

No. 55, S.]

[Published March 13, 1905.]

CHAPTER 8.

AN ACT amending chapter 115 of the laws of 1879, and relating to the jurisdiction, procedure, powers and duties of the judge, of the municipal court for Marathon county.

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

COURT AND JUDGE.

Municipal court created. SECTION 1. There is hereby constituted and established in the city of Wausau and county of Marathon a municipal court for which purpose said city of Wausau and county of Marathon are hereby declared a municipality. The jurisdiction of said court shall extend to all parts of Marathon county.

Court how designated and where held; seal. SECTION 2. The name of such court shall be the municipal court for Marathon county, and its judge, the municipal judge of Marathon county. Such court shall be held at the city of Wausau in a suitable place in the court house, to be provided, furnished and maintained by said Marathon county. The county board of said county may however provide such quarters in said city outside of said court house if deemed necessary. Such court shall be a court of record with a seal, to be designed and procured by the judge at the expense of the county.

Qualifications; election and term of judge; vacancies how filled. SECTION 3. Said municipal judge shall have the qualifications and be subject to the liabilities, prohibitions and restrictions of a circuit judge. The present municipal judge of Marathon county shall continue in office as municipal judge under this act, until the expiration of the time to which he was elected. His successor shall be elected by the qualified electors of Marathon county at the spring election in the year 1908 and once every four years thereafter and his term commence on May 1st, after election. He shall hold his office until his successor is elected and qualified. Before entering upon the duties of such office, he shall subscribe and file in the office of the clerk of the circuit court of Marathon county the constitutional oath of office. Vacancies in such office shall be filled in the

same manner as vacancies in the office of a county judge of Marathon county.

Salary of judge; how paid. SECTION 4. The salary of such office shall, until otherwise determined by the county board of Marathon county, be two thousand dollars (\$2,000.00) per annum, payable quarterly out of the treasury of Marathon county, and said board is empowered to fix the salary of said judge in the same manner as the salaries of other county officers, and all fees and perquisites of such office shall be paid to the treasurer of Marathon county on the first secular day of each calendar quarter and belong to said county. If not so fixed, it shall be the same as for the preceding term and until so fixed, shall be \$2,000.00 per year.

Temporary disability of judge. SECTION 5. In case of sickness, temporary absence or disability of such judge, he may, by filing an order to that effect, appoint the county judge or any justice of the peace of the city of Wausau to hold such court in his place, for the trial of all actions there pending of which a justice court would have jurisdiction, and actions for the violation of municipal ordinances. In such contingency, he may also, by order, transfer to the circuit court for Marathon county, any and all other actions and upon the filing of such order with the clerk of such circuit court, such circuit court shall have jurisdiction thereof and shall thereafter proceed as if originally brought in such circuit court.

CLERK.

Clerk, qualifications and duties. SECTION 6. The clerk of the circuit court for Marathon county and his deputy shall be clerk and deputy respectively of such municipal court. Such clerk, in addition to his oath and bond as clerk of the circuit court, shall file an additional oath of office as the clerk of said municipal court and shall execute and file with the county clerk a bond with two official sureties approved by such clerk in such sum as said municipal judge shall designate, conditioned that he will pay over to the proper persons all fines and penalties, suit-taxes, and other moneys in his hands as required by law and the order of said court, and will faithfully perform the duties of said office as required by law. Said clerk shall have all the power and perform all the duties with reference to said municipal court in the same manner as the clerk of the circuit court has and does for that court except as otherwise herein provided.

Judgments, how docketed. SECTION 7. He may docket all judgments rendered in said court in the same manner as circuit court judgments are docketed and in the same judgment dockets, which, when done, shall be liens and enforced in the same way as judgments of the circuit court.

Civil suit how taxed; disposition of fees and fines. SECTION 8. The clerk shall charge one dollar (\$1.00) state tax on every civil suit in said court before filing any papers, and on actions proceeding according to circuit court procedure, the same fees as in circuit court and on those according to justice court procedure the same as allowed in justice court. He shall retain as his compensation such fees on circuit court actions, and the fees for docketing justice court judgments, and issuing execution on such docketed judgments, and ten per cent of the other fees in justice court actions, and shall quarterly pay to the county treasury all sums collected for state tax, 90 per cent of justice court fees, and all fines and forfeitures where the state is prosecutor. He shall quarterly pay to the treasurer of the city of Wausau all fines and forfeitures where the city is prosecutor.

JURISDICTION.

Jurisdiction of court; criminal. SECTION 9. Such municipal court shall have concurrent jurisdiction with the circuit court of Marathon county of all criminal actions and proceedings of every kind, except trials for murder.

Jurisdiction of court; civil. SECTION 10. Such court shall have civil jurisdiction to hear, try and determine all actions and proceedings at law and in equity, including bastardy proceedings, concurrent with the circuit court for Marathon county except actions involving money or property where the amount of the claim or value of the property in controversy, exclusive of costs, exceeds \$25,000.00. If the property affected exceeds the value of \$25,000.00, but the lien or interest claimed therein is less than \$25,000.00, exclusive of costs, such court shall have jurisdiction.

Jurisdiction concurrent with justice of the peace; cases arising under city charter. SECTION 11. Such court shall have civil and criminal jurisdiction concurrent with justice of the peace of Marathon county. Such court shall have exclusive jurisdiction of all actions and offenses for the violation of or to recover a forfeiture or penalty under the charter, ordinances, rules and by-laws of the city of Wausau.

Justice of the peace may bind over person for trial to municipal or circuit court. SECTION 12. In all proceedings in any justice court of Marathon county where any person shall be bound over for trial, such justice may bind such offender over for trial either to the circuit court or municipal court of said county, whichever the defendant or a majority of them if several are bound over jointly, may designate, but if not so designated, then to whichever such justice may elect.

In all such proceedings in said municipal court, any person so bound over for trial shall be bound over for trial in said municipal court, with the same procedure in all respects as if bound over by a justice of the peace to the circuit court.

PROCEDURE.

Powers of court; rules of procedure. SECTION 13. Except as hereinbefore specifically provided, said court shall have all of the powers, issue all writs, orders and process throughout the state and follow the rules of pleading and procedure applicable in the circuit court, except as otherwise herein provided, in all actions of which a justice court would not have jurisdiction and all other actions commenced by process of the form used in circuit court. In all actions of which a justice court would have jurisdiction, the court shall have the same power, issue all writs and process throughout the county, and follow the rules of procedure applicable in a justice court, except as herein otherwise provided, and except that all pleadings shall be in writing.

Method of procedure in certain cases. SECTION 14. In actions of which either a justice or circuit court would have jurisdiction, the form of the process shall determine the method of procedure and territorial limits for service of process.

Objection to procedure; how waived. SECTION 15. In any action, proceeding according to circuit court procedure, any objection that the procedure should be according to justice court procedure, or in any action proceeding according to justice court procedure, any objection that the procedure should be according to circuit court procedure, shall be deemed waived unless made before commencing to strike a jury or if no jury empaneled, before entering on the trial. If any such objection be made in time either by motion, pleading or objection at any stage, and be sustained, such action shall be dismissed with costs, unless the court shall expressly find that the same was started in good faith, believing the procedure taken to be proper, in which case the court may in its discretion retain the

action and order it to continue on such terms and with such rectification of pleadings and procedure as may be proper in the interest of justice.

Procedure where title to land involved. SECTION 16. In any action proceeding according to justice court procedure, if the defendant shall at the time and in the manner provided in sections 3619 and 3620 R. S. make an affidavit that the title of land will come in question, and give a bond of the amount and form there provided, that if on the trial judgment be rendered against him on such issue of title, he will pay such judgment, the case shall thereafter proceed in said court according to the same procedure as if it were removed on such issue and bond to the circuit court.

Costs and fees; how taxed. SECTION 17. Costs shall be allowed and taxed and officers allowed to charge parties in civil actions and receive from the county in criminal actions such fees for services as would be allowed in circuit court, for circuit court actions and as would be allowed in justice court for justice court actions.

CHANGE OF VENUE.

Change of venue. SECTION 18. In any action of which a circuit court would have jurisdiction, any change of venue on grounds other than prejudice of the judge may be made to any circuit court to which the same might be sent, if such action were pending in the circuit court for Marathon county and the change of venue made by that court.

Change of venue for prejudice of judge. SECTION 19. In any such action where a change of venue is claimed because of prejudice of the municipal judge, he shall change the venue either to the circuit court of Marathon county, or to a county of some adjoining circuit, as he may elect. There shall be a change of venue of actions proceeding as justice court actions to the nearest justice as in justice court.

JURIES.

Jury commissioners, qualifications, powers and duties. SECTION 20. The judge of said court shall appoint three persons to act as jury commissioners, who shall hold for the tenure of office, have the qualifications, powers and duties and in all respects serve for said municipal court the same as circuit court commissioners as provided in chapter 116, Wisconsin statutes. In addition to making a list of names of citizens of Mar-

athon county at large qualified for jury service, they shall also make a similar list, kept and treated in the same way, of citizens of the city of Wausau eligible for jury service.

Trial by jury, when; jury how drawn. SECTION 21. If within ten days after joining issue or pleading to an information in any circuit court jury action or filing the return on appeal from justice court, either party shall serve and file a written demand for a trial by a jury of the county, the case shall be so tried. If no such demand be so served and filed, a jury shall be empaneled as follows: On the day set for trial (or on a previous day, if the parties so agree) the clerk shall draw from the names in a box kept for that purpose, containing all the names of the jurors named on the list made up of citizens of the city of Wausau, not excused or serving on some other jury in this or some other court, forty names by lot and write them upon a list. The parties shall then strike from such list alternately beginning with the plaintiff, one name at a time until each party has struck twelve names. If any parties, either plaintiff or defendant, are entitled to separate challenges under the rules of separate challenges, in circuit court, there shall be drawn from such box thirteen additional names for each party or parties so entitled to separate challenges, and they shall also strike twelve names the same as the other parties do. When all strikes have been made, a venire shall be issued for the remaining named persons to serve as jurors, returnable forthwith. After hearing and granting excuses, if more than twelve jurors remain, the clerk shall draw by lot as jurors' names are drawn, enough from such remainder to reduce their number to twelve, which remaining twelve shall be the jury. "If less than twelve jurors remain after granting excuses, the clerk shall draw in the same manner as before such additional names as the court shall order to complete the jury, and such additional jurors shall be forthwith summoned and the jury completed." Jurors excused or retired by lot shall draw pay for one-half day and mileage. In justice court actions, juries shall be drawn as in justice court. If any party refuse or neglect to strike from the list when required, the judge shall strike in his stead.

Expenses of court, how paid. SECTION 22. All jurors, court stenographers, officers and other court expenses shall be paid on the order of the judge out of the treasury of Marathon county, the amount and method of payment to be either according to the practice in circuit court or in justice court, as each case may be, except that the court stenographer shall receive only five dollars per day besides fees for transcripts.

TERMS AND TRIALS.

Terms and trials of court. SECTION 23. Such court shall be open for business on all secular days except as the judge thereof may otherwise order. Any circuit court action may be brought on for trial at any time by consent, or after issue joined or information pleaded to, by fifteen days' notice of either party, specifying the date for trial, which date, however, shall first be approved by the judge. Continuances or adjournments may be granted for cause, and shall be to a day certain unless the parties consent otherwise, in which case new notices of trial must be given or agreement had.

Judge to fix date for jury trials. SECTION 24. The judge of said court shall set certain dates not less than one each year, when he will take up for trial in the order of issue joined and without a notice of trial being served, all jury cases in which either party shall have demanded a jury of the county as above provided. A jury of thirty-six jurors shall be procured for such term from the list furnished by the jury commissioners of citizens of the county and in all such cases juries shall be drawn and empaneled as in circuit court. If on the date for drawing such jury, there shall be no cause for trial in such manner, commenced since the last such term, or for any other good cause, the judge may by order dispense with the drawing of such jury from the county for that date set.

APPEALS.

Appeals from justice courts. SECTION 25. Appeals from any justice court of Marathon county in all actions except where the venue had been changed from the municipal court to such justice court, may be taken to the municipal court of said county within the same time and in the same manner as to the circuit court, and shall be so returned by the justice when so taken to said municipal court.

Appeals to circuit court. SECTION 26. In any justice court action tried in said municipal court, an appeal may be taken to the circuit court for Marathon county within the same time and in the same manner as from a justice court or at appellant's option, a bill of exceptions of the evidence and rulings of the judge may be settled within thirty days after judgment the same as in circuit court, and when so settled an appeal may be taken direct to the supreme court within sixty days after judg-

ment in the same manner as from a circuit court. An appeal to either court shall be a waiver of the right of appeal here given to the other court, but not of the right of appeal from the circuit court to the supreme court after trial of such appeal in the circuit court.

Appeals to supreme court. SECTION 27. In circuit court actions, appeals may be taken to supreme court within the same time and in the same manner from all judgments and orders the same as may be done from the circuit court.

REPEAL OF FORMER ACTS.

SECTION 28. Chapter 115 of the laws of 1879, except section 2 thereof and chapter 295 of the laws of 1897, are hereby repealed and this act passed as an amendment thereto.

SECTION 29. This act shall take effect and be in force from and after its passage and publication.

Approved March 13, 1905.

No. 63, A.]

[Published March 14, 1905.

CHAPTER 9.

AN ACT relative to the establishment of a second municipal court in and for the county of Dunn.

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

Second municipal court created; seal for court; effect of.
SECTION 1. A second municipal court in and for the county of Dunn is hereby established, under the name of the second municipal court of Dunn county, with the powers and jurisdictions hereinafter specified and provided. Said court shall have a seal with suitable device to be procured under the direction of the judge of said court at the expense of Dunn county, and all papers, depositions, certificates, acknowledgments, communications and other documents, accepted and signed by said judge, when sealed with the seal of said court shall be evidence