

SECTION 5. This act shall take effect and be in force from and after its passage and publication.
Approved March 14, 1889.

[No. 314, A.]

[Published March 16, 1889.]

CHAPTER 93.

AN ACT to amend the charter of the city of Chilton.

[See Vol. 2.]

[No. 10, S.]

[Published March 15, 1889.]

CHAPTER 94.

AN ACT to create the municipal court of the city and county of Ashland.

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

SECTION 1. A municipal court for the city and county of Ashland is hereby established, under the name of the municipal court for Ashland county. The same shall be a court of record, have a clerk, and a seal with a suitable device, to be procured under the direction of the judge thereof at the expense of the city of Ashland. Said court may exercise powers and jurisdiction equal to, and concurrent with, the circuit court of Ashland county, in all cases of crimes and misdemeanors arising in said county, except murder and rape. Such jurisdiction includes the right to try and determine all appeals in civil or criminal cases from justices of the peace, or police justices of said county. No justice of the peace, police justice or court commissioner within said city of Ashland,

Creating
municipal
court for
Ashland
county.

Powers and
jurisdiction of
judge.

shall exercise any jurisdiction in criminal or bastardy cases, but all such jurisdiction is vested in the judge of said court; and all examinations, recognizances and commitments from said judge, justices of the peace and police justices of said county, in criminal cases (except murder and rape), and in bastardy cases, shall be certified and returned to said municipal court instead of said circuit court, at least five days before the time fixed for the appearance of the accused; and the accused shall, and all witnesses required to attend may be committed to be brought or recognized to appear before said municipal court, on a day certain, not more than thirty days from the date of said commitment or recognizance. Said court shall have jurisdiction to try and determine all appeals in civil and criminal cases from justices of the peace and police justices in said county, and in all cases removed from said justices' or police courts on account of the title to lands coming in question, and all such cases shall be certified and returned to said municipal court instead of the circuit court of said county, within ten days after the perfection of the appeal, in appealed cases, or the joining of issue, in other cases; provided, that in civil cases appealable from justices' and police justices' judgments, the party appealing may, at his option, appeal to the circuit court for Ashland county instead of to said municipal court. Civil cases appealed or certified to said court shall stand for trial at the next regular term of said court after the filing of the papers in such cases in said court without notice, when such terms shall be held as hereinafter provided and when such terms are not held, either party may bring any such case to trial at any time after the filing of the papers in such case, by thereafter giving the opposite party ten days' notice in writing of the day on which said case will be moved for trial; and when said notice shall be given by a party, the opposite party may move such case on the day named, without having given a notice; such notice may be served upon a party or his attorney, if an attorney of record shall have appeared in a justice court or in said municipal court in such cases, in the same manner as now provided by law for serving no-

tices of trial in circuit courts. When any such case is continued for any cause, it shall be to the next term of said court, when terms are held, and when not, to a time so fixed by said court, and when any such case has been continued it need not again be noticed for trial. Transcripts of all judgments rendered in said court shall, immediately after the entry of such judgments, be filed by the clerk of said court, in the office of the clerk of the circuit court of Ashland county, and shall be docketed by said clerk of the circuit court, who shall receive the same fees therefor as provided by law in other cases, and such transcripts of judgments so filed and docketed, shall have the same force and effect as constituting a lien upon real estate that judgments rendered and docketed in said circuit court have by law, and be carried into execution, both as to the principal judgment debtor and his surety, if any, in the same manner and with like effect as the judgment of said circuit court. The judgments of said municipal court, in criminal cases tried upon information, bastardy cases, and in all cases not originally commenced in said court, may be reviewed by the supreme court in the same manner as like judgments of the circuit court may be, and all judgments originally rendered by said court, or the judge thereof, in criminal cases of which justices of the peace have jurisdiction, and in all other cases originally commenced in said court except on information, may be appealed to and tried by the circuit court for said Ashland county, in the same manner as like judgments rendered by justices of the peace.

SECTION 2. The general provisions of law which shall at any time be in force relative to circuit courts, and actions and proceedings therein shall relate also to said municipal court, unless inapplicable, 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 its rules of practice and proceedings shall conform as nearly as practicable to the rules and practice of circuit courts, but in case of the change in the place of trial of any cause not originally commenced in said court, or of any criminal case begun by information or of any bastardy case certified to said court, said case shall be removed to

General rules of law and practice relative to circuit courts, etc., to be in force in said court.

the circuit court for Ashland county, unless such change is taken on the ground of prejudice of the people of said county, in which case the place of trial shall be changed to the circuit court of an adjoining county within this state. Said court shall have power and authority to issue all process necessary to carry into effect its jurisdiction; which process shall in substance be the same, when applicable, as used in circuit courts, or shall be as directed by the judge thereof. Process issued by said court, its judge or clerk in criminal cases, or in civil cases not originally commenced in said court may be executed in any part of the state by the officer to whom it is addressed. All informations for criminal offenses, except murder and rape, committed in said county of Ashland, shall be filed in said municipal court by the district attorney of said county at the next term at which the same may be triable, if terms are held as hereinafter provided, and if not before the day fixed for the trial thereof, it shall be the duty of said district attorney to prosecute all criminal actions in said court in which the state is a party. The sheriff of Ashland county and his deputies shall be officers of said court, and may execute all process, sentences and judgments thereof.

**Criminal
jurisdiction.**

SECTION 3. The municipal judge of said court, in addition to the powers vested in the municipal court as aforesaid, is vested with all the powers and jurisdiction of a justice of the peace in said county, in criminal actions and proceedings, and jurisdiction of all prosecutions for the breach of any ordinance or by-law of the city of Ashland; and also with all the powers and jurisdiction of justices of the peace in said county in civil actions and proceedings; and also power to hear and determine any such case, although the title to land may come in question therein, and said municipal court, and the judge thereof shall have power and jurisdiction concurrent with the circuit court of Ashland county, of all classes of actions and proceedings now cognizable by or before justices of the peace in said county, where the value of the property in controversy or the amount of money claimed or sought to be recovered, after deducting all claims and set-offs, shall not exceed five hundred dollars, and to exercise

such jurisdiction, shall hold the municipal court as courts are held by justices of the peace. The general provisions of law relative to civil and criminal actions before justices of the peace, shall apply to said municipal court so far as applicable, and shall so apply when the value of the property in controversy or the amount of money or damages claimed or sought to be recovered exceeds two hundred dollars, except that no change of venue shall be taken from said court in any civil case originally commenced in said court, or in any criminal or bastardy examination, or criminal trial, except cases tried upon information as hereinbefore provided. Said court shall not have jurisdiction to try actions in ejectment. In all actions brought in said municipal court, where an attachment shall be issued upon an affidavit made by or on behalf of the plaintiff, and the debt or demand mentioned in such affidavit exceeds the sum of two hundred dollars, such attachment shall be issued in the manner provided in chapter 124, of the revised statutes, entitled, "of attachments," and all the provisions of said chapter 124, shall be applicable to any such attachment in said court. Appeals in cases removed from the municipal court shall be taken to the circuit court of Ashland county instead of said municipal court. Whenever in any case commenced in any of the justice or police courts of said county, a plea of title to land shall be interposed in such manner as to entitle the defendant to a removal of such case, the same shall be certified to said municipal court instead of the circuit court, in the same manner as such cases are now required to be certified to the circuit court; and said municipal court shall have full power and authority to hear, try and determine the same in the same manner as cases brought to said court on appeal. The city marshal of the city of Ashland, constables of said county, and other officers having the same power and authority as constables of said county, shall be officers of said court, with the same powers and duties as are or shall be conferred upon them by the laws of this state in reference to justice or police courts, in cases wherein said court or the judge thereof exercises original jurisdiction in civil actions, and in all criminal cases and examinations, including ex-

aminations in bastardy cases, except appeal cases and cases in which informations have been filed; and such officers shall receive the same fees for such services as if performed in justice's court. Appeals from judgments rendered in said court in civil and criminal actions originally commenced in said court, except cases commenced by information and bastardy cases, may be taken to the circuit court in the same manner as appeals from justices of the peace and police justices in similar actions. The judge of said court shall open court each morning, Sundays and legal holidays excepted, and hear and dispose of, in a summary manner, all cases which shall be brought before him for violations of by-laws or ordinances of said city; and in all such cases the city attorney shall be the prosecuting officer. All provisions in the charter and ordinances of said city relating to the police court, to justices' courts, or to criminal prosecutions, shall be held applicable to said municipal court. The judge of said court shall have the same power to solemnize marriages, take acknowledgments and depositions, and administer oaths, as a justice of the peace, and shall receive like fees therefor. The judge of said court may, in his discretion, summon witnesses before him and examine them on oath for the purpose of determining whether a warrant should be issued, and witnesses so summoned shall be compelled to attend before him and answer all pertinent questions relative to the subject of inquiry, and shall be subject to punishment for contempt for refusal to attend and answer.

Judge to be elected.

SECTION 4. The qualified voters of the county of Ashland, shall, on the first Tuesday in April, 1889, and on the first Tuesday of April every fourth year thereafter, elect a suitable person to the office of judge of said municipal court, to be called municipal judge, who shall hold his office for the term of four years from the first Monday in January next succeeding his election, and until his successor shall be elected and qualified, and who may be removed from office in the manner provided in the constitution of Wisconsin for the removal of judges of the circuit and of the supreme court. Whenever a vacancy shall happen in the office of said judge, the governor shall fill

such vacancy by appointment. The person so appointed shall hold the office until his successor shall be elected and qualified. Elections to fill the vacancy for the residue of the term only, shall be held in the manner provided in section 88, of the revised statutes for other judges, and notice thereof shall be given by the county clerk of said county in the same manner as for elections of county judges. 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 provided by law in case of the election of county judges. Said judge, before entering upon the duties of his office, shall take and subscribe the oath of office prescribed by the constitution, which oath shall be filed in the office of the clerk of said city and a duplicate thereof in the office of the clerk of the circuit court of said county. Said judge may, by an order in writing to be filed in said court, appoint any justice of the peace of said county or the county judge thereof, to discharge the duties of such judge during his absence, sickness, or other temporary disability. The appointee shall have all the powers of such judge while administering such office, except the power to try cases begun by information and cases not originally begun in said court. The order appointing any such county judge or justice of the peace may be revoked by said judge at any time.

When justice
may act as
judge, powers.

SECTION 5. Said judge shall appoint in writing a clerk of said court, who before entering upon his duties, shall take and subscribe the oath of office prescribed in the constitution, which appointment and oath shall be filed in the office of the clerk of said city, and a duplicate thereof in the office of the clerk of the circuit court of said 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 and subject to his revision. He may examine on oath all persons applying for warrants, reduce such examination to writing and file the same, and issue all warrants and other process from said court. He shall procure, under the direction of said judge, all necessary record books, blanks,

Judge to
appoint clerk,
powers, duties.

May appoint
phonographic
reporter,
powers, duties,
salary, how
paid.

stationery, lights and fuel for said court at the expense of said city, subject to the approval of the common council of said city. Said judge may also appoint a phonographic reporter, skilled in the art of short-hand reporting, for said court, and may remove him at pleasure and appoint another in his place. Every person so appointed shall be deemed an officer of said court and shall before entering on the duties of his office, take and subscribe the constitutional oath, and file the same, duly certified, with the clerk of said court. The reporter shall attend said court whenever requested by the judge, and perform such duties as the judge may require. He shall be allowed such compensation as shall be fixed by the judge, not exceeding five dollars a day for each day's actual attendance, or two dollars and fifty cents for each half day's attendance, on the court; which shall be certified, audited and paid in the manner provided by law for payment of the sheriff for attending the circuit court. Section 2+39, of the revised statutes shall apply to such reporter and said court, and section 4141, of the revised statutes shall apply to transcribed copies of the testimony and proceedings taken by the reporter in said municipal court.

Court to be
held in city of
Ashland.

SECTION 6. Said municipal court shall be held at the city of Ashland in a suitable place to be provided and furnished by said city. All fines and penalties collected in criminal cases in which the state is a party shall be immediately paid by the judge to the treasurer of said city, and shall be by him annually accounted for and paid over to the treasurer of the county of Ashland at the time of paying over the county taxes. All fines collected in city prosecutions shall be immediately paid by the judge to the treasurer of said city. At the time of such payment to the county treasurer, the county shall pay to the city two-thirds of all sums paid by the latter for record books, blanks, stationery, rent, office furniture, lights, fuel, and all other expenses of such court.

Judge to pay
over fines in
criminal cases.

May hold
terms.

SECTION 7. Said judge may, if he deems it best, by order in writing filed in said court, direct terms to be held for the trial of offenses on which information may be filed, and of bastardy cases and of all other cases not originally commenced in said

court, not exceeding four in any one year. When such terms are ordered, the clerk of said court, in the presence of the judge, at least three days before such term, shall draw from the list of persons selected as hereinafter provided, to serve as jurors therein, thirty-six jurors for such term, and shall issue a venire to summon them as such. If no such terms are ordered the court shall fix a particular day for the trial of the cases heretofore mentioned in this section, not more than twenty days after the day fixed in the recognizance or commitment for the appearance of the accused, or after the filing of the return on appeals and in other cases, and a jury shall be drawn in open court in the presence of the accused and prosecuting officer, in criminal and bastardy cases, and of the parties or their attorneys, in civil cases on the day of the trial; but such jury may be drawn in the same manner at any previous time by consent of parties. All such juries shall be drawn in the manner following: The clerk shall draw, in the presence of the court, from a box containing the names of all persons not disqualified by previous service, furnished by the senior aldermen and supervisors as hereinafter provided, thirty-six names, and shall make a list thereof and each party alternately, beginning with the prosecution or plaintiff, shall strike a name from such list, until only twelve names remain. In case either party shall neglect or refuse to strike out such names, the judge shall appoint some person to strike for him. The twelve persons whose names remain shall be summoned as jurors in such cases. In all actions before such judge, originally commenced in said court excepting cases begun by information and bastardy cases, eighteen names from whom a jury shall be struck shall be drawn from such box in like manner, each party striking six names instead of twelve, in the manner aforesaid. The day for trial may be adjourned from time to time in the discretion of the court. If any person thus drawn cannot be summoned or be excused or set aside as incompetent, another name may be drawn from said list to supply his place and the person whose name is so drawn shall be summoned in like manner, or the judge may di-

Jurors, how drawn.

rect the issue of a venire to said sheriff to summon the necessary jurors to complete the panel from said county at large. In any case where a jury of twelve is required, said judge may at his option, direct the sheriff or one of his deputies to make a list of thirty-six qualified electors from any or all of the towns of said county from which list a jury shall be struck and summoned in the same manner as hereinbefore provided. And in case any of said jurors cannot be summoned or be excused from any cause, a sufficient number of talesmen to complete the panel may be summoned in the manner hereinbefore provided and upon the written request of either party that a jury be drawn from the body of the county, the judge shall direct such list to be made from the body of the county, and a jury shall be obtained by striking twenty-four names from such list, and the persons represented by the twelve names remaining shall make a jury and be summoned as aforesaid; and talesmen necessary for any cause, to complete the panel and make a jury may be summoned from the body of the county. Every person having served as a juror at any regular term of said court, shall be disqualified from serving as a juror at the next succeeding term, except he shall be summoned on a special venire or as a talesman, and every person having served as a juror in any case not tried at a regular term of said court shall be disqualified from again serving for three months next succeeding such service except at a regular term. The clerk shall not replace in the box from which the names of jurors are drawn the name of any person while such person is disqualified from acting as a juror by reason of previous service.

List of jurors
to be furnished.

SECTION 8. The senior alderman and supervisor for each ward in the city of Ashland shall each, before the first Tuesday in April in each year make a list of twenty qualified electors who are citizens of the United States, of his ward to serve in said court as jurors for one year from said first Tuesday in April, and deliver said list to said judge. A jury trial in said court in criminal cases begun by information or not originally begun in said court, may be waived by the accused in writing, or by consent in open court

entered on the minutes. In civil cases the jury shall be deemed waived unless demanded by one of the parties before entering upon the trial. In trials on information, bastardy cases and cases not originally commenced in said court, a jury shall consist of twelve jurors. The fees of jurors shall be two dollars per day, for each day's actual attendance and six cents per mile for each mile actually traveled in going and returning by the most usual route, in cases tried on information, bastardy cases, and cases not originally commenced in said court, and in other cases the same as are allowed by law in courts of justices of the peace. In all cases tried on information, bastardy cases and cases not originally commenced in said court, the fees of the judge, clerk, attorneys, witnesses, sheriff and other officers of said court, shall be the same as in circuit courts, and in other cases the same as in courts held by justices of the peace, except as hereinafter provided, and shall be paid in like manner as in circuit and justices' courts respectively, except said judge or clerk shall receive no fees from said county or city. Two-thirds of all fees of said judge or clerk, collected or received by said judge or clerk, shall at the end of each month be paid into the county treasury by said judge for the use of the county and one-third into the city treasury of the city of Ashland for the use of said city. The judge of said court shall keep or cause to be kept by the clerk of said court, a full and complete record and account in a book to be furnished as the other records and books of said court are furnished, of all fees and costs so received by said judge or clerk, in such a manner that such record shall show the exact amount paid, by whom, at what time, and on what account and if paid in any case, what case. Said judge shall also make duplicate certificates showing the same facts and file one with the county clerk and one with the city clerk at the end of each month. In all civil cases coming before said court there shall be paid to the judge the sum of three dollars at the time of issuing the summons, in actions originally commenced in said court and at the time of filing the papers in said court in actions brought into said court by appeal on change of

Fees of jurors.

venue, and no appeal to said court or change of venue to said court in civil cases shall be of any effect unless said sum is paid. Said sum of three dollars shall be applied by said judge to the payment of the costs of said court; and if there be any surplus such surplus shall be refunded to the party paying. If the party paying such sum shall obtain judgment for his costs in such action the amount so paid by him shall be included in his judgment, but if the adverse party have judgment for costs, such sum shall not be included therein. The provisions of section 2939, of the revised statutes of Wisconsin shall not apply to actions begun in said court or brought there by appeal or change of venue.

Salary of judge, how paid.

SECTION 9. The salary of the judge of said court shall be the sum of two thousand dollars per annum to be paid as follows: Two-thirds shall be paid out of the treasury of Ashland county and one-third out of the treasury of the city of Ashland, to be paid monthly at the end of each calendar month, after such judge shall enter upon the duties of his office, out of said county and city treasury respectively. The clerk of said court shall receive a salary of six hundred dollars per annum, to be paid in the same way as the salary of the judge. Said sums shall be in full for all services rendered by said judge and clerk. The judge of said court before entering upon the duties of his office shall give a bond to Ashland county in the sum of five thousand dollars with two sufficient sureties to be approved by the chairman of the board of supervisors and the clerk of said county for the faithful performance of his duties. The conditions of said bond shall be substantially such as are now provided by law for the bond of the clerk of the circuit court. Said judge shall also give a bond to the city of Ashland in the sum of three thousand dollars with like conditions as the bond required to be given by the city clerk of the city of Ashland. Said judge shall be responsible on his official bonds or either of them for all and any official default or misconduct of his clerk.

Salary of clerk.

Bond to be given.

Not to affect actions already pending.

SECTION 10. Nothing in this act shall be construed as in any manner affecting the right or jurisdiction of any court, judge, justice of the peace or police justice to hear, try and determine

any cause now pending in such court or before such judge, justice of the peace or police justice or which may be commenced before the judge of said municipal court shall enter upon the duties of his office.

SECTION 11. This act shall take effect and be in force from and after its passage and publication.
Approved March 14, 1889.

[No. 203, A.]

[Published March 15, 1889.]

CHAPTER 95.

AN ACT to amend section 4269, of revised statutes of 1878, as amended by chapter 239, of laws of 1882.

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

SECTION 1. Section 4269, of revised statutes of 1878, as amended by chapter 239, of laws of 1882, shall be and the same is hereby amended by striking out of said section the words, "within ten days after service of the complaint," and inserting in lieu thereof, the words, "at or before the time of the service of his answer," so that said section when so amended shall read as follows: Section 4269. In all actions to recover the possession or value of logs, timber or lumber wrongfully cut upon the land of the plaintiff, or to recover damages for such trespass, the highest market value of such logs, timber or lumber, in whatsoever place, shape or condition, manufactured or unmanufactured, the same shall have been, at any time before the trial, while in the possession of the trespasser, or any purchaser from him, with notice shall be found or awarded to the plaintiff, if he succeed, except as in this section provided. The defendant in any such action may, at or before the time of the service of his answer, serve on the plaintiff his affidavit that such cutting was done by mistake, and therewith an offer, in writing, to allow judgment to be taken against him for the

Amending sec-
4269, R. S.

Measure of
damages in
actions to re-
cover posses-
sion of logs or
timber wrong-
fully cut.