

REVISED LAWS OF
MINNESOTA 94

SUPPLEMENT 1909

CONTAINING

THE AMENDMENTS TO THE REVISED LAWS,
AND OTHER LAWS OF A GENERAL AND
PERMANENT NATURE, ENACTED
BY THE LEGISLATURE IN
1905, 1907, AND 1909

WITH HISTORICAL AND EXPLANATORY NOTES TO PRIOR STATUTES
AND FULL AND COMPLETE NOTES OF ALL
APPLICABLE DECISIONS

COMPILED AND ANNOTATED BY
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1910

be deemed guilty of a misdemeanor, and the governor of the state is hereby authorized and empowered to remove any such official from office. Provided, that in case of calamity or actions of the elements (such as fire, water, storms, etc.) such board or official may obtain the consent of the governor, the state auditor and the state treasurer, in writing, stating the special amount of expense that may be incurred and such expenditure shall be considered a valid claim against the State of Minnesota. ('07 c. 272 § 2)

[68—]4. **Additional compensation from contingent fund prohibited.**—In all cases where the compensation of an officer of the state is fixed by law at a specified sum, it shall be unlawful for any such officer or employé to receive additional compensation for the performance of his official services out of the contingent fund of said officer or said department, and it shall be unlawful for the head of any department of the state government to direct the payment of such additional compensation out of the contingent fund, and the state auditor is hereby prohibited from issuing his warrant upon such contingent fund in payment of such additional compensation. ('09 c. 395 § 1)

Historical.—“An act prohibiting the payment of additional compensation to officers and employés of the state out of the contingent fund in certain cases, and providing a penalty for the violation of this act.” Approved April 22, 1909.

[68—]5. **Same—Penalty.**—Every person offending against the provisions of this act shall be guilty of a misdemeanor and punished by a fine of not exceeding \$100.00 or imprisonment in the county jail for not exceeding ninety days. ('09 c. 395 § 2)

CHAPTER 5.

JUDICIAL DEPARTMENT.

SUPREME COURT.

72. Powers concerning writs and processes.

Mandamus.—An election contest, which involves charges of fraud, illegal voting, and the legality of the election, cannot be determined in mandamus proceedings. *Lauritsen v. Seward*, 99 Minn 313, 109 N. W. 404.

Certiorari.—Not the appropriate remedy to review the action of the tax commission. *State ex rel. Foley Bros. & Kelly v. Minnesota Tax Commission*, 103 Minn. 485, 115 N. W. 647.

MINNESOTA REPORTS.

[88—]1. **New contract.**—That the secretary of state be and is hereby authorized and required on behalf of the state of Minnesota to solicit bids and enter into a contract for the printing and publishing of the number of copies of the supreme court reports of this state now required by law for the period of six years from and after October 1st, 1909, said contract to be awarded to the lowest responsible bidder whose bid shall not exceed \$1.00 per volume, and who shall furnish to said secretary of state a bond in the sum of five thousand dollars conditioned that the said reports and the printing and publishing thereof shall conform to the following specifications, to-wit:

First. That the size of the volumes, the character and quality of the paper used therein, and the binding and the general mechanical execution thereof shall conform to the requirements for the printing

and publication of said reports provided by section 87, Revised Laws, 1905.

Second. That the number of copies provided for by law shall be published and delivered to the secretary of state within sixty days after the complete manuscript thereof shall be delivered by the reporter of said court to said contracting party.

Third. That at the time said party to whom said contract shall be awarded shall deliver said copies of said report to said secretary of state, free of charge, a true and correct paper matrix of said report, to be preserved by said secretary of state as part of the records of his office.

Fourth. That the party to whom said contract shall be awarded shall agree to publish and sell the same at the place of publication within this state, and at all times keep the same on sale at such place of publication in quantities of one or more copies at any one time, and upon reasonable notice of not less than ten days for the price agreed upon in said contract, and shall agree to stereotype the same and at all times keep the same on sale in the state of Minnesota at the contract price, and furnish the state any number of additional copies that may be thereafter required at said contract price, the copyright of all reports published under said contract vesting in the secretary of state for the benefit of the people of this state; provided, however, that nothing herein contained shall be so construed as to prevent the contractors by whom any such volume is published, their representatives or assigns, from continuing the publication and sale of such volumes, so long as they shall comply in all respects with the requirements of this act in respect to the character, sale and price of such volume. ('09 c. 438 § 1)

Historical.—"An act to authorize the Secretary of State to enter into a contract on behalf of the state of Minnesota for the printing and publishing of the Supreme Court Reports." Approved April 22, 1909.

DISTRICT COURT.

92. Power to issue writs.

Certiorari.—Where there is no occasion for the application of technical rules to statements in a petition for certiorari and in the writ issued, and no prejudice has resulted, the writ will be liberally construed, and not held to the standard of definiteness and precision of formal pleadings. The test of the right to certiorari, so far as parties are concerned, is whether the person seeking the writ was a party in form or in substance, so as to be concluded by the determination of the matters in controversy. *State ex rel. Wickstrom v. Board of Com'rs of Isanti County*, 98 Minn. 89, 107 N. W. 730.

Certiorari is available to review an order of the county commissioners acting under Laws 1905, c. 230, laying out and establishing a public ditch; no appeal from such order being provided by that statute. *State ex rel. Ross v. Posz*, 106 Minn. 197, 118 N. W. 1014.

The writ should run in the name of the state, and be directed to the court or body whose proceedings are sought to be reversed. *State ex rel. Berg v. Village Council of Blackduck*, 120 N. W. 894.

94. Judge may act in another district.—Whenever in the judgment of the governor, or of any judge of any judicial district, the convenience or interest of the public or the interest of any litigant shall require that the judge of another judicial district shall discharge any of the duties of such judge, the governor may designate, or such judge may request, a judge of the district court of any other judicial district to discharge any such duties; to hold, or to assist in holding a general or special term of such court, in any county of such judicial district other than his own, or to try and determine any motion, action or proceeding pending therein. And thereupon such judge of the district court, or any other judicial district so designated or requested, may discharge any such duties, hold or assist in holding a general or special term of such court, or

try and determine any motion, action or proceeding pending therein. And by consent of the parties any judge of said court may act in all matters brought before him from another judicial district. In either case the acts, orders and judgments of the judge so acting shall have the same force and effect as though given by a judge of such judicial district. When no other provision has been made therefor, the clerk shall seasonably notify the governor of the inability of the judge to hold any of his terms. (R. L. § 94, as amended by Laws 1907, c. 157, § 1.)

97. Times for holding general terms.—The general terms of the district court shall be held in the several counties in each year at the times herein prescribed as follows:

First judicial district.—Goodhue county: Second Tuesday in January and September; third Tuesday in May. Dakota county: First Tuesday in May; first Wednesday after the first Monday in November.

Second judicial district.—Ramsey county: First Monday of each month, except July, August and September.

Third judicial district.—Olmstead county: First Monday in June and December. Wabasha county: Second Monday in May and November. Winona county: Second Monday in January; third Monday in April and September.

Fourth judicial district.—Hennepin county: Second Monday of September, effective after September first, 1909.

Fifth judicial district.—Dodge county: First Monday in April and October. Rice county: First Monday in May; second Monday in November. Steele county: First Monday in June and December. Waseca county: Third Monday in March and October.

Sixth judicial district.—Blue Earth county: First Tuesday in February and June; second Wednesday in November. Watonwan county: First Tuesday in May and October.

Seventh judicial district.—Benton county: First Monday after the first of January; first Monday in June. Douglas county: Fourth Monday in February; first Tuesday in September. Mille Lacs county: First Monday in April; third Monday in November. Morrison county: First Monday in March; third Monday in September. Otter Tail county: Second Monday in April and November. Stearns county: First Monday in May and December. Todd county: Fourth Monday in April; third Monday in October. Clay county: First Monday in May; third Monday in October. Becker county: Fourth Monday in March; first Monday in October. Wadena county: Third Monday in March; second Monday in September.

Eighth judicial district.—Carver county: Second Monday in March and October. Le Sueur county: Third Monday in February and September. McLeod county: Second Monday in May and third Monday in November. Scott county: First Monday in April and fourth Monday in October. Sibley county: First Monday in June and second Monday in December.

Ninth judicial district.—Lyon county: First Tuesday in June; fourth Tuesday in November. Redwood county: Third Tuesday in April; first Wednesday after the first Monday in November. Brown county: Third Tuesday in May; second Tuesday in December. Nicollet county: First Tuesday in May; third Tuesday in October. Lincoln county: Second Tuesday in March; first Tuesday in October.

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JUDICIAL DEPARTMENT.

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Tenth judicial district.—Fillmore county: Fourth Tuesday in May; second Tuesday in November. Freeborn county: First Monday in February; second Monday in May; fourth Monday in September. Houston county: Fourth Tuesday in February; third Tuesday in October. Mower county: Second Tuesday in January and June.

Eleventh judicial district.—Carlton county: First Tuesday in April; third Tuesday in October. St. Louis county: First Wednesday in January, March, April, May, July, September, October and November. Lake county: First Wednesday in June and December. Cook county: Last Thursday in June.

Twelfth judicial district.—Chippewa county: First Monday in June; fourth Monday in November. Kandiyohi county: Third Monday in March; first Monday in October, effective after August first, 1909. Lac qui Parle county: First Tuesday in May; second Tuesday in December. Meeker county: Second Tuesday in June; first Tuesday in December. Renville county: Second Monday in May; second Monday in November. Swift county: Third Monday in May; second Monday in November. Yellow Medicine county: Second Tuesday in January; third Tuesday in June.

Thirteenth judicial district.—Cottonwood county: First Monday in June; second Monday in November. Murray county: First Tuesday in May and December. Nobles county: Third Monday in February and October. Pipestone county: First Monday in January; third Monday in May. Rock county: Third Monday in March and last Monday in September.

Fourteenth judicial district.—Norman county: Third Monday in May; second Monday in November. Polk county: First Monday in June and December. Marshall county: Fourth Monday in June and November. Kittson county: Second Monday in June and December. Red Lake county: Fourth Monday in March and October. Roseau county: Fourth Monday in January and second Monday in July. Mahnomen county: Fourth Tuesday in October.

Fifteenth judicial district.—Aitkin county: Third Tuesday in May; second Tuesday in October. Itasca county: Fourth Tuesday in March and October. Crow Wing county: Fourth Tuesday in May; first Tuesday in December. Hubbard county: Second Tuesday in January and June. Beltrami county: Fourth Tuesday in February; second Tuesday in September. Cass county: Fourth Tuesday in April and November. Clearwater county: Third Tuesday in June. Koochiching county: Second Tuesday in July.

Sixteenth judicial district.—Big Stone county: Third Monday in June and the second Monday in October. Grant county: First Monday in June; fourth Monday in October. Pope county: Second Monday in June; fourth Monday in November. Stevens county: Third Monday in March; first Monday in October. Traverse county: First Monday in May; second Monday in November. Wilkin county: Third Monday in May; second Monday in December.

Seventeenth judicial district.—Faribault county: First Monday in April and December. Martin county: Second Monday in March and November. Jackson county: Second Monday in January; third Monday in May.

Eighteenth judicial district.—Anoka county: Third Monday in March; second Monday in October. Isanti county: Third Monday in April; fourth Monday in September. Wright county: First

Monday in June and December. Sherburne county: Second Monday in May and November.

Nineteenth judicial district.—Kanabec county: Fourth Tuesday in March. Chisago county: Second Tuesday in October. Pine county: Second Tuesday in April; third Tuesday in September. Washington county: Second Monday in May; fourth Monday in November.

In addition thereto general terms of court shall be held in Chisago county on the first Tuesday in May and in Kanabec county on the third Tuesday in August, for the trial and determination of both civil and criminal cases, but no grand or petit jury shall be drawn or summoned unless the court shall so direct by a written order made and filed with the clerk of court of the proper county, at least twenty days before the dates herein fixed for holding said court. (R. L. § 97, as amended by Laws 1909, c. 244, § 1.)

Historical.—“An act to amend section ninety-seven, Revised Laws 1905, relating to times of holding general terms of the district court of this state.” Approved April 19, 1909.

By section 3 the act took effect July 1, 1909.

St. Louis county.—For terms in the city of Virginia, see section [105—] 8.

Beltrami county.—For terms in the village of Beaudette, see section [105—] 27.

LAWS SUPERSEDED.

Acts were passed at the sessions of 1905 and 1907, prescribing the times for holding general terms in certain judicial districts, as follows:

First judicial district—Laws 1905, c. 6 (cf. Laws 1907, c. 146).

Fifth—Laws 1905, c. 44.

Seventh—Laws 1905, c. 13; Laws 1905, c. 55 (Becker county); Laws 1907, c. 182 (Clay and Todd counties).

Ninth—Laws 1905, c. 41; Laws 1907, c. 196 (Lincoln county).

Fifteenth—Laws 1907, c. 181 (Clearwater county).

Eighteenth—Laws 1905, c. 45.

Nineteenth—Laws 1907, c. 146.

Place of trial.—The courts have no jurisdiction to convene for the trial of actions or proceedings involving issues of fact at any place in the county other than the county seat, except by consent, or express statute. *Bell v. Jarvis*, 98 Minn. 109, 107 N. W. 547.

[97—]1. **Same—In new counties.**—Whenever a new county is added to any district, until the time for holding court therefor is fixed by law, the judge or judges of such district, by an order filed with the secretary of state and with the several clerks in such district, shall fix the time of holding terms in such county; but such order shall not take effect until thirty (30) days after the filing thereof with the secretary of state, nor to be altered except as thereafter provided by law. The secretary of state shall publish in the volume of laws enacted at each legislative session, a schedule of the times of holding court in the several counties as fixed by law. ('09 c. 244 § 2)

[99—]1. **Special terms in Washington county.**—That in addition to the general terms of the district court in Washington county, special terms of said court shall be held in said county on the second and fourth Mondays of each month for the trial of issues of fact by the court, the trial of issues of law, the hearing of motions and applications, and all matters except the trial of issues of fact by a jury. ('09 c. 21 § 1)

Historical.—“An act fixing the time for holding special terms of court in Washington county.” Approved February 25, 1909.

Section 2 repeals inconsistent acts. See section [7—] 1, and note thereunder. Laws 1899, c. 233, cited in *Bell v. Jarvis*, 98 Minn. 109, 107 N. W. 547.

[105—]1. **Terms to be held in certain cities and villages—Order and notice.**—Except as hereinafter provided, one or more terms of the district court shall be held during each year in all cities and villages in this state which at any time shall have a population of

more than 6,000, which are situated fifty miles or more by the usual traveled route by rail from the county seat of the county in which said village or city may be situated. The time and place of holding such terms of court shall be fixed by the order of a judge of said court, made and filed with the clerk thereof at least thirty days before the time appointed to hold said court. Such order may be special as to each term of court to be held, or it may be a general order providing the times and places at which such terms shall be held, until the further order of the court. Such clerk shall cause published notice of said order to be made for two successive weeks in a newspaper published in the city or village where such terms shall be appointed to be held, the last of which publication shall be had not less than ten nor more than twenty days before the opening of any such term. At such terms of court, with the limitations hereinafter provided, all matters cognizable before the court, except the trial of issues of fact by a jury, may be brought on for hearing, trial and determination. ('07 c. 414 § 1)

Historical.—"An act to provide for the trial of certain actions and proceedings in cities and villages of over 6,000 population that are more than fifty (50) miles distant from the county seat in the county in which said cities or villages are located." Approved April 25, 1907.

[105—]2. **Place of trial, how determined.**—The business to be transacted at any such term shall be such as may be brought before the court by consent of parties, and, if in any case or proceeding the parties shall fail to agree with respect to the place of hearing or trial thereof, when one or more of such parties shall reside within such county, and more than fifty miles distant from the county seat thereof, the matter in dispute may be submitted to the court eight days or more before any such term, and the court shall thereupon determine the place of hearing or trial, having consideration of the residence and convenience of the parties, and the hearing or trial shall thereupon be had at the place so fixed; provided, that in case cities or villages having the population herein provided for, shall at any time exist within fifteen miles of each other, it shall not be necessary to fix or hold terms of court in both of such places, but the terms of court may be held in either; as a judge of this court may from time to time determine. ('07 c. 414 § 2)

[105—]3. **Court room, how provided.**—It shall be the duty of every such city or village in which such term of court shall be appointed to be held as aforesaid, to provide therefor a suitable room or building to hold the terms of court as shall be so designated by said judges, at the expense of said village or city. ('07 c. 414 § 3)

[105—]4. **Calendar—Note of issue.**—It shall be the duty of the clerk to keep a calendar of actions for trial in any such city or village, and it shall be the duty of parties litigant entitled to have their action tried in any such city or village, as aforesaid, to designate the same upon the note of issue to be filed with the clerk of court. ('07 c. 414 § 4)

[105—]5. **Duties of judges and sheriffs.**—It shall be the duty of one or more judges of the district court, the sheriff or his deputy or deputies, the clerk of the district court, or one or more of his deputies, to be present at all terms of court, so appointed to be held, to properly attend to the trial and disposition of all cases on the calendar for trial, for any such city or village. ('07 c. 414 § 5)

[105—]6. **Records.**—All records, orders, judgments, of any term of a court so held shall finally be deposited and recorded in the county clerk's office at the county seat of the county. ('07 c. 414 § 6)

[105—]7. **Traveling expenses—Change of venue.**—The judges of the district court shall have full power and authority to make all such orders as are necessary to carry out the provisions of this act, and shall have the power to direct the county commissioners of any such county to pay the necessary traveling and other expenses connected with holding said terms of court, not otherwise provided by law. Provided, that nothing in this act shall prevent the change of venue of the trial of civil actions as otherwise provided by law. ('07 c. 414 § 7)

[105—]8. **Eleventh district—St. Louis county—General Terms in Virginia.**—General terms of the district court for the county of St. Louis are hereby established to be held in the city of Virginia, in said county, on the fourth Tuesday of January, April, July and October in each year, for the trial of all actions and proceedings, civil and criminal, with the same force and effect as though held at the county seat of said county; and said terms shall be in addition to the general terms of said district court held at the county seat of said county, as now provided by law. Provided, that all proceedings for the registration of title to real estate shall be tried at the county seat of said county. Provided further, that all other actions involving the title to real estate shall be tried at the county seat of said county, except that by written consent of all the parties thereto, any such action may be tried at the said city of Virginia. Provided further, that no officer having in his custody any of the public records of St. Louis county shall be required to produce any of such records at the trial of any action herein provided for, except at the county seat, save on an order of said court providing for the immediate return of any such records to the proper office. ('09 c. 126 § 1)

Historical.—“An act to create an additional judge for the district court of the Eleventh judicial district, and to provide for holding terms of said district court at the city of Virginia, county of St. Louis, in said district, and for adjourning said terms to the village of Hibbing, in said county, in certain cases.” Approved March 29, 1909.

Section 16 repeals inconsistent acts.

[105—]9. **Special terms.**—Special terms of said district court shall also be held at said city of Virginia at least once in each month, for the hearing of such matters as are usually heard at special terms and at chambers in the district courts. ('09 c. 126 § 2)

[105—]10. **Deputy sheriff and clerk.**—There shall be at all times at least one deputy sheriff of said county, and at least one deputy clerk of said district court, resident at said city of Virginia, and their appointment shall be made, and their salaries shall be fixed, and paid, in the same manner as other deputy sheriffs, and deputy clerks of district court, in said county. But the office of said deputy sheriff and the office of said deputy clerk at Virginia shall not in any sense be considered or deemed to be the office of the sheriff or the office of the clerk of said court for any purpose except for the performance of their respective official duties relating solely to proceedings tried, or to be tried, at said city of Virginia, or at the village of Hibbing, except that marriage licenses may be issued by said deputy clerk. ('09 c. 126 § 3)

[105—]11. **Courthouse—Traveling expenses.**—It is hereby made the duty of the board of county commissioners of said county of St. Louis, to furnish adequate accommodations for the holding of the said court at said city of Virginia, proper offices for said deputies, and a proper place for the confinement and maintenance of prisoners at said city. And said county shall also reimburse

the clerk of said court and his deputy herein provided for, and the county attorney and the district judges of said district for their travelling expenses actually and necessarily incurred in the performance of their respective official duties. ('09 c. 126 § 4).

[105—]12. **Grand and petit jurors.**—Grand and petit jurors for each of said general terms shall be selected, drawn and summoned in the same manner in all respects as for the general terms of said court held at the county seat of said county. ('09 c. 126 § 5)

[105—]13. **Appeals from municipal courts and justices.**—All appeals from municipal courts and from justices of the peace, shall be heard and tried at said city of Virginia, in all cases when the court appealed from is, by the usual route of travel, situated nearer to the said city of Virginia than it is to the county seat of said county. Provided, that by consent of the parties, any such appeal may be tried at the county seat of said county. ('09 c. 126 § 6)

[105—]14. **Trial of criminal causes.**—All persons bound over to the district court, charged with a criminal offense, by any justice of the peace or municipal court, situated nearer to the said city of Virginia than to the county seat of said county, shall be tried at said city of Virginia. Also all criminal offenses committed in cities, villages, townships, or unorganized territory, situated nearer to said city of Virginia, by the usual traveled route, than to the county seat of said county shall be tried at said city of Virginia. ('09 c. 126 § 7)

[105—]15. **Trial of civil actions.**—All civil actions brought in the district court of said county against any party whose place of residence, by the usual routes of travel, is situated nearer to the said city of Virginia than to the county seat of said county, shall be tried at the terms of Court to be held in said city of Virginia, unless the place of trial shall be waived by the defendant. And for the purpose of determining the place of residence of a corporation, the location of its principal office in said county shall govern. ('09 c. 126 § 8)

[105—]16. **Place of trial, how determined.**—Any party wishing to have any civil cause commenced by him in said court, tried at the said city of Virginia, shall, in the summons issued therein, in addition to the usual provisions, print, stamp or write thereon the words "to be tried at the city of Virginia"; and in all cases where any summons contains such specifications, the case shall be tried at said city of Virginia, unless the defendant shall have the place of trial fixed at the county seat, as hereinafter provided. If the place of trial designated in any summons is not the proper place of trial, as specified in this Act, the cause shall nevertheless be tried at such place, unless the defendant, in his answer in addition to the other allegations of defense, shall plead the location of his residence, and demand that such action be tried at the place of holding said court nearest his residence, as herein provided; and in any case where the answer of the defendant pleads such place of residence, and makes such demand of place of trial, the plaintiff, in his reply, may admit or deny such allegations of residence, and if such allegations of residence be not expressly denied, such cause shall be tried at the place so demanded by the defendant; and if the allegations of residence be so denied, then the place of trial shall be determined by the court on motion. If there are several defendants, residing at different places in said county, the trial shall be at the place upon which the majority of such defendants unite in demanding, or, if the numbers are equal, at the place nearest the residence of the majority. Nothing in this act contained, however, shall be construed to abridge the power of the court,

for cause shown, to change the place of trial of any such action or proceeding, civil or criminal. ('09 c. 126 § 9)

[105—]17. Papers, where filed—Judgment, etc.—After the place of trial of any cause is determined, as provided in this Act, all papers, orders and documents pertaining to said cause, and filed in Court, shall lie filed and kept on file at the place where such cause was tried, or is to be tried. In all actions tried at the city of Virginia, the clerk of said court, as soon as final judgment is entered, shall cause such judgment to be docketed in his office in Duluth; and when so docketed the same shall become a lien on real estate, and have the same effect as judgments entered in causes tried at the county seat. Provided, that in all actions tried at said city of Virginia, involving the title to real estate, upon final judgment being entered, all the papers in said cause shall be filed at the clerk's office at the county seat, and the final judgment or decree recorded therein. ('09 c. 126 § 10)

[105—]18. Powers of judges—Adjournment to Hibbing.—The judges of the district court shall have full power and authority to make all such rules, orders and regulations as are necessary to carry out the provisions of this act. The judge or judges holding any of said terms at said city of Virginia, may also, in his, or their, discretion, adjourn the same to some suitable place in the village of Hibbing, in said county, to be designated in the order of adjournment, for the trial of any cause or causes, civil or criminal, pending for trial at said term. Provided, that no such adjournment shall be made unless the said village of Hibbing shall have previously, without expense to the county of St. Louis, provided suitable rooms for the holding of such term, and a proper place for the confinement of prisoners during the session of any such adjourned term. ('09 c. 126 § 11)

[105—]19. Four judges—Powers.—There shall be elected in the eleventh 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 terms of office, and commencement of such term, compensation, jurisdiction, duties, authority, and powers of the present judges of the 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. ('09 c. 126 § 12)

[105—]20. Appointment and election.—That immediately upon the passage of this Act, the governor of the state shall appoint a competent person to be one of the judges of the 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. ('09 c. 126 § 13)

[105—]21. Joint sessions.—The said judges, or any two or more 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, the judges so acting together shall be evenly divided in opinion, the opinion of the presiding judge shall prevail. Process may be tested in the name of any one of the said judges. ('09 c. 126 § 14)

[105—]22. **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. ('09 c. 126 § 15)

[105—]23. **Fifteenth district—Three judges.**—There shall be elected in the fifteenth judicial district of said state three judges of the district court of said district, any one or more of whom shall have and exercise the powers of 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 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. ('09 c. 11 § 1)

Historical.—"An act relative to the judges of, and to create an additional judge for, the district court of and for the Fifteenth judicial district of the State of Minnesota." Approved February 10, 1909.
Section 5 repeals inconsistent acts.

[105—]24. **Appointment and election.**—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 the 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 next general election after the passage of this act. ('09 c. 11 § 2)

[105—]25. **Joint sessions, etc.**—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. ('09 c. 11 § 3)

[105—]26. **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. ('09 c. 11 § 4)

[105—]27. **Same—Beltrami county—Terms in Beaudette.**—Except as hereinafter provided, one or more terms of the district court shall be held during each year in the village of Beaudette, in the county of Beltrami. The time and place of holding such terms of court shall be fixed by the order of the judges of said court, made and filed with the clerk thereof at least thirty days before the time appointed to hold said court. Such clerk shall

give a published notice of said order, to be made for two successive weeks, in a newspaper published in the village of Beaudette, and also in the official newspaper of said county the last of which publication shall be not less than ten nor more than twenty days before the opening of any such term. At such terms of court, with the limitations hereinafter provided, all matters cognizable before the court, except the trial of criminal actions under indictments and actions involving or affecting the title of real property, may be brought on for hearing, trial and determination. ('09 c. 134 § 1)

Historical.—"An act to provide for holding terms of the district court of the Fifteenth judicial district in and for the county of Beltrami at the village of Beaudette, in said county, and for adjourning said term to the village of Spooner, in said county, in certain cases." Approved April 1, 1909.

Section 10 repeals inconsistent acts.

[105—]28. **Consent of parties.**—The business to be transacted at any such term except as hereinafter provided, shall be such as may be brought before the court by consent of parties. ('09 c. 134 § 2)

[105—]29. **Petit jurors.**—Petit jurors for each of said terms may be selected, drawn and summoned in the same manner in all respects as for the general terms of said court held at the county seat of said county, except that no person residing south of the fourteenth standard parallel in said county shall be summoned or required to attend as a juror at any such term. ('09 c. 134 § 3)

[105—]30. **Appeals from municipal courts and justices.**—All appeals from municipal courts and from justices of the peace in either civil or criminal actions shall be heard and tried at such terms in said village of Beaudette in all cases where the court appealed from is situated north of the fourteenth standard parallel, being the township line between towns No. 156 and 157 in said county, provided that, by consent of the parties, such appeal may be tried at the county seat of said county. ('09 c. 134 § 4)

[105—]31. **Adjournment to Spooner.**—The judge or judges holding any of said terms of court at said village of Beaudette, may also, in his or their discretion, adjourn the same to some suitable place in the village of Spooner, in said county, to be designated in the order of adjournment, for the trial of any cause or causes, civil or criminal, pending for trial at said term. ('09 c. 134 § 5)

[105—]32. **Courthouse, etc.**—The village of Beaudette shall, previous to the holding of any term of court in said village, and for each of such terms, without expense to the county of Beltrami, provide suitable rooms for the holding of such terms and a proper place for the confinement of prisoners during the session of any such term; and no adjournment of said court shall be made to the said village of Spooner unless the said village of Spooner shall have previously, without expense to said county of Beltrami, provided suitable rooms for the holding of such term and a proper place for the confinement of prisoners during such term. ('09 c. 134 § 6)

[105—]33. **Calendar—Note of issue.**—It shall be the duty of the clerk to keep a calendar of actions for trial at such terms, and it shall be the duty of parties litigant, entitled to have their action tried in the said village of Beaudette as aforesaid, to designate the same upon the note of issue to be filed with the clerk of court. ('09 c. 134 § 7)

[105—]34. **Officers to be present.**—It shall be the duty of one or more judges of the district court, the sheriff or his deputy or deputies, the clerk of the district court, or one or more of his depu-

ties, to be present at all terms of court so ordered to be held, to properly attend to the trial and disposition of all cases on the calendar for trial. ('09 c. 134 § 8)

[105—]35. **Powers of judges—Expenses.**—The judge or judges of the district court who shall preside at such terms of court shall have full power and authority to make such orders as are necessary to carry out the provisions of this act and shall have the power to direct the county commissioners of said county of Beltrami to pay to the judge of said court and each county official necessarily in attendance at any such term, mileage at the rate of six cents per mile from his place of residence to said Beaudette and return and to pay the other expenses connected with the holding of said terms of court as provided by law and as if such terms were held at the county seat of said county. ('09 c. 134 § 9)

CLERK.

106. Election—Bond—Duties—Not to practice law.

As to counties having 275,000 inhabitants, see sections [601—] 17, [601—] 18, [601—] 18a, and [601—] 28 to [601—] 30.

G. S. 1894, § 857, cited in *Bell v. Jarvis*, 98 Minn. 109, 107 N. W. 547.

108. Deputies.

As to counties having 275,000 inhabitants, see section [601—] 18.

109. To search records—Certificate—Public inspection.—The clerk, upon request of any person, shall make search of the books and records of his office, and ascertain the existence, docketing, or satisfaction of any judgment or other lien, and certify the result of such search under his hand and the seal of said court, giving the name of the party against whom any judgment or lien appears of record, the amount thereof, and the time of its entry, and, if satisfied of its satisfaction, and any other entries requested relative to such judgment. But nothing in this section shall prevent attorneys or others from having access to such books and records at all reasonable times, when no certificate is necessary or required. (R. L. § 109, as amended by Laws 1907, c. 203, § 1.)

[111—]1. **Clerk in counties having less than 50,000 inhabitants to index certain cases.**—The clerk of the district court in any county in this state, having a population of less than 50,000 inhabitants, is hereby authorized and directed to index in records, now provided for in section 111, Revised Laws, Minnesota, 1905, all cases on file in his office prior to March 7, 1885. ('07 c. 312 § 1)

Historical.—"An act to authorize the indexing of records in the office of the clerk of the district court in counties of less than 50,000 inhabitants in this state, and fixing the compensation therefor." Approved April 23, 1907.

[111—]2. **Same—Compensation of clerk.**—The clerk of the district court shall receive as compensation for such services such sum as may be fixed by the judge of said court, not to exceed the sum of ten cents for each index to be allowed by board of county commissioners as other claims are allowed. ('07 c. 312 § 2)

[113—]1. **Printed calendars.**—The clerk of the district court in each of the several counties of this state shall provide printed calendars of the cases to be tried at the general terms thereof at the expense of the counties where such court is held. Provided, that this act shall not apply to a county constituting one judicial district where only one term of court is held each year. ('09 c. 369, § 1)

Historical.—"An act providing for the printing of the calendars for the several district courts in the state of Minnesota." Approved April 22, 1909.

[114—]1. **Salary in counties having less than 45,000 inhabitants.**—In all counties of the state of Minnesota having a population of

less than forty-five thousand (45,000) inhabitants, the clerks of the district court thereof shall receive an annual salary in lieu of all fees as provided by law for official services rendered by them for their counties, as hereinafter provided. ('09 c. 335 § 1)

Historical.—"An act fixing the salaries of clerks of the district court of certain counties, in lieu of fees for services rendered to and paid for by such counties except in real estate tax proceedings, and the manner of payment thereof." Approved April 21, 1909.

[114—]2. **Same—Counties classified.**—For the purpose of fixing said salary the several counties of the state of Minnesota having a population of less than forty-five thousand inhabitants, are hereby classed as follows: Such counties having a population of less than seven thousand and five hundred shall be known as class "A"; those counties having a population of seven thousand five hundred (7,500) and less than twelve thousand five hundred (12,500) shall be known as class "B"; those counties having a population of twelve thousand five hundred (12,500) and less than twenty thousand (20,000) shall be known as class "C"; those counties having a population of twenty thousand (20,000) and less than thirty thousand (30,000) inhabitants shall be known as class "D"; those counties having a population of thirty thousand (30,000) and less than forty thousand (40,000) inhabitants shall be known as class "E"; those counties having a population of forty thousand (40,000) and less than fifty thousand (50,000) inhabitants shall be known as class "F." The county auditor in determining the population of any county for the purpose of ascertaining the compensation to be paid to the clerk of the district court as herein provided, shall take the census taken by the state of Minnesota for the year 1905, or any census thereafter taken by the United States or the state of Minnesota, and add two (2) per cent to the population as shown by the census last taken for each year expiring after the year in which such census was taken unless the last census shall show a decrease in population from the preceding census. ('09 c. 335 § 2)

[114—]3. **Same—Amount of salary, etc.**—The several clerks of the district court, as aforesaid, shall receive in full compensation for all services rendered by them for their respective counties, except in real estate tax proceedings, in lieu of the fees now provided by law, a yearly salary, payable monthly out of the county revenue fund by the treasurer of the county upon the warrant of the county auditor, as follows: Clerks of court of counties of class "A," six hundred and fifty dollars (\$650.00); of class "B," seven hundred and fifty dollars (\$750.00); of class "C," eight hundred dollars (\$800.00); of class "D," nine hundred dollars (\$900.00); of class "E," one thousand dollars (\$1,000.00); of class "F," or any counties with a taxable valuation of more than six million dollars wherein during the preceding year the grand jury returned indictments against at least twenty (20) separate defendants, or wherein the district court shall have been held for forty (40) days or more, eleven hundred dollars (\$1,100.00). For all services rendered by such clerks except as included in this act, the clerk shall receive the same fees and compensation as now provided by law. Provided, that in counties having a taxable valuation of less than six million dollars, or counties having less than fifteen thousand inhabitants the salary shall be one hundred dollars less than the sum fixed herein. Whenever it shall appear to the county board of any county containing such valuation or population, upon a showing made by the clerk thereof that the salary herein provided is inadequate for the services performed by such clerk for such county, the county board may increase such salary at any regular meeting of such board to a just and reasonable salary for the services of such

clerk. If dissatisfied with the action of the county board any clerk may appeal to the district court within thirty days by filing with the auditor, a notice thereof. The court either in term or vacation and upon eight days' notice to the chairman of the county board, shall hear such appeal and summarily determine the amount of such salary for the term of office by an order, a copy of which shall be filed with the county auditor. Provided, that in counties with a taxable valuation of less than six million (6,000,000) dollars, the clerk shall be allowed no fees in excess of one thousand (1,000) descriptions for entering the annual real estate judgments, but such fees shall nevertheless be included in every case in entering said judgments. ('09 c. 335 § 3)

[114—]4. **Same—Acts repealed.**—All acts and parts of acts either general or special, except chapter 423 and 424 of the Special Laws of Minnesota for the year 1891 and except subdivision 49 of section 2694 Revised Laws 1905, inconsistent herewith are hereby repealed. ('09 c. 335 § 4)

STENOGRAPHIC REPORTERS.

119. **Salaries.**—The judges, by an order filed with the county auditors annually on or before the first Monday in May, 1909, and on or before the first Monday in January, annually thereafter, shall apportion the salaries of the reporters in their respective districts among the several counties. Such salary shall be fixed by such order at not exceeding two thousand dollars per year, and each county shall be required by such order to pay a specified amount thereof in monthly installments, which amount shall be such proportion of the whole salary as the number of days work actually done by a reporter in the trial of cases in said county during the preceding year bears to the whole number so performed in the district. Such stenographic reporters shall have and maintain their residences in their respective judicial districts. But if any reporter be appointed in two or more districts he may reside in any of the same. (R. L. § 119, as amended by Laws 1909, c. 168, § 1.)

By section 2 the act took effect May 1, 1909.

See, also, Laws 1909, c. 285, amending G. S. 1894, § 4890 (Laws 1874, c. 88, § 4). Laws 1874, c. 88, was not among the Session Laws of that year repealed by R. L. § 5527.

[120—]1. **Readjustment of salaries on change of district.**—That whenever a new judicial district is created, or the boundary lines of a judicial district is changed, the judge or judges of such district or districts shall, within thirty (30) days after the establishing of such new district or the changing of such boundary lines, file an order readjusting the salaries of court reporters and the proportions to be paid by the several counties, with the several county auditors in each district, to conform to such changes, and the filing of such order shall vacate and set aside any and all orders then on file with such auditors. ('07 c. 242 § 1)

Historical.—“An act relating to salaries of court reporters in certain cases.” Approved April 19, 1907.

[121—]1. **Phonographic reporters in district comprising county having 292,000 inhabitants.**—That each judge in any judicial district in this state which comprises, or which may hereafter comprise, a single county of two hundred and ninety-two thousand inhabitants or over, may appoint a phonographic reporter, who shall be well skilled in his profession and competent to discharge the duties required, and who shall be a sworn officer of said court, and shall hold his office during the pleasure of said judge so appointing him. The salary of said reporter shall be two thousand dollars per annum, payable in monthly installments by the county treasurer.

er of the county comprised in such judicial district; from any funds in his hands not otherwise appropriated. ('07 c. 186 § 1)

Historical.—"An act regulating the appointment and compensation of phonographic reporters for the district court in districts which comprise, or which may hereafter comprise, a single county having a population of two hundred and ninety-two thousand or more." Approved April 13, 1907.

Section 3 repeals Sp. Laws 1891, c. 370, providing for phonographic reporters in the district court of Hennepin county. By section 4 the act took effect June 1, 1907.

[121—]2. **Same—Duties of reporters—Fees.**—It shall be the duty of said phonographic reporters and each thereof, to take or cause to be taken, full phonographic notes of all trials and proceedings in said court before the judge so appointing him, whenever so directed; and each of said reporters shall act in the capacity of a private secretary to the judge so appointing him, whenever so directed by said judge, in taking notes of any findings, decisions or orders of said judge, so given or rendered in open court or dictated at chambers to said reporter, and each of said reporters shall, when requested by said judge so appointing him, without charge therefor, transcribe said notes, or any part thereof, for the use of said judge, or for such other purpose in furtherance of justice as said judge may order; and each of said reporters shall furnish a freehand or typewritten copy of said notes, or any part thereof, at the request of any party to an action in said court, for which copy he shall be entitled to charge at the rate of ten (10) cents per folio, or for every hundred words so written out; and whenever such transcript has been filed as provided by the rules of the court, the amount paid by any party for such copy to be used upon a motion for a new trial or appeal may be taxed and allowed as other disbursements are taxed and allowed in an action. ('07 c. 186 § 2)

SALARIES.

122. **Supreme and district courts, etc.**—The annual compensation of the judges and other officers of the judicial department hereinbefore named, shall be as follows, all to be paid by the state unless otherwise specified, and in monthly installments:

First: The justices of the supreme court, seven thousand dollars each;

Second: The clerk thereof, fifteen hundred dollars, and his deputy, one thousand dollars; and in addition to his salary the clerk shall receive such fees as are allowed by law;

Third: Each stenographer, such sum as shall be fixed by the justice appointing him, not to exceed nine hundred dollars;

Fourth: The reporter of said court, three thousand dollars;

Fifth: The marshal thereof, nine hundred dollars;

Sixth: The janitor, nine hundred dollars;

Seventh: The state librarian, two thousand dollars; assistant librarian, fifteen hundred dollars; second assistant librarian, one thousand dollars, and clerk, nine hundred dollars;

Eighth: The judges of the district court, four thousand two hundred dollars (\$4,200) each from the state, and fifteen hundred dollars (\$1,500) additional, payable monthly, from each county in their respective districts having a population of seventy-five thousand or more. (R. L. § 122, as amended by Laws 1907, c. 175, and Laws 1909, c. 252, § 1.)

Laws 1909, c. 252, § 2, repeals inconsistent acts.

MUNICIPAL COURTS.

See Laws 1907, c. 176, establishing a municipal court in the village of International Falls, subject to the provisions of this chapter.

124. Existing courts confirmed.

Minneapolis.—The municipal court of Minneapolis has jurisdiction to determine all criminal cases arising in or triable within the city where the punishment cannot exceed a fine of \$100 or 90 days' imprisonment. The municipal court act, which confers jurisdiction to hear and dispose of in a summary way, without jury trial, cases for violation of the ordinances does not violate the state or federal Constitutions or the Ordinance of the Northwest Territory. *State v. Marciniak*, 97 Minn. 355, 105 N. W. 965.

The court has jurisdiction to try and determine all offenses committed within Hennepin county which under the general laws are within the jurisdiction of a justice court. *State ex rel. Rosckes v. Dreger*, 97 Minn. 221, 106 N. W. 904.

The court has no jurisdiction in forcible entry and unlawful detainer based on breach of contract of lease to lands, part of which were within and part without Hennepin county. *Bunker v. Hanson*, 99 Minn. 426, 109 N. W. 327.

St. Paul.—To require the court to certify a cause to the district court upon the ground that an equitable defense or equitable relief is interposed (Sp. Laws 1889, c. 351, § 22) the answer must set forth facts sufficient to constitute a defense. *Selover v. Williams*, 98 Minn. 155, 107 N. W. 960.

Duluth.—Laws 1901, c. 397, is constitutional, and limits the right of appeal from the municipal court to the district court. *Dahlsten v. Anderson*, 99 Minn. 340, 109 N. W. 697.

Mankato.—Laws 1899, c. 143, repealed G. S. 1894, § 5191, by implication, and required that change of venue in courts of the class to which it applied, including the municipal court of Mankato, be secured in accordance with practice in the district court. *Clark v. Baxter*, 98 Minn. 256, 108 N. W. 838.

[124—]1. **Oaths and bonds.**—The oaths, and bonds when required, after their approval, of all judges and clerks of municipal courts, whether organized under special or general law, shall hereafter be filed with the secretary of state. They shall be in such form as the attorney general shall prescribe. ('09 c. 116 § 1)

Historical.—"An act relating to the oaths, and bonds when required, of judges and clerks of municipal courts." Approved March 27, 1909.

[124—]2. **Same—To be forwarded to secretary of state.**—The present several custodians of the oaths and bonds of all such officers now acting, shall, prior to May 1, 1909, forward the same to the secretary of state, who shall receipt therefor and likewise file and record the same. ('09 c. 116 § 2)

[126—]1. **Courts in cities of fourth class—Salary of judge—Court, how organized—Fees, etc.**—Whenever the common council of any city of the fourth class, where any municipal court heretofore has been or hereafter shall be organized, shall fail to fix the salary of the municipal judge, as provided for by law, or the mayor shall not approve the salary fixed by the council, such judge shall receive as his compensation until such salary shall be so fixed and approved the same fees as is provided for in section 32 of chapter 229 of the General Laws of the state of Minnesota for the year 1895, and shall, in addition to his duties as such judge, perform the duties incumbent on the clerk of such municipal court. The common council in cities of the fourth class, having a population of less than five thousand inhabitants, which heretofore has been or hereafter may be incorporated under the laws of this state, and which have not organized a municipal court at the time of the passage of this act, may by resolution adopted by its common council or governing body and approved by its mayor, organize such a court under and by virtue of and with such jurisdiction and powers as are conferred by chapter 229 of the General Laws of Minnesota for 1895 and amendments thereto, and the judge of any court so organized shall, in addition to his duties as judge, perform the duties otherwise incumbent or imposed by law on the

clerk of such municipal court. In addition to the other powers now granted to the common council of any city of the fourth class by law, which powers are not abridged or impaired by anything herein contained, such common council shall have the power to fix the salary of any such judge, which salary may be fixed by resolution adopted by such council and approved by the mayor and shall not be diminished during his term. Any municipal court to which the provisions of this act shall apply shall be governed as near as may be under and pursuant to the provisions of law applicable to municipal courts, and contained in the Revised Laws of Minnesota, 1905, and the jurisdiction thereof, the practice and procedure therein shall conform as near as may be to the provisions of law applicable to municipal courts contained in the Revised Laws of Minnesota, 1905. Any common council of any city of the fourth class having a municipal court now organized, or which shall hereafter organize a municipal court to which the provisions of this act may apply, shall have power to fix such reasonable sum, in lieu of all judges' and clerks' fees, to be charged to litigants in civil actions therein, and provide for the collection thereof and the payment of the sum so fixed into the city treasury of such city, and may provide for the collection of fees and the payment thereof into the city treasury, or shall have power to determine that the fees provided for in this act shall be in lieu of and in place of all salary, and shall have power to and may require in cases where salary is paid by the city that such judges collect such fees and pay same into the city treasury and be responsible for such collection. When fees shall be taxed they shall be taxed and paid as in ordinary cases in courts of justices of the peace and shall be the same in amount as are provided in section 32 of chapter 229 of the Laws of 1895, as hereinbefore stated. ('09 c. 306 § 1)

Historical.—"An act relating to the powers, duties and compensation of judges of municipal courts and to the powers of the common council of cities of the fourth class in certain cases, and legalizing and confirming the organizing of municipal courts in cities of the fourth class." Approved April 21, 1909.

[126—]2. Same—Certain courts legalized.—Any municipal court heretofore organized or attempted to be organized in any city of the fourth class under any law, and now existing and performing the duties of such court is hereby legalized and the organization thereof in all things performed: ('09 c. 306 § 2)

COURT COMMISSIONER.

148. Qualification and powers.—Court commissioners shall be men learned in the law, and shall have and may exercise the judicial powers of a judge of the district court at chambers. Among other powers conferred by law, they are empowered to issue writs of habeas corpus, to take acknowledgment of deeds and other written instruments, to take depositions and certify to the same, to perform the marriage ceremony, to take disclosures in garnishment proceedings pending in the district court, and orders for the examination of judgment debtors in proceedings supplementary to execution may be made returnable before the court commissioner. (R. L. § 148, as amended by Laws 1909, c. 59, § 1.)