

No. 536, A.]

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CHAPTER 225.

AN ACT to amend chapter 23, of the laws of 1895, entitled, "An act to establish a municipal court at Oconomowoc for the western municipal district of the county of Waukesha."

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

SECTION 1. Section 1, of chapter 23, of the laws of 1895, is hereby amended so as to read as follows: Section 1. The territory embraced within the city of Oconomowoc, and the towns of Oconomowoc, Merton, Delafield, Summit, Ottawa, and the village of Hartland, in Waukesha county, Wisconsin, is hereby declared to be a municipal district, to be known as 'The western municipal district of the county of Waukesha,' for the purpose of establishing a municipal court therein, to have jurisdiction as hereinafter provided, over and throughout the extent of the city, towns and villages above named.

Western municipal court of Waukesha county, organized. Territory defined.

SECTION 2. There is hereby constituted, created, and established in the territory comprised within the said towns of Oconomowoc, Merton, Delafield, Summit, Ottawa, city of Oconomowoc, and the village of Hartland, being the towns named in section 1, of this act, a court to be known as "The municipal court for the western district of Waukesha county," which shall be held at the city of Oconomowoc in said county by a judge to be elected for that purpose.

Court to be held at Oconomowoc.

SECTION 3. Section 3, of chapter 23, of the laws of 1895, is hereby amended so as to read as follows: Section 3. The municipal court for the western municipal district of Waukesha county, shall be a court of record, and have a

Shall be a court of record; its jurisdiction defined.

clerk and a seal, with suitable device to be procured under the direction of the judge thereof, at the expense of the county of Waukesha. It has and may exercise powers and jurisdiction concurrent and equal with the circuit court of Waukesha county, in all cases of bastardy, crime and misdemeanor, arising in said western municipal district of said county, except murder. Said municipal court in addition to the powers vested therein as aforesaid, is vested with all the powers and jurisdiction of a justice of the peace of said county in the said municipal district, in bastardy cases, criminal actions and proceedings, and jurisdiction of all prosecutions for breach of any ordinance of any city or village, now, or which may hereafter be incorporated in said territory; and also all the powers and jurisdiction of a justice of the peace of said county in civil cases and proceedings arising within said municipal district, and also power to hear and determine any such cases, although the title to land may come in question therein. The general provisions of law relative to civil, criminal and bastardy cases before justices of the peace, shall apply to said court, so far as applicable. Appeals from judgments rendered in said court in civil actions, shall be taken to the county court of Waukesha county in the same manner as appeals from judgments of justices of the peace in civil actions. No justice of the peace, police justice or court commissioner within said western municipal district, on or after the first Monday of May, A. D. 1897, except when called in to sit as judge of said court, as hereinafter provided, shall exercise any jurisdiction in cases of bastardy, crimes or misdemeanors, or breaches of any village or city ordinance arising within the limits of said county, and all such jurisdiction within the limits of said western municipal district, is vested in said municipal court. The said municipal court has also jurisdiction of all cases brought for breach of any recognizance given in said court, but no judgment in any such action

Justices of
the peace not
to exercise
jurisdiction
after May,
1897.

shall constitute a lien upon real estate until a transcript thereof is duly docketed in the office of the clerk of the circuit court of said county, in like manner as judgments of circuit courts in civil actions are required to be docketed; and when so docketed shall have the same lien upon real estate in said county as judgments of the circuit court so docketed have. The judgments of the municipal court in bastardy and criminal cases tried before it, may be examined and reviewed by the supreme court in the same manner as a judgment of the circuit court. To carry out its jurisdiction, the said municipal court shall have all the powers of circuit courts, and the municipal judge shall have the same powers in all matters pertaining to the jurisdiction of said municipal court as circuit judges.

SECTION 4. Section 4, of chapter 23, of the laws of 1895, is hereby amended so as to read as follows: Section 4. The general provisions of law, which may at any time be in force, relative to the circuit courts, and actions and proceedings therein, in cases of bastardy and crimes, and the matter of empanelling and drawing of jurors therein, shall apply also to the said municipal court, unless inapplicable, or as hereinafter otherwise provided; and the rules of practice prescribed by the justices of the supreme court for circuit courts, shall be in force in said municipal court; and the rules of practice and the proceedings, shall conform as nearly as practicable to the rules of practice of circuit courts; and it has power and authority to issue all process necessary to carry this practice, which process shall in substance be the same, when applicable, as used in circuit court. The municipal court may, by rule, direct the practice in said court, and the form and direction of process, when not otherwise provided by law, or the rules prescribed by the justices of the supreme court, and the process of said municipal court in cases of bastardy and crime, may be executed in any part of this state by the officer to whom it is addressed. It may, when neces-

General provisions of the statutes to prevail in drawing jurors.

sary, issue special venires to complete any panel of jurors therein, in like manner as in circuit courts.

To have the powers and jurisdiction of justices of the peace.

SECTION 5. Section 5, of chapter 23, of the laws of 1895, is hereby amended so as to read as follows: Section 5. The said municipal court has all the powers and jurisdiction heretofore or now vested in justices of the peace, police justices or police courts of the city of Oconomowoc, in said municipal district, in all cases of bastardy, crime and misdemeanors arising in said city, and has jurisdiction of all prosecutions for breach of any ordinance, law, rule, regulation or resolution of said city; for such purpose, the said municipal court shall be open for business every morning, Sundays and legal holidays excepted, to hear, try and determine in a summary way all cases which shall be brought before it by the proper officers, either with or without process, for violation of the laws of this state, and in any case of bastardy, crime or misdemeanor arising in said city, or in said western municipal district, or of any violation of any such ordinance, law, rule or resolution of said city, the said court may, in its discretion, grant such continuance of cases as may be necessary to the ends of public justice, with or without bail. Applications for warrants may be made to the clerk of the court; said clerk shall have power to issue the same under the supervision of said court. A printed copy of any ordinance, by-law or resolution passed by any city or village, and published in the official newspaper of said city or village, or in pamphlet or book form, shall be prima facie evidence of its due passage and publication and can be received in evidence. After issue joined, and before trial, in all cases of misdemeanor cognizable before said court, of which justices of the peace would have jurisdiction, the defendant may demand a jury of not more than twelve nor less than six men, and shall designate the number at the time of the demand. The proper officer, when the court may direct,

Printed copies of the ordinances, etc., to be prima facie evidence of passage.

shall thereupon make a list of twice the number of jurors demanded, who may be qualified to serve as jurors in courts of record in Waukesha county, and the parties shall then alternately strike therefrom, so many names as will leave remaining the number demanded. The court shall thereupon issue a venire, commanding the officer to summon those so remaining to appear before him at such time as he may direct, to make a jury for the trial of the said action, and the court may compel their attendance by attachment. Either party may challenge any juror for cause, and the deficiencies occasioned thereby or by any other cause, shall be supplied by talesmen selected and summoned by the officer. In all cases for the violation of any ordinance, by-law or resolution, if the defendant shall not demand a jury, any city or village may demand a jury as above provided. If no jury be demanded, it shall be a waiver of a jury trial. If either party declines to strike from the list the names which he is entitled to strike, the court may appoint some disinterested person to strike the same for said party. Each juror mentioned in this section, shall receive for his services the sum of one dollar for each day, and the fees of such jurors shall be taxed as costs in such action. Witnesses and jurors shall attend before said court in all bastardy proceedings and criminal prosecutions, and in actions for the violation of any ordinance, by-law or resolution, without the payment of fees in advance or tender thereof, upon the process of the court duly served; and in default thereof, their attendance may be enforced by attachment. In case a jury, after being kept out a reasonable time, should disagree, they shall be discharged, and the court shall adjourn the case to a day certain and issue a new venire as aforesaid.

Drawing of jurors—procedure.

SECTION 6. There is hereby added to and immediately following section 5, of chapter 23, of the laws of 1895, a section to be known as 5a, which is as follows: Section 5a. The president of each incorporated village and mayor of

New section added. What it contains.

Relating to
the drawing of
jurors.

each city, and the chairman of the town board of each town within said municipal district, shall each, on or before the first Tuesday of May in each year, make a list of twenty residents of each village, city or town, qualified to act as jurors in the circuit court of said county of Waukesha, to serve at the regular term of said municipal court as jurors for the then ensuing year, and deliver such list to the clerk of said municipal court, to be filed therein. The jurors for each term of said municipal court shall be selected as follows: At least twelve days before each term of said court at which cases may be tried by a jury, the clerk of said court, in the presence of the judge thereof, shall draw from the list of persons selected as above provided, to serve as jurors therein, thirty-six jurors for such term, and the clerk and the judge of said court shall make a list of the names of the persons so drawn, sign the same and forthwith file said list in the office of said clerk; and the clerk shall issue a venire to summon such jurors. The clerk shall put the names of all such persons so drawn in a box, in the manner prescribed for jurors in the circuit courts, and when a jury shall be required for the trial of any offense in which any information or indictment may be filed, the same shall be drawn from the names in such box conformably to the practice prevailing in circuit courts.

Election of the
municipal
judge.

SECTION 7. Section 6, of chapter 23, of the laws of 1895, is hereby amended so as to read as follows: Section 6. The qualified electors of all the territory embraced in the said western municipal district of the county of Waukesha, shall, on the first Tuesday of April, A. D. 1895, and on the first Tuesday of April each six years thereafter, elect a suitable person, who shall have been admitted to practice in courts of record in said county, and be a resident of the district for which he is elected, to the office of judge of said municipal court, to be called "The Municipal Judge," who shall hold his office for the

term of six years from the first Monday in May next succeeding such election, and until his successor is elected and qualified, and who may be removed from office in the manner provided in the constitution for the removal of supreme and circuit judges. If a vacancy shall happen in the office of judge of said court, the governor shall appoint a judge to fill the vacancy until a successor is elected. Elections to fill such vacancies shall be held as provided in section 88, revised statutes, and notice thereof shall be given by the sheriff of Waukesha county, in the same manner as for the election of county officers. All vacancies so filled shall be for the residue of the term only. All such elections shall be held and conducted and the votes cast thereat shall be returned and canvassed, and a certificate shall be given, in all respects as is provided by law in the case of the election of county judges.

Term of office.

Vacancies in office—how filled.

SECTION 8. Section 8, of chapter 23, of the laws of 1895, is hereby amended so as to read as follows: Section 8. The judge shall appoint in writing a clerk of said court who shall hold his office during the pleasure of said judge, who shall not be a relative of said judge, and who, before entering upon his duties, shall take and subscribe the oath of office prescribed in the constitution, and give a bond for the faithful discharge of his duties, and to pay over all moneys the same as clerks of circuit courts are required, which appointment, oath and bond shall be filed in the office of the clerk of the city of Oconomowoc and approved by the judge of the county court of Waukesha county, and a duplicate thereof filed in the office of the county clerk of said Waukesha county. He shall make and keep the records of said court and perform all ministerial acts required of him, by and under the direction of the judge; he shall have power to administer oaths and take bail in the absence of the judge subject to his revision. He may examine on oath all persons applying for warrants, and may reduce

Judge to appoint a clerk of court; his duties.

their examination to writing, and file the same, and may issue all warrants and other processes from said court, including summons and other process, in all civil actions cognizable by justices of the peace. He shall procure, under the direction of said judge, all necessary record books, blanks, stationery, lights, and fuel for said court, at the expense of the county of Waukesha, subject to the approval of the county board of said county. Every such clerk may appoint a deputy, which appointment shall be approved by the judge of said court, but be revocable by the clerk at pleasure; such appointment and revocation shall be in writing, and filed in the office of said clerk; such deputy shall aid said clerk in the discharge of the duties of his office, under his direction, and in the absence of the clerk from his office or from the court, or in case of a vacancy by resignation, death, removal or from any other cause, such deputy may perform all the duties of the clerk, until such vacancy shall be filled. The clerk shall be responsible on his official bond for all official default or misconduct of his deputy. The compensation of such deputy shall in all cases be borne and paid by said clerk.

Terms of court—when to be held.

SECTION 9. Section 9, of chapter 23, of the laws of 1895, is hereby amended so as to read as follows: Section 9. The said municipal court shall hold terms commencing on the first Monday in the months of January and June of each year, at some place in the city of Oconomowoc, to be provided by the said county of Waukesha. Grand juries, when ordered, shall be drawn and summoned, as provided in chapter 116, of the revised statutes and laws amendatory thereof. The district attorney of Waukesha county shall be the prosecuting officer in all criminal cases, and the city attorney in all prosecutions for the violation of its ordinances in said court.

District attorney to be prosecuting officer.

Relating to change of venue.

SECTION 10. Section 11, of chapter 23, of the laws of 1895, is hereby amended so as to read as follows: Section 11. Whenever a change

of venue in any action, examination or proceeding, pending in said court, shall be taken, on account of the prejudice of the judge, or because he is interested in any civil cause of action depending upon the same state of facts that any criminal action is based upon, or is related to the defendant, or has been of counsel for him, or is otherwise disqualified to try the cause, it shall be sent to the county court of Waukesha county, providing said county court has jurisdiction to hear the same; otherwise to the circuit court of Waukesha county; or in any case, said municipal judge, upon a change of venue duly taken as aforesaid, may send the action, examination or proceeding to the court or judge of the eastern municipal district of said county; provided, however, that the judge of said municipal court may, in his discretion, on cause of removal being shown, instead of taking an order of removal as aforesaid, set the trial or examination of any action or proceeding for a day certain, and call in the judge of the eastern municipal district of Waukesha county to hear, try or determine the same. Whenever such change of place of trial or examination shall be applied for by one or more of the several defendants in any complaint, indictment or information, in any case where a separate trial or examination has not been previously awarded to the defendant or defendants making said application, the court in every case where it is adjudged that the place of trial or examination be changed, shall order the change of the place of trial or examination as to all of the defendants, in the same manner and with like effect as if all had joined in the said application; and whenever in any case, the place of trial is changed to the circuit court or county court of Waukesha county, from the said municipal court, at any time when a term of said circuit or county court is being held, the recognizance of the accused and the witnesses required by law, shall be for their

appearance at such term, otherwise for their appearance at the next term of such court.

Sheriff of
Waukesha
county to be
officer of the
court.

SECTION 11. Section 12, of chapter 23, of the laws of 1895, is hereby amended so as to read as follows: Section 12. The sheriff of Waukesha county shall be the officer of said court; shall serve its process and carry into effect its orders and judgments; and the marshal and constables of the city of Oconomowoc may serve its process in all civil actions and proceedings of which justices of the peace of said city heretofore had jurisdiction. The municipal court shall have power to commit or bail over to an existing term, or to its next regular term, such persons as on examination are found to be indictable or subject to information, and such witnesses as may be necessary. In case the judge of said court desires to be absent from said court, or in case of his sickness, press of business, at a regular term, or of his inability for any cause to attend, he may designate and appoint, by order, entered in the minutes of said court, one of the justices of the peace of said county, resident in said municipal district, to temporarily discharge the duties of judge of said court, except holding the term or any part thereof, for the trial of indictments, informations or appeals, and his acts shall be of the same force as if performed by the judge. And the clerk shall make a like record of his proceedings; and such justice of the peace shall receive for his services five dollars per day, to be paid by said county. The municipal judge shall not voluntarily absent himself from the duties of his office more than six weeks in any one year, except from sickness. But if absent from the duties of his office to exceed two weeks in any one year, there shall be deducted from his salary the sum of five dollars for each and every day that he shall be absent. Any circuit judge, or judge of any municipal court having jurisdiction in criminal cases, equal to or greater than the judge of said municipal court for the western district of Waukesha

Who to pre-
side in case of
absence of the
judge for any
cause.

county, may hold court as judge of said municipal court in term time, for the trial of term cases, in case of absence, sickness or other disability or upon request of the judge of said municipal court, and while so doing shall have the same powers as if elected judge of said court.

SECTION 12. Section 13, of chapter 23, of the laws of 1895, is hereby amended so as to read as follows: Section 13. The fees of witnesses, jurors, sheriff and other officers, and taxable costs of suits, except as herein provided, shall be the same as in circuit court, except in cases and proceedings that would otherwise be cognizable by a justice of the peace; in which last mentioned cases and proceedings the same fees and costs shall be taxed and allowed as provided by law in justice courts. The costs shall be paid in criminal prosecutions in the name of the state, by the county, and in city and village prosecutions, by the respective city or village prosecuting the same.

Fees of witnesses, etc.

SECTION 13. Section 14, of chapter 23, of the laws of 1895, is hereby amended so as to read as follows: Section 14. The salary of the judge of said municipal court shall be the sum of one thousand dollars per annum, to be paid as follows: Three-fourths of the same to be paid out of the county treasury of Waukesha county, and one-fourth to be paid out of the treasury of the city of Oconomowoc, to be paid quarterly at the end of each quarter, out of said county and city treasuries respectively. The salary of the clerk of said court shall be six hundred dollars per annum, to be paid in like manner and in like proportions as the salary of the judge; which said salaries shall be in full for all services rendered by said judge and clerk of said municipal court. The said court is authorized to tax and collect fees as follows: For all services rendered by said court in civil and criminal actions when exercising the powers of a justice of the peace, the fees allowed to justices of the peace, except as here-

Salary of the municipal judge.

Court fees allowed to be taxed.

inafter provided. For hearing and deciding any motion, fifty cents each; for issuing each venire, fifty cents; for making and recording all necessary orders, fifty cents each; for receiving and recording verdict of the jury, fifty cents; taking and approving bail, fifty cents; each commitment, fifty cents; drawing jury in every case, fifty cents; for services of clerk, one dollar in each criminal case, and one dollar in each civil case; and the same shall be paid as other costs in civil or criminal cases are paid; and the said clerk shall pay the same into the county and city treasuries, to apply on the salary of the judge and clerk as follows: All costs imposed and collected in bastardy and criminal cases, arising under the laws of the state, shall be paid into the county treasury, and all costs imposed and collected in cases arising under the charter and ordinances of any city or village, shall be paid into the treasury of the city or village under whose charter, by-laws or ordinance said case arose, and all costs collected in civil cases shall be paid as follows: Three-fourths of the same into the county treasury of Waukesha county, and one-fourth into the treasury of the city of Oconomowoc. The clerk of said court shall keep an accurate statement of all such costs thus collected, and file the same in the county clerk's office at the end of each month under his hand and the seal of said court; and shall, at the same time, pay over all such moneys as provided for in this act.

Repealing section.

SECTION 14. All acts and parts of acts contravening the provisions of this act are hereby repealed.

SECTION 15. This act shall take effect and be in force from and after its passage and publication.

Approved April 14, 1897.