, and until his successor shall be elected and qualified. In case of any vacancy in the office of municipal judge, the governor of the state of Minnesota shall appoint some qualified person to said office until the next annual election held in said city, when a judge shall be elected for a full term of three years. (*Sp. Laws 1887, c. 323, § 2.*)

**\*§ 242. Judge—Qualifications—Powers—Special judge.**

The judge of the municipal court shall be a resident of the city of Duluth, a person learned in the law, and duly admitted to practice as an attorney in all the courts of 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 clerk of said city. He shall have the general powers of the judges of courts of record, and may administer oaths, take and certify acknowledgements in all cases, and as a conservator of the peace, or otherwise, shall have all power and authority which is or may hereafter be vested in justices of the peace, or any other judicial officer. There shall be one special judge of said municipal court, whose manner of election, term of office, powers, and 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. In case of a press of business requiring the attendance of two judges at one time in said court, at the request of the municipal judge, or, in case of the absence or sickness of the municipal judge, at the request of the mayor or acting mayor of said city, the said special judge shall act as judge of said court, and when the special judge so acts as judge of said court, the said special judge and the municipal judge may each have and exercise the powers of the said court, and may sit in the trial and examination of cases at the same time. The said special judge so acting as judge of said court shall receive compensation from the city at the rate of six dollars per day. This section shall not incapacitate such special judge from acting as attorney in any case in said court; but when such judge is acting as judge of said court, he shall take no action in such case, save to adjourn the same. (*Id. § 3.*)

**\*§ 243. Clerk—Oath—Bond.**

There shall be a clerk of said municipal court, who shall be appointed by the judge of said court, with the advice and consent of the common council of the city of Duluth, and the judge shall have power to remove said clerk at

pleasure, or he may be removed by a two-thirds vote of the whole number of the aldermen elected to the common council. Such clerk, before he enters upon the duties of his office, shall take and subscribe an oath to support the constitution of the United States and state of Minnesota, and to faithfully and honestly discharge and perform the duties of his office, and shall execute to the city of Duluth a penal bond, in such sum and with such sureties as the common council shall direct and approve, conditioned that he will account to and pay over to the treasurer of said city on the first Monday of every month all fines, penalties, fees, and other moneys belonging to or to go to said city, which may have come into his hands during the month next preceding, and that he will at all times pay over to all other persons, on demand, all moneys to which they may be entitled, which may have come into his hands in virtue or by reason of his office, and that at the end of his term of office he will forthwith pay over to the city of Duluth all moneys to which said city shall then be entitled, and to his successor in office all other moneys then remaining in his hands, and which shall have come into his hands in virtue or by reason of his office. Such oath and bond shall be filed in the office of the city clerk of said city. (*Sp. Laws 1887, c. 323, § 4.*)

**\*§ 244. Powers of court—Process.**

Said 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 the state of Minnesota, applicable to courts of record, except that it shall not have jurisdiction to issue writs of *habeas corpus, quo warranto, ne exeat, mandamus*, prohibition, or injunction. All process shall be tested in the name of the judge, and issued under the seal of the court, and signed by the clerk, who shall be styled "clerk of the municipal court," 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 adopted 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 Duluth, or to the sheriff or any constable of said counties of St. Louis, Lake, and Cook. (*Id. § 5.*)

**\*§ 245. Place of holding court—Judge's duties.**

The municipal court shall be held in the city of Duluth at some suitable place to be provided therefor by the common council. Its judge shall be the chief magistrate of the city, and shall see that the criminal 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 in a summary manner to hear and dispose of all cases which shall be brought before him by the police officers of the city, or otherwise, whether with or without process, for violations of the criminal laws of the state committed within its jurisdiction, or 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 other process. (*Id. § 6.*)

**\*§ 246. Clerk—Powers and duties.**

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, unless absent from sickness or by the consent of the judge, and, in case of the absence of both clerk and deputy, the judge may appoint some per-

son temporarily to the position. He may swear all witnesses and jurors, and administer all other oaths and affidavits, 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, and when the judge is not present adjourn the court from day to day until the special judge is requested to act. 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 and proper to the enforcing and carrying out the jurisdiction of the municipal court. He shall receive and collect all fines, penalties, and fees of every kind accruing to the court, or any officers thereof, including police officers, and keep full, accurate, and detailed accounts of the same, and shall on the first Monday of every month deliver over to the city treasurer of the city of Duluth moneys so received, with detailed accounts thereof, and take his receipt therefor. The clerk of said court shall, under the direction of the judge, and with the consent of the common council of said city, [unless otherwise provided,] from time to time procure and furnish all the necessary blanks, stationery, record-books, court-room, jury-room, and office furniture, lights and fuel for the use of the court and the officers thereof, at the expense of the city. (*Id.* § 7.)

**\*§ 247. Terms—Summons—Pleading—Practice.**

The municipal court shall hold regular terms for the trial of civil actions on the first and third Mondays of every month, which term 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, or by writ of attachment, or other process to be issued by the clerk; and all proceedings under the provisions of chapter eighty-four of the general statutes, and all civil process, shall be returnable at ten o'clock in the forenoon of one of said terms, and the summons, or other process, shall be served upon the defendant six days before the term at which the same is made returnable, exclusive of the day of service. No summons shall issue until the complaint in the action shall have been filed with the clerk. The proceedings in civil actions in said court shall be the same as similar pleadings in the district courts of this state, subject to such modifications as the court may by rule prescribe. If the defendant fails to appear at the opening of the court on the day of which the summons is returnable, he shall be defaulted; if he so appear, he shall then, or at such time as the court shall designate, not to exceed one week, answer the plaintiff's complaint, or demur to the same, and if the answer contain a counter-claim, the plaintiff shall reply thereto forthwith, or at such times as the court shall designate. Every complaint, answer, or reply shall be verified by the party, his agent or attorney, as in courts of justices of the peace. Either party may demur to any pleading or his adversary, as in the district court. The court may for good cause, in its discretion, and on such terms as it may deem equitable, open any default within thirty days after the party against whom it is entered shall have notice or knowledge of the same, and may allow any amendment of any pleading at any time. Either party shall be entitled to a continuance of any civil action, except in the case of the proceedings under the provisions of chapter eighty-four of the General Statutes of Minnesota, until the next term of the court following the term at which the summons shall be returnable; and further continuance may be granted, upon sufficient cause shown, and on such terms as shall be just. Said court shall 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,

or at any other time. The counter-claim in the defendant's answer may be such an one as could be interposed in the district court. (*Sp. Laws*, 1887, c. 323, § 8.)

**\*§ 248. Attachment.**

Any creditor desiring to proceed by attachment in said court shall by himself, his agent or attorney, make and file his complaint in writing, together with an affidavit similar to the affidavit required by law in an application for an attachment in justice courts, and [also] caused [cause] to be filed a bond with sufficient sureties to be approved by the judge, and similar to the bond required on a like application in justice courts, except that the limit of liability thereon shall be mentioned therein as not exceeding three hundred dollars. The service of the writ and other proceedings thereon shall be similar, as near as may be, to the service of such writ and proceedings in justice courts: *provided, however*, that in all cases where such writ shall be served on the defendant, personal judgment may be entered in said action, whether property be actually attached by virtue of such process or not. Writs of attachment may be vacated by the judge upon proper showing the same as in the district courts of this state. (*Id.* § 9.)

Under the act of 1885 it was held that the court had authority to vacate an attachment only upon bond given as required in similar proceedings in justice court. *Rossiter v. Minnesota Bradner-Smith Paper Co.*, 33 N. W. Rep. 855.

**\*§ 249. Replevin.**

When the object of the action is to recover the possession of personal property, the plaintiff, his agent or attorney, may make and file a complaint in writing, together with an affidavit similar to the affidavit required in justice courts in like actions. The plaintiff, or some person in his behalf, shall execute a bond, with sureties, to be approved by the judge, conditioned similar to bonds in such actions in justices' courts, and file such bond, and an action may be maintained on such bond as upon similar bonds filed in like actions in justice court, not exceeding in amount the sum of three hundred dollars. The writ, and all proceedings thereunder, shall be executed (except as to time and forms and trial) in 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 days before delivering the same to the plaintiff; and if within that time the defendant, or some one in his behalf, shall execute to the plaintiff a sufficient bond, with one or more sureties, to be approved by the judge, conditioned [as] in like cases in the district court, and file such bond, the clerk shall thereupon issue an order to the officer to redeliver such property to the defendant. (*Id.* § 10.)

**\*§ 250. Calendar.**

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 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. (*Id.* § 11.)

**\*§ 251. Jury trials—Jurors.**

Trial by jury in the municipal court shall in all respects be conducted as in the district courts of said state, and all laws of a general nature, applicable to jury trials in said district courts, shall apply to said municipal court. Jurors in said municipal court shall be provided and drawn in the following manner: The mayor or acting mayor of said city, the city clerk, and the judge of said court, shall on the first Monday in January and July of each year, at the office of the city clerk, meet, and from the legal voters of said city select and designate seventy-two legal voters of said city as the jurors of said municipal court

to serve therein when required and drawn, during the succeeding six months, and until their successors are elected and certified, and shall thereupon certify said names so elected 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 said clerk shall draw twenty-four ballots; the persons named upon said ballots shall be summoned to attend the trial of the cause wherein they were drawn, and the first twelve so drawn shall constitute the jury, unless challenged and excused, in which case the clerk shall draw in like manner the names of other jurors until a panel of twelve shall be selected from said twenty-four persons, then the clerk shall draw the names of other jurors in said box, until a sufficient number of jurors can be obtained. After a jury has been obtained, the clerk shall place the names of all the jurors in said box, and cause the same to be intermingled with those not drawn; but no juror shall be required to serve as such in said court oftener than once each month. Said municipal court shall have the same powers to compel the attendance of jurors and witnesses that is by law given to the district courts of said state. Jurors in said municipal court shall be entitled to like fees in the trial of civil actions as jurors in justices' courts, to be collected and paid in the same manner. Like peremptory challenges may be made by either party as in the district court. 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 the district court, and exceptions to the rulings and decisions of the judge, and his charge and refusal to charge, may be taken as upon trials in the district court. When no other provisions are otherwise made in this act said municipal court is vested with all the powers which are possessed by the district courts of this state; and all the laws of a general nature shall apply to said municipal court as far as the same can be made applicable [to] and not inconsistent with this act; jurors in criminal cases shall be entitled to like fees as in civil cases, which said fees shall be taxed as part of the costs in the case. (*Id.* § 12.)

**\*§ 252. Application of laws—Costs—Appeals.**

Title eighteen of chapter sixty-six of the General Statutes, relative to trial by referee, title nineteen of the same chapter, relative to exceptions, and title twenty of the same chapter, relative to new trials, shall apply to said municipal court. Disbursements shall be allowed the prevailing party in said municipal court, and costs to be taxed forthwith without notice. Such costs shall be as follows: For the plaintiff, upon a judgment in his favor, five dollars; for the plaintiff, upon a judgment in his favor upon a trial upon the merits, where the amount thereof, or the value of the personal property recovered, exclusive of disbursements, exceeds fifty dollars, an additional five dollars; for the defendant, when judgment is rendered in his favor on the merits after trial of an issue of fact, five dollars; and if the amount of money or value of property claimed in the complaint exceeds fifty dollars, an additional five dollars. Appeals from this court shall be, in all cases, to the supreme court, where they lie in similar cases from judgments and orders of the district courts. (*Id.* § 13.)

**\*§ 253. 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, upon entry of judgment, against the goods and chattels of the judgment debtor, returnable within thirty days. Judgment may be stayed in this court the same as in justices' courts. Every person in whose favor a judgment is rendered in said municipal court for an amount exceeding ten dollars, besides

costs, may, upon paying the fee therefor, and all unpaid fees payable to the clerk in such actions, demand, and shall receive from such clerk, a transcript of such judgment duly certified, and file the same in the office of the clerk of the district court of St. Louis county, who shall file and docket the same as in case of transcripts from the docket of justices of the peace; and every such judgment shall become a lien upon real estate of the debtor from the filing of such transcript to the same extent as a judgment of the district court, and, so far as relates to the enforcement of the same, be exclusively under the district court, and carried into execution by its process as if rendered in said court. The clerk of the municipal court shall not issue such transcript while the writ of execution is in the hands of an officer, and not returned or lost, and shall note on the records that such transcript has been given, and not thereafter issue a writ of execution on such judgment, but at any time may issue a new transcript of such judgment in case of loss of the transcript first given. (*Sp. Laws 1887, c. 323, § 14.*)

**\*§ 254. Garnishments.**

Proceedings against garnishees may be instituted in the same manner as in justices' courts, but the summons may be served either by any officer or other person not interested, at any place within the state of Minnesota, and the summons may be made returnable at any term of said municipal court which may be named therein, not less than six days; and the notice required to be served on the defendant in the action may be signed either by the clerk of said court or by the person who served the garnishee summons, or by the plaintiff or his attorney. The disclosure of the garnishee may be taken, and all further proceedings had, in the same manner as if the proceedings were in the district court. (*Id.* § 15.)

**\*§ 255. Criminal proceedings.**

Complaints in criminal cases, where the defendant is not in custody, may be made to the court while in session, or to the judge or clerk when not in session, and shall be made in writing, or reduced to writing by the village attorney, 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, regulation, or by-laws of said city. And the clerk as well as the judge is hereby made a conservator of the peace, and vested with the same authority, discretion, and power to act, on receiving complaints and issuing warrants of said court in criminal cases, and complaints, warrants, and other process in criminal cases may follow substantially the same forms heretofore in use by the municipal court of the village of Duluth, with such alterations as may seem convenient to adapt the same to the style of the said municipal court, or may be in such other form as the court may prescribe, sanction, or approve. In cases where 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 defendant is charged, which shall stand in place of a complaint, unless the court shall order 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 formerly plead. In 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. (*Id.* § 16.)

**\*§ 256. Salaries—Fees.**

The judge of said court shall receive a salary of two thousand dollars per year, the clerk of said court a salary of one thousand dollars, and the city attorney shall receive a salary of six hundred dollars, exclusive of the salary

paid said officer by the common council of said city. The salary of each of said officers shall be payable from the city treasury of the city of Duluth in monthly installments, and neither the said judge, clerk, nor city attorney shall receive any other fee or compensation for his services; but in all proceedings had in said municipal court, like fees shall be charged and collected by the clerk, as costs, as are allowed by law to justices of the peace in proceedings and trials before them, or for similar services. Police officers of said city are hereby vested with all the powers of constables, under the statutes of the state of Minnesota, as well as at common law; and the police officers, in making service of any process, or doing any other duty in respect to causes in said court, shall note and return to the court for collection, such fees as are allowed to constables for like services in justice's courts; and all fees, whether so charged by the clerk or any police officer, whether due from the county on preliminary examinations or otherwise, shall be collected by the clerk as costs, and by him accounted for to the city treasurer of said city as hereinbefore provided. (*Id.* § 17.)

**\*§ 257. Officers to attend court.**

It shall be the duty of the mayor or the 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 the proceedings. Police officers of said city shall 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 service, he shall forthwith pay the same over to the clerk of said municipal court for the use of said city; and the failure so to do shall be a misdemeanor, punishable by a fine not exceeding one hundred dollars, or by imprisonment not exceeding thirty days. (*Id.* § 18.)

**\*§ 258. Costs in criminal cases.**

In all criminal cases tried in said court, in which the defendant shall be convicted, the clerk shall tax as costs of court, and, if not paid, judgment shall be entered therefor against the defendant in the following sums, to-wit: In cases where no warrant is issued, and the defendant, on being arraigned, shall plead guilty, two dollars; in cases where warrants shall be issued, and the defendant, upon arraignment, pleads not guilty, [pleads guilty,] two and one-half dollars; in cases where the defendant pleads not guilty, and shall be tried before the court, five dollars; in cases where the defendant shall plead not guilty, and be tried before a jury, ten dollars. Said sums respectively to be in addition to all costs of witnesses, jurors, and other costs taxed in said actions, or either of them, and in case of examination in cases where said court shall not have exclusive jurisdiction the clerk shall tax as costs the same fees as are now allowed to justices of the peace for similar services. (*Id.* § 19.)

**\*§ 259. Deposit by plaintiff.**

The plaintiff, upon making his complaint in all civil actions, shall pay to the clerk of said court one dollar for each one hundred dollars, or fraction thereof, claimed in the complaint. (*Id.* § 20.)

**\*§ 260. Process—Service.**

All process issued by said court may run into any adjoining county in this state, and be served therein by any police officer or sheriff or constable in the manner provided. (*Id.* § 21.)

**\*§ 261. Prosecuting officers.**

The city attorney of the city of Duluth shall have charge of the prosecution of all criminal cases before said municipal court not indictable, and the

county attorney of St. Louis county shall act in the prosecution of offenders charged with indictable offenses, when so required by law, to prosecute before justices of the peace. (*Sp. Laws 1887, c. 323, § 22.*)

**\*§ 262. Former court—Pending actions—Removal.**

Upon the passage and approval of this act, the municipal court of the city of Duluth shall take cognizance of all actions and proceedings when pending in the municipal court of the village of Duluth, and shall have jurisdiction to hear and determine the same, in the same manner as if the said actions and proceedings had been originally commenced in the municipal court of the city of Duluth. (*Id. § 23.*)

**\*§ 263. Actions involving title to realty.**

In case it shall appear from the pleadings, or upon the trial of any cause, that the title to real estate is involved in this action, the municipal court shall not proceed further therein, but shall transfer the action to the district court of St. Louis county, and the cause shall be proceeded with in the court to which it has been transferred, as if originally commenced therein. (*Id. § 24.*)

**\*§ 264. Certifying salaries.**

It shall be the duty of the clerk of said court at the end of each month, to make out and certify and [an] order for each of the officers of said court, for the respective amount due each, for the preceding month, and, when so drawn and signed by the clerk of said court, the same shall be countersigned by the mayor or acting mayor of said city, and the comptroller, when the same may be presented to the city treasurer, who shall pay the sum out of any funds belonging to said city, without any other act necessary to be done in the premises, and the city treasurer may hold said order as his voucher for and to be used in settlement with the common council. (*Id. § 25.*)

**\*§ 265. Stenographer.**

The municipal judge of said court shall have power to appoint a stenographer for said court, whose duty it shall be to keep accurate minutes in short-hand of all the proceedings in causes tried in said court whenever requested so to do by said judge, and extend the same into long-hand at the request of either party to such action. Said stenographer shall receive pay at the rate of four dollars per day for each day actually employed in said court, the same to be certified and paid out of the city treasury of the city of Duluth, in the same manner as other officers of said court are certified and paid. He shall receive fees for extending his short-hand minutes into long-hand, from the party ordering the same, at the rate of ten cents per folio for original copies, and five cents per folio for carbon copies. It shall be the duty of the clerk of said court, in all cases where the services of said stenographer are used, to tax in the costs of said case three dollars, for the use and benefit of the city of Duluth, to be taxed and collected in the same manner as other costs are taxed and collected. (*Id. § 26.*)

MUNICIPAL COURT OF WASECA.\*

**\*§ 266. Established—A court of record.**

There is hereby established in the city of Waseca, Minnesota, a court of record, to be called the "municipal court," for the transaction of all business which may lawfully come before it. (*Sp. Laws 1885, c. 117, § 1.*)

\*"An act to be entitled 'An act to establish a municipal court in the city of Waseca.'" Approved March 5, 1885. § 27 repeals all parts of c. 47, Sp. Laws 1881, so far as inconsistent with this act.

**\*§ 267. Jurisdiction—Seal—Clerk—Removal to district court.**

Said court shall have a seal, and may have a clerk, and shall have all the jurisdiction and powers now conferred by chapter forty-seven of Special Laws of Minnesota for one thousand eight hundred and eighty-one upon either of the justices of said city, and in addition thereto shall have cognizance of and jurisdiction to hear, try, and determine all civil actions or proceedings where the amount in controversy does not exceed three hundred dollars, or where, in case the action is for the recovery of personal property, the value of such property does not exceed the sum of three hundred dollars: *provided however*, that such cognizance and jurisdiction shall only extend to actions of the same nature and character, save as to amount, now cognizable before said justices, or hereafter cognizable before a justice of the peace: *and provided further*, that when a counter-claim of more than three hundred dollars in excess of plaintiff's claim, or where any equitable defense, or ground for equitable relief, of a nature not cognizable before a justice of the peace is interposed, or where it appears that the title to real estate is involved, the said court shall immediately cause an entry of such facts to be made of record, and cease all further proceedings in the same, and certify and return the same to the district court of said county, a transcript of all entries relating to such case, together with all process and other papers relating to such suit, in the same manner and within the same time, as upon an appeal from a justice's court; and thereupon the said district court shall proceed in the cause as if the said suit had been originally commenced in the said district court, and the costs shall abide the event of the suit, except that the plaintiff shall advance the costs of the said municipal court. (*Id.* § 2.)

**\*§ 268. Judge—Election—Vacancies.**

The judge of said court shall be called the "municipal judge," and shall be elected by the qualified electors of said city at the general city election of said city holden in the year one thousand eight hundred and eighty-five, and each second year thereafter, save as the time of such election may be varied by the provisions herein contained as to filling vacancies, and that the first said judge shall be so elected at the first such general election held in one thousand eight hundred and eighty-five; and in case of any vacancy in the office of municipal judge, the governor of the state of Minnesota shall appoint some qualified person to said office until the next annual city election, when a judge shall be elected for a full term of two years. (*Id.* § 3.)

**\*§ 269. Judge—Qualifications—Oath.**

No person shall be elected to or hold the office of judge of said court except a person then a resident of said city of Waseca, and a person duly admitted to practice as an attorney in the district courts of the state; and before entering upon the duties of his office he shall take and subscribe an oath as prescribed by the General Statutes for judicial officers, which oath shall be filed in the office of the city recorder. (*Id.* § 4.)

**\*§ 270. Judge—Powers.**

The judge of said municipal court, shall have the general powers of judges of courts of record, and may administer oaths, take and certify acknowledgments, and, as conservators of the peace, shall have all the authority and powers which by law is vested in justices of the peace of said state or city, or any other judicial officer, including sole and exclusive jurisdiction of all violations of the ordinances of the city of Waseca, and prosecution thereunder. (*Id.* § 5.)

**\*§ 271. Clerk—Oath—Bond—Deputy.**

Said municipal court may have a clerk, who may be appointed or removed at the pleasure of said judge by an order in the minutes of said court. Such clerk, before entering upon the duties of his office, shall take an oath to support the constitution of the United States and the state of Minnesota, and to faithfully discharge and perform all the duties of his office, and shall execute to said city a penal bond in such sum and with such sureties as the common council of said city shall direct and approve, conditioned that he will at all times pay over to all persons, on demand, all moneys to which they may be entitled, which may have come into his hands by virtue of his office. Such oath and bond shall be filed in the office of the city recorder of said city. And in case of sickness or pressure of business such clerk may appoint, subject to the approval of said judge, a deputy clerk, with the like powers of the clerk, but acting under the authority of said clerk, who shall be liable on his said bond for all the official acts of such deputy, and for all moneys coming into his hands. The salary or compensation of said clerk shall be such as the judge of said court shall determine, and shall be paid by said judge. (*Sp. Laws 1885, c. 117, § 6.*)

**\*§ 272. Powers of court—Process.**

Said 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 at common law, subject to the 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*, or injunction. It shall have all the powers and jurisdiction conferred on justices of the peace by chapter eighty-four of General Statutes, one thousand eight hundred and seventy-eight. All process shall be attested in the name of the judge and issued under the seal of the court, and signed by the clerk, who shall be styled "clerk of the municipal court," or by the 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 prescribed forms, the forms of process in use either in the courts of record in the 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 the marshal or constable of the city of Waseca, or to the sheriff or any constable of Waseca county, and may be served in the same manner as a summons issued by a justice of the peace, except as this is modified by section fifteen of this act, and service by publication may [be] ordered and made as in justices' courts. (*Id.* § 7.)

**\*§ 273. Court-room—Duties and powers of judge—Criminal proceedings—Costs.**

Said municipal court shall be held in said city of Waseca, in some suitable place to be provided therefor by the judge of said court or by the common council of said city. Its judge shall be chief magistrate of said city, and shall see that the criminal laws of the state and the ordinances, laws, and regulations and by-laws of said city are observed and executed, and shall for that purpose open his court every morning, (Sundays, New Year's day, Christmas day, July Fourth, February twenty-second, Thanksgiving day and other 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 Waseca, or of the

ordinances, laws, regulations, or by-laws of said city: *provided*, that in all cases for the violation of any criminal law of this state the county of Waseca shall be held for and shall pay to the judge of said court all fees and costs which are not collected from the defendant, and that in all cases for the violation of any ordinance, law, regulation, or by-law of said city, said city shall be held for and shall pay to the judge of said court all fees and costs which are not collected from the defendant. A record of all proceedings in said court shall be kept, and all commitments and executions, as well as all other process, shall be issued by the judge or clerk of said court, and all orders, judgments, and sentences shall be entered under the supervision of the judge. (*Id.* § 8.)

**\*§ 274. Clerk—Duties—Powers.**

The clerk of the municipal court (if there be such clerk) shall have the care and custody of all the books, papers, and records of said court. He shall be present, by himself or his deputy, at all trials and all times of said court, unless absent from sickness or by consent of the judge; and, when necessary, the judge may appoint, from day to day, some person to act temporarily as clerk. He may swear all witnesses or jurors, and administer all oaths and affidavits; and when [so] appointed by the court, he shall act as referee in any civil action pending in said court, without compensation. He shall keep minutes of all proceedings, and may enter 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: *provided*, that the judge of said court shall have full power to do any act which said clerk is authorized to do. (*Id.* § 9.)

**\*§ 275. Terms—Summons—Pleadings—Practice.**

Said municipal court shall hold regular terms for the transaction of civil business and trial of civil actions on each and every Tuesday, which terms shall continue from day to day, with such adjournments as the court shall deem proper, until the business of such term shall be finished; and all civil actions shall be commenced by summons issued from said court by its judge or clerk; and all proceedings under the provisions of chapter eighty-four of General Statutes, and all civil process shall be made returnable at ten o'clock in the forenoon of the first day of one of said terms. The form of summons may be as follows, save in actions under chapter eighty-four of the General Statutes:

State of Minnesota;	}	ss.	City of Waseca,
County of Waseca.			Municipal Court.

The state of Minnesota to the marshal or constable of said city of Waseca, or to the sheriff or any constable of said county:

You are hereby commanded to summon \_\_\_\_\_ if \_\_\_\_\_ be found within said county of Waseca, to be and appear before the municipal court of the city of Waseca, at a term thereof to be begun and holden on Tuesday, the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—, at 10 o'clock in the forenoon, and then and there answer to \_\_\_\_\_, whose complaint is on file in said court, in a civil action, and have you then and there this writ.

Witness the honorable \_\_\_\_\_,  
Municipal Judge,

This \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—.

\_\_\_\_\_ of the Municipal Court.

Or the summons may be in any other form which said court may by rule prescribe, and shall be served upon the defendant at least six days before the time at which the same is made returnable. No summons shall issue in any

action until the complaint in such action shall be filed in said court. All complaints and other pleadings of every kind shall be in writing, and subscribed by the attorney of the party, or the party, and shall be verified by the party, or, if the party is absent from the place of trial, by his attorney, as in district courts of this state. If the defendant fails to appear by eleven o'clock in the forenoon of the day on which said summons is made returnable, he shall be declared in default, and the plaintiff shall thereupon have such judgment as he shall show himself entitled to. If the defendant shall so appear, he shall immediately, or within such time as the court shall direct, file his answer or demurrer to the complaint, and the plaintiff may reply thereto forthwith, or within such time as the court may designate. Either party may demur to any pleading of his adversary for the same reasons and in the same form as in district court; but all pleadings shall be construed liberally, and merely technical objections shall be disregarded. And the court may, for good cause shown, in its discretion, and on such terms as it may deem equitable, open any default within ten days after such default. And the opposing party shall have two days' notice, in writing, of any motion to open any default, and may appear to oppose the same. The court shall disregard variances arising between the allegations 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 action, excepting cases under the provisions of chapter eighty-four, General Statutes, until the next term of the court following the term at which the summons shall be returnable; and further continuance may be granted, upon sufficient cause shown, and on such terms as may be just. Said court shall have authority to provide by rule that the plaintiff in any civil action shall, before any summons shall issue in the action, or at any other time, give security for costs by bond, recognizance, or deposit of money, in such sum as the court may designate; and in all civil actions tried in this court without a jury the judge shall, when requested, make and file separate findings of facts and conclusions of law; and on appeals from a judgment in actions tried without a jury on questions of law only; such judgment may be received, if the findings of fact do not justify the conclusions of law. Said municipal judge may practice as an attorney in any of the justice, probate, or district courts, and in the supreme court of this state, except in cases which have come before him in said municipal court, or in matters or proceedings relating thereto. And said municipal judge, in case of sickness, or absence, or other cause, is unable to hold his court, may procure the probate judge and the court commissioner of the county of Waseca to act for him; and such probate judge or court commissioner so called in shall have all the powers of every kind possessed by said municipal judge during such time as he may, by written order of such municipal judge, be requested so to act. (*Sp. Laws 1885, c. 117, § 10.*)

**\*§ 276. Application of laws—Practice.**

All of chapter sixty-six of General Statutes of one thousand eight hundred and seventy-eight, of this state, from section ninety, inclusive, to section one hundred and thirty-one, inclusive, with the amendments thereof, and all other sections of said chapter, and all laws whatsoever of a general nature, shall apply to said municipal court, so far as the same can be made applicable, and so far as they are not inconsistent with the provisions of this act; *provided*, that in cases not herein otherwise provided the practice and method of proceeding shall be as in justices' courts. (*Id.* § 11.)

**\*§ 277. Costs.**

All necessary disbursements paid or incurred shall be allowed the prevailing party as in district courts, and costs shall be allowed the prevailing party as follows:

*First.* To the plaintiff upon a judgment in his favor of one hundred dollars or more, or in actions of replevin when the value of the property replevied is one hundred dollars or more, ten dollars, if issue has been joined, and five dollars if no issue has been joined.

*Second.* To the plaintiff, upon a judgment of less than one hundred dollars, and for fifty dollars or more, or when, in an action of replevin, the value of the property replevied is less than one hundred dollars, and is fifty dollars or more, five dollars, if an issue has been joined, and three dollars if issue has not been joined.

*Third.* To the plaintiff upon any judgment not herein provided for, three dollars.

*Fourth.* To the defendant, when the amount claimed in the complaint, or the value of the property sought to be replevied, is one hundred dollars or over, five dollars, if the judgment be upon discontinuance or dismissal, and ten dollars if judgment is rendered in his favor on the merits.

*Fifth.* To the defendant, when the amount claimed in the complaint, or the value of the property sought to be replevied, is less than one hundred dollars, and is fifty dollars or over, three dollars, if the judgment be upon discontinuance or dismissal, and five dollars if judgment is rendered in his favor on the merits.

*Sixth.* To the defendant, upon any judgment in his favor not herein before provided for, three dollars:

*Provided*, that in every case where a demurrer has been interposed by either party, and overruled, and the party demurring shall not afterwards answer or reply, as the case may be, it shall be considered the same as an issue joined or a decision on the merits: *and provided, further*, that costs may be allowed the prevailing party on a contested motion or demurrer, in the discretion of the judge, not exceeding the sums of five dollars, when the amount or value of the property in dispute exceeds one hundred dollars; and three dollars when the amount or value of the property in dispute is one hundred dollars or less; *and provided, further*, that no party shall recover any costs as herein provided, unless he has appeared of record in such action by an attorney admitted to practice in district courts of this state. (*Id.* § 12.)

### \*§ 278. Same—Taxation—Appeal.

Costs and disbursements may be taxed by the clerk or the judge upon two days' notice by either party, and may be inserted in the entry of judgment. The disbursements shall be stated in detail as in district court, and verified by affidavit filed with the court, and all objections to any item shall be in writing, and shall specify the grounds thereof. When such costs and disbursements are taxed by the clerk either party may appeal to the judge in the same manner as in district court; and sections four, six, seven, eight, nine, ten, eleven, twelve, thirteen, and fifteen, of chapter sixty-seven, of General Statutes of one thousand eight hundred and seventy-eight, shall apply to this court so far as not inconsistent with this act. (*Id.* § 13.)

### \*§ 279. Attachments.

Writs of attachment may be issued on behalf of a plaintiff in any action in said court in the same manner and in like cases as in the district courts of this state; and title nine of chapter sixty-six of General Statutes of one thousand eight hundred and seventy-eight shall apply to this court and govern all proceedings herein as to attachments, except that the causes for an attachment and the form and affidavit therefor shall be the same as in justices' courts and except as the provisions thereof may be inconsistent with the provisions of this act: *provided, nevertheless*, that no real estate shall be attached on a writ issued from said municipal court, unless the amount of the plaintiff's claim, as appears by the affidavit, shall be fifty dollars or more, and

# MINNESOTA STATUTES 1888 SUPPLEMENT

630

DISTRICT COURT.

[Chap.

that no writ of attachment shall issue unless the amount of plaintiff's demand exceeds the sum of five dollars: *and provided, further*, that the bond shall be approved and the writ issue by the judge of said court, and that no order therefor from any court commissioner shall be necessary: *provided, however*, that in all cases where the summons has been served on the defendant, and the court has gained jurisdiction of the defendant, and judgment may be entered without regard to whether the writ of attachment has been levied on any property or not. (*Sp. Laws 1885, c. 117, § 14.*)

**\*§ 280. Same.**

The form of such writ of attachment may be as follows, except that the words "and real estate" shall be omitted, unless the amount of plaintiff's claim as shown by the affidavit shall be fifty dollars or more:

State of Minnesota, County of Waseca.	} ss.	City of Waseca, Municipal Court.
_____, _____, <i>Plaintiff,</i> vs. _____, _____, <i>Defendant.</i>	}	
State of Minnesota, County of Waseca.	} ss.	

The state of Minnesota to the marshal or constable of said city of Waseca, or to the sheriff or any constable of said county:

\_\_\_\_\_. Whereas, in the above-entitled action, an application has been duly made to this court for a writ of attachment against the property of \_\_\_\_\_, defendant therein, setting forth by affidavit that a cause of action exists against such defendant, and specifying the amount of claim and the ground thereof; and that the affiant has good reason to believe (here state the ground for the attachment) \_\_\_\_\_; and, whereas, the bond required by law has been duly executed, approved, and filed in this court:

Therefore you are hereby commanded and required to attach and safely keep all the personal property and real estate of said \_\_\_\_\_ within your county, and not exempt from execution, or as much thereof as may be sufficient to satisfy the said plaintiff's demand, which amounts to the sum of \_\_\_\_\_, as appears from the complaint and affidavit in said action, together with costs and expenses, and that you proceed herein in the manner required of you by law.

Witness the Honorable \_\_\_\_\_, judge of the municipal court of the city of Waseca, Minn., this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 1885.

And no such writ containing the words "and real estate" shall run to or be served by any officer except the sheriff, nor shall it contain the words "marshal or constable of said city of Waseca, [or to] into the," nor the words "or any constable." (*Id.* § 15.)

**\*§ 281. Replevin.**

When the object of an action is to recover the possession of personal property, the plaintiff may at the time of the filing the complaint and issuing of the summons and notification, file an affidavit similar to the affidavit required in the justice court, and in a like action, and also a bond executed with sureties to be approved by the judge and conditioned similar and in same amounts as bonds in like actions in justice courts; and a writ shall thereupon issue, which shall be returnable on the return-day of the summons in such action,

# MINNESOTA STATUTES 1888 SUPPLEMENT

and it may be signed by the clerk or judge, and under seal of the court and in form as follows:

State of Minnesota, } County of Waseca. } ss.	City of Waseca, Municipal Court.
--	-------------------------------------

The state of Minnesota to the marshal or constable of the city of Waseca, or to the sheriff or any constable of said county:

Whereas, \_\_\_\_\_ complains that \_\_\_\_\_ has become possessed of and unjustly detains from the said \_\_\_\_\_ the following described goods and chattels; that is to say, (describing the articles with reasonable certainty and stating their alleged value:) Therefore, you are hereby commanded that you cause the same goods and chattels to be replevied without delay and delivered to said \_\_\_\_\_, and to summon the said \_\_\_\_\_, if to be found within said county, to be and appear before the municipal court of the city of Waseca, at a term thereof to be holden on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—, at ten o'clock in the forenoon, and answer to \_\_\_\_\_, whose complaint is on file in said court, in a civil action; and have you then and there this writ.

Witness the Honorable \_\_\_\_\_,  
 Municipal Judge,

This \_\_\_\_\_ day of \_\_\_\_\_, A. D. 188—.

\_\_\_\_\_ of the Municipal Court.

Or the writ may be in any other form that 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 pleadings and trials, and except as hereinafter provided) as upon similar proceedings in a justice court: *provided*, that all proceedings after the seizure of such property by the officer respecting the possession of such property shall be governed by sections one hundred and thirty-five, one hundred and thirty-six, one hundred and thirty-seven, one hundred and thirty-eight, one hundred and thirty-nine, one hundred and forty, and one hundred and forty-one of chapter sixty-six of the General Statutes of one thousand eight hundred and seventy-eight. (*Id.* § 16.)

**\*§ 282. Calendar.**

Prior to each term of said municipal court for the trial of civil actions a calendar may be made up of the causes which will come up for trial or for any disposition before the court at such term, and the judge may adopt the order of arrangement, and may at each term direct the order of the trial and other disposition of the cases, as in district courts. (*Id.* § 17.)

**\*§ 283. Juries and jurors.**

Trial by jury may be had in the municipal court as in justices' courts, and the jury may be selected in same manner as in justices' court, and *venires* issue therefor and talesmen be selected in the usual manner. Three peremptory challenges of talesmen may be made by either party. 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 the rulings and decisions of the judge, and his charges and refusals to charge, may be taken as upon trials in the district court. When no other provisions are otherwise made in this act, said municipal court is vested with all the powers which are possessed by the district courts in this state; and all laws of a general nature apply to the said municipal court so far as the same can be made applicable and are not inconsistent with the provisions of this act. Jurors in said municipal court shall be entitled to like fees as jurors in justices' courts, to be collected and paid in same manner, but to be advanced by the party demanding a jury before such jury is drawn and at the time of demanding the same; and jurors in

criminal cases shall be entitled to like fees as jurors in civil actions, which said fees shall be taxed as a part of the costs in the case. (*Sp. Laws* 1885, c. 117, § 18.)

**\*§ 284. Application of laws—Motions for new trial—Time for rendering decisions.**

Title eighteen of chapter sixty-six of General Statutes, relative to trials by referees, title nineteen of the same chapter, relative to exceptions, title twenty of the same chapter, relative to new trials, section four of chapter seven of the General Statutes, and chapter eighty-four of said statutes shall all apply to said municipal court and its judge: *provided*, that all motions for a new trial shall be made within ten days, unless after the decision in the trial sought to be opened. And in all cases the judge in cases tried without a jury may take five days in which to decide any action, motion, or demurrer. (*Id.* § 19.)

**\*§ 285. Appeals.**

Appeals shall lie from said municipal court to the district court of Waseca county in all actions, both civil and criminal, and in actions under chapter eighty-four of the General Statutes of this state, as follows: In criminal actions and in actions under chapter eighty-four of General Statutes appeals may be taken in all cases in the same manner and upon like proceedings and with like effect as they may now be taken from justices' courts of this state. In civil actions not under chapter eighty-four of General Statutes appeals may be taken in all cases and in the same manner and within the same time and with the same effect as can be now taken from justices' courts, and title eleven of chapter sixty-five of General Statutes, relating to appeals, shall apply to appeals from this court: *excepting and providing*, that an appeal may be taken from any judgment, or from an order granting or refusing a new trial, or from an order sustaining or overruling a demurrer, and in no other cases: *and provided, further*, that in case of an appeal from a judgment on questions of law only, or from an order granting or refusing a new trial, or from an order sustaining or overruling a demurrer, such district court shall certify under its seal its final decision on such appeal to said municipal court; and that in case such appeal be from an order, or in case such district court has failed to sustain a judgment of the municipal court appealed from on questions of law only, said district court shall remand such case to said municipal court in the same manner and with same effect as cases are remanded from the supreme court to the district court: *and provided further*, that no appeal from any order of said municipal court shall be allowed unless the same is taken within ten days from the filing of such order, unless further time be granted, on application made within such space of ten days, in which to prepare a bill of exceptions or case, and in which to perfect such appeal. (*Id.* § 20.)

**\*§ 286. Judgments—Lien—Transcripts—Executions.**

No judgment rendered in said municipal court shall be a lien upon real estate until a transcript thereof shall be filed in the district court, as hereinafter provided; but writs of execution on all judgments in civil actions may issue upon entry of judgment after time for appeal has elapsed against the goods and chattels of the judgment debtor, returnable within thirty days. Judgments may be stayed in this court the same as in justices' courts. Every person in whose favor a judgment is rendered in said municipal court for an amount exceeding ten dollars, besides costs, may, upon the paying the fee therefor and all unpaid fees payable to the judge of said court in such action, demand, and shall receive from such court, a transcript of such judgment, duly certified, and file the same in the office of the clerk of the district court of the

county of Waseca, who shall file and docket the same as in case of transcripts of judgment from justices' courts; and every such judgment shall become a lien upon the real estate of the debtor from the filing of such transcript to the same extent as a judgment of the said district court, and shall thereafter, so far as relates to [the] enforcement of the same, be exclusively under the control of said district court, and carried into execution by its process as if rendered in said district court: *provided*, that the transcript of a judgment in any action in municipal court in which a writ of attachment has been issued and levied on real estate shall become a lien, on being filed in such district court in the county where such land is, on all real estate so attached; and such lien shall date back to the date of such attachment. Said municipal court shall not issue such transcript while a writ of execution is in the hands of an officer and not returned or lost, 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 such judgment in the case of the loss of the transcript first given. (*Id.* § 21.)

**\*§ 287. Garnishment.**

Proceedings against garnishees may be instituted in the same manner as in justices' courts, but the garnishee summons may be served either by an 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 which may be named therein, not less than six days, and the notice required to be served on the defendant in the action may be signed either by the clerk 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 if the proceedings were in the district court. (*Id.* § 22.)

**\*§ 288. Criminal proceedings.**

Complaints in criminal cases, where the defendant is not in custody, may be made to the court while in session, or to the judge or clerk when not in session, and shall be made in 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, except that the judge may require the city attorney of said city to draw the same when violations of any ordinance, regulation, or by-law of said city, or the county attorney of said county to draw the same [when] for any violation of any law of this state, and may so notify such city attorney or county attorney. And the clerk of said court, as well as said judge, is hereby made a conservator of the peace and vested with the same authority, discretion, and power to act on receiving complaints and issuing the warrants of said court in criminal cases. Any complaints, warrants, and other process in criminal cases may follow substantially the same forms heretofore in use by the 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 where alleged offenders shall be in custody, and brought before the court or clerk without process, the judge or 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; and in case of failure to plead, the judge or clerk shall enter a plea of not guilty, and a formal acquittal or conviction for the same offense may be proved under that plea, the same is if formally pleaded and [in] the examination of offenders charged with indictable offenses; the judge or clerk shall keep such minutes of the examina-

tion as the court may direct, and shall make the proper return to the proper court before which the party charged with the offense may be bound to appear. The city attorney of Waseca shall have charge of all criminal cases before said municipal court for offenses against any ordinance, regulation, or by-law of said city, and the county attorney of Waseca county shall act in the prosecution of all offenders charged with the violation of any law of this state. (*Sp. Laws 1885, c. 117, § 23.*)

**\*§ 289. Fees.**

In all proceedings had in said municipal court like fees or costs shall be charged and collected by the judge, or the clerk for the judge, which are allowed by law to justices of the peace in proceedings and upon trials before them, or for similar services, except as hereinafter provided: *provided*, that the fees shall be one dollar for issuing each and every summons, which fees shall [be paid] in advance by the plaintiff, prior to the issuing of such summons; and that the fees for issuing each writ of attachment which can be levied on real estate, there shall be a fee of fifty cents in addition to the other fees allowed in justices' court: *and provided, also*, that for hearing and deciding every motion for a new trial, or for removing a default, there shall be a court fee to go to the judge, of one dollar, and for hearing and deciding every demurrer a fee of fifty cents in addition to the usual fees in justices' courts; and that for allowing or settling any bill of exceptions or case a fee of fifty cents shall be allowed to the judge; and that for certifying any return to the district court on an appeal ten cents per folio, unless such return and all necessary copies be made by the appealing party: *provided, further*, that in all criminal actions before said municipal court, and in all examinations held by or before said court to inquire into offenses of which said court shall not have final jurisdiction, the same fees shall be taxed as costs of said court as are now allowed to justices of the peace for similar services, and twenty-five per cent. additional thereto: *and provided*, that all such fees and costs mentioned in this section shall go to the judge of said court as his compensation in lieu of a salary. (*Id. § 24.*)

**\*§ 290. Records, books, seal, etc.**

The municipal court shall be furnished from time to time with all necessary records and judgment books and dockets, and also with a seal of court, by and at the expense of the city of Waseca. (*Id. § 25.*)

**\*§ 291. City justices, superseded—Pending actions.**

The said municipal court created by this act shall not exercise any of the powers of jurisdiction conferred on it by this act until the first Tuesday following the general election of said city in one thousand eight hundred and eighty-five, and until such time the city justices of said city shall have all the powers and jurisdiction heretofore had and enjoyed by them: *provided, however*, that on and after the first Tuesday after such general city election in one thousand eight hundred and eighty-five, the power and jurisdiction of said justices shall cease, and all causes, actions, and proceedings then pending before any of said city justices shall be considered as pending thenceforth in said municipal court; and such justices shall immediately transfer to said municipal court all papers and records concerning the same; and all dockets, records, files, and papers in the custody of each of the city justices of said city shall on such day be transferred to and turned over to said municipal court, which shall have full jurisdiction to finish and complete all proceedings pending before any such justice, and to enforce, by execution or otherwise, all judgments theretofore rendered by any such justice; and such judgments shall have the same force and legal effect as other judgments of said municipal court; and thereafter no city justice within said city shall issue any process or take cognizance of any action or proceeding, civil or criminal; and that the

time of office of such city justices as are now in office shall end on the first Tuesday after the general city election of said city in one thousand eight hundred and eighty-five. And the said municipal court shall have the custody and possession of all dockets, records, files, and papers of all city justices in said city, and of all village justices of the village of Waseca; and all judgments existing on such dockets shall be of the same legal effect as other judgments of said municipal court. (*Id.* § 26.)

## MUNICIPAL COURT OF WINONA.\*

**\*§ 292. Established.**

That there is hereby established in the city of Winona, in the county of Winona, a municipal court for the transaction of all business which may lawfully come before it. (*Sp. Laws* 1885, c. 115, § 1.)

**\*§ 293. Jurisdiction.**

Said court shall be a court of record, and shall have a clerk and 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 dollars. Also to hear, try, and determine all criminal cases, and conduct all criminal examinations heretofore cognizable before a justice of the peace of the city of Winona. 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 dollars over plaintiff's claim is interposed, or where it appears from the evidence 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 Winona 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 an appeal from justices' court; and thereupon the said district court shall proceed in the cause to final judgment and execution according to law, the same as if the said suit had been originally commenced in said court; and the costs shall abide the event of the suit, except that the plaintiff shall advance the costs of the said municipal court in the suit. (*Id.* § 2, *as amended Sp. Laws* 1887, c. 49, § 1.)

**\*§ 294. Judge—Election—Vacancy.**

There shall be elected at the general city election in said city on the first Monday in April, in the year one thousand eight hundred and eighty-five, and on that day quadrennially thereafter, a suitable person with the qualifications hereinafter mentioned, to the office of judge of said court to be called "municipal judge," who shall enter upon the duties of his office on the third Monday of April in the year of his election, and shall hold his office for the term of four years, and until his successor shall be elected and qualified. In case a vacancy shall occur in the office of any municipal judge in said city before the expiration of the term for which he was elected, the vacancy shall be filled by appointment by the governor of this state until a successor is elected and qualified; and such successor shall be elected at the first general city election, occurring more than thirty days after the vacancy shall have happened, and shall enter upon his office on the third Monday in April in the year of his election, and hold the same for the full term of four years, and until his successor shall be elected and qualified. (*Id.* § 3, *as amended Sp. Laws* 1887, c. 49, § 2.)

\*"An act to establish a municipal court in the city of Winona." Approved March 9, 1885.

**\*§ 295. Judge—Qualifications—Powers.**

Every judge of said court shall be a resident of the city of Winona, and a person duly admitted to practice as an attorney in the courts of this state; and before entering upon the duties of his office he shall take and subscribe an oath as prescribed by the general statutes for judicial officers, which oath shall be filed in the office of the city recorder of said city. The judge of said municipal court shall have the general powers of judges of courts of record, and may administer oaths, take and certify acknowledgments in all cases, and, as conservator of the peace, shall have all powers and authorities which are by law vested in justices of the peace or any other judicial officer. (*Sp. Laws 1885, c. 115, § 4.*)

**\*§ 296. Clerk—Oath—Bond—Deputy.**

The recorder of the city of Winona shall be *ex officio* clerk of said municipal court. Such clerk, before he enters upon the duties of his office, shall take and subscribe an oath to support the constitution of the United States and of the state of Minnesota, and to faithfully and honestly discharge and perform the duties of his office, and shall execute to the city of Winona a penal bond in such sum and with such sureties as the council shall direct and approve, conditioned that he will account for and pay over to the treasurer of said city, on the first Monday of every month, all fines, penalties, fees, and other moneys belonging to or to go to said city, which may have come into his hands during the month next preceding, and that he will at all times pay over to all other persons, on demand, all moneys to which they may be entitled, which may have come into his hands by virtue or by reason of his office. Such oath and bond shall be filed in the office of the city treasurer of said city. Such clerk shall have power to appoint, subject to the approval of the judge, a deputy clerk with the like powers of the clerk, for whose acts the said clerk shall be responsible. (*Id. § 5.*)

**\*§ 297. Court officer.**

The municipal judge shall, on or before the first Monday in May in each year, appoint by and with the consent of the city council of said city a suitable person to act as officer of the said court, with the official title of "court officer," whose term of office shall begin on the first Monday in May, and continue for one year, and until his successor shall be appointed and qualified. Such officer shall, before entering upon the duties of his office, take the usual oath of office, and shall execute a bond to said city, with one or more sureties, to be approved by said council, conditioned for the faithful performance of his duties, and for the payment and delivery to the person or corporation entitled thereto of all moneys and effects which may come into his hands by virtue or color of his office. It shall be the duty of said officer to attend said court at all times when it is in session, to execute its orders, to serve all process issued therefrom which may be delivered to him for service, and to perform such other duties as may be required of him by this act or by any law of this state. In case of a vacancy in said office, the municipal judge shall, by and with the consent of the said city council, fill such vacancy by appointment for the remainder of the unexpired term; and in case of said court officer's temporary absence or disability, the municipal judge may appoint some police officer of said city to act for the time being in his place, who shall, while so acting, possess the same powers and perform the same duties as said court officer. The compensation of the court officer shall be fixed by the city council at or before the beginning of each term of office, and shall not be increased or diminished during such term; and such officer may, for good cause, be removed from office by the municipal judge, and the vacancy thus caused shall be filled in the same manner in this section above provided. (*Id. § 6, as amended Sp. Laws 1887, c. 49, § 3.*)

**\*§ 298. Powers of court—Process.**

The municipal court shall have full power and authority to issue all process, civil and criminal, necessary and proper to the exercise of the jurisdiction given it by law, and to enforce 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. It shall also have all the powers and jurisdiction conferred on justices of the peace by chapter eighty-four, General Statutes of this state, relating to forcible entries and unlawful detainers, and the proceedings shall be the same, with the same right of appeal, as therein provided. All process shall be tested in the name of the judge, and issued under the seal of the court and signed by the clerk, who shall be styled "clerk." And all forms of process not prescribed herein 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. Process shall be directed for service to the court officer or any police officer of the city of Winona, or to the sheriff or any constable of Winona county, and shall be served in the same manner as like process from the district court; and service by publication may be made in like manner as in justice court. (*Id.* § 7, as amended 1887, *Sp. Laws*, c. 49, § 4.)

**\*§ 299. Court-room—Duties of judge and clerk.**

The said municipal court shall be held in the city of Winona at some suitable place to be provided therefor by the city council. Its judge shall be the chief magistrate of the city, and shall open his court every morning, (Sundays and legal holidays excepted,) and proceed to hear and dispose of all cases which shall be brought before him by the police officers of the city, or otherwise, either with or without process, for violation of the criminal laws of this state committed within the county of Winona, or of the ordinances, 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 other process and writs. (*Id.* § 8, as amended *Sp. Laws* 1887, c. 49, § 5.)

**\*§ 300. Clerk—Powers—Duties.**

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 first 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; and all moneys so collected for fines, penalties, or fees shall remain the property of said city. (*Sp. Laws 1885, c. 115, § 9.*)

**\*§ 301. Terms—Summons—Service—Pleadings—Practice.**

The municipal court shall hold regular terms for the trial of all civil actions on the first and third Tuesdays 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 order or rule, 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 or by writ of attachment to be issued by the clerk. The form of summons may be as follows:

State of Minnesota,	}	ss.	Municipal Court,
County of Winona,			City of Winona.

The state of Minnesota to the court officer or any police officer of said city of Winona, or the sheriff or any constable of said county:

You are hereby commanded to summon \_\_\_\_\_, if \_\_\_\_\_ shall be found within the county of Winona, to be and appear before the municipal court of the city of Winona, at a \_\_\_\_\_ term thereof to be holden on Tuesday, the \_\_\_\_\_ day of \_\_\_\_\_, A. D. \_\_\_\_\_, at the hour of \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, and answer to \_\_\_\_\_ whose complaint is on file in said court, and have you then and there this writ. The amount claimed by the plaintiff is the sum of \_\_\_\_\_ dollars and \_\_\_\_\_ cents, and interest thereon from and since the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 188—, at the rate of \_\_\_\_\_ per cent. per annum.

Witness, the honorable \_\_\_\_\_, municipal judge, this day of \_\_\_\_\_, A. D. 188—.

[L. s.]

\_\_\_\_\_  
Clerk of the Municipal Court.

And the judge of said court may, upon the request of the plaintiff, empower any suitable person not a party to the action to execute the same by an indorsement thereon to the following effect: "At the request and risk of the plaintiff, I authorize A. B. to execute and return this writ. Judge of the Municipal Court;" and the person so empowered shall thereupon possess all the authority of an officer in relation thereto, and be subject to the same obligations. The summons shall be served upon the defendant at least six days before the term at which the same is made returnable. No summons shall issue until a written complaint in the action shall be made and filed with the clerk: *provided*, that whenever the action is brought upon a promissory note or other instrument in writing, purporting to be signed by the defendant, or upon account for money paid or goods sold and delivered, or services rendered, such note or other instrument in writing, or a duly-certified copy of such account, together with a minute in writing of the amount claimed, may be filed, and shall be deemed sufficient as a complaint. If the defendant fails to appear at the time 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 contains a counter-claim, the plaintiff shall reply thereto forthwith, or at such time as the court may designate. The answer or reply shall be in writing, and be filed with the clerk, and each of such pleadings shall be verified by the party, or his agent or attorney, as in courts of justices of the peace. Either party may demur to any pleadings of his adversary as in the district court, but all pleadings in this court shall be construed liberally. And the court may for good cause, in its discretion, and on such terms as it may deem equitable, open any default within six months after the same is made, and may allow any amendment of

any pleading at any time, and shall disregard variance between the allegations 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 action, except in the case of proceedings under the provisions of chapter eighty-four, General Statutes of Minnesota, until the next term of the court following the term at which the summons shall be returnable; and further continuance may be granted upon sufficient cause shown, and on such terms as may be just. 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, or at any other time. The counter-claim in the defendant's answer may be such a one as could be interposed in the district court. (*Id.* § 10, *as amended Sp. Laws 1887, c. 49, § 6.*)

**\*§ 302. Attachment.**

Any creditor having a claim of ten dollars or more, and desiring to proceed by attachment in said court, shall, by himself, his agent or attorney, make and file his complaint in writing, together with an affidavit similar to the affidavit required by law in an application for a writ of attachment in the district court, and also cause to be filed a bond in the penal sum to be fixed by the judge of the court, not less than one hundred dollars, nor more than five hundred dollars, with sufficient surety to be approved by the judge, and similar to the bond required on a like application in district court. The writ of attachment may be in form as follows:

State of Minnesota,	}	ss.	City of Winona,
County of Winona.			Municipal Court.

The state of Minnesota to the court officer or any police officer of the city of Winona, or to the sheriff or any constable of said county:

You are hereby commanded to attach the goods, chattels, moneys, effects, and credits of \_\_\_\_\_, or so much thereof as shall be sufficient to satisfy the sum of \_\_\_\_\_ dollars, with interest and costs of suit \_\_\_\_\_, in whosoever hands or possession the same may be found in said county of Winona, and so provide that the same may be subject to further proceedings as the law requires; also to summon \_\_\_\_\_, if to be found within said county, to be and appear before the municipal court of the city of Winona, at a term thereof to be holden on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 188—, at the hour of \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, and answer to \_\_\_\_\_, whose complaint is on file, in said court, in a civil action; and have you then and there this writ.

Witness the honorable \_\_\_\_\_, municipal judge, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 188—.

Clerk of Municipal Court.

And shall in all cases be returnable as an ordinary summons, except that in no case shall it be made returnable more than thirty days from its date. In all other respects the service of the writ and other proceedings thereon shall be similar, as near as may be, to the service of such writ and proceedings in district court: *provided, however*, that in all cases where such writ shall be served on the defendant personally, judgment may be entered in said action, whether property be actually attached by virtue of said process or not. (*Id.* § 11, *as amended Sp. Laws 1887, c. 49, § 7.*)

**\*§ 303. Replevin.**

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 district court in a like action, and the plaintiff, or some person on his behalf,

# MINNESOTA STATUTES 1888 SUPPLEMENT

640

DISTRICT COURT.

[Chap.

shall execute a bond with one or more sureties, to be approved by the judge, conditioned similar to like bonds in such actions in district court, and file such bond. The clerk shall thereupon issue the writ, which may be in form as follows:

State of Minnesota, }  
County of Winona. } ss.

City of Winona.

The state of Minnesota to the court officer or any police officer of the city of Winona, or to the sheriff or any constable of said county:

Whereas, \_\_\_\_\_ complains that \_\_\_\_\_ has become possessed of and unjustly detains from the said \_\_\_\_\_ the following described goods and chattels; that is to say, (describing the articles with reasonable certainty, and stating their alleged value:)

Therefore you are commanded that you cause the said goods and chattels to be replevined without delay, and delivered to said \_\_\_\_\_, and to summon the said \_\_\_\_\_, if to be found within said county, to be and appear before the municipal court of the city of Winona at a term thereof to be holden on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—, at the hour of \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, and answer to \_\_\_\_\_, whose complaint is on file in said court, in a civil action; and have you then and there this writ.

Witness the honorable \_\_\_\_\_, municipal judge, this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—.

\_\_\_\_\_  
Clerk of the Municipal Court.

The writ shall be served, and all proceedings thereunder had in the same manner, except as herein otherwise provided, as upon similar proceedings in district court. The officer executing the writ shall retain the property under it in his own custody for three days before delivering the same to the plaintiff, and if within that time the defendant, or some one in his behalf, shall execute to the plaintiff a sufficient bond, with one or more sureties, to be approved by the judge, conditioned as in like cases in the district court, and file such bond, the clerk shall thereupon issue an order to the officer to redeliver such property to the defendant. Or the defendant may, within three days after the service of the writ, serve a notice on the officer serving the same, and on plaintiff or his attorney, that he excepts to the sufficiency of the surety or sureties on plaintiff's bond, and, upon filing an affidavit with the clerk of the municipal court showing the service of such notice, the judge of said court shall require such surety or sureties to appear before him, at such time as he may fix, to be examined as to their sufficiency; and in case said surety or sureties fail to appear at such term, or if said judge after such examination deems them, or either of them, insufficient, he shall require the plaintiff to file a new bond in the same amount, and containing the same conditions required by law in the bond first filed, with surety or sureties to be approved by the judge. In case plaintiff fails within the time prescribed by the court to give such bond, the action shall be dismissed, and defendant have judgment for the return of the property. (*Sp. Laws 1885, c. 115, § 12, as amended Sp. Laws 1887, c. 49, § 8.*)

## \*§ 304. Calendar.

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. (*Id.* § 13.)

## \*§ 305. Juries and jurors.

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 legal voters of said city as the jurors of said municipal court, to serve therein when required during the six months, beginning on the next ensuing first 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 names from the said box and make a list of the same. Each party may thereupon strike out six 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 city marshal 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 the consent of both parties entered upon the minutes, a jury of six may be ordered, and in such case eighteen names shall be drawn from the box, and a list of the same made by the clerk, and each party may strike [out] six; and the said jury shall be selected, impaneled, and summoned as provided in this section. The first three series of twenty-four or eighteen ballots each so drawn from the box shall not be returned to the box until the fourth series shall have been drawn, and the same rule shall be observed in connection with subsequent drawings during each period of six months; and no person selected and required to serve for a period of six 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 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 officer shall summon a sufficient number of talesmen to supply the deficiency. To the talesmen so summoned either party may interpose two peremptory challenges; and 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 trial of causes shall be the same as in district court, and exceptions to the rulings and decisions of the judge, and to his charges and refusals to charge, may be taken as upon trials in the district court. Each juror sworn in any civil action in said municipal court shall be entitled to fifty cents as his fee in the case, and the 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 jury fee of fifty cents for each juror to the clerk, who shall pay the same to the jurors when they are discharged. 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 as he may designate for a retrial of such action; but in a civil action, before such new jury is sworn, their fees shall be advanced, as above provided, by the party originally demanding a jury, or by the plaintiff if a jury shall have been demanded in the first instance by both parties. 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. (*Sp. Laws 1885, c. 115, § 14.*)

**\*§ 305a. Jurors' fees.**

Jurors' fees in said municipal court shall be one dollar per day in the trial of civil actions, but no party shall be entitled to a jury in any civil action, unless he shall demand the same, and shall pay into court the fees of such jury for one day's attendance, before the *venire* shall issue, and all the fees of a jury in any civil case in said court shall be taxed as costs against the unsuccessful party, and shall be included in the judgment, and shall be collected as other taxable costs. In case a jury is not demanded, and the jury fee paid, as hereinbefore provided, the case shall be tried by the court without a jury. (*Sp. Laws 1887, c. 50, § 2.*)

**\*§ 306. Application of laws—Rules of practice.**

Title eighteen of chapter sixty-six of the General Statutes, relating to "trial by referees," title nineteen of the same chapter, relating to "exceptions," and title twenty of the same chapter, relative to "new trials," shall apply to said municipal court. Where not otherwise provided in this act, said municipal court is vested with all the powers which are possessed by the district courts in this state; and all laws of a general nature apply to said municipal court as far as the same can be made applicable, and are not inconsistent with the provisions of this act, and the practice and mode of procedure prescribed by the General Laws of this state for use in district courts shall in all cases not otherwise provided for in this act, and when not inconsistent with the provisions of this act, obtain and be followed in said municipal court: *provided*, that the judge of said municipal court may adopt and enforce such rules of practice therein, not contravening this act or the General Laws of this state, as he may deem necessary and just. (*Sp. Laws 1885, c. 115, § 15.*)

**\*§ 307. Costs.**

Disbursements shall be allowed to the prevailing party in all civil cases in said municipal court, to be taxed on such notice as the court may by rule prescribe. Costs, to be taxed as aforesaid, shall also be allowed the prevailing party in civil actions, when he appears by attorney, as follows: To the plaintiff, on judgment by default, when the amount of the judgment, exclusive of costs and disbursements, or the value of the property recovered, exceeds fifty dollars, five dollars. To the plaintiff, on a judgment in his favor after a trial on the merits, when the amount of the judgment, exclusive of costs and disbursements, or the value of property recovered, exceeds fifty dollars, ten dollars. To the defendant, on dismissal of the action after issue joined and before trial, when the amount claimed by plaintiff, exclusive of costs and disbursements, or the value of the property sought to be recovered, as alleged in the complaint, exceeds fifty dollars, five dollars. To the defendant, on a judgment in his favor after a trial on the merits, when the amount claimed by plaintiff, exclusive of costs and disbursements, or the value of property sought to be recovered, as alleged in the complaint, exceeds fifty dollars, ten dollars. (*Id.* § 16.)

**\*§ 308. Appeals.**

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 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 or judgment of the appellate court therein.

*Third.* The appellant shall pay to the clerk his fees for making the return on the appeal.

Any defendant convicted of any offense charged in any criminal case 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 compliance with the following requisites within ten 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 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 general term thereof and abide the judgment of the appellate court on the appeal, and that in the mean time he will keep the peace and be of good behavior.

*Second.* The appellant shall serve a 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 proof of service thereof, with the clerk of said municipal court.

Upon compliance with the foregoing requisites prescribed for appeals in the respective classes of cases above mentioned, the appeal shall be allowed, and the clerk of the municipal court shall make a minute of such allowance in the record of the case, and all further proceedings in the municipal court on the judgment appealed from shall be stayed until the appellate court shall otherwise order. A return on each 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 appeals to the supreme court from final judgments 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 days after the appeal is perfected; and the clerk shall minute on the return the amount of his fees for making the same, and, if paid, state by which party. The matters 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 affecting 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 other further proceedings; but no trial of 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; 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 ten days from either party. The district court shall, in civil cases, award costs to the prevailing party on appeal, not less than five

nor more than fifteen dollars in amount, and judgment shall be entered therein in favor of said party for such costs and for 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 costs of both courts, including the fees of the clerk of the municipal court for making the return, and such fees and all other costs properly 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. The district court shall have the same power to compel a return on 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. (*Sp. Laws 1885, c. 115, § 17.*)

**\*§ 309. 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 upon entry of judgment against the goods and chattels of the judgment debtor, returnable within thirty days. Execution may be stayed in this court the same as in justices' courts. Every person in whose favor a judgment is rendered in said municipal court for an amount exceeding ten dollars, besides costs and disbursements, may, upon paying the fee therefor, and all unpaid fees, payable to the clerk in such action, demand and shall receive from such clerk a transcript of such judgment duly certified, and may file the same in the office of the clerk of the district court of the county of Winona, who shall file and docket the same as in the case of transcripts of judgment from courts of justices of the peace, and every such judgment shall become a lien upon the real estate of the debtor from the filing of such transcript; to the same extent as a judgment of the said district court, and shall thereafter, so far as relates to the enforcement of the same, 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 such transcript while a writ of execution is in the hands of an officer, and not returned or lost, 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 such judgment; and it shall not be necessary, in order to entitle a party to any such transcript, that execution be first issued from said municipal court. (*Id.* § 18.)

**\*§ 310. Garnishment.**

Proceedings against garnishees may be instituted in the same manner as in justices' courts, but the summons may be served either by an officer, or, if authority be given by the court as in the case of an ordinary summons, by any person not a party to the action, at any place within the state of Minnesota, and such garnishee summons may be made returnable at any term of said municipal court, not more than thirty days from its date, and shall be served not less than six days before the term at which it is made returnable, and the notice required to be served on the defendant in the action may be signed either by the person who served the garnishee summons, or by the plaintiff or his attorney, and shall be served upon the defendant at least three days before the time specified in the summons for the appearance of the garnishee.

The disclosure of the garnishee may be taken, and all further proceedings had, in the same manner as if the proceedings were in a justice court. (*Id.* § 19.)

**\*§ 311. Criminal proceedings.**

Complaints in criminal cases, where the defendant is not in custody, may be made to the court while in session, or to the judge when the court is 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. Warrants shall be issued by the judge, or by the clerk on the order of the judge, and may be served by the marshal or any police officer of said city, or by the sheriff of Winona county, at any place within this state. And complaints, warrants, and other process in criminal cases may follow substantially the same forms heretofore in use by the justices of the peace, with such alterations as may seem convenient to adapt 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 where alleged offenders shall be in custody, and brought before the court 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 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 of the same offense may be proved under that plea as well as if formally pleaded. In the examination of offenders charged with offenses of which the municipal court has not final jurisdiction, the judge shall keep minutes of the examination, and the clerk shall make the proper return to the court (as required from justices of the peace in like cases) before which the party charged with the offense may be bound to appear. (*Id.* § 20.)

**\*§ 312. Salaries.**

The salary of the judge shall be twelve hundred dollars per year, payable from the city treasury in monthly installments, and neither the judge, clerk, or deputy clerk shall receive any other fee or compensation for his official services under this act. (*Id.* § 21.)

**\*§ 313. Judge's salary.**

That from and after January first, A. D. one thousand eight hundred and eighty-seven, the salary of the judge of the municipal court of the city of Winona shall be at the rate of two thousand dollars per annum, to be paid from the city treasury in monthly installments. (*Sp. Laws 1887, c. 50, § 1.*)

**\*§ 314. Court officer, etc.—Duties—Fees.**

The court officer and all 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 the court officer and police officers, in making service of any process, warrant, or writ, or doing other duty in respect to causes in said municipal court, shall note and return to the court for collection such fees as are allowed to constables for like service in justice courts; and all fees, whether charged by the clerk or the court officer, or any police officer, shall be collected by the clerk as costs, and shall by him be accounted for and paid over to the city treasurer of said city as hereinbefore provided. Service of all process, warrants, and writs issued out of said municipal court, in cases triable therein that are to be served within the limits of said city, shall be made by the court officer of said court or by some police officer of said city, except when, in civil cases, service of process by private persons shall be authorized by the court as elsewhere herein provided; but the court may, in its discretion, when the circumstances of the case render such action necessary or advisable,

specially authorize the making of such service by the sheriff or any constable of Winona county; and neither said court officer nor any police officer of said city shall receive for any service by him performed in said court, or in executing its orders, process, warrants, or writs, any other or further compensation than the regular salary paid him by said city; and if any fees shall be paid to either of said officers for any such service he shall forthwith pay the same over to the clerk of said municipal court for the use of said city. (*Sp. Laws 1885, c. 115, § 22, as amended 1887, Sp. Laws, c. 49, § 9.*)

**\*§ 315. Special judge—Judge may practice as an attorney**

At the regular city election in said city, on the first Monday in April, one thousand eight hundred and eighty-nine, there shall be elected a special judge of the municipal court, who shall be a resident of said city, and whose term of office shall begin on the third Monday in April in the year of his election, and continue four years, and until his successor shall be elected and qualified. Any vacancy occurring in the office of the special judge shall be filled in the same manner as hereinbefore prescribed in the case of vacancy in the office of municipal judge. At the request of the municipal judge, in case of a press of business in said court, or at the request of the mayor of said city, in 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 on the trial or examination of any case, or otherwise, except as above provided; and any special judge acting as judge of said court shall receive compensation at the rate of five 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 from the city, without leave of absence by the city council, shall be deducted from the salary of the municipal judge. This section shall not incapacitate any such special judge from acting as an attorney in any case or proceeding in said court, but when such 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. (*Id. § 23, as amended, Sp. Laws 1887, c. 49, § 10.*)

**\*§ 316. Prosecuting officers.**

It shall be the duty of the city attorney of the city of Winona to prosecute all offenses in said court in cases of which the court has final jurisdiction, arising under the ordinances of said city or the statutes of the state of Minnesota, and the county attorney of Winona county may appear in the prosecution of indictable offenses against the criminal laws of the state, and shall appear and conduct all examinations for offenses of which said court has not final jurisdiction, if requested by the municipal judge. (*Id. § 24.*)

**\*§ 317. Blanks, furniture, etc.**

The clerk of the municipal court, under the direction of the judge, and with the consent and approval of the city council, (unless herein otherwise provided,) shall from time to time procure and furnish all the necessary blanks, stationery, record-books, court-room, jury-room, and office furniture, lights, and fuel for the use of the court and the officers thereof, at the expense of the said city. (*Id. § 25.*)

**\*§ 318. Justices of the peace superseded.**

Upon the election and qualification of the municipal judge, all causes and proceedings then pending before justices of the peace within said city shall forthwith by said justices be transferred to said municipal court, with all papers and records concerning the same, and 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. And the dockets, records, files, and papers in the custody of any and all justices of the peace of said city shall at once be transferred and turned over to the said municipal court, which shall have full jurisdiction to finish and complete all proceedings pending before any such justice of the peace, and to enforce, by execution or otherwise, all judgments theretofore rendered by justices of the peace within the present city of Winona. 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 justice of the peace within the city of Winona shall issue any process nor take cognizance of any action or proceedings, civil or criminal, but the jurisdiction of said municipal court shall, within said city, be exclusive in all causes heretofore cognizable before 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. (*Id.* § 26.)

**\*§ 319. Costs in criminal cases.**

In all criminal cases tried in said court, whether arising under the statutes of this state or under the ordinances of said city, in which the defendant shall be convicted, he shall be required to pay the costs of prosecution, and the clerk shall tax as costs of court, in addition to all fees of witnesses for the prosecution and of the sheriff, or other officer or officers taxed in said cases, and if not paid, judgment shall be entered therefor against the defendant, the following sums, viz.: In cases where no warrant is issued, and the defendant, upon being arraigned, shall plead guilty, two dollars; in cases where warrant shall be issued, and the defendant, upon arraignment, pleads guilty, two and one-half dollars; in cases where the defendant shall plead not guilty, and shall be tried before the court, five dollars; in cases where the defendant shall plead not guilty, and shall be tried before a jury, ten dollars. Said sums, respectively, to cover all ordinary court costs up to and including entry of judgment, and the issue of commitment or execution for the enforcement thereof. In any criminal case in said court, whether arising under the statutes of this state, or under the ordinances of said city, the court shall have power, if the defendant is convicted, to commit him either to the jail of Winona county or to the city prison of said city, until any fine which the court may impose upon him, and the costs of prosecution, or either, are paid: *provided*, that such commitment shall not in any case be for a longer time than three months. (*Id.* § 27.)

**\*§ 320. Costs in examinations.**

In all examinations held by or before said court, to inquire of offenses of which said court shall not have final jurisdiction, the clerk shall tax as costs of said court the same fees as are now allowed to justices of the peace for similar services, including a fee of two dollars for the return, and collect the same from the county of Winona. (*Id.* § 28.)

**\*§ 321. Deposit by plaintiff.**

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 dollars, which shall be retained and paid over to the city treasurer whether any further proceedings in the case are taken or not; and if the amount claimed in the complaint, or the value as therein alleged, of the property of which recovery is sought does not exceed one hundred dollars, and judgment is rendered in plaintiff's favor, by default or by consent of defendant without trial, or in defendant's favor on dismissal of the action without trial, no further charge for such costs shall be made; but if the amount so claimed, or the value of property so alleged, exceeds one hundred dollars, there shall be charged on entry of

judgment in either case above stated the further sum, as such costs, of fifty cents for each additional hundred dollars, or fraction thereof. When issue is joined, and a trial had in the action, there shall be charged as court costs, in every case, in addition to the charges in this section above mentioned, the sum of three dollars for each day, or part of a 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 execution, and satisfaction of judgment: *provided, however*, 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, besides the court costs above stated, the same fees for services performed by the sheriff, city marshal, or other officer, in serving process or otherwise, as are allowed by the statutes for this state to constables for like services. All sums due for court costs or fees of the city marshal, or his deputy, or the court officer in any civil case, shall be paid to the clerk before judgment shall be entered therein. (*Sp. Laws 1885, c. 115, § 29, as amended 1887, Sp. Laws, c. 49, § 11.*)

**\*§ 322. Costs include clerk's fees.**

The term "court costs," or "costs of court," as used in section twenty-seven and twenty-nine 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 fees shall be charged and collected as now are or may hereafter be allowed by law to the clerk of the district court of Winona county for similar services. (*Id.* § 30.)

**\*§ 323. Territorial jurisdiction.**

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. (*Id.* § 31.)

---

## CHAPTER 65.

### COURTS OF JUSTICES OF THE PEACE.\*

#### TITLE 1.

#### JURISDICTION.

**§ 2. Place of holding office and court.**

[*"Amended so as to read as follows: Provided, further, that no justice of the peace shall hold his office or court in any saloon, or in any room adjacent to a saloon, where there is communication, by door or otherwise, between said place where said court is held and said saloon.*

*"§ 2. Every justice of the peace shall keep his office in the town, city, or ward for which he is elected; but he may issue process in any place in the county, and may, in his discretion, for the convenience of parties, make any*

\* Jurisdiction of justices of the peace of offenses in relation to obscene books, etc., see *post*, c. 100, §§ 12a, 12b.

For duties of justices of the peace to make reports to county attorneys, see *ante*, c. 8, \*§ 212c.