

CHAPTER 10.

AN ACT TO AMEND AN ACT ENTITLED "AN ACT TO INCORPORATE THE CITY OF MOORHEAD, CLAY COUNTY, MINNESOTA," APPROVED FEBRUARY TWENTY-FOURTH (24TH), ONE THOUSAND EIGHT HUNDRED AND EIGHTY-ONE (1881), PROVIDING FOR A MUNICIPAL COURT THEREIN.

Be it enacted by the Legislature of the State of Minnesota:

SECTION 1. There shall be established in the city of Moorhead, in the county of Clay, a municipal court, for the transaction of all business that may lawfully come before it. Said court shall be a court of record, and shall have a clerk and a seal, and shall have jurisdiction to hear, try and determine civil actions at law where the amount in controversy does not exceed five hundred dollars (\$500), excepting causes involving title to real estate. It shall also have exclusive jurisdiction to hear all complaints and conduct all examinations and trials in criminal cases, arising or triable within the city of Moorhead heretofore cognizable before a justice of the peace. It shall not have jurisdiction of actions for divorce, nor of any actions where the relief asked for in the complaint is purely equitable in its nature.

SEC. 2. *Election of judge—vacancies*—The qualified electors of the city of Moorhead shall, at the general city election to be holden on the twentieth (20th) of March, in the year one thousand eight hundred and eighty-three (1883), and on the day of the general city election every third (3d) year thereafter, elect a suitable person with the qualifications hereinafter mentioned, to the office of judge of said municipal court, to be called "municipal judge," who shall hold his office for the term of three (3) years and until his successor shall be elected and qualified. In case of any vacancy in the office of municipal judge, the Governor of the state of Minnesota shall appoint some qualified person to said office until the next annual city election, when a judge shall be elected for a full term of three (3) years.

SEC. 3. *Qualifications of judge—special judge*—The judge of the municipal court shall be a resident of the city of Moorhead, a person learned in the law, and duly admitted to practice as an attorney in the courts of this state.

Before entering upon the duties of his office, he shall take and subscribe an oath as prescribed in the General Statutes for judicial officers, which oath shall be filed in the office of the city recorder of said city. He shall have the general powers of judges of courts of record, and may administer oaths, take and certify acknowledgments in all cases, and as a conservator of the peace shall have all power and authority which is by law vested in justices of the peace or any other judicial officer. There shall be one (1) special judge of said municipal court, whose manner of election, term of office, powers, duties and qualifications shall be the same as those of municipal judges, except as otherwise provided in this act, and his successor shall be elected and vacancies in his office filled in like manner.

In case of a press of business in said court, at the request of the

municipal judge, or in case of the absence or sickness of the municipal judge, the said special judge shall act as judge of said court; and when the said special judge so acts at the request of the municipal judge, the said special judge and the municipal judge may each have and exercise the powers of said court. The said special judge shall not act on the trial or examination of any case except as above provided; and such special judge, acting as judge of said court, shall receive compensation from the city at the rate of five dollars (\$5) per day. This section shall not incapacitate such special judge from acting as attorney in any case in said court; he shall take no action in such case save to adjourn the same.

SEC. 4. *Qualifications of clerk—deputy*—The city recorder of said city shall be “*ex-officio*” clerk of the said municipal court. Such clerk, before he enters upon the duties of his office, shall take and subscribe an oath to support the constitution of the United States, of the state of Minnesota, and to faithfully and honestly discharge and perform the duties of his office, and shall execute to the city of Moorhead a penal bond in such sum and with sureties as the council shall direct and approve, conditioned that he will account to and pay over to the treasurer of said city, on the first (1st) Monday of every month, all fines, penalties, fees and other moneys belonging to or to go to said city, which may have come into his hands by virtue or by reason of his office. Such oath and bond shall be filed in the office of the treasurer of said city. Such clerk shall have power to appoint, subject to the approval of the judge, a deputy clerk, with the like powers of the clerk, for whose acts the said clerk shall be responsible.

SEC. 5. *Powers of court—Process—Forms*—The municipal court shall have full power and authority to issue all process, civil and criminal, necessary or proper to carry into effect the jurisdiction given to it by law, and its judgments and other determinations. And it shall have and possess all the powers usually possessed by courts of record at common law, subject to modifications of the statutes of this state applicable to courts of record, except that it shall not have jurisdiction to issue writs of habeas corpus, quo warranto, ne exeat, mandamus, prohibition or injunction. It shall also have all the powers and jurisdiction conferred on justices of the peace by chapter eighty-four (84), General Statutes, and the proceedings shall be the same as therein provided, except that no appeal shall be allowed except to the supreme court. All process shall be tested in the name of the judge, and issued under the seal of the court and signed by the clerk, who shall be styled “*clerk.*” And the forms of process may be prescribed by the court, by rule or otherwise, and any form so prescribed shall be valid and sufficient, and such forms may be changed by the court from time to time. In the absence or such prescribed form, the forms in use, either in courts of record in this state, or by justices of the peace, may be changed and adapted to the style of the court, and used at the discretion of the court or clerk. Process may be directed for service to any police officer of the city of Moorhead, or to the sheriff or any constable of said county, and may be served the same as a summons in the district court, and service by publication may be ordered and made in like manner.

SEC. 6. *Place of holding court—Judge as Criminal Magistrate*—

The said municipal court shall be held in the city of Moorhead, at some suitable place to be provided therefor by the city council. Its judge shall be the chief magistrate of the city, and shall see that the criminal laws of the state, and the ordinances, laws, regulations and by-laws of said city are observed and executed, and for that purpose shall open his court every morning (Sundays and legal holidays excepted), and proceed to hear and dispose of in a summary manner, all cases which shall be brought before him by the police officers of the city, or otherwise, either with or without process for violation of the criminal laws of this state, committed within the county of Clay, or of the ordinances, laws, regulations or by-laws of said city. The clerk of the court shall keep a record of all proceedings, and enter all orders, judgments and sentences, under the supervision of the judge, and issue commitments and executions as well as all other process.

SEC. 7. *Duties of Clerk*—The clerk of the municipal court shall have the custody and care of all the books, papers and records of said court. He shall be present, by himself or deputy, at all trials, unless absent from sickness or by consent of the judge; and in case of the absence of both clerk and deputy, the judge may appoint jurors, and administer all oaths and affidavits, and take acknowledgments. He shall keep minutes of all proceedings and enter all judgments, and make up and keep the records of the court, under the direction of the judge, and when the judge is not present, adjourn the court from day to day. He shall tax all costs and disbursements allowed in any action, subject to review by the judge, and do all other things and acts necessary and proper to the enforcing and carrying out the jurisdiction of the municipal court. He shall receive and collect all fines, penalties and fees of every kind accruing to the court or any officer thereof, including police officers, and keep full, accurate and detailed accounts of the same; and shall, on the first (1st) Monday of every month, deliver over to the city treasurer of the city of Moorhead, all moneys so received, with detailed accounts thereof, and take his receipt therefor.

SEC. 8. *Terms—Summons and Service—Return—Pleadings, etc.,—Cost and Security Therefor*—The municipal court shall hold regular terms for the trial of civil actions, on the first (1st) and third (3d) Tuesdays of every month, which terms shall continue from day to day with such adjournments as the court may deem proper, until the business of each term shall be finished; and he may by rule or order appoint such terms to be held oftener, or upon other days than the days above mentioned. All civil actions for the recovery of money only, shall be commenced by summons to be issued by the clerk. The form of the summons may be as follows:

STATE OF MINNESOTA,)	CITY OF MOORHEAD,
County of Clay.)	Municipal Court
ss.	

State of Minnesota to any police officer of the city of Moorhead, or to the sheriff or any constable of said county:

You are hereby commanded to summon _____ if _____ shall be found within the county of Clay, to be and appear before the municipal court of the city of Moorhead at a term thereof to be holden on the _____ day of _____ A. D. 18 _____ at the open-

ing of the court, and answer to _____ whose complaint is on file
 in said court, and have you then and there this writ. The amount
 claimed by the plaintiff in said complaint is the sum of _____
 dollars and _____ cents, and interest thereon from and since the
 _____ day of _____ A. D. 18 _____, at the rate of _____ per
 cent. per annum.

Witness the Honorable _____ Municipal judge,
 this _____ day of _____ A. D. 18 _____.

[L. S.]

Clerk of the Municipal Court.

Or the summons may be in any other form which the court may by
 rule prescribe, and shall be served upon the defendant at least six (6)
 days before the term at which the same is made returnable. The
 manner of service shall be the same as that required by law for the
 service of summons in courts of justices of the peace in this state; and
 a summons issued out of said municipal court may be served by publi-
 cation in like manner as provided in sections twelve (12) and thirteen
 (13) of title two (2), of chapter sixty-five (65) of the General Statutes
 of one thousand eight hundred and sixty-six (1866) of this state, re-
 lating to service of summons by publication. No summons shall issue
 until the complaint in the action shall be filed with the clerk.
 The complaint may be presented in writing, to be filed, or
 may be made orally and reduced to writing by the clerk. If the de-
 fendant fails to appear at the opening of the court on the day at which
 the summons is returnable, he shall be defaulted; if he so appear,
 he shall then, or at such time as the court may designate, answer the
 plaintiff's complaint; and if the answer contains a counter-claim, the
 plaintiff shall reply thereto forthwith, or at such time as the court
 may designate. The answer or reply shall be reduced to writing, and
 filed with the clerk, and each of such pleadings shall be verified by
 the party, or his agent or attorney, either as in courts of justices of the
 peace or in the district courts of the state.

Either party may demur to any pleadings of his adversary, as in the
 district court, but all pleadings in this court shall be construed liber-
 ally, and merely technical objections shall be disregarded. And
 the court may for good cause, in its discretion, and on such terms as
 it may deem equitable, open any default at the same term at which it
 occurred, or allow any amendment of any pleading, at any time, and
 shall disregard variance between the allegations of a pleading and the
 evidence, unless satisfied that the adverse party is prejudiced thereby.
 Either party shall be entitled to a continuance of any civil action,
 (except actions for forcible entry and unlawful detainer) until the
 next term of the court following the term at which the summons
 shall be made returnable; and further continuance may be granted upon
 sufficient cause shown, and on such terms as may be just. Said court
 shall also have authority to provide by rule that the plaintiff in any
 civil action shall, by bond, recognizance, or deposit of money with the
 clerk, give security for costs, in such sum as the court may designate
 by such rule, before any summons or other process shall issue in the
 action.

Costs are allowed to the prevailing party in actions commenced in
 said municipal court, as follows:

To the plaintiff, upon a judgment in his favor of fifty (\$50) dollars

or more, or in actions of replevin when the value of the property is fifty (\$50) dollars or more, when no issue of facts of law is joined, five (\$5) dollars; when an issue is joined, ten (\$10) dollars.

To the defendant, when the amount claimed in the complaint is fifty (\$50) dollars or more, upon discontinuance or dismissal, five (\$5) dollars, when judgment is rendered in his favor on the merits, ten (\$10) dollars; and upon determination of demurrer and motion to the prevailing party such sum as the court may order, not exceeding ten (\$10) dollars.

Costs and disbursements shall be taxed and allowed in the first instance by the clerk, upon two (2) days notice to either party, and inserted in the entry of judgment. The disbursements shall be stated in detail, and verified by affidavit, which shall be filed. The party objecting to any item shall specify in writing the ground of objection, and same in case of appeal, shall be certified to the court by the clerk, and the appeal shall be heard and determined upon the objections so certified, and none other.

SEC. 9. *Attachments*—Any creditor desiring to proceed by attachment in said court, may, at the time of commencing the action, or thereafter and while said action is still pending, by himself, his agent or attorney, make and file with the clerk an affidavit similar to the affidavit required by law in an application for a writ of attachment in justice's court, and also cause to be filed a bond with sufficient surety to be approved by the judge, and similar to the bond required on a like application in justice's court, except that the limit of liability therein shall be mentioned therein as not exceeding the sum of two hundred and fifty dollars (\$250). The writ of attachment may be in form as follows:

STATE OF MINNESOTA, } County of Clay. }	ss.	CITY OF MOORHEAD, Municipal Court.
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The State of Minnesota to any police officer of the city of Moorhead, or to the sheriff or any constable of said county:

You are hereby commanded to attach the goods, chattels, moneys, effects and credits of _____ or so much thereof as shall be sufficient to satisfy the sum of _____, with interest and costs of suit, in whosoever hands or possession the same may be found, in said county of Clay, and so provide that the same may be subject to further proceedings as the law requires; and make due return of this writ.

Witness the Honorable _____ Judge of said court.
this _____ day of _____ A. D. 18 _____

Clerk.

Or the writ may be in any other form that the court may by rule prescribe. In all other respects the service of the writ, and other proceedings therein, shall be similar as near as may be, to the service of such writ and proceedings in justice's courts.

SEC. 10. *Replevin*—When the object of an action is to recover the possession of personal property, the plaintiff, his agent or attorney, shall make and file his complaint in writing, together with an affidavit similar to the affidavit required in a justice court in a like action. The

said names so selected to the clerk of said municipal court, who shall thereupon write said names upon separate ballots and place the same in a wheel or box and whenever a jury is required in said court, shall thereupon by lot draw eighteen (18) ballots, the persons named upon which shall be summoned to attend the trial of the cause wherein they were drawn; and the first twelve (12) so drawn shall constitute the jury, unless some of said jurors shall be challenged or excused, in which case the clerk shall consecutively call the remaining six (6) jurors so drawn, until the panel so drawn shall be exhausted. No talesmen shall be summoned or sit in any cause in said court. And the first (1st) and second (2d) series of eighteen (18) ballots each so drawn shall not be returned to said box or wheel until the third (3d) series shall have been drawn from said box. The persons selected to serve as aforesaid shall not again be eligible during the year in which they may have been elected.

Where no provision is otherwise made in this act, said municipal court is vested with all the powers which are possessed by the district courts of the state; and all laws of a general nature apply to said municipal court so far as the same can be made applicable, and not inconsistent with the provisions of this act. Jurors in said municipal court shall be entitled to like fees in the trial of civil actions as jurors in justices' courts, to be collected and paid in the same manner; but the party demanding a jury in any civil action shall be required to advance the jury fee before the commencement of the trial.

SEC. 13. *Referees—exceptions—new trials—appeals—removals from justices of the peace, etc.*—Title eighteen (18) of chapter sixty-six (66) of the General Statutes, relative to trials by referees, title nineteen (19) of the same chapter, relative to exceptions, and title twenty, (20) relative to new trials, shall apply to said municipal court; and section four (4) of chapter twenty-seven (27) of the General Statutes relating to reporter of the supreme court, and the distribution of the supreme court reports, shall apply to the judge of said municipal court; and all cases may be removed from the said municipal court to the supreme court of the state of Minnesota, in the same manner and upon like proceedings, and with like effect, as from the district court: and said municipal court shall have jurisdiction of actions of forcible entries and unlawful detainer, and may fix return days for such actions other than the regular term days of said court; and chapter eighty-four (84) of the General Statutes, relative to forcible entries and unlawful detainers, shall apply to said municipal court.

SEC. 14. *Judgments—transcripts—executions.*—No judgment rendered in said municipal court shall attach as a lien upon real estate until transcript thereof shall be filed in the district court as hereinafter provided. But writs of execution thereon, in civil actions, may issue against the goods and chattels of the judgment debtor, returnable within thirty (30) days, as in justices' courts. Every person in whose favor a judgment is rendered in said municipal court, for an amount exceeding ten dollars (\$10) besides costs, may, upon paying the fee therefor, and all unpaid fees payable to the clerk in such actions, demand and shall receive from such clerk a transcript of such judgment, duly certified, and may file the same in the office of the clerk of the district court of said Clay county, who shall file and docket the same, as in case of transcripts of judgments from courts of justices of the peace.

And every such judgment shall become a lien on the real estate of the debtor from the filing of such transcript, to the same extent as a judgment of the said district court, and shall thereafter be exclusively under the control of said district court, and carried into execution by its process, as if rendered in said district court. The clerk of said municipal court shall not issue such transcript while a writ of execution is outstanding in the hands of an officer or otherwise, and shall note in the record of such judgment the fact that such transcript has been given; and shall not thereafter issue any writ of execution on the same judgment, but may at any time give to the same party, or his representatives, a new transcript of such judgment, in case of the loss of the transcript first given.

SEC. 15. *Garnishments*.—Proceedings against garnishees may be instituted in the same manner as in justices' courts; but the summons may be served either by any officer, or any indifferent person, at any place within the state of Minnesota; and the summons may be made returnable at any term of said municipal court which may be named therein; and the notice required to be served on the defendant in the action, may be signed either by the clerk of said court or the person who served the garnishee summons, or by the plaintiff or his attorney. The disclosure of the garnishee may be taken, and all further proceedings had in the same manner as if the proceedings were in the district court.

SEC. 16. *Proceedings in criminal cases*.—Complaints in criminal cases, where the defendant is not in custody, may be made to the court when in session, or to the judge or clerk when not in session, and shall be made in writing or reduced to writing by the judge or clerk, and sworn to by the complainant, whether the offense charged be a violation of the criminal laws of the state, or of the ordinances, regulations or by-laws of said city. And the clerk as well as the judge is hereby made a conservator of the peace, and vested with the same authority, discretion and power to act in receiving complaints, and issuing the warrants of said court in criminal cases. And complaints, warrants and all other process in criminal cases may be substantially the same forms heretofore in use by justices of the peace, with such alterations as may seem convenient to adapt the same to the style of said municipal court, or may be in such other form as the court [may] prescribe, sanction or approve.

In case where alleged offenders shall be in custody, and brought before the court or the clerk without process, the clerk shall enter upon the records of the court a brief statement of the offense with which the defendant is charged, which shall stand in place of a complaint, unless the court shall direct a formal complaint to be made. The plea of the defendant shall be guilty or not guilty; in case of failure to plead, the clerk shall enter a plea of not guilty, and a former acquittal or conviction for the same offense may be proved under that plea, as well as if formally pleaded. In the examination of offenders charged with indictable offences, the clerk shall keep such minutes of the examination, as the court may direct, and shall make the proper return to the court, before which the party charged with the offence may be bound to appear.

SEC. 17. *Salary of judge and clerk—police officers*.—The judge of said court shall receive a salary of one thousand dollars (\$1,000) per

year, and the clerk of said court, a salary of three hundred dollars (\$300) per year, exclusive of his salary as city recorder, payable from the city treasury of Moorhead, in monthly installments; neither said judge, clerk or deputy clerk shall receive any other fee or compensation for his services; but in all proceedings had in said municipal court, double the fees shall be charged and collected by the clerk as costs, as are allowed by law to justices of the peace in proceedings, and upon trials before them, as for similar services. Police officers of said city are hereby vested with all the powers of constables under the statutes of Minnesota, as well as at common law; and police officers, in making service of any process, or doing other duty in respect to causes in court, shall note and return to the court for collection, such fees as are allowed to sheriffs for the like services; and all fees, whether so charged by the clerk or any police officer, whether due from the county in preliminary examinations, or otherwise, shall be collected by the clerk as costs, and by him be accounted for and paid over to the city treasurer of said city, as hereinbefore provided for.

SEC. 18. *Police officers in attendance on court.*—It shall be the duty of the mayor and chief of police of said city, to see that a sufficient number of police officers are always in attendance upon said court, and in readiness to obey its mandates and serve its process, and preserve order in the proceedings. Police officers of said city shall hereafter receive for their services no other compensation than the salary paid them by said city, except as otherwise provided in the act to which this is amendatory; and if any fee shall be paid to any police officer for any service, he shall forthwith pay the same over to the clerk of said municipal court, for the use of said city; and a failure to do so shall be a misdemeanor, punishable by fine not exceeding one hundred dollars (\$100), or by imprisonment not exceeding thirty (30) days. The mayor of said city shall have the power, in his discretion, to appoint one (1) or more persons, approved by the municipal judge, as policemen for special attendance and duty in said court, irrespective of the general or special rules, or legal regulations and enactments, relative to the qualifications of policemen; but such persons shall receive the same, but no greater compensation, unless the council direct greater compensation, as ordinary police; and all policemen attending said court may be required to give bonds to said city, in such sum as the council shall direct, for the performance of their duties, for the use of all persons interested; *Provided, however,* That the above shall not affect the powers and duties of the general police in said court.

SEC. 19. *Titles to real estate.*—In case it shall appear from the pleadings, or upon the trial of any cause, that the title to real estate is involved in the action, the municipal court shall not proceed further therein, but shall transfer the action to the district court of said county, and the cause shall be proceeded with in the court to which it shall be transferred, as if originally commenced therein.

SEC. 20. *Prosecuting officers.*—The city attorney of the city of Moorhead, shall have charge of the prosecution of all criminal proceedings before said municipal court; but the county attorney of the county of Clay may, at his discretion, act in the prosecution of offences, charged with offences against the criminal laws of the state.

SEC. 21. *Clerk to procure supplies for court.*—The clerk of the municipal court shall, under the direction of the judge, and with the consent

of the city council of said city (unless otherwise provided) from time to time procure and furnish all the necessary blanks, stationery, record books, court room, jury room and office furniture, lights and fuel for the use of the court and the officers thereof, at the expense of the said city.

SEC. 22. *Justices of the peace superseded.*—Upon the election and qualification of the municipal judge, all causes and proceedings then pending before justices of the peace within said city, shall forthwith, by said justices, be transferred to said municipal court, with all papers and records concerning the same; and said municipal court shall take cognizance of such causes and proceedings, and proceed therein as if the same were originally commenced in said municipal court. And the dockets, records, files and papers in the custody of [any] and all justices of the peace of said city, shall at once be transferred and turned over to said municipal court, which shall have full jurisdiction to finish and complete all proceedings pending before any justice of the peace and to enforce, by execution or otherwise, all judgments theretofore rendered by justices of the peace within the present city of Moorhead; and such judgment shall stand on the same footing as judgments of said municipal court. And after the election and qualification of said municipal judge, no justice of the peace within the city of Moorhead shall issue any process, nor take cognizance of any action or proceeding, civil or criminal, but the jurisdiction of said municipal court shall, within said city, be exclusive in all causes heretofore cognizable before justices of the peace, except that this clause shall not affect the jurisdiction of any court of record having general jurisdiction, such as is conferred upon the district court.

SEC. 23. *Costs in criminal cases.*—In all criminal cases tried in said court, in which the defendant shall be convicted, the clerk shall tax, as costs of court, and, if not paid, judgment shall be entered therefor against the defendant, in the following sums, viz: In cases where no warrant is issued, and the defendant, upon being arraigned, shall plead guilty, two dollars (\$2). In cases where warrants shall be issued, and the defendant, upon arraignment, pleads guilty, two and one-half dollars (\$2½). In cases where the defendant shall plead not guilty, and shall be tried before the court, five dollars (\$5). In cases where the defendant shall plead not guilty, and be tried before a jury, ten dollars (\$10). Said sums respectively to be in addition to all costs of witnesses, jurors, and other costs taxed in said actions, or either of them.

SEC. 24. *Costs on examinations.*—In all examinations held by or before said court, to enquire of offences of which said court shall not have final jurisdiction, the clerk shall tax as costs of said court for making such examinations, the same fees as are now allowed to justices of the peace, for similar services, and fifty (50) per cent additional thereto.

SEC. 26. *Security for costs.*—The plaintiff, upon making his complaint in all civil actions, shall give such security for costs as the judge or the clerk shall direct.

SEC. 27. This act shall take effect and be in force from and after its passage.

Approved February 27, 1883.