CHAPTER 488

MUNICIPAL COURTS

488.01 EXISTING COURTS CONFIRMED.

HISTORY. 1887 c. 164; 1889 c. 161; 1891 c. 146; 1893 cc. 51, 190; G.S. 1894 ss. 1357 to 1408; R.L. 1905 s. 124; G.S. 1913 s. 256; G.S. 1923 s. 212; M.S. 1927 s. 212.

A municipal court established under the provisions of Laws 1895, Chapter 229, as amended, is a state court within the meaning of Minnesota Constitution, Article 6, Section 1, and a municipal judge is a state officer, and cannot be legislated out of office, nor his term shortened, by the adoption of a home rule charter, by a vote of the electors of a municipality under Minnesota Constitution, Article 4, Section 36. Simpson v Fleming, 112 M 136, 127 NW 473.

Where the justice resided in Spring Valley, held, that an appeal should be taken to the district court and not to the municipal court of Spring Valley. Gordon v Freeman, 112 M 482, 128 NW 834, 1118.

The preferential system of voting provided by the Duluth charter is unconstitutional as applied to municipal judges, and is in contravention of Minnesota Constitution, Article 7, Sections 1, 6. Brown v Smallwood, 130 M 492, 153 NW 953.

The remedy of interpleader is available to a defendant sued in municipal court of Minneapolis. Bank v Bank, 149 M 367, 183 NW 821.

In an action for merchandise sold, both the plaintiff and the defendant have a constitutional right to a trial by jury. In the conciliation court of Minneapolis there is no trial by jury. There is a right of removal in the losing party to the municipal court where a trial by jury may be had. This sufficiently satisfies the constitutional guaranty. Flour City v Young, 150 M 452, 185 NW 934.

For the purposes of appellate procedure, prosecutions for the violation of municipal ordinances are criminal actions. In such proceedings in municipal courts established since the taking effect of Revised Laws 1905, appeals to the district court must be taken pursuant to sections 633.20, 633.21. An appeal under section 532.38 is ineffective. Crosley v Stemich, 160 M 261, 199 NW 918.

The municipal court of the city of Faribault is without power to try a person upon a criminal complaint made by a private individual charging an offense beyond the jurisdiction of a justice of the peace, but within the jurisdiction prescribed in the act creating the court. The "information" designated in said creating act means an information made and filed by a duly constituted prosecuting officer, and the proceedings must conform to the provisions of sections 628.29 to 628.33. Knudson v Municipal Court, 164 M 328, 205 NW 63.

Where the statute provides only for appeals from judgments of a municipal court, an appeal does not lie from an order denying a motion to vacate a judgment in an action in unlawful detainer. Doyle v Long, 205 M 322, 285 NW 832.

To be eligible to the office of municipal judge of the village of Perham, a person need not be an attorney at law. That part of Ex. Laws 1933, Chapter 35, Section 3, requiring the municipal judge to be "a person learned in the law and duly admitted to practice as an attorney in this state" is violative of the Minnesota Constitution, Article 7, Section 7. State ex rel v Welter, 208 M 338, 293 NW 914.

All municipal courts organized after the taking effect of the Revised Statutes should be organized and governed by provisions found in the Revised Laws; the district court rule as to pleadings apply. In order to organize a court the council must adopt the provisions of the act, provide a suitable place for holding court, provide for the appointment of at least one judge and clerk, and fix their compensation. OAG Oct. 2, 1908 (169).

Under the provisions of Revised Laws 1905, relating to the creation and functioning of municipal courts, the city should pay all costs of criminal prosecution

for violation of the state laws in said courts and should receive the fines. 1910 OAG 540, June 8, 1909.

The statutes have been construed requiring the state to furnish each municipal judge with a set of the Minnesota Reports, but not of the General Statutes. 1922 OAG 184, April 4, 1922.

Following Minnesota Constitution, Article 6, Section 10, a municipal judge appointed to fill a vacancy is appointed for the unexpired term of his predecessor, or until the next general city election, such election occurring more than 30 days after the office became vacant. 1922 OAG 185, March 3, 1921.

A municipal court established under the general municipal court act of 1905 is a state court and the judges are state officers. The legislature contemplates the such judge be chosen at the next regular city election. 1934 OAG 290, Sept. 13, 1934.

This section supersedes any inconsistent home rule charter provision. OAG Jan. 25, 1934.

In municipal courts established under Ex. Laws 1933, Chapter 35, and Laws 1935, Chapter 253, the fees are to be charged in accordance with section 488.27. 1936 OAG 147, Jan. 16, 1936.

Where, in case of incapacity of a municipal judge, the mayor appoints a practicing attorney to serve temporarily, no pay may be awarded to him except based upon a city ordinance adopted in the regular course. 1938 OAG 175, Jan. 19, 1938.

The city council of the city of Anoka may increase the salary of a judge of the municipal court during the term of such judge. 1938 OAG 177, May 11, 1937.

Laws 1911, Chapter 177, provides that when a municipal court is established, books and records of the justice court may be transcribed. 1934 OAG 286, March 17, 1934 (306a-4).

488.02 OATHS AND BONDS.

HISTORY. 1909 c. 116 s. 1; G.S. 1913 s. 257; G.S. 1923 s. 213; M.S. 1927 s. 213.

The statutes governing municipal courts in cities of the fourth class, as they stood in 1934, did not authorize the city council to discontinue the salary of the municipal judge of the city or to place the compensation of the judge back on a fee basis. The oath and bond of the municipal judge of a city of the fourth class are to be filed in the office of the secretary of state. Child v Waseca, 195 M 266, 262 NW 633.

Where the judge of a municipal court acts also as clerk, he is required to give a bond, otherwise not. In any event, he must file his official oath. 1924 OAG 89, March 12, 1924.

The penalty clause in the bond of a municipal judge should run to the state. OAG April 12, 1937 (307a).

The judges of the municipal court of Brainerd must have his oath and bond approved by the attorney general, and filed with the secretary of state. OAG April 26, 1937 (306a-3); OAG May 13, 1937 (307i).

488.03 MUNICIPAL COURTS ESTABLISHED.

HISTORY. 1891 c. 146 sc. 11 s. 1; G.S. 1894 s. 1357; R.L. 1905 s. 125; 1913 c. 104 s. 1; G.S. 1913 s. 259; 1915 c. 75; 1919 c. 268; G.S. 1923 s. 215; M.S. 1927 s. 215.

A distinctive feature is that while the statute grants equal authority to all municipalities within the class covered, it requires as a prerequisite that the council or the electors of the municipality take certain steps, by resolution, or ordinance, or vote, in order to operate under the law. While the authority granted is permissive and not mandatory, it grants the same power to all and operates uniformly. State ex rel v Peterson, 180 M 366, 230 NW 830.

A municipal court organized under the general law has no jurisdiction of gross misdemeanors. State ex rel v Monical, 182 M 368, 234 NW 453.

Municipal court organized under Laws 1895, while courts of record are of special and limited jurisdiction and possess only such authority as is conferred by

the particular statute under which organized. Such courts, like courts of justice of the peace, have no authority to grant new trial. Untiedt v Ver Dick, 195 M 239, 262 NW 568.

Where a court has been established by a statute apparently valid, and the court has gone into operation under the statute, it is a "de facto court" notwithstanding the statute is subsequently declared unconstitutional. Marckel v Zitzow, 218 M 305, 15 NW(2d) 777.

Revised Laws 1905, relating to municipal courts, entirely supersedes all prior laws as to municipal courts organized after April 1, 1906. Fees cannot be taxed, and the municipality should establish the court and provide for its operating expenses before the court begins to function. OAG Oct. 2, 1908 (169).

Only attorneys at law may practice before a municipal court organized under Laws 1895, Chapter 229. OAG Nov. 13, 1912 (493).

A municipal court organized under Laws 1895, Chapter 229, is a court of record, and only attorneys may practice therein. A party may appear pro se. OAG May 5, 1916 (37).

The office of county auditor and clerk of the municipal court are incompatible. 1918 OAG 348, July 3, 1917.

Where there are two judges of the municipal court, one may be called the municipal judge and the other a special municipal judge. 1920 OAG 304, March 22, 1920.

Controlled by Powell v King, 78 M 83, the 1919 amendment to General Statutes 1913, Section 259, is merely a reenactment and does not repeal an intermediate act which qualified or limited the original law. OAG March 24, 1920 (305).

In a municipal court, organized pursuant to Revised Laws 1905, fines paid into court upon a conviction of violation of the state law, that is, misdemeanor made such by statute and not by ordinance, except in special cases such as breach of the game laws and such, belong to the county and should be paid to the county treasurer. OAG September 4, 1928 (114).

Where a municipal court is established under Laws 1895, Chapter 229, or Laws 1909, Chapter 306, and the council has fixed a salary in lieu of fees, all costs collected by the judge should be paid into the treasury whether the case arises within or without the city. OAG Oct. 22, 1928 (115).

There is nothing in the uniform highway traffic act, nor in the motor vehicle tax law whereby the duties respectively of city attorney or county attorney are specified. Generally, under the municipal court acts, city attorney prosecutes for misdemeanors and the county attorney gross misdemeanors and crimes. Though county attorneys often prosecute in justice court, there seems to be no law compelling them to do so. 1928 OAG 125, Dec. 1, 1927.

The municipal court of the village of Buhl was established by legislative act, and when it adopted a resolution their act merely made the law effective. It is now a state court with state officers. It cannot be abolished by an act of the municipality. 1930 OAG 178, Dec. 10, 1929.

Where the term of a municipal judge in the village of Chisholm did not expire until January 1, 1935, and the village was reorganized as a city of the fourth class, and a special election was held for selection of village officers on Oct. 8, 1934, no election can be had for municipal judge because such judge may only be elected at a general election. OAG Sept. 13, 1934 (290).

Th statute rather than the terms of a home rule charter control as to term of a municipal judge, but all must conform to Minnesota Constitution, Article 7, Section 9. OAG Dec. 1, 1934 (291).

The legislature is without power to deprive a person of a constitutional right, and to refuse to grant a defendant a jury trial in a criminal case for failure to pay a jury fee would disregard his constitutional privilege. OAG March 21, 1940 (41).

De facto officers; courts; offices. 29 MLR 36.

488.04 APPLICATION TO EXISTING COURTS.

HISTORY. R.L. 1905 s. 126; G.S. 1913 s. 260; G.S. 1923 s. 216; M.S. 1927 s. 216.

A special municipal judge of a court established under Laws 1895, as amended, cannot be legislated out of office, nor his term shortened by the adoption of a home rule charter adopted by a vote of the electors, his term being controlled by Minnesota Constitution, Article 4, Section 36. State ex rel v Fleming, 112 M 136, 127 NW 473.

Laws 1929, Chapter 57, relating to firemen's civil service commission, does not violate Minnesota Constitution, Article 4, Sections 33, 34, or 36. State ex rel v Peterson, 180 M 366, 230 NW 830.

A city council may by proper resolution provide that the municipal court of the city be governed by section 488.04, rather than by the law and rules of an existing court; but unless the statutory mandate is fully followed, no change merely in the issuance of a summons is effective. OAG June 6, 1928 (113).

A municipal court established prior to April 1, 1906, may by proper resolution come under the uniform municipal court act. OAG Feb. 23, 1939 (121B-14).

488.05 JUDGES; ELECTION; TERM; SALARY.

HISTORY. 1891 c. 146 sc. 11 ss. 4, 5, 7; G.S. 1894 ss. 1360, 1361, 1363; R.L. 1905 s. 127; 1913 c. 104 s. 1; G.S. 1913 s. 261; G.S. 1923 s. 217; 1927 c. 276 s. 1; M.S. 1927 s. 217; 1929 c. 223; 1933 c. 269; 1937 c. 154 s. 1.

Under a statute creating an office, fixing the term, and making no provision for holding over until a successor is elected and qualified, the term is definite and a vacancy exists upon its expiration. Where the statute provides the incumbent hold over until his successor is elected and qualified, if a successor is not elected, the incumbent holds over and there is no vacancy to be filled by appointment, but the legislature cannot increase the term beyond the seven years fixed by the constitution. State ex rel v Windom, 131 M 401, 155 NW 629.

A municipal judge holding over after the expiration of his term was a de facto official and entitled to his salary. He is entitled to the salary while in possession of the office and serving. Windom v Duluth, 137 M 154, 162 NW 1075.

Sections 488.05 and 200.31 cannot be harmonized in any other way than by holding that as to municipal judges the beginning and ending of the term of office is determined by section 488.05 and the charter provision fixing the time of general municipal elections is limited by the rule in State ex rel v Fleming, 112 M 136, 127 NW 473, and a municipality may not shorten a four-year term by the change in its charter, or any other means. State ex rel v Bensel, 194 M 55, 259 NW 389.

A municipal judge in a city of the fourth class is elected for a term of four years and until his successor is elected and qualifies. There being a valid resolution in force fixing the salary of the municipal judge, the attempt to discontinue such salary was not effective and did not operate as a failure to fix the salary, which was already fixed. State ex rel v Waseca, 195 M 266, 262 NW 633.

Section 542.16 does not appear to cover judges of the municipal court. Duluth v La Fleaur, 199 M 470, 272 NW 389.

Where the statute provides only for appeals from judgments of a municipal court, an appeal does not lie from an order denying a motion to vacate a judgment in an action in unlawful detainer. Doyle v Long, 205 M 322, 285 NW 832.

Under the Revised Laws 1905, in order to organize a municipal court the council must adopt the provisions of the act; provide a suitable place for holding court, provide for the appointment of at least one judge and one clerk, and fix their compensation. OAG Oct. 21, 1908 (169).

Under the provisions of Minnesota Constitution, Article 7, Section 7, a person need not be an attorney to hold the office of municipal judge. OAG Dec. 19, 1914 (371); OAG Feb. 13, 1932 (111); 1934 OAG 288, Feb. 9, 1933; 1936 OAG 149, Oct. 12, 1935.

The right of a public officer to compensation for the performance of duties imposed upon him by law, does not rest on contract. Unless compensation is allowed by law, an officer cannot demand payment as upon quantum meruit. OAG Sept. 10, 1920 (306).

The provision in the constitution that the governor shall fill a vacancy "until the next annual election" uses the word "annual" in the sense regular, that is, an election held in the usual course at which with propriety the office may be filled. Though no provision is made by statute for filling it, then a successor to one appointed municipal judge should be elected at the next regular election, and so far the statutory provision for an election only in four-year cycles must yield. 1930 OAG 249, May 23, 1929.

The offices of municipal judge and treasurer of the school board are not incompatible. OAG July 30, 1930 (304).

The compensation of a public officer is an incident of the office, and not measured by services performed. OAG March 16, 1934 (289).

Where a municipal court was established in a village which came under the act establishing a city of the fourth class, the judge will hold office "until the first general election", and for a term of four years for which he had been elected. OAG Sept. 13, 1934 (290).

The term of a municipal judge may not be changed by the adoption of a home rule charter, and the salary is fixed entirely under the provisions of section 488.05. OAG Dec. 1, 1934 (291).

Section 488.05 is controlled by Minnesota Constitution, Article 6, Section 10, and where there is a vacancy occurring more than 30 days prior to a general election, one elected at that general election holds for the full four-year term. 1934 OAG 292, Oct. 14, 1933; 1936 OAG 154, July 30, 1935.

The city council cannot modify the salary of a municipal judge by fixing a salary for actions arising in the city, and allowing him to charge fees from the county on account of actions brought before him by the county or work done for it. OAG Jan. 3, 1936 (151).

Where the office of municipal judge is vacated, the salary of his successor may not be diminished during the term for which the deceased judge was elected. OAG Jan. 27, 1936 (152); OAG July 30, 1936 (154).

Cities of the fourth class through their councils have ample power to provide compensation of their municipal judges either by salary or by fees or both, as their discretion may dictate. OAG May 13, 1936 (153).

A statute that requires a person designated to fill temporarily the place of an absent judge should be an attorney, is not valid. OAG Feb. 13, 1932.

Where a practicing attorney is appointed to serve during the absence or incapacity of the municipal judge, in the absence of a city ordinance providing compensation he cannot recover for his services. The council may, however, adopt an ordinance in the usual and legal manner. OAG Jan. 19, 1938 (175).

The council may provide that all fees which a municipal court is by law authorized to collect shall be paid into the city treasury, and the judge may not retain fees as part of his compensation. OAG Feb. 1, 1938 (176).

Where a municipal judge has served two years of a four-year term, the council may by ordinance increase the salary for the balance of the term. 1938 OAG 177, May 11, 1937.

488.06 JURISDICTION.

HISTORY. 1891 c. 146 sc. 11 s. 1; G.S. 1894 s. 1357; R.L. 1905 s. 128; G.S. 1913 s. 262; G.S. 1923 s. 218; M.S. 1927 s. 218.

Where a criminal offense is committed within a city having a municipal court, the municipal court of another city has no jurisdiction of such offense, either for the purpose of trial or for the purpose of holding a preliminary examination. State ex rel v Kelley, 139 M 462, 167 NW 110.

The defense raised in the instant case was strictly legal and not equitable, and a determination of title to real estate was not involved. Weisman v Cohen, 157 M 161, 195 NW 898.

The municipal court of the city of St. Paul has jurisdiction in actions of forcible entry and unlawful detainer, and removal to the district court is authorized only when the title comes in issue on the evidence. That the answer raises the issue of title is insufficient. Bank v Vogt, 178 M 282, 226 NW 847.

An action for money had and received under the terms of an investment contract does not involve a question of equity and the municipal court in Minneapolis has jurisdiction. Goodell v Accumulative Income, 185 M 213, 240 NW 534.

The defendant quitclaimed property to plaintiff, and surrendered to plaintiff the Torrens certificate. These were not filed. Plaintiff executed a lease of the property to defendant. At the termination of the lease, plaintiff brought proceedings for restitution of the premises. Held, the municipal court of Minneapolis has jurisdiction. Cook v Luettich, 191 M 6, 252 NW 649.

Municipal courts organized under Laws 1895, Chapter 229, while courts of record, have only such authority as is conferred by the statute under which organized, and in this case have no power to grant new trials. Untiedt v Ver Dick, 195 M 239, 262 NW 568.

Where after the judge had made findings for judgment in favor of a plaintiff in an action of forcible entry, the defendant asked for a rehearing. This was in the nature of a motion for a new trial, which the municipal court had no power to grant. Olson v Lichten, 196 M 352, 265 NW 25.

Where the statute provides only for appeals from judgments of a municipal court, an appeal does not lie from an order denying a motion to vacate a judgment in an action in unlawful detainer. Doyle v Long, 205 M 322, 285 NW 832.

Possessed of specific authority under its charter to enact legislation regulating the sale of intoxicating liquor, the city of Duluth may pass an ordinance forfeiting the liquor seized; and may prosecute under the ordinance though there is a state law covering the same offense. Duluth v Cerveny, 218 M 511, 16 NW(2d) 779.

In a prosecution in a municipal court established under Laws 1895, Chapter 221, under a city ordinance the judge has no authority to order the witness fees of defendant's witnesses paid by the city. 1908 OAG 170, Sept. 16, 1907.

The offices of probate judge and municipal judge are not incompatible; the offices of mayor and municipal judge are. 1922 OAG 423, Jan. 21, 1921.

Ruling regarding the taking over by the probate court of the duties of clerk, and relative to the disposition of fees collected. 1928 OAG 115, Oct. 22, 1928.

The court officer of the city of Virginia may serve papers issued out of the municipal court of the city of Eveleth, on a resident of Buhl at Buhl, and fees earned for such service should be turned over to the city treasurer of Virginia. 1934 OAG 293, May 17, 1933.

488.07 JURISDICTION LIMITED.

HISTORY. 1891 c. 146 sc. 11 s. 2; G.S. 1894 s. 1358; R.L. 1905 s. 129; G.S. 1913 s. 263; G.S. 1923 s. 219; M.S. 1927 s. 219.

A defendant in an action in a municipal court cannot oust the court of jurisdiction, and secure a transfer of the cause to the district court, by simply demanding equitable relief in the answer. To effect such result, the answer must allege facts which, if true, would entitle the defendant to some equitable relief. Iltis v Greengard, 109 M 208, 123 NW 406.

The municipal court of Minneapolis has no jurisdiction in any cause involving title to real estate. The title to real estate is not involved in an action, unless the title is disputed and there is a real controversy in regard thereto. The fact that husband and wife leased property owned by the wife, is not such a controversy as would oust the jurisdiction of the municipal court in an action of unlawful detainer. Twitchell v Cummings, 123 M 270, 143 NW 785.

The municipal court of St. Paul has jurisdiction in actions of forcible entry and the case is removable to the district court on the ground that the title to real estate is involved. Such removal is authorized only when the title comes in issue on the evidence. The fact that the answer may present such an issue is not sufficient. Bank v Vogt, 178 M 282, 226 NW 847.

488.08 DEFENSES IN EXCESS OF JURISDICTION; PROCEDURE.

HISTORY. 1891 c. 146 sc. 11 s. 1; G.S. 1894 s. 1357; R.L. 1905 s. 130; G.S. 1913 s. 264; G.S. 1923 s. 220; M.S. 1927 s. 220.

Iltis v Greengard, 109 M 208, 123 NW 406.

488.09 CRIMINAL JURISDICTION; JUSTICES OF THE PEACE.

HISTORY. 1891 c. 146 sc. 11 s. 1; G.S. 1894 s. 1357; R.L. 1905 s. 131; 1913 c. 104 s. 1; G.S. 1913 s. 265; G.S. 1923 s. 221; M.S. 1927 s. 221.

A duly qualified judge of the municipal court engaged in a hearing of a preliminary examination of a prisoner has jurisdiction to punish for contempt of court committed in open court, although proceedings are pending to oust him of jurisdiction. He had authority to impose a fine, and in default of payment to commit the offender. Bullard v McDonough, 117 M 173, 134 NW 509.

Neither the constitution nor the statutes give the right of trial by jury to persons charged with petty offenses under a city ordinance. Defendant was fined for violation of an ordinance relating to use of street railway transfers. Held, the power to grant franchises, conferred by implication, the power to require issuance of transfers by the railway company and consequently the power to regulate the issuance by the company and use by the public. St. Paul v Robinson, 129 M 383, 152 NW 777.

Where a criminal offense is committed within a city having a municipal court, the municipal court of another city has no jurisdiction of such offense either for the purpose of trial or preliminary examination. Murray v Kelley, 139 M 462, 167 NW 110.

Defendant was found guilty and on Sept. 26, 1935, sentenced to 30 days and the sentence suspended to May 23, 1936. On Oct. 1, 1935, the court revoked the suspension and ordered the defendant committed. Held, a suspension of a sentence is a matter of grace, and not a legal right of the defendant, and within the discretion of the court and the court may revoke or modify the suspension at any time. State ex rel v Court, 197 M 141, 266 NW 433.

Damsgaard was charged with operating a motor vehicle while under the influence of intoxicating liquor. The prosecuting officer in this case asks a writ of prohibition to restrain the municipal judge from granting a jury trial. Held, the act establishing the municipal court of the city of St. Paul provides that cases involving violations of the city ordinance may be held in a summary manner, and that even if there is a statute covering the same subject matter as does the ordinance. State ex rel v Parks, 199 M 622, 273 NW 233.

Under Minnesota Constitution, Article 6, Section 8, the legislature has power to determine how many justices of the peace there shall be in any county and to define and limit the jurisdiction of those provided. That part of Laws 1921, Chapter 362, which gives exclusive jurisdiction over misdemeanors and preliminary examinations to the municipal court of the city of St. Paul over all of Ramsey county, is special legislation, and void. Best v Gibbons, 202 M 421, 278 NW 578.

Sections 488.09 and 633.01 (4) should be construed as "in pare materia", and the provisions of section 488.09 are not so inconsistent with those of section 633.01 as to indicate a purpose to repeal it with reference to the jurisdiction of justice courts established by home rule charters. State ex rel v Weed, 208 M 342, 294 NW 370.

Laws 1911, Chapter 29, made the election of two justices of the peace mandatory in all villages. The jurisdiction of village justices is limited. They have no jurisdiction of offenses committed in the village, and the municipal court has concurrent jurisdiction with justices of all offenses committed elsewhere within the county. OAG March 20, 1922 (181); OAG April 14, 1939 (266B-11).

A village marshal has no common-law powers as does a sheriff or constable, but only such powers as are conferred upon him by statute and under the statute he has generally only power of arrest within the municipality, and if he makes an arrest outside of the village it is under the statute permitting any citizen to make an arrest under certain circumstances. 1928 OAG 136, May 11, 1927.

Controlled only by the constitution and the statutes, a municipal judge has practically unlimited discretionary power to sentence, suspend same, or fine the defendant. OAG June 26, 1933.

Fines and costs recoverable for violations of the statute, and termed misdemeanors, are payable to the county treasurer. OAG April 6, 1934 (287).

A municipal court having jurisdiction similar to that of justice of the peace, has no jurisdiction to hear and try persons charged with the violation of section 340.36 relating to the sale of liquor in dry territory. OAG Aug. 7, 1939 (218f).

488.10 TWO JUDGES; DAILY SITTINGS; TERMS.

HISTORY. R.L. 1905 s. 132; 1913 c. 104 s. 1; G.S. 1913 s. 266; G.S. 1923 s. 222; M.S. 1927 s. 222.

Fines and costs in state cases such as misdemeanors are paid to the county treasurer. 1934 OAG 287, April 6, 1934 (306b-6).

488.11 CLERKS AND DEPUTIES; PROCESS.

HISTORY. 1891 c. 146 sc. 11 ss. 10, 11; G.S. 1894 ss. 1366, 1367; R.L. 1905 s. 133; 1913 c. 104 s. 1; G.S. 1913 s. 267; G.S. 1923 s. 223; M.S. 1927 s. 223; 1931 c. 23 s. 1.

A judge of a municipal court may not prepare or assist or advise in preparing proceedings in civil cases pending in his court. OAG May 25, 1932.

The office of clerk of the municipal court is not one within the purview of the soldiers preference act. OAG March 13, 1933.

The appointment by the court of a clerk does not require approval by the village council. OAG April 8, 1933.

The court officer of Virginia may serve a paper issued by the municipal court of Eveleth upon a resident of the city of Buhl, in Buhl, but the fees must be paid to the city treasurer of Virginia. OAG May 17, 1933.

488.12 CLERK SHALL REPORT WEEKLY.

HISTORY. 1891 c. 146 sc. 11 s. 12; G.S. 1894 s. 1368; R.L. 1905 s. 135; G.S. 1913 s. 269; G.S. 1923 s. 225; M.S. 1927 s. 225 .

Clerks of the municipal court and justices of the peace need not report to the county attorney prosecutions under a village ordinance. 1908 OAG 149, Nov. 21, 1907.

Fines for violation of Laws 1911, Chapter 156, for violations of the statute relating to weights and measures are under municipal courts established under Revised Laws 1905, payable to the village treasurer, and under Laws 1895, Chapter 229, to the state treasurer, and in any event under Laws 1911, Chapter 156, they are recoverable for the benefit of the state department of weights and measures. 1914 OAG 540, Oct. 11, 1913.

In state cases, fines are paid by the clerk, or by the judge, if he acts as his own clerk, to the treasurer of the city or village, and in turn the treasurer shall forward same to the county treasurer. OAG Aug. 13, 1924 (88).

488.13 CLERK TO DEPOSIT MONEY RECEIPTS WITH TREASURER.

HISTORY. 1891 c. 146 sc. 11 s. 12; G.S. 1894 s. 1368; R.L. 1905 s. 134; G.S. 1913 s. 268; G.S. 1923 s. 224; M.S. 1927 s. 224.

See, 1914 OAG 540, under section 488.12.

The city except in special instances, receives all the fines in connection with prosecutions and pays the costs thereof. The fees and expenses in connection with preliminary hearings should be borne by the county. OAG May 4, 1922.

In all prosecutions for violation of state statute, the fines received by the clerks of all municipal courts shall be paid to the county treasurer, except in cases in which such fines are specially appropriated to the state, in which case, of course, such fines will be paid into the state treasury. 1924 OAG 88, Sept. 6, 1923.

Under Revised Laws 1905, the village council max fix the salary of a deputy clerk. There is no legal authority for appointment of a deputy treasurer. A deputy village clerk may also be clerk of the municipal court. 1930 OAG 56, Feb. 26, 1929.

All fines collected in state cases should be paid into the county treasury, except when otherwise directed by statute. OAG April 6, 1934 (287).

Fines from traffic violations should be deposited with the village or city treasurers whose duty it is to remit to the state treasurer. OAG Aug. 12, 1936 (148).

488.14 COURT OFFICERS.

HISTORY. R.L. 1905 s. 136; 1913 c. 104 s. 1; G.S. 1913 s. 270; G.S. 1923 s. 226; M.S. 1927 s. 226.

A municipal court officer is not a policeman or under civil service regulations; an appointment by the mayor is valid without the approval of the council; and the position is within the purview of the veterans preference law. State ex rel v Eveleth, 194 M 44, 260 NW 223; State ex rel v Eveleth, 196 M 307, 265 NW 30.

In the city of Staples the city must pay all costs of criminal prosecution in the municipal court for violation of state laws and receive and retain all fines. 1910 OAG 540, June 8, 1909.

In cities and villages of less than 5,000 inhabitants the constable collects and retains the service fees, and over 5,000 inhabitants receives the same salary as a policeman and deposits fees with city treasurer as collected. OAG Jan. 19, 1916 (604).

Ex. Laws 1935-1936 apply to and control the practice in the city of St. Cloud. Any fees collected by the salaried officer of the city of Virginia must be deposited with the city treasurer. 1934 OAG 293, May 17, 1933.

Section 488.14 controls over inconsistent charter provisions. OAG Jan. 25, 1934.

488.15 REPORTER; DUTIES; FEES.

HISTORY. 1891 c. 146 sc. 11 s. 15; G.S. 1894 s. 1371; R.L. 1905 s. 137; G.S. 1913 s. 271; G.S. 1923 s. 227; M.S. 1927 s. 227.

Ex. Laws 1935, Chapter 88, Section 6, applies to St. Cloud only.

That part of Laws 1921, Chapter 362, which provides that the municipal court of the city of St. Paul shall have exclusive jurisdiction of misdemeanors and preliminary examinations in criminal cases over all of Ramsey county is unconstitutional as to all Ramsey county outside of the city. State ex rel v Gibbons, 202 M 424, 278 NW 580.

488.16 POWERS AND DUTIES; PRACTICE; RULES; FEES.

HISTORY. 1891 c. 146 sc. 11 ss. 8, 12; G.S. 1894 ss. 1364, 1368; R.L. 1905 s. 138; 1913 c. 104 s. 1; G.S. 1913 s. 272; G.S. 1923 s. 228; M.S. 1927 s. 228.

Actions in municipal courts are within the purview of section 542.09, defining the county residence of railroads, and where the venue is properly laid thereunder the defendant has no right under section 488.16 to change it to another municipal court in the same county. State ex rel v Municipal Court, 128 M 225, 150 NW 924.

The granting of a continuance to prepare for trial is largely discretionary with the trial court. Duluth v La Fleaur, 199 M 470, 272 NW 389.

The case was tried before Judge White, who died before filing his decision, whereupon on stipulation his successor, Judge Day, examined the record and decided the case thereon in favor of the plaintiff. Defendant moved for a new trial, but before a hearing thereon, Judge Day resigned. The case came on before Judge Anderson, who granted a new trial on the ground that Judge Day acted without authority and that no judge had any authority in the premises other than to grant a new trial. Held, error, Judge Day and Judge Anderson respectively were fully empowered to pass upon the record and the motion for a new trial. Butcher v Tomczik, 200 M 262, 273 NW 706.

Where a defendant is accused of contempt of court for publishing a false and inaccurate account of a trial, a writ of prohibition will not lie to prevent the judge from hearing the case. State v Laughlin, 204 M 291, 283 NW 395.

To establish a municipal court under the 1905 Laws, the council of the municipality must adopt the provisions of the act, provide suitable quarters, appoint a judge and clerk and fix their compensation. A summons is not a process. District rules apply. 1910 OAG 540, June 8, 1909.

A county is not bound to pay any part of the salary, fees or expenses of a municipal court. 1910 OAG 540, June 8, 1909.

The word "process" as used in section 488.16 does not include a summons issued in a civil action. 1918 OAG 159, May 4, 1917.

Where one pleads guilty to a charge, and is found guilty and fined, and thereafter appeals to the district court, he is presumed to have waived his right of defense and his appeal should be dismissed. OAG Dec. 9, 1930 (177).

The court officer of the municipal court of the city of Virginia, may serve papers issued out of the municipal court of the city of Eveleth, on a person in the city of Buhl. 1934 OAG 293, May 17, 1933.

Councils of cities of the fourth class have ample power to provide for the compensation of their municipal judges either by salary, or by fees or by both, and as their legislative discretion might dictate. OAG May 13, 1936 (153).

Where the state does not make out a case, the municipal court has power to dismiss the prosecution. OAG Jan. 23, 1936 (307c).

Municipal courts may suspend a fine and are not responsible for fines not collected. OAG June 1, 1937 (306b-6).

The village council has full authority as to the amount of the salary of a municipal judge. OAG Feb. 21, 1938 (308c).

Where the officer who makes the arrest and attends the trial is a salaried officer, the municipal court cannot charge or tax the expenses as costs against the individual or county. OAG May 9, 1939 (199a-3).

A municipal court established under Laws 1895, Chapter 229, may issue an order to show cause and so shorten the time of hearing on a motion to vacate a writ of attachment. OAG July 19, 1939 (361a).

Where an alternative sentence is imposed, and the court allows the defendant time to raise and pay the fine, the judge may have the defendant picked up, and may enforce the imprisonment sentence at discretion. OAG Aug. 17, 1939 (199B-3).

The judge of a municipal court which has no clerk is not required to report to the bureau of criminal apprehension under Laws 1935, Chapter 197, Section 2. 1942 OAG 26, March 10, 1942 (985F).

With the exception of the clerk's fee, expenses where a preliminary examination of an alleged criminal is heard in the municipal court, must be paid by the county. OAG June 12, 1944 (308d).

488.17 COMPENSATION; MUNICIPAL COURT CLERKS.

HISTORY. 1925 c. 182; M.S. 1927 s. 228-1.

This section is mandatory as to villages within the scope of its provisions, but as to councils of other villages they may allow the clerk to receive fees or fix compensation in a fixed amount in lieu of fees. OAG Feb. 15, 1938 (308c).

488.18 COSTS AND DISBURSEMENTS.

HISTORY. 1891 c. 146 sc. 11 ss. 12, 17, 36, 37; G.S. 1894 ss. 1368, 1373, 1392, 1393; R.L. 1905 s. 139; G.S. 1913 s. 273; G.S. 1923 s. 229; M.S. 1927 s. 229.

Under the municipal court act of St. Paul where in an action in damages the defendant counterclaims, and the verdict is in favor of defendant, but defendant is denied anything on his counterclaim, the defendant may tax costs against the plaintiff. Ballard v Railway, 129 M 494, 152 NW 868.

Plaintiff sued for $10.00 and defendant counterclaimed for the same amount. Held, defendant who recovered on his counterclaim the same amount as plaintiff on his complaint, was prevailing party and entitled to costs because he prevented recovery by plaintiff. Tank v Clark, 179 M 587, 229 NW 579.

Where only one appeal bond was necessary, but two were filed, collection of costs can be had only on one. Where the appellate court found the verdict excessive, but where at the trial the appellant took no exception to the court's charge which permitted the excessive judgment, and did not point out the amount it was excessive, the defendant is not entitled to the $25.00 statutory fee. Hackenjos v Kemper, 193 M 37, 257 NW 518, 258 NW 433.

488.19 NOTICES; UNLAWFUL DETAINER.

HISTORY. 1891 c. 146 sc. 11 s. 23; G.S. 1894 s. 1379; R.L. 1905 s. 140; 1913 c. 104 s. 1; G.S. 1913 s. 274; G.S. 1923 s. 230; M.S. 1927 s. 230.

The municipal court of Minneapolis in forcible entries and unlawful detainers cannot entertain: (1) motion for new trial, (2) motion for judgment notwithstanding. It can: (1) dismiss an action, (2) charge a jury, (3) direct a verdict, (4) determine a motion for judgment on the pleadings. In order to terminate a contract for a deed if properly drawn, a notice in the name of the owner signed by her attorney, is sufficient. Clark v Dye, 158 M 217, 197 NW 209.

Judgment for restitution having been granted against the defendant, whereupon the defendant made a motion to vacate, and in support of the motion her attorney filed an affidavit, held, not sufficient, there being no settled case or bill of exceptions. Olson v Lichten, 196 M 352, 265 NW 25.

Where the statute provides only for appeals from judgments of a municipal court, an appeal does not lie from an order denying a motion to vacate a judgment in an action in unlawful detainer. Doyle v Long, 205 M 322, 285 NW 832.

While forcible entry and unlawful detainer is a quasi criminal procedure, yet in practice it is within the general classification of "suits", and the complainant is required to deposit the prescribed fee which may be taxed as a disbursement. OAG Sept. 19, 1916 (36).

488.20 JURY TRIALS.

HISTORY. 1891 c. 146 sc. 11 s. 40; G.S. 1894 s. 1396; R.L. 1905 s. 141; G.S. 1913 s. 275; G.S. 1923 s. 231; M.S. 1927 s. 231.

Neither the constitution nor the statutes give the right of trial by jury to persons charged with petty offenses under the ordinances of a city. St. Paul v Robinson, 129 M 383, 152 NW 777.

Ex. Laws 1889, Chapter 351, Section 41, provides that two of the judges of the municipal court, together with the president of the common council, shall select the panel of jurors; but, under the city charter in force since 1914, there is no president of the council so that the duty of selecting the jury panel, or making a supplementary list, devolves upon the judges. State v Weingarth, 134 M 309, 159 NW 789.

In prosecutions for violation of a municipal ordinance, it is the duty of the city attorney to prosecute both at the trial and on appeal. The defendant is not entitled to a jury in either the municipal court or in the district court on appeal. OAG Feb. 5, 1935 (260a-13); OAG Feb. 25, 1935 (605a-11).

Unless expressly provided in an ordinance, or by charter, or by law under which the city is established, the defendant may not demand a jury trial. OAG March 2, 1938 (477a).

Where the defendant in a criminal case is entitled to a trial by jury, a law denying him such right unless he pays the jury fee is unconstitutional. OAG March 21, 1940 (41).

488.21 DRAWING JURY; FEES; SPECIAL VENIRE.

HISTORY. 1891 c. 146 sc. 11 ss. 41, 42; G.S. 1894 ss. 1397, 1398; R.L. 1905 s. 142; G.S. 1913 s. 276; G.S. 1923 s. 232; M.S. 1927 s. 232.

487.22 CRIMINAL CASES; PROSECUTION; FEES; CIVIL CASES.

HISTORY. 1891 c. 146 sc. 11 s. 48; G.S. 1894 s. 1404; R.L. 1905 s. 143; 1913 c. 104 s. 1; G.S. 1923 s. 277; G.S. 1923 s. 233; M.S. 1927 s. 233.

As applied to the city of Staples, the city shall pay the costs of all criminal prosecutions and receive all fines. 1910 OAG 540, June 8, 1909.

Laws 1913, Chapter 104, Section 143, provides that in municipal courts, misdemeanors and violations of the city ordinances shall be prosecuted by the city attorney and all other offenses by the county attorney and this applies to cities under a home rule charter. OAG Sept. 24, 1914 (44); OAG Aug. 18, 1914 (82).

Offices of city attorney and clerk of the municipal court are incompatible. 1916 OAG 364, Jan. 14, 1915.

Where in certain violations of the liquor laws the city attorney and the county attorney have concurrent jurisdiction to prosecute, either may do so and the one who first undertakes to prosecute should not be interfered with by the other. 1916 OAG 410, March 27, 1915.

Expenses of preliminary hearings should be paid by the county. 1920 OAG 298, March 27, 1919.

The justice fees in connection with the examination of offenders without doubt differs in each case, and should be computed for the services performed at the prescribed rates. 1920 OAG 300, Feb. 18, 1919.

Section 488.22 imposes on city and village attorney the duty to prosecute misdemeanors and violations of ordinances. This is in addition to those prescribed by municipal charters. OAG March 25, 1922 (28).

Violations of the game and fish act must be prosecuted by the county attorney. 1924 OAG 18, Dec. 28, 1923.

There is no law of general application governing the duty of county or city attorneys to prosecute violations of the highway traffic act. Probably the county attorney should prosecute gross misdemeanors and possibly those before a justice, and misdemeanors before the municipal court probably by the city attorney. 1928 OAG 125, Dec. 1, 1927.

All fines collected in municipal court in state cases should be paid into the county treasury. OAG April 6, 1934 (287).

As to violations of the motor vehicle laws, if the prosecution is under the state laws the county attorney must prosecute and any fines go to the state; if under city ordinances, the city attorney prosecutes and the fines go to the city. OAG Feb. 17, 1944 (989a-6).

488.23 RETRIAL OF TITLE TO LANDS.

HISTORY. 1891 c. 146 sc. 11 s. 39; G.S. 1894 s. 1385; R.L. 1905 s. 144; G.S. 1913 s. 278; G.S. 1923 s. 234; M.S. 1927 s. 234.

488.24 LIEN OF JUDGMENTS; TRANSCRIPTS; EXECUTION.

HISTORY. 1891 c. 146 sc. 11 s. 44; G.S. 1894 s. 1400; R.L. 1905 s. 145; 1913 c. 104; G.S. 1913 s. 279; G.S. 1923 s. 235; M.S. 1927 s. 235.

The offices of clerk of the district court and clerk of a municipal court are inconsistent and may not be held by the same person. This is because the clerk of the municipal court must make returns in criminal cases and make certain reports in appeals in civil cases, and failure to do so may be enforced by mandamus. 1924 OAG 180, Jan. 17, 1923.

The clerk of the municipal court of South St. Paul may issue a transcript for filing in the district court without the execution being returned unsatisfied; and may issue an execution out of the municipal court after the filing of the transcript. OAG Feb. 5, 1926 (115).

488.25 APPEALS TO DISTRICT COURT.

HISTORY. R.L. 1905 s. 146; 1913 c. 104; G.S. 1913 s. 280; G.S. 1923 s. 236; M.S. 1927 s. 236.

Defendant convicted in the municipal court of the city of Madison for violation of a city ordinance appealed to the district court of Lac qui Parle county but followed the procedure on appeals from justice court in civil cases. Held, the ap-

peal was rightfully dismissed. For the purpose of appeal, the rules relating to criminal prosecution should be followed. Madison v Martin, 109 M 292, 123 NW 809.

Appeal from municipal court to the district court was rightly dismissed because the proof of service of the notice of appeal failed to show a valid service of that notice, the service being made by mail. Santala v Hill, 143 M 289, 173 NW 651.

Appeal to the district court from the municipal court of Waseca, organized under Laws 1895, Chapter 229, must be taken under the provisions of section 532.38. Burns v Miller's, 146 M 356, 178 NW 812.

A district court order, dismissing an appeal from the municipal court of Crookston, ordering that "judgment be entered accordingly" is not appealable. Thompson v Berg, 152 M 538, 187 NW 703.

For purposes of appellate procedure, prosecutions for the violation of municipal ordinances are criminal actions, and appeals to the district court must be under the provision of sections 633.20 and 633.21. An appeal taken under the provisions of section 532.38 was properly dismissed. Crosby v Stemich, 160 M 261, 199 NW 918.

Appeal to the district court from a municipal court created under Laws 1895, Chapter 229, must be taken in the manner prescribed by Laws 1917, Chapter 283 (section 532.38). Burns v Miller's, 146 M 356, 178 NW 812.

In an action of replevin the municipal court of Worthington held that the plaintiff failed to prove default under a conditional sales contract, and plaintiff appealed to the district court. The district court is not required to make findings of fact in an appeal upon questions of law alone, and since the judgment of the municipal court was right it should not be reversed because the district court assigned a wrong reason for its affirmation. Iowa v Kingery, 181 M 477, 233 NW 18.

A defendant against whom a default judgment is entered is out of court and is not entitled to notice of further proceedings in the case. Anderson v Graue, 183 M 336, 236 NW 483.

Where the statute provides only for appeals from judgments of a municipal court, an appeal does not lie from an order denying a motion to vacate a judgment in an action in unlawful detainer. Doyle v Long, 205 M 324, 285 NW 832.

The appeal from the conciliation court to the municipal court of Duluth is proper if the addresses of the parties are shown in the proof of service only. Duff v Usiak, 215 M 33, 9 NW(2d) 319.

History of municipal court revision. 1936 OAG 153, May 13, 1936.

Defendant accused of the violation of a city ordinance is not entitled to a jury trial in the municipal court nor an appeal to the district court. It is the duty of the city attorney to prosecute in both courts. OAG Feb. 5, 1935 (260a-13).

Appeals from conviction in the municipal court for the violation of a city ordinance may be taken under the provisions of section 633.20 in this case, the city charter being silent as to appeals. OAG June 11, 1937 (6h).

Payment of a fine in justice or municipal court waives the right of appeal. 1942 OAG 10, Feb. 27, 1942 (208-G).

488.26 COURTS IN CITIES OF THIRD OR FOURTH CLASS.

HISTORY. 1909 c. 306 s. 1; 1911 c. 10 s. 1; G.S. 1913 s. 281; G.S. 1923 s. 237; M.S. 1927 s. 237; 1935 s. 114.

A writ of replevin issued pursuant to Laws 1895, Chapter 229, Section 22, is valid. An action against an officer because of an "act done in his official capacity and in virtue of his office" must be brought within three years even though it involves negligence. Dahl v Halverson, 178 M 174, 226 NW 405.

The statutes governing municipal courts in cities of the fourth class, as they stood in 1934, did not authorize the city council to discontinue the salary of a municipal judge of the city or to place the compensation of the judge back on a fee basis. State ex rel v Waseca, 195 M 266, 262 NW 633.

488.27 FEES TO BE CHARGED BY MUNICIPAL COURTS.

HISTORY. 1895 c. 229 s. 32; 1919 c. 318 s. 1; G.S. 1923 s. 239; M.S. 1927 s. 239.

A municipal judge in a city of the fourth class is elected for a term of four years and until his successor is elected and qualified. State ex rel v City of Waseca, 195 M 266, 262 NW 633.

If the municipal court of a city is established under Laws 1895, Chapter 229, or Laws 1909, Chapter 306, and the council has fixed a salary, any fees collected should be paid into the city treasury. OAG Oct. 22, 1928 (115).

Where a municipal court is established under Laws 1895, Chapter 229, and the council by ordinance fixes the salary of the municipal judge, but is silent as to the special municipal judge, such special judge can only be paid by fees collected. His compensation is not chargeable to the municipal judge. OAG Dec. 31, 1930 (179).

Municipal courts established under Ex. Laws 1933, Chapter 35, or under Laws 1935, Chapter 253, are controlled as to fees by section 488.27. OAG Jan. 16, 1936 (147).

The common councils of cities of the fourth class have power by ordinance to fix the compensation of municipal judges either by salary, or by fees, or by both. OAG May 13, 1936 (153).

488.28 FORM OF SUMMONS IN MUNICIPAL COURT.

HISTORY. 1919 c. 389 s. 1; 1921 c. 119 s. 1; G.S. 1923 s. 240; M.S. 1927 s. 240.

It is not necessary that the original summons and complaint be filed with the clerk at the time the summons is issued. The filing fee must be paid when the complaint is filed. 1920 OAG 303, June 2, 1919.

Prior to the passage of Laws 1921, Chapter 119, the form of summons in municipal court in cities of the fourth class required that the summons be subscribed by the plaintiff, or his attorney, attested in the name of the judge, and signed by the clerk under the seal of the court. 1920 OAG 309, June 19, 1919; 1920 OAG 310, June 3, 1919.

Since the passage of Laws 1921, Chapter 119, attestation of the judge and clerk not required. Under the statutory provisions, summons in actions in the municipal court are subscribed by the plaintiff, or his attorney. Any disinterested person may lawfully serve a summons. OAG March 28, 1932.

Section 488.04 provides that the city council of any village or any city of the second, third or fourth class may, by proper resolution, ordain that the municipal court of the municipality be covered by Laws 1895, Chapter 229. OAG June 6, 1928 (113).

488.29 RULES OF PRACTICE.

HISTORY. 1937 c. 268 s. 1; M. Supp. s. 214-1.

488.30 COUNTIES MAY APPROPRIATE MONEY FOR MUNICIPAL COURT.

HISTORY. 1921 c. 276 s. 1.