

Amending ch. 389, laws 1885, appointment of inspectors and clerks of new election districts.

inspectors and clerks of election therefor, after the first regular meeting in September, as provided in chapter 389, of the laws of 1885, and the laws amendatory thereof, the mayor shall prescribe the boundaries of such district so as to include not more than five hundred legally qualified electors, and shall appoint inspectors and clerks therefor, as provided by law. Such inspectors and clerks shall, if confirmed by the common council, hold their office until the first regular meeting of the common council in September next following the date of their appointment, and be governed by the provisions of chapter 389, of the laws of '1885, and the laws amendatory thereof.

SECTION 2. This act shall take effect and be in force from and after its passage and publication.
Approved March 8, 1889.

[No. 111, A.]

[Published March 9, 1889.]

CHAPTER 63.

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

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

Creating municipal court of Dunn county and city of Menomonie.

SECTION 1. There is hereby created and established in the county of Dunn, and the city of Menomonie a municipal court, and for that purpose the county of Dunn and the city of Menomonie are hereby declared a municipality, under the jurisdiction of said court, which shall have powers and jurisdiction as hereinafter specified and provided.

Established.

SECTION 2. The court hereby established shall be known as the "municipal court for Dunn county," and the judge thereof as the "municipal judge." It may have a clerk, to be appointed and paid by the municipal judge, and shall have a seal with suitable device, to be procured under the direction of the judge thereof, at the expense of said county. All papers, certificates, depositions,

acknowledgments, examinations and other documents executed or signed by said judge, when sealed with the seal of said court, shall be evidence in all courts and places in this state.

SECTION 3. On the first Tuesday in April, A. D. 1889, and every four years thereafter, there shall be elected in the county of Dunn, in the same manner as county judges are elected, one municipal judge, who shall hold his office for the term of four years from the first Monday in May next following said election, and until his successor is elected and qualified, and in case of a vacancy occurring in the office of municipal judge, the vacancy shall be filled by appointment by the governor of the state and the person appointed to fill such vacancy shall hold said office for the residue of the term for which his predecessor was elected or appointed, and until his successor is elected and qualified. In case of sickness, absence or temporary disability of said municipal judge, he may, by an order in writing to be filed in said court, appoint a justice of the peace of said county, to discharge the duties of said judge during such sickness, absence or disability, who shall have the same powers as said judge, while administering such office, except to hear trials or informations.

Election of judge.

SECTION 4. No person shall be eligible to the office of judge of the municipal court except a qualified elector of the county of Dunn, at the time of his election or appointment, and said judge shall hold no other county office during the term for which he is elected or appointed.

Who eligible.

SECTION 5. The municipal judge before entering upon the duties of said office, shall take and subscribe the constitutional oath of office, and file the same in the office of the clerk of the circuit court for said county, and a duplicate copy thereof in the office of the clerk of the city of Menomonie, and shall execute to the county of Dunn a bond in the penal sum of one thousand dollars, with one or more sureties to be approved by the treasurer of said county, and recorded and filed as provided in section 702, of the revised statutes conditioned for the faithful performance of the duties required of him by law, and the faithful application and payment of all moneys and effects which may come into his hands in the execution of the duties of his office.

To take oath of office and give bond.

To hold office
and court
in city of
Menomonie.

SECTION 6. The judge of the municipal court for Dunn county shall hold his office and court in the city of Menomonie, in some suitable room therein to be provided, suitably furnished, heated, lighted and cared for by the city of Menomonie, and said city shall furnish all needful dockets and records, also all needful stationery and blanks in criminal causes.

Jurisdiction.

SECTION 7. The municipal court for Dunn county shall have cognizance of and jurisdiction to hear, try and determine all actions and proceedings at law wherein the amount of debt, damages, demand, penalty or forfeiture shall not exceed the sum of five hundred dollars; actions to recover the possession of personal property, with damages for the unlawful taking or detention thereof, when the value of the property claimed shall not exceed the sum of five hundred dollars; actions at law for damages in tort or on contract against said county; and any town or incorporated city or village in said county, and actions for malicious prosecution and false imprisonment where the damages claimed do not exceed five hundred dollars, but nothing herein contained shall be construed to give said municipal court cognizance or jurisdiction of any action mentioned in subdivisions 1 and 3, of section 3573, of revised statutes; it has and may exercise powers and jurisdiction equal and concurrent with the circuit court for Dunn county, in all cases of crimes and misdemeanors arising in said county, except crime for which the highest penalty provided by law shall exceed five years' imprisonment in the state prison, and except where the person accused shall demand in writing, as hereinafter provided, to be tried in the circuit court for said county. No justice of the peace or court commissioner within said county shall exercise any jurisdiction in criminal or bastardy cases on or after the first Monday of May, A. D. 1889, except that justices of the peace and court commissioners may issue warrants in criminal and bastardy cases returnable before the municipal judge, but all such jurisdiction is vested in the judge of said municipal court; and all examinations, recognizances and commitments from said judge in criminal and bastardy cases, except offenses for which the highest penalty provided by law shall

exceed five years' imprisonment in the state's prison, shall be certified and returned to said municipal court, instead of said circuit court, at or before the time fixed for the appearance of the accused, and the accused and all witnesses required to attend shall be committed to be brought, or recognized to appear, before said municipal court on a day certain, not more than sixty days nor less than ten days from the date of the commitment or recognizance.

SECTION 8. The general provisions of law, which may at any time be in force relative to circuit courts, and actions and proceedings therein in criminal cases, 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 near as practicable, to the rules of practice in circuit court; but the laws of the state relative to changes of venue in criminal examinations and trials shall not apply to said municipal court or the judge thereof.

Criminal jurisdiction.

SECTION 9. Any person charged upon information of a criminal offence, triable in said court, may at any time before a jury is drawn for the purpose of the trial thereof, or the trial thereof commenced in said court, demand in writing that he be tried in the circuit court for Dunn county, and thereupon the said municipal court shall commit or hold said party to bail to appear at the next term of said circuit court, as upon examinations, and the judge, under the seal of said court, shall transmit all papers and a copy of the record of the proceedings in said case, properly certified to be such, to said circuit court, which shall then proceed to hear and determine the same, and all recognizances previously given in said case and returned to the municipal court may be enforced by said circuit court as fully as if they had originally run and been certified and returned thereto. All informations for criminal offences committed in said county, except offences for which the highest penalty provided by law shall exceed five years' imprisonment in the state prison, shall, in the first instance, be filed in said municipal court by the district attorney for said county, at or before the term at which the same may be triable,

Trial of criminal offenses may be changed to circuit court.

if terms are held, and if not, then at or before the time fixed for the trial thereof.

Additional powers and jurisdiction.

SECTION 10. The municipal judge in addition to the powers vested in the municipal court as aforesaid, is vested with original and exclusive powers and jurisdiction heretofore given to justices of the peace in said county, in all bastardy and criminal actions and proceedings, and with original and exclusive jurisdiction of all prosecutions for the breach of any ordinance or by-law of the city of Menomonie, and to exercise said jurisdictions shall hold the municipal court as courts are held by justices of the peace; said judge shall open court each morning (Sundays and legal holidays excepted), and hear and dispose of in a summary way, all cases for violation of the ordinances and by-laws of said city, which may be brought before him by police officers or otherwise, either with or without process. Proceedings therein shall be in such forms as are now used by justice courts, as far as applicable or such forms as may be prescribed by the municipal judge, and the city attorney shall be the prosecuting officer therein.

Proceedings and practice in civil actions to be governed by provisions of law relating to justice courts.

SECTION 11. The proceeding and practice in civil actions and proceedings, in said municipal court, shall be governed by, as near as may be, the provisions of law for justice courts, the pleadings therein shall be those prescribed for justice courts, they shall, in all cases be in writing, they may be verified as in 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; in addition to the powers of justices 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 disposition of any civil or criminal cause or proceedings which he has jurisdiction, to hear, try and determine, as will best 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 or criminal cause

or proceeding, adjourn any such civil or criminal cause, and proceeding to a future time, not exceeding ten days at any one time, without consent of parties.

SECTION 12. Whenever said municipal judge adjourns any civil or criminal cause, matter or proceeding without entering the same on 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 or their respective attorneys by mail or otherwise, of the time and place fixed by him for trial, which time shall not exceed ten days, and jurisdiction shall in no such case be thereby lost.

Adjournments
in criminal
cases.

SECTION 13. No action, examination or other proceedings shall be removed from said municipal court, but whenever it shall appear by affidavit that the municipal judge is interested pecuniarily in the action, examination or other proceeding, or that said judge is a material witness, or is within the forbidden degree of consanguinity to either of the parties to the action, examination or other proceeding, the municipal judge shall by order in writing filed in said court, appoint a court commissioner or a justice of the peace of said county not disqualified to try said action or hear said examination or other proceeding, for the reason above stated, to appear and try said action, or hear said examination or other proceeding, whereupon it shall be the duty of said court commissioner or justice so notified to forthwith appear at the court room of said municipal court and discharge the duties of judge of said municipal court on the trial of said action or the hearing of said examination or other proceeding in the same manner and with like effect as said municipal judge would if not disqualified to act; and the doings of said court commissioner or justice of the peace while so presiding over said municipal court shall have and be of the same force and effect as like proceedings of said municipal judge, and when said action, examination or other proceeding is concluded, a like record as in other like cases shall be made in said court, and thereafter and thereupon execution may be issued as in other like cases tried before said municipal judge; said court commissioner or justice while presiding over said municipal

When actions
or proceedings
may be
removed.

court shall receive the same fees in civil cases as are allowed by law to said municipal judge for like services, and in criminal causes he shall receive three dollars per day, to be paid by the county of Dunn.

Causes may be removed from justice courts to.

SECTION 14. Whenever any civil action or other proceeding shall be removed from any justice of the peace of said Dunn county upon the oath of said defendant, his agent or attorney, according to the provisions of law for such removal, if said defendant, his agent or attorney, requests in writing to such justice that said action or other proceeding be removed to said municipal court, then said action or other proceeding and all papers therein shall forthwith be transmitted to the presiding judge thereof, who shall proceed with said action or other proceeding in the same manner as if originally instituted before him.

Trial by jury may be had.

SECTION 15. A trial by jury may be had in said municipal court in all cases, both civil and criminal as hereinafter provided, the jury therein shall consist of six unless the parties interested consent to a less number. After issue joined in any civil action or proceeding and before the commencement of the trial thereof, either party to the action on first paying to the municipal judge six dollars in advance as jurors' fees, may demand that the action be tried by a jury of six men, the money so advanced or so much thereof as may be necessary, shall be paid to the jurors when they shall have rendered their verdict, and the residue of the money, if any, shall be returned to the party advancing said money; on the trial and determination of bastardy and criminal causes a jury may be had on demand after issue joined and before the commencement of the trial, and if no jury be demanded as aforesaid, then a jury trial shall be deemed to have been waived.

List of jurors, how made and drawn.

SECTION 16. The senior alderman and the supervisor of each ward of the city of Menomonie shall, on or before the fourth Monday of April in each year, make a list of eighteen electors, qualified to serve as jurors, from each ward of said city, to serve as jurors in the municipal court for the ensuing year, and to forthwith deliver said list, complete, to the judge of the municipal court; when a jury has been demanded for a trial

either civil or criminal, the municipal judge shall, in the presence of both parties or their respective attorneys, draw from a box containing the names of the persons so furnished by the senior alderman and supervisors, six names; each party may, alternately, beginning with the prosecution, strike out a name drawn, not more than six in all, and as soon as a name is objected to, the judge shall draw another; the six persons whose names remain after such objections are made or waived, shall be summoned as jurors in such case; if any person thus drawn cannot be summoned, or be excused by the judge, or be set aside for cause, as provided in section 2849, revised statutes 1878, another name may be drawn from said box containing said list, to supply the deficiency, who shall be summoned in like manner; or the judge may, in his discretion, order the officer to summons a talemán to supply the deficiency. Jurors, witnesses and interpreters shall receive the same fees as in justice courts, to be paid in criminal or bastardy cases by Dunn county, on the certificate of the municipal judge in the same manner as jurors are paid in circuit court.

SECTION 17. 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. Said judge 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 practicable, 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 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

Jury may be waived, duty of judge.

evidentiary papers or other documents used by either party upon the trial, with the papers in the case.

May set aside verdicts, procedure thereon, new trials.

SECTION 18. For ten 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 determine, the said municipal judge shall have, and he is hereby vested with the same power over verdicts, judgments, rulings, orders and proceedings in his court as are possessed by the circuit courts over their judgments, orders and proceedings at or before trial or judgment and during trial term. And said municipal judge may direct or set aside verdicts, grant new trials on payment of all costs or on 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 practice of the circuit court, 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 ten 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 rule for justice courts shall apply; if granted upon the grounds of newly discovered evidence, it 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 said municipal court, shall be decided except as herein provided, within ten 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 justice code, shall be governed by the rules of circuit courts as near as may be. Orders to show cause may be granted by said judge, to prevent delay, 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 court; 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 case to the successful party.

SECTION 19. A judgment by confession may be entered before the judge of said municipal court, in any sum not exceeding one thousand dollars without action, either for money due or to become due, or to secure any person against a contingent liability, on behalf of the defendant, or both, if a statement in writing be made, signed by the defendant and verified by his oath to the following effect:

Judgments by confession, how.

First. It must state the amount for which judgment may be entered and authorize the entry of judgment therefor by the municipal judge of said court.

Judgments, how entered.

Second. If it be for money due or to become due, it must state, concisely, the fact out of which it arose, and must show that the sum confessed therefor is justly due or to become due.

Third. If it be for the purpose of securing the plaintiff against a contingent liability, it must state, concisely, the fact constituting the liability, and must show that the sum confessed does not exceed the same.

SECTION 20. In all actions in civil cases, in said municipal court, the plaintiff, if he shall obtain judgment, shall be entitled to recover attorney's fees as follows: On all judgments taken in actions, wherein the defendant does not appear, and answer or demur, when the amount of the judgment exceeds one hundred dollars and is less than three hundred dollars, ten dollars, when the amount of the judgment is three hundred dollars or upwards, fifteen dollars; on all other judgments, when the amount found, does not exceed one hundred dollars, an amount equal to ten per cent. of the judgment found. When the amount of the judgment found exceeds the sum of one hundred dollars, ten dollars on the first one hundred dollars and five per cent. on the amount of the judgment in excess of one hundred dollars; provided, that in no case shall the amount of such attorney's fees exceed the sum of twenty dollars; and in case the judgment shall be for the defendant, he shall be entitled to recover attorney fees as follows: In all cases where the plaintiff shall claim in his complaint one hundred

Attorneys fee allowed.

dollars or less, an amount equal to ten per cent. of such claim. In all cases where plaintiff shall claim in his complaint a sum over one hundred dollars, ten dollars for the first one hundred dollars, and five per cent. on the amount claimed in excess of one hundred dollars; provided, that in no case shall the amount of attorney's fees exceed the sum of twenty dollars. The provisions of this section shall also apply to proceedings for the recovery of personal property and the value of the property as found, if judgment be for plaintiff, and as claimed, if judgment be for defendant, shall be the basis for the taxation of attorneys' fees; and in all other civil actions, not herein provided for, an attorney fee of ten dollars shall be allowed to the party in whose favor judgment is rendered; provided, however, that no attorney fee shall be allowed unless the party who recovers judgment shall appear by an attorney of a court record

Sheriff or any constable may serve writs, etc.

SECTION 21. The sheriff or any constable of the county of Dunn or the marshal of the city of Menomonie, shall have the same power to serve and execute writs, warrants and processes of said court and judge as of justices of the peace and of justice courts, and they shall have and recover the same fees therefor; provided, however, that a "long summons" issued by said court or judge 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 summons" and deliver them to any attorney of a court of record, which may afterwards be filled out by said attorney and served with full force and effect. In all cases commenced or preceding had in said court when the sheriff or one of his deputies is a party, the summons or other process may be served on such sheriff or deputy by any person authorized by the said court for that purpose.

Effect of final judgment.

SECTION 22. The final judgment of said court shall be of the same force and effect as a final judgment of a justice of the peace and justice court, and execution thereon may be issued in like manner; transcripts thereof in civil actions may be filed in the office of the clerk of the circuit court for said county in the same manner and

be of the same force and effect as a judgment of a justice of the peace.

SECTION 23. The said municipal judge is hereby authorized to tax and collect in all actions and proceedings, both civil and criminal, for his own use, except as hereinafter provided, the fees allowed by law to justices of the peace. For his services in conducting criminal trials and examinations, said municipal judge shall receive a salary in lieu of fees, payable quarterly out of the treasury of Dunn county in the same manner as other county officers who receive salaries are said to be fixed by the county board of supervisors, according to the provisions of section 694, of the revised statutes, which shall not be less than five hundred dollars per year, and the salary of said municipal judge is hereby fixed at the sum of five hundred dollars per year for the first term only, and in consideration thereof said judge shall pay over all fines collected and all costs imposed and collected in criminal cases arising under the laws of the state, into the county treasury for the use of said county, and all fines collected, and all costs imposed and collected in cases arising under ordinances or by-laws of the city of Menomonie shall be paid into the city treasury for the use of said city. Said judge shall retain for his own use all fees collected in civil actions and proceedings only.

Fees of judge how taxed, etc.

SECTION 24. The municipal court and the judge thereof has power and authority to issue all writs, warrants and processes necessary to carry into effect its jurisdiction, which writs, warrants and processes may in substance be in the same form as now used in justice courts, or such as shall be directed by the judge thereof, and may be entitled thus:

Judge issue writs, etc.

State of Wisconsin,)
 Dunn county.) In municipal court.
 Hand signed thus:

A. B.,
 Municipal Judge.

Writs, warrants and processes issued by the municipal court, or the judge thereof, signed by the judge and sealed with the seal of said court, may be executed in any part of the state by the officer to whom it is addressed.

Appeals, how
taken.

SECTION 25. Appeals from said municipal court shall be taken to the circuit court for Dunn county, and when not otherwise provided, the law relating to appeals from justice courts shall apply. The same affidavit and notice, in substance, shall be made and given as upon appeal from justice court. Any party, to a final judgment, or to an order affecting a substantial right, made after judgment may appeal; any party desiring to appeal, may upon motion, the opposite party or parties having had five days' notice in writing, or a less time on an order to show cause, in civil actions or proceedings, and on twelve hours' notice in criminal actions or proceedings, move the court for a reversal, in whole or in part, of the judgment or orders made, for a new trial, for an order setting aside a verdict, or for such relief as the party may consider himself lawfully entitled to, and the judge shall enter his orders or rulings granting or refusing the relief prayed for, within ten days after judgment in civil cases, and within twenty-four hours after judgment in criminal actions. In civil cases the appeal must be taken within twenty days after judgment is rendered (not proceeding after judgment), and in criminal causes, within twenty-four hours after judgment. Appeals shall be from the judgment and final orders affecting a substantial right made subsequent to judgment, and the appeal shall open up for trial in circuit court, both the law and the facts in the whole case. The party first appealing shall pay the judge's fees, including costs of transcribing hereinbefore provided, together with one dollar for his return, one dollar for state tax, and two dollars for clerk's fees for the clerk of the court appealed to, except in criminal cases where no fees are required to be advanced by the defendant therein; upon the receipt of the fees heretofore provided to be paid, 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 said 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 to the action, or upon an

order or suggestion from the appellate court, all parties interested having notice, correct his minutes or his record, so as to show the very truth of the matter. Attorneys practicing in said court may ask that instructions be given to juries, and allege objections to rulings or orders of said court according to the rules of practice in circuit courts.

SECTION 26. The docket and records of said municipal court shall be public records, open to the inspection of all persons at every reasonable hour.

Docket and records to be public. How kept

SECTION 27. The circuit judge is hereby authorized to appoint the municipal judge, who shall be an attorney of a court of record, a court commissioner in addition to the other court commissioners authorized for said county.

May be a court commissioner.

SECTION 28. 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 Dunn county may be, such rules shall have the same force and effect as the rules of practice in the circuit court.

May publish rules of practice.

SECTION 29. All acts and parts of acts conflicting with the provisions of this chapter are hereby repealed.

Repealed.

SECTION 30. This act shall take effect and be in force from and after its passage and publication.

Approved March 8, 1889.