

paid, and may tax the same amount as a part of the costs in any civil action.

SECTION 19. This act shall take effect and be in force, from and after its passage and publication.

Approved May 8, 1901.

No. 373, A.]

[Published May 10, 1901.

## CHAPTER 314.

AN ACT to create a second municipal court for Lincoln county.

*The people of the state of Wisconsin represented in senate and assembly do enact as follows:*

**Second municipal court created.** SECTION 1. There is hereby created and established in and for the county of Lincoln, a municipal court to be known and designated as "The second municipal court of Lincoln county," with the powers and jurisdiction hereinafter specified and provided.

**Election of judge; term; vacancy.** SECTION 2. On the first Tuesday of April 1901, and every four years thereafter, there shall be elected in the county of Lincoln, in the same manner as county judges are elected, a municipal judge for said court who shall hold his office for the term of four years from the first Monday of May next following his election, and until his successor is elected and qualified, and in case of vacancy occurring in the office of municipal judge, the vacancy shall be filled by appointment by the governor, and the person appointed to fill such vacancy shall continue in office for the residue of the term for which his predecessor was elected or appointed; provided that upon the passage and publication of this act the office of judge of said court shall be deemed to be vacant and shall be filled by appointment as herein provided.

**Judge to be an attorney.** SECTION 3. No person shall be eligible to the office of judge of said municipal court, except an attorney of a court of record, and such judge shall hold no other county office during the term for which he was elected.

**Oath and bond.** SECTION 4. The municipal judge before entering upon the duties of his office, shall take and subscribe the constitutional oath of office and file the same, duly certified, in the office of the clerk of the circuit court for said county and execute to the said county a bond in the sum of one thousand dollars, with two or more sureties to be approved by the county treasurer of said county and recorded and filed as provided in section 702 of the statutes of 1898, conditioned for the faithful performance of the duties required of him by law and for the faithful application and payment of all moneys and effects that may come into his hands in the execution of the duties of his office.

**Court, where held.** SECTION 5. The judge of the second municipal court of Lincoln county shall hold his office at the city of Tomahawk in a suitable room for such purpose, to be provided by the board of supervisors of Lincoln county.

**Civil and criminal jurisdiction of.** SECTION 6. The second municipal court of Lincoln county and the municipal judge thereof, shall have cognizance of and jurisdiction to hear, try and determine all actions and proceedings at law wherein the amount of debt damages, demand, penalty or forfeiture shall not exceed the sum of five hundred dollars; actions to recover the possession of personal property with damages for the unlawful taking or detention thereof, wherein the value of the property claimed shall not exceed the sum of five hundred dollars, exclusive of damages, actions founded on an account when the same shall be reduced to an amount not exceeding five hundred dollars, by credits given to hear, try and determine all actions arising under chapter 145 of the statutes of 1898 when the amount claimed shall not exceed five hundred dollars, and all charges for offenses arising within said county and which are not punishable by commitment to state prison, offenses against the city charter, ordinances, by-laws, rules and regulations of the city of Tomahawk said county, and shall have power to sentence and commit all persons convicted of any offense of which he has jurisdiction. Said judge shall have power and jurisdiction throughout the county to cause to come before him, persons who are charged with having committed any criminal offense and commit them to jail, or bail them as the case may require. Said judge shall further have all the jurisdiction, authority, powers and rights given by law to justices of the peace, together with the power and right in his discretion to charge the jury upon written charges submitted by the parties, and said judge shall be subjected to the same prohibitions and penalties as justices

of the peace. No justice of the peace or police justice within the city of Tomahawk, shall exercise any jurisdiction in criminal cases, but all such jurisdiction is vested in said court and the judge thereof. The proceedings and practice in said court shall in all respects be governed, so far as practicable, by the law relating to justices' courts of this state, and transcripts of judgments of the municipal court may be filed and docketed with the clerk of the circuit court of said county with the same effect as may be transcripts of judgments rendered by justices of the peace of said county. Nothing herein contained shall be construed to give the said municipal judge cognizance of any actions mentioned in subdivisions 1, 2 and 3 of section 3573 of chapter 154 of the statutes of 1898 of this state.

**Judgment by confession.** SECTION 7. A judgment by confession may be entered by the judge of said court in any sum not exceeding one thousand dollars without action, whether for money due or to become due or to secure any person against contingent liability on behalf of the defendant or both if a statement be made in writing signed by the defendant and verified by his oath to the following effect: First. It must state the amount for which judgment may be entered and authorize the entry of judgment therefor by the judge of said court. Second. If it be for money due or to become due, it must state concisely the fact out of which the indebtedness arose and must show that the amount confessed therefor is justly due or to become due. Third. If it be for the purpose of securing the plaintiff against a contingent liability, it must state concisely the facts constituting the contingent liability and must show that the sum confessed does not exceed the same.

**When justice of the peace may sit.** SECTION 8. In case of sickness, absence or temporary disability of such municipal judge, he may by an order in writing to be filed in said court, appoint a justice of the peace in said county to discharge the duties of said judge during such sickness, absence or disability who shall have the powers of such judge while administering such office.

**Proceedings in lieu of change of venue.** SECTION 9. No action, examination or other proceeding shall be removed from said court, but whenever it shall appear by affidavit that the municipal judge is interested, pecuniarily in the action, examination or other proceeding or that said judge is a material witness or within the forbidden degree of consanguinity or from prejudice will not decide impartially in the matter, and the matter or proceeding is one of which a justice of the peace has juris-

diction, the municipal judge shall notify the nearest justice of the peace in the county of Lincoln, not disqualified to try said case or to hear said examination or other proceeding as the case may be, whereupon it shall be the duty of said justice so notified as aforesaid, to forthwith appear at the court room of said municipal court and to discharge the duties of judge of said municipal court on trial of said case or the hearing of said examination or other proceeding, in the same manner and with like effect as said municipal judge would if not disqualified to act, and the doings of said justice of the peace while so presiding over said municipal court shall have and be of the same force and effect as proceedings of said municipal judge and when such action, examination or other proceeding is concluded a like record as in other like cases shall be made in said court and thereafter and thereupon execution may be issued as in other cases tried before said municipal judge. Said justice of the peace while presiding over said municipal court shall receive the same fees as are allowed by law to said justice of peace for his service. In matters or proceedings of which a justice of the peace has no jurisdiction, when such affidavit is filed the municipal judge shall transfer the same to the county court of Lincoln county, which county court shall thereupon have jurisdiction to hear, try and determine the same in the same manner and with like effect as if such action or proceeding had been begun in said county court.

**Judge to have court commissioner's powers.** SECTION 10. The municipal judge of said county shall have and may exercise in his county all the powers and may perform all the duties of a court commissioner as defined in section 2434 of the statutes of 1898, and every authority granted to or limitation of the powers of the court commissioner by the laws of Wisconsin shall be construed to extend to said municipal judge acting in such capacity, except when otherwise expressly provided. The official designation of said officer in matters where he shall so act, shall be "judge of the second municipal court of Lincoln county."

**Removal of civil action from justice court to.** SECTION 11. Whenever any civil action shall be removed from any justice of the peace in the county of Lincoln, upon the oath of the defendant, his agent or attorney according to the provisions of law for such removal, if said defendant, his agent or attorney requests in writing to such justice that the action be removed to said municipal court then the action and all the papers therein shall be transmitted to the presiding judge thereof, who shall proceed with the action in the same manner as if originally instituted before him, provided that no action, examination or proceeding shall be removed to the said municipal court from any justice

court in the city of Merrill in said county, without the consent of all parties to such action or proceeding.

**Trial by jury.** SECTION 12. Trial by jury may be had in said court in the same manner and process as in justices' courts.

**Service of process.** SECTION 13. Sheriffs and constables of Lincoln county shall have the same power to serve and execute process as of justices' courts and shall be entitled to the same fees and shall be subject to the same liabilities and penalties as in justices' courts.

**Separate and criminal dockets; may issue summons in blank.** SECTION 14. The judge of the said court shall keep one docket for criminal trials and proceedings, one docket for civil actions and a separate docket for the trial of offenses against the city charter and ordinances of the city of Tomahawk in said county. In civil actions and in all criminal trials, examinations and proceedings in said court under this act, the docket entries and process shall be made, kept and filed in the same manner, as far as applicable to the municipal court, as the same are required to be kept by justices of the peace under the laws of this state, provided that in all civil actions, said judge may sign in blank, summons and other process and deliver the same to attorneys of courts of record throughout the county to be issued by them as occasion may require, and upon the filing of said summons or other process at any time before the day on which the same is made returnable, said judge shall forthwith docket said case, which docket entries shall have the same force and effect as if made at the time of issuing such summons or other process; provided further that no summons or other process issued by an attorney at law under the provisions of this act, shall be valid unless said attorney shall endorse thereon his name or the name of the firm of which he is a member, which endorsement shall be substantially in the following form: Issued by A. D. attorney at law; provided further that all process, except subpoenas, shall be made returnable at nine o'clock A. M. of the return day, and when any action, examination or proceeding in the municipal court shall be adjourned or continued to a day certain, it shall be set for trial at nine o'clock A. M. of the day to which the same has been adjourned or continued, unless otherwise agreed to by the parties, and at the hour specified the parties shall proceed to the trial without delay unless the same shall be adjourned or continued by the court for cause shown and upon such terms as may be just and equitable.

**Compensation of judge to be taxed as costs.** SECTION 15. In all actions, examinations or proceedings in the municipal court under this act, the county board shall fix the compensation of the municipal judge, which sum shall be taxed as costs in the case.

**Attorney's fees.** SECTION 16. In all actions in the municipal court under this act, an attorney's fee shall be allowed to the plaintiff if he recover judgment as follows: If the judgment does not exceed twenty-five dollars, the sum of two dollars and fifty cents; if the judgment exceeds twenty-five dollars and does not exceed one hundred dollars, a sum equal to ten per centum of the judgment; if the judgment exceeds one hundred dollars and does not exceed two hundred dollars, ten dollars on the first hundred dollars and five per centum on the balance of the judgment; if the judgment exceeds two hundred dollars, fifteen dollars on the first two hundred dollars and two and one-half per centum on the balance of the judgment. In case judgment shall be for the defendant he shall receive the same attorney's fee, and the amount claimed by the plaintiff shall be the basis for computing the same. In actions of replevin, the value of the property as proved shall govern the amount of attorney's fees, in case judgment is for the plaintiff and the value of the property as claimed shall govern the amount of attorney's fees in case judgment is for the defendant. In any case not herein provided for, a reasonable attorney's fee shall be allowed in the discretion of the court, provided that no attorney's fee shall exceed the sum of twenty-five dollars; and provided further that no attorney's fee shall be allowed unless the prevailing party shall appear in the action by an attorney of a court of record.

**Reporter; compensation of.** SECTION 17. It shall be lawful for the municipal judge by request of either party, to call in a phonographic reporter skilled in the art of shorthand reporting, to take testimony in any action, examination or proceeding in the municipal court, and the reporter's notes so taken may be filed in lieu of the minutes of testimony required by law to be taken by justices of the peace in like proceedings, provided that in case of appeal in civil actions, said reporter when requested by the appellant shall file a transcribed copy of his notes, verified by his oath, which shall be returned as the testimony in the case, and the fees for transcribing said testimony, not exceeding five cents per folio shall be taxed as a part of the judges' fee in the case. Said reporter shall receive such compensation for taking testimony as shall be fixed by the county board, which amount shall be taxed as costs in the case. In all cases wherein the

county shall become liable for the costs, said fees and per diem shall be certified, audited and paid out of the county treasury monthly upon filing with the county treasurer the certificate of the municipal judge showing the title of the case and the amount due said phonographic reporter for services therein. The sum per diem to the municipal judge and to the phonographic reporter shall be in lieu of the fees allowed by law to justices of the peace for taking testimony therein. Section 2439 of the statutes of 1898 shall apply to said reporter and said court.

**Seal for court; effect of.** SECTION 18. The municipal judge may provide a seal for said court and all papers, depositions, certificates, acknowledgments, examinations and other documents executed or signed by said judge when sealed with the seal of the court shall be evidence in all courts and places in this state, and shall have the same effect as the seal of a court of record.

**Appeals.** SECTION 19. Appeals from said municipal court shall be taken to the circuit court for Lincoln county and when not otherwise provided the law relating to appeals from justices' courts shall apply. The same affidavit and notice in substance shall be made and given as upon appeal from justice's courts.

**Records to be public.** SECTION 20. The documents and records of said municipal court shall be public records, open to the inspection of all persons at every reasonable hour.

**Notice of election of judge.** SECTION 21. The county clerk of Lincoln county shall give the same notice of the election of said judge as in other judicial elections.

**Stationery, etc., who to furnish.** SECTION 22. All needful stationery and all blanks required by said court in civil and criminal actions and examinations and judges' dockets required by law shall be furnished at the expense of Lincoln county.

SECTION 23. This act shall take effect and be in force, from and after its passage and publication.

Approved May 8, 1901.