

[No. 357, A.]

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CHAPTER 497.

AN ACT creating a municipal court for Douglas county.

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

SECTION 1. There is hereby created and established in and for Douglas county a municipal court with the jurisdiction and powers hereinafter granted; and to that end Douglas county, and all towns and incorporated cities or villages now in, or hereafter created therein, are hereby made a municipality under the jurisdiction of said court.

Creating municipal court for Douglas county.

SECTION 2. On the third Tuesday in May, A. D. 1887, and every fourth year thereafter on the first Tuesday in April, there shall be elected in said county of Douglas, in the same manner as county judges are elected, a judge of said municipal court who shall hold his office for the term of four years from the first Monday in June next following his election, and until his successor is elected and qualified; and in case of a vacancy occurring in the office of said municipal judge, the vacancy shall be filled by appointment by the governor, and the person so appointed shall hold office for the residue of the term for which his predecessor was appointed or elected.

Election of judges.

SECTION 3. Such judge shall hold no other office during the term for which he is appointed or elected; but nothing in this act shall deprive him of the right to practice as an attorney in any court of record in this state, should he so desire and can do so without conflicting with or neglecting the duties of municipal judge.

Not to hold any other office.

SECTION 4. Before entering upon the duties of his office said municipal judge shall take and subscribe the constitutional oath of office, and file the same in the office of the clerk of the circuit court for Douglas county.

To take oath of office.

SECTION 5. The judge of said municipal court shall hold his office and court at the court house in Douglas county or other place therein, to be

Office of judge, to be held in court house, at county seat.

designated by the board of supervisors of said county, most convenient for business, and the place of holding said office and court may be changed from time to time, but not oftener than once a year, by said supervisors with the consent of said judge, if in their judgment the public convenience and interests will be thereby promoted.

Jurisdiction.

SECTION 6. The court hereby established shall be known as the Douglas county municipal court, and the judge thereof as municipal judge; and the said judge is hereby authorized to hold said court for the trial of all civil and criminal matters over which justices of the peace, have jurisdiction to try and finally determine; and to bind over for trial on any criminal charge to the circuit court; and to that end where no special provisions are otherwise made by law, such judge and his court are hereby vested with all the powers and authority conferred by law on justices of the peace and on justice's courts; and the jurisdiction of said judge and of said municipal court is hereby established in all civil matters or actions to the extent of four hundred dollars over and above that of justices of the peace; and said municipal court is, in addition to the jurisdiction of justices of the peace, given authority to hear, try and determine actions at law for damages, on tort or contract against said county, and any town, or incorporated city or village, hereafter created in Douglas county; and actions for slander, libel, malicious prosecution and false imprisonment, where the damages claimed do not exceed six hundred dollars.

Proceedings,
and practice.
Trial by jury.

SECTION 7. The proceedings and practice in said municipal court shall be primarily conformable to and be governed by, as near as may be, the rules of law for justice courts; the pleadings therein shall be those prescribed for justice courts; they shall be in all cases in writing; they may be verified as in the circuit court and with the same effect. After a verified complaint has been filed, unless all subsequent pleadings, except a demurrer, are verified, they may be stricken out on motion regularly noticed; in addition to the powers of justice of the peace over pleadings said municipal judge is given power, in his discretion, to entertain and decide such motions and to make such orders in reference to pleadings as are provided

by law for circuit courts; said municipal judge may in his discretion, in matters of practice in his court, and without consent of parties, make such orders and preliminary dispositions of any civil or criminal cause which he has jurisdiction to hear, try and finally determine, as will promote justice, and prevent a failure thereof, or costs or hardships; and to this end he may at any time and at any stage of the said civil, but not criminal proceedings, adjourn any such civil cause to a future time thereafter, not exceeding ten days, without consent of parties. Whenever said municipal judge adjourns any civil or criminal cause, matters or proceedings without entering in his docket as hereinafter provided the time, or place, or either, or both, the same shall be presumed to be adjourned to a time thereafter to be fixed by said judge, and at his office, who shall notify all parties by mail or otherwise of the time and place fixed by him for trial, which shall be within ten days, and jurisdiction shall in no such case be thereby lost. The final judgments of said municipal court shall be of the same force and effect as final judgments of justices of the peace; and transcripts thereof in civil cases may be filed in the offices of the clerks of the circuit courts of this state in the same manner and be of the same force and effect as a judgment of a justice of the peace.

SECTION 8. A jury may be had in said municipal court in all civil or criminal cases on the same powers as in justice court; the jury therein shall consist of twelve, unless parties consent to a less number; jurors therein shall receive one dollar a day, to be paid by Douglas county, for each day's service in any case in said municipal court; and whenever a jury is had therein it shall be the duty of said municipal judge to certify to the county board of said county the amount due each juror, which shall be sufficient evidence of the amount due such jurors for their services. The jury therein in all cases shall be called for as in justice courts and waived in the same manner; and when called by either party, jurors shall be drawn and summoned in the same manner as in justice courts, except that said municipal judge shall prepare a list of thirty names and each party shall alternately strike therefrom nine names, and the remaining twelve shall be summoned, any of

Trial by jury.

whom may be challenged for cause, and if found disqualified, the jury shall be filled by summoning by-standers or others, who may be challenged for cause. The said municipal judge shall in all civil and criminal cases over which he has jurisdiction to finally determine, instruct the jury in the law of the case, and he shall, in addition to the powers of a justice of the peace, have the same power and control over the jury and its verdicts, before judgment and for twenty days thereafter, as the circuit court has over its juries and their verdicts, before trial and during trial term; and said judge shall in all cases make and file with the papers in the case full minutes of all his directions and instructions to the jury, either in long or short-hand.

Trial by court
—docket.

SECTION 9. In all cases tried without a jury said judge shall, when requested in writing by either party before judgment, make and file with the papers in the case his findings of facts and conclusions of law; and he shall keep a separate docket for civil and criminal causes, in which he shall make and enter the same and all the matters required by law of justices of the peace, and in the same manner as near as may be applicable to this court, together with all other steps, orders and proceedings in any cause before or after judgment so as to show a true and complete record thereof. Said judge shall make and file in all causes full minutes of all evidence taken by himself or any disinterested person under his direction, in either long or short-hand; and when requested by either party said judge shall cause all documents written in short-hand to be transcribed into long hand, and the stenographer shall certify to the correctness thereof; and the said judge or stenographer shall be allowed to charge and collect from the party so requiring the transcript ten cents per folio therefor. Said judge shall file all evidentiary papers or other documents used by either party upon the trial with the papers in the case.

Powers of
judge—may
direct and set
aside verdict.

SECTION 10. For twenty days after judgment in civil actions, and for twenty-four hours after judgment in criminal causes over which said court has jurisdiction to hear, try and finally determine, the said municipal judge shall have, and he is vested with the same power over verdicts,

judgments, rulings, orders and proceedings in his court as are possessed by the circuit courts ever their judgments, orders and proceedings at or before trial or judgment and during trial term. And the said municipal judge may direct or set aside verdicts, grant new trials, on payment of all costs, or such conditions as to costs as justice requires, modify or reverse judgments and orders, of his said court, or of the judge thereof, or do any act or thing which circuit courts may do during trial term, being governed therein by the general law and the practice of the circuit courts as near as may be where the rules of law for justice courts are inadequate or do not apply. New trials, if granted, must be granted within twenty days after judgment in civil cases, and within twenty-four hours after judgment in criminal causes, except on substituted service by publication in civil cases, where the rules for justice courts shall apply; and if granted upon the ground of newly discovered evidence, they may be granted at any time within six months after judgment; if a jury should disagree, said judge shall forthwith fix a time for a new trial. All motions and matters of practice subsequent to judgment in the said municipal court, shall be decided, except as herein provided, within twenty days after judgment. Motions in this court requiring notice, may be brought on upon five days' notice in all cases and upon less time upon an order to show cause. Motions when not provided for in the justice code, shall be governed by the rules of the circuit courts as near as may be. Orders to show cause may be granted by the said judge to prevent delays, costs, or undue advantage; in granting orders to show cause, the rules of the circuit court shall prevail, as near as may be. Costs in this court shall be governed by the law prevailing in justice courts; provided, that for all contested motions in civil cases subsequent to judgment, the municipal judge may, in his discretion, award an attorney fee not exceeding five dollars, in any one cause to the successful party; and he may tax and collect a fee not exceeding three dollars for his own use in addition to his fees hereinafter provided.

SECTION 11. Appeals from said municipal court shall be taken to the circuit court for Douglas

Appeals, how
taken.
Practice, etc.

county, and when not otherwise provided the law relating to appeals from justice courts, shall apply. And the same affidavit and notice, in substance, shall be given as upon appeal from justice courts. No appeal can be taken from a final judgment rendered by said municipal court unless the party desiring to appeal, and any party to a final judgment or to an order affecting a substantial right made after judgment may appeal, shall call the attention of the municipal court to the specific errors by which the party considers himself aggrieved; and have given the said municipal judge an opportunity to pass upon the same and to correct the error if any; the party desiring to appeal shall upon motion, the opposite party, or parties having five days' notice, or a less time, on an order to show cause, in a civil case, and on twelve hours' notice in a criminal proceeding, move the court for a reversal in whole or in part of the judgment or orders made, for a correction of the findings of fact or conclusions of law, for a new trial, for an order setting aside a verdict, or for any or all of these things, or for such other relief the party may consider himself lawfully entitled to; and the said judge shall enter his orders or rulings granting or refusing the relief prayed for within twenty days after judgment in civil cases, and within twenty-four hours after judgment in criminal causes. Thereupon, and within twenty-five days after judgment the party, or either, or both, or any, or all parties, affected by the judgment or orders made subsequent to judgment may appeal as from a justice's judgment. In civil cases the appeal must be taken within twenty-five days after judgment (not proceedings after judgment) and in criminal causes within twenty-four hours after judgment. Appeals shall be from the judgment and not from orders, and the appeal shall open up for review in the circuit court, both the law and fact of the whole case upon the record, and all proceedings had and orders made in any cause, both before and after judgment. The party first appealing shall pay the judge's fees, including costs of transcribing hereinbefore provided, one dollar for his return, and the state tax; except in criminal causes where no fees are required to be advanced by a defendant thereupon, and not till then, the

municipal judge shall make a transcript of his docket, and a return, in the same manner as in an appeal from justice court, and transmit the record and all the papers in the case to the clerk of the circuit court for Douglas county within ten days after the appeal is perfected; and said clerk shall file the same; and to the end that a true and correct record be kept, said municipal judge may at any time on motion of himself or of a party, or upon an order or suggestion of the appellate court, all concerned having notice, correct his minutes or his record so as to show the very truth of the matter. And it shall be the duty of attorneys practicing in this court to take exceptions, ask instructions to juries, and allege objections to all rulings or orders of said municipal judge or court according to the rules of law prevailing in the circuit courts; but this rule is directory only and no otherwise meritorious appeal shall be dismissed because the last aforesaid regulation has not been strictly complied with; and no bill of exceptions shall be necessary upon an appeal for all papers, minutes, orders, rulings, steps and proceedings shall be taken to be embodied in the record and subject to review without a bill of exceptions. The appeal having been perfected and the papers filed in the circuit court, either party may bring the appeal to a hearing on ten days' notice of trial, at any general or special term of the circuit court for any county in the judicial circuit in which Douglas county may be. When it is desired to remove the papers from the custody of the clerk of the circuit court of Douglas county for purposes of a hearing on appeal in any other county, the party desiring so to remove the papers shall prepare for and procure from the presiding judge, or a court commissioner, an order for that purpose. In the appellate court there shall be no new trial, but the appeal shall be heard, determined and decided upon the record, the municipal judge's return and all the papers in the cause, which collectively shall constitute the record for purposes of appeal. The appellate court may in any case review both law and fact and all proceedings in the municipal court, and the appeal shall be determined without reference to technical errors or omissions not affecting the merits. The appellate court shall make such orders, directions or decisions in the

premises as the law requires, either affirming or reversing in whole or in part the proceedings of the municipal court, or of the judge thereof—ordering a new trial in the municipal court or any other act or thing needful. And to the end that full justice may be done all parties, the appellate court in all cases requiring it, for the guidance of the municipal judge, make and return to him with the papers in the case a certificate briefly setting forth the errors committed, if any, and the law of the case; and the order, decision or directions of the appellate court in the premises. Within twenty days after the filing of the decision in the appellate court, unless an appeal be taken therefrom to the supreme court, the papers in the case shall be returned by the clerk of the circuit court of Douglas county to the municipal judge. Appeals may be taken in all cases, as provided by law, from the judgment or orders of the appellate court to the supreme court. When the papers are returned, the municipal judge shall promptly notify all parties by mail, or otherwise, of the result of the appeal, and set a time for a new trial of the cause and have the same, and in all things to carry out the directions of the appellate court, or to enforce the judgment of the municipal court, or do any other act or thing needful to the due administration of justice. The municipal court in any case for convenience and in aid of the circuit court may collect all costs of appeal by execution or otherwise, and disburse all moneys to the proper parties.

Sheriffs and constables to serve and execute process.

SECTION 12. Sheriffs and constables of Douglas county shall have the same power to serve and execute processes of this court as of justices of the peace and of justice courts, and they shall receive the same fees therefor; provided, however, that a "long summons" issued by this court may be served by any person not a party to the action and in the same manner as a circuit court summons, and the same proof of service shall be required as in case of the service of a circuit court summons by a person not an officer. The municipal judge may sign in blank long summonses and deliver them to any attorney, which may afterwards be filled up and served with full force and effect.

SECTION 13. The same fees in all actions, civil and

criminal, allowed by law to justices of the peace, it shall be lawful for said municipal judge to charge and collect, for his own use, except as hereinafter provided, and in addition thereto one dollar for every civil action or proceeding in his court. For his services in conducting criminal trials and examinations, said municipal judge shall receive a salary, payable monthly, out of the treasury of Douglas county, to be fixed by the supervisors thereof, according to section 694, of the revised statutes, which shall be not less than seventy-five dollars per month. And in consideration thereof, said judge shall pay over all fines collected by him according to law, and all the judges fees in criminal cases, to the county treasurer for the use of Douglas county; he shall retain for his own use all fees collected in civil causes only.

Fees allowed judge.

Salary.

SECTION 14. A court room, fuel, lights, stoves and furniture therefor shall be provided said municipal judge, together with all needful dockets and blanks in criminal cases by and at the expense of Douglas county.

Court room fuel, etc., to be supplied at expense of Douglas county.

SECTION 15. In all civil cases in this court where the amount claimed by the plaintiff exceeds two hundred dollars, and defendant appears and answers or demurs by an attorney of a court of record, fifteen dollars attorney fee shall be taxed and allowed to the successful party; and, except as in this act provided, attorney fees shall be charged and recovered as in justice courts.

Attorney fees.

SECTION 16. The municipal court hereby established shall have, in the first instance, exclusive cognizance and jurisdiction of appeals in civil and criminal cases from all justice courts in Douglas county, and said court shall dispose of such appeals as though the action were originally commenced in said municipal court. Whenever any cause, civil or criminal, is removed from any justice in Douglas county, for prejudice or other grounds prescribed by law, the same shall be transmitted for trial, not to the nearest justice, but to said municipal court, there to be tried as an action originally commenced therein. And whenever any cause comes into said municipal court by appeal or removal from any justice of the peace, said judge shall forthwith fix a time for trial thereof; and for every purpose said mu-

To have exclusive cognizance and jurisdiction of appeals from all justices of Douglas county—how disposed of.

Removal from
municipal
court.

municipal court shall be considered open at all times. a court may be held in this state, or the judge thereof may do ministerial duty. And whenever any action or proceeding, civil or criminal, shall have been begun or brought into said municipal court the same cannot be removed therefrom on the grounds of prejudice or other disqualification of the judge thereof; and if it shall be made to appear in the same manner and at the same time, and for the same or other reasons as prescribed by law in justice courts that said municipal judge is disqualified to determine the action, matter or proceeding by reason of prejudice, consanguinity, pecuniary interest or other grounds provided by law, then said judge shall stop all proceedings and call in the nearest qualified justice of the peace, who shall proceed with the cause and determine the same according to the rules of law prescribed for said municipal court.

Examination
in criminal
cases to be
conducted in
said court.

SECTION 17. All examinations in criminal cases over which justices of the peace have not jurisdiction to hear, try and finally determine, shall be conducted in said municipal court, in the same manner and according to the law prescribed for justices of the peace in like cases, anything in this act to the contrary notwithstanding. The powers herein given said municipal judge beyond those of justices of the peace shall apply only to civil cases and criminal actions which justices of the peace have jurisdiction to try and finally determine. Appeals from the said municipal court in the last mentioned cases shall be taken in the same manner as appeals in civil cases therefrom, except that the appeal must be perfected within twenty-four hours after judgment, and a defendant in a criminal case appealing need not advance any costs upon an appeal. In criminal cases a defendant appealing may give bonds and bail in the same manner and to be of the same force as upon an appeal from justices of the peace. Appeals from said municipal court in criminal cases shall be determined as in civil cases appealed therefrom, to-wit., upon the record.

Judge to provide seal for
court.

SECTION 18. The judge of said municipal court may at the expense of Douglas county, provide a seal for his court; and all papers, depositions, certificates, acknowledgments, examinations or other documents signed by said judge and sealed

with said seal, shall be evidence in all courts and places in this state, and be of the same effect as if sealed with the seal of a court of record.

SECTION 19. The basis of practice and procedure in said municipal court shall be chapters 15+ to 161, inclusive, of the revised statutes, and amendments thereto, in civil actions, and chapters 194, 195, and 196, and amendments thereto, in criminal actions, so far as applicable, and except as the practice and procedure therein are modified by this act. No power herein given shall fail by reason of want of a specific statutory method of carrying out the same; but said municipal judge shall have, in all cases, power to carry out the provisions of this act, and all steps, orders or proceedings taken by said municipal judge, or said municipal court, with a view of carrying out the provisions hereof, shall be sustained by all courts, unless the same are clearly in excess of jurisdiction or are in conflict with law. The writs, warrants and processes of said court may be in the form prescribed for justices of the peace, and they may be entitled thus:

STATE OF WISCONSIN, } In Municipal Court.
Douglas County, }

And signed thus:

L. M.,

Municipal Judge.

And when thus entitled, and signed by said municipal judge, and sealed with the seal of his court, they shall be sufficient, and they may be served anywhere in this state. And it is further provided in reference to costs, where new trials are had, that said judge may tax costs for himself, officers and stenographers, for all work done, whether on the first or subsequent trials; but in no case shall attorney fees be taxed more than once to the same party in any one cause.

SECTION 20. No general or local act of the legislature hereafter enacted shall be so construed as to change, alter or modify this act or any part thereof, unless the purpose so to do be expressly set forth in said general or local law by naming such altering or repealing act; provided however, that all acts of the legislature regulating the practice in justice courts shall apply to said municipal court so far as consistent with its character and this act. But nothing in this act shall be

Basis of practice and procedure.

This act not to be modified.

construed so as to abridge the power or jurisdiction of the circuit court except as herein provided.

Powers and jurisdiction may be held, and exercised by municipal judge.

SECTION 21. Said municipal judge, from and after the passage and publication of this act, and his appointment or election, shall be and he hereby is empowered to have and to exercise the authority and jurisdiction of a justice of the peace, and all the powers herein given in addition thereto, and to receive for his own use the fees and salary hereinbefore mentioned; and when his authority is not otherwise given in the law he can in all cases exercise all the power and authority of a justice of the peace in the way of administering the civil and criminal law of this state, and in upholding the dignity of this court, and in enforcing its mandates and judgments

Dockets and records to be open to inspection.

SECTION 22. The dockets and records of said municipal court shall be public records, open to the inspection of all persons at every reasonable hour.

This act to be liberally construed.

SECTION 23. A liberal construction shall be given by all courts in this state to this act, and to the powers herein conferred upon said municipal court and the judge thereof. The said municipal judge may, when this court shall have been in operation two years, make and publish rules of practice and procedure therein more specifically regulating the said practice and procedure than is done hereby, which shall be conformable to this act and law; and when the same shall have been approved by the presiding judge of the judicial circuit in which Douglas county may be, such rules shall have the same force and effect as the rules of practice in the circuit court.

Judge may make and publish rules.

Repeal.

SECTION 24. All acts and parts of acts conflicting with the provisions of this chapter are hereby repealed.

SECTION 25. This act shall take effect and be in force from and after its passage and publication.

Approved April 14, 1887.