

MASON'S MINNESOTA STATUTES

1927

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THE GENERAL STATUTES OF 1923

EMBRACING THE ORGANIC LAWS, THE CONSTITUTION, AND THE STAT-
UTES CONTAINED IN THE GENERAL STATUTES OF 1923, EXCEPT
THOSE WHICH HAVE BEEN REPEALED OR SUPERSEDED
BY THE SUBSEQUENT LEGISLATION OF 1925
AND 1927

AND ALSO EMBRACING LAWS OMITTED FROM THE GENERAL STATUTES
1923, AND THE LAWS OF THE 1925 AND 1927 SESSIONS OF THE
LEGISLATURE UNDER APPROPRIATE CLASSIFICATION.

COMPILED AND EDITED BY THE EDITORIAL STAFF OF THE
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1927

and him there safely keep until the expiration of said
..... days, or until he shall be thence discharged
by due course of law.

Given under my hand this day of
....., 19....

J. P., Justice of the Peace.

Commitment After Arrest and Before Trial

State of Minnesota,)
County of) ss.

The State of Minnesota, to the Sheriff or Any Con-
stable, and to the Keeper of the Common Jail of
Said County:

Whereas, has been this day brought
before the undersigned, one of the justices of the peace
in and for said county, charged on the oath of
..... with having on the day of
....., 19...., at, in said county
(here state the offence as in the warrant); and, the
said not having given bail to appear
and answer for the said offence, therefore you, the
said constable, are commanded forthwith to convey and
deliver into the custody of the said keeper the body
of the said, and you, the said keeper, are
hereby commanded to receive the said
into your custody in the said jail, and him there safely
keep until he shall be required to be brought before
the court to be tried, or shall be otherwise discharged
by due course of law.

Given under my hand this day of
....., 19....

J. P., Justice of the Peace.

Order to Bring Up Prisoner

State of Minnesota,)
County of) ss.

The State of Minnesota, to the Keeper of the Common
Jail of Said County:

The undersigned, one of the justices of the peace in
and for said county, sitting as a court for the trial of
....., now in your custody in the common
jail of said county do hereby order you to bring the
said forthwith before me at my office in

the of, in said county,
together with the warrant by which he was committed
to your custody, in order that he may be tried.

Given under my hand this day of
....., 19....

J. P., Justice of the Peace.

Commitment Where Justice, On the Trial, Finds He
Has Not Jurisdiction

State of Minnesota,)
County of) ss.

The State of Minnesota, to the Sheriff or Any Con-
stable of Said County:

Whereas, of, has
been brought this day before the undersigned, one of
the justices of the peace of said county, charged on the
oath of with having on the
day of, 19...., at, in
said county, committed the offence of (here state the
offence charged in the warrant), and, in the progress
of the trial on said charge, it appearing to the said
justice that there is probable cause to believe that
said had been guilty of the offence of
(here state the new offence found on the trial), com-
mitted at the time and place aforesaid, of which of-
fence the said justice has not final jurisdiction; and
whereas, after examination had, in due form of law,
touching the said charge and offence last aforesaid,
the said justice did adjudge that the said offence had
been committed, and that there was probable cause
to believe the said to be guilty thereof;
and whereas the said has not offered
sufficient bail for his appearance to answer for said
offence, you are therefore commanded forthwith to
take the said, and him convey to the
common jail of said county, the keeper whereof is here-
by required to detain him in custody in said jail until
he shall be thence discharged according to law.

Given under my hand this day of
....., 19....

J. P., Justice of the Peace.

(4035) [7655]

CHAPTER 76

FORCIBLE ENTRY AND UNLAWFUL DETAINER

Table with 2 columns: Description and Section Number. Includes items like 'Forcible entry—Penalty', 'Unlawful detention of lands or tenements subject to fine', 'Recovery of possession', etc.

9147. Forcible entry—Penalty—No person shall
make entry into lands or tenements except in cases

where his entry is allowed by law, and in such cases
he shall not enter by force, but only in a peaceable
manner. If any person does to the contrary, he shall
be punished by fine. (4036) [7656]

19-174, 137; 66-416, 418, 69+218; 72-446, 75+701; 85-90,
88+426; 110-186, 124+1094.

Breach of condition of lease. (138-179, 164+807, 194+
102).

156-71, 194+102.

Municipal courts. 158-217, 197+209.

9148. Unlawful detention of lands or tenements sub-
ject to fine—When any person has made unlawful or
forcible entry into lands or tenements, and detains
the same, or, having peaceably entered, unlawfully de-
tains the same, he shall be fined, and the person en-
titled to the premises may recover possession thereof
in the manner hereinafter provided. (R. L. '05 § 4037,
G. S. '13 § 7657, amended '17 c. 227 § 1)

Forcible entry statute inapplicable (127-93, 148+983).

In an action to foreclose a mortgage, where the mortgagor had died leaving a widow and children as his heirs at law, a receiver was appointed to take possession of the land mortgaged. The widow, as administratrix of her husband's estate and in her own right, was a party to the action, but the children were not. Prior to the appointment of the receiver, one of the children took possession of the land. Held, that the receiver could not recover possession by resorting to unlawful detainer proceedings. 157-485, 196+661.

9149. Recovery of possession—When any person holds over lands or tenements after a sale thereof on an execution or judgment, or on foreclosure of a mortgage and expiration of the time for redemption, or after termination of contract to convey the same, or after termination of the time for which they are demised or let to him or to the persons under whom he holds possession, or contrary to the conditions or covenants of the lease or agreement under which he holds, or after any rent becomes due according to the terms of such lease or agreement, or when any tenant at will holds over after the determination of any such estate by notice to quit, in all such cases the person entitled to the premises may recover possession thereof in the manner hereinafter provided. (R. L. '05 § 4038, G. S. '13 § 7658, amended '17 c. 227 § 2)

157-485, 196+661, note under § 9148; 166-33, 206+944.

Complaint and objections thereto. 160-428, 200+470.

1. **Election of remedies**—53-483, 487, 55+630.

2. **Nature and object of action**—8-524, 467; 14-170, 131; 25-183; 28-267, 273, 9+772; 28-388, 389, 10+417; 53-483, 486, 55+630; 62-370, 64+911; 67-449, 451, 70+567; 81-445, 450, 84+454.

3. **Jurisdiction**—Original jurisdiction limited to justice and municipal courts (53-483, 55+630). Municipal court of Minneapolis has no jurisdiction in proceedings based on breach of contract of lease of lands partly within and partly without Hennepin county (99-426, 109+827).

The Municipal Court Act of the city of Minneapolis. c. 34, Special Laws 1889, as amended by chapter 407, Laws 1917, gives jurisdiction of action in unlawful detainer, whether the title to real estate is involved or not. 161-157, 201+299.

The lessee of a homestead, the lease being void because the wife of the lessor failed to sign it, becomes a tenant at will when he enters into possession under the lease, and is bound to pay rent in accordance with the terms thereof. If he fails to do so, he may be evicted under the unlawful detainer statute. 166-190, 207+498.

4. **When action will lie**—Conventional relation of landlord and tenant essential (28-267, 273, 9+772; 30-393, 15+678; 47-269, 50+227; 81-445, 451, 84+454. See 8-524, 467; 73-108, 75+1039). Unnecessary that detainer be forcible (36-80, 30+446). Will lie against tenant withholding possession after expiration of his term (28-267, 273, 9+772; 30-393, 15+678; 31-430, 18+151; 47-1, 49+327; 53-456, 55+603; 70-102, 72+841); contrary to the conditions or covenants of the lease or agreement (28-267, 273, 9+772; 29-432, 13+676; 32-291, 20+232; 36-80, 30+446; 36-102, 30+400; 51-358, 53+805; 67-449, 451, 70+567; 89-444, 95+314); after rent becomes due according to the terms of the lease or agreement whether the lease contains a re-entry clause or not (21-398; 22-37; 26-99, 1+820; 41-542, 546, 43+479; 45-26, 47+397; 61-448, 63+1099; 72-100, 75+114; 74-279, 77+3).

5. **Who may maintain**—Grantee of lessor (81-445, 84+454). Subsequent lessee from lessor (30-393, 15+678).

6. **Parties defendant**—Subtenants (31-430, 18+151; 34-470, 26+602). Servants, agents or members of family of tenant (34-470, 26+602).

7. **Demand—Notice to quit**—If the action is based on the ground of non-payment of rent no notice to quit or demand of rent is necessary before suit whether the tenancy is for a fixed term or at will (21-398; 22-37; 36-173, 30+457; 72-100, 75+114; 74-279, 77+3). If the action is based on the ground of expiration of a fixed term no notice to quit is necessary before suit (30-122, 14+510); otherwise if tenancy is at will.

8. **Actions against mortgagors holding over**—22-349, 30-27, 14+56; 37-76, 33+440; 47-269, 50+227; 60-6, 61+818; 66-262, 68+1087; 67-197, 69+887; 73-58, 61, 75+756.

9. **Actions against debtor holding over after execution sale**—4-298, 215; 25-183; 35-367, 368, 29+3. See 37-76, 33+440.

10. **Transfer to district court**—An action for forcible entry and unlawful detainer, transferred to district court after it appears that title to real estate is involved, is in effect an action in ejectment (105-348, 117+512).

127-93, 148+983.

A month's notice to quit entitles lessor to possession (128-534, 150+1102; 138-179, 164+807). Unlawful de-

tainer judgment not a bar to action on title (162-330, 188+732; 154-228, 191+824; 194+722).

9150. Limitation—No restitution shall be made under this chapter of any lands or tenements of which the party complained of, or his ancestors, or those under whom he holds the premises, have been in quiet possession for three years next before the filing of the complaint, after the determination of the leasehold estate that he may have had therein. (4039) [7659]

45-26, 47+397; 81-445, 453, 84+454.

9151. Complaint and summons—The person complaining shall file a complaint with a justice of the peace, describing the premises of which possession is claimed, stating the facts which authorize the recovery, and praying for restitution thereof. The justice shall thereupon issue a summons, directed to the sheriff or any constable of the county, commanding him to summon the person against whom such complaint is made to appear before him on a day and at a place in such summons named, which shall not be less than three nor more than ten days from the day of issuing the same. A copy of the complaint shall be attached to the summons, which shall state that it is so attached, and that the original has been filed. (4040) [7660]

Requisites of complaint under § 9148 (19-174, 137. See 37-76, 33+440). Requisites of complaint under § 9149 (1-88, 67; 1-179, 153; 9-34, 23; 21-398, 30-122, 14+510; 43-458, 45+864). Pleadings to be construed as in ordinary civil actions (53-456, 459, 55+603). Cited (28-461, 462, 11+63). Summons in municipal court of St. Paul, when returnable (101-253, 112+220).

9152. Summons—How served—The summons shall be served at least three days before the return day thereof by delivering a copy to the person against whom it is issued or if such person be a corporation, a minor under fourteen years of age or a person under guardianship, by delivering a copy as provided in the case of a service of summons in a civil action in the district court; but in case such person cannot be found in the county, the summons may be served on him at least six days before the return day thereof, by leaving a copy thereof at his last usual place of abode with a member of his family, or a person of suitable age and discretion residing at such place, or if he had no place of abode, by leaving a copy thereof upon the premises described in the complaint with a person of suitable age and discretion occupying the same or any part thereof: Provided, that in case the defendant has no usual place of abode and cannot be found in the county, of which the return of the officer, shall be prima facie proof, and further that there is no person actually occupying the premises described in the complaint, then upon the filing of an affidavit by the plaintiff or his attorney in the court in which said action is brought stating that no person is actually occupying said premises and that he believes the defendant is not in said state, or cannot be found therein, and either that he has mailed a copy of the summons to the defendant at his last known address, or that such address is not known to him, service of the summons may be made upon such defendant by posting the summons in a conspicuous place on said premises one week and by one week's published notice thereof in some newspaper printed and published in the county wherein said action is brought, or, if there be no newspaper therein, then in some newspaper printed and published at the capitol of the state and if upon the return day the said defendant or his attorney does not appear in said court in said action then the trial thereof shall be continued for one week to enable the defendant to

make his appearance and defend therein. (R. L. § 4041, amended '09 c. 496 § 1) [7661]

89-444, 95+314. Cited (101-253, 112+220).

9153. Answer—Trial—After the return of the summons, at the time and place appointed therein, if the defendant appear, he may answer the complaint, and all matters in excuse, justification, or avoidance of the allegations thereof shall be set up in the answer; and thereupon the justice shall hear and determine the action, unless he shall adjourn the trial as provided in § 9154, but either party may demand a trial by jury. The proceedings in such action shall be the same as in other civil actions in a justice's court, except as in this chapter otherwise provided. (4042) [7662]

Defendant must answer, if at all, on the return day or at such other time as the justice may designate (42-35, 43+687). Oral plea of not guilty (89-444, 95+314). Matters requiring affirmative equitable relief cannot be set up by answer (28-267, 273, 94772; 31-392, 18+101; 53-456, 55+603; 68-328, 331, 71+395, 72+71; 73-108, 113, 75+1039). Matters which control the legal effect of the lease may be set up (28-267, 273, 94772). Matters in "excuse, justification, or avoidance" are such as constitute "new matter" under general practice act (101-155, 111+962). Held not a defence (36-80, 30+446; 53-204, 209, 54+112; 61-448, 63-1099; 67-449, 70+567). Defendant cannot set up a counterclaim (67-449, 70+567). See 14-469, 351). If the complaint is insufficient defendant may move to dismiss (28-388, 390, 10+417). Judgment on the pleadings (53-456, 55+603; 61-448, 63+1099). Burden of proof (8-524, 467; 89-444, 446, 95+314). Waiver of jury trial (21-393). Justice not required to wait an hour for appearance of defendant (22-37). Section 9153 deals only with judgment upon a trial on merits, and is not inconsistent with entry of judgment when there is no such trial (102-237, 113+383).

165-262, 206+168.

Practice in municipal court. 154-225, 194+722.

A justice of the peace cannot entertain motions for a new trial, nor should a judge of the municipal court, in actions of this nature, where he must follow the practice prescribed for a justice of the peace. 154-225.

The answer set forth matters strictly legal, and the court had jurisdiction to entertain the same. 157-161, 195+898.

The municipal court of Minneapolis in forcible entries and unlawful detainers cannot entertain (1) a motion for a new trial; (2) a motion for judgment notwithstanding the verdict. It can, however, (a) dismiss an action; (b) discharge a jury; (c) direct a verdict; (d) entertain and determine a motion for judgment on the pleadings. 158-217, 197+209.

9154. Adjournment—Security for rent—The justice, in his discretion, may adjourn the trial, but not beyond six days after the return day, unless by consent of parties; but in all cases mentioned in § 9149, except in an action upon a written lease signed by both parties thereto, if the defendant, his agent or attorney, shall make oath that he cannot safely proceed to trial for want of a material witness, naming him, and that he has made due exertion to obtain said witness, and believes that, if such adjournment be allowed, he will be able to procure the attendance of such witness at the trial, or his deposition, and shall give bond conditioned to pay to the plaintiff all rent which may accrue during the pendency of the action, and all costs and damages consequent upon such adjournment, the justice shall adjourn the trial for such time as may appear necessary, not exceeding three months. (4043) [7663] 41-542, 547, 43+479; 72-100, 75+114.

9155. Judgment—Fine—Execution—If, upon the trial, the justice or jury find the defendant or any of several defendants guilty of the allegations in the complaint, the justice shall thereupon enter judgment that the plaintiff have restitution of the premises, and tax the costs for him, and, when the action is brought under § 9148, shall impose such a fine against the defendant, not exceeding one hundred dollars, as he may deem just. The justice shall issue execution in favor of the plaintiff for such costs, and also issue a writ

of restitution. If the justice or jury shall find that the defendant is not guilty as aforesaid, he shall enter judgment for the defendant, tax the costs against the plaintiff, and issue execution therefor. (4044) [7664]

Justice has reasonable time to enter judgment (21-398). Judgment on default without proof unauthorized (28-461, 11+63). Findings (26-99, 1+820; 28-461, 11+63). Judgment of dismissal on appeal (40-211, 41+972). Judgment as a bar (68-328, 330, 71+395, 72+71). Cited 89-444, 446, 95+314. Form of judgment held sufficient (63-456, 55+603). Damages for withholding or for rent cannot be recovered. The only judgment that can be rendered is for restitution and costs (53-483, 487, 55+630).

See 102-237, 113+383.

Motion for new trial cannot be entertained by Justice or Municipal Judge (154-228, 191+824, 194+722).

Effect of judgment in such actions, following William Welsman Holding Co. v. Miller, 152 Minn. 330, 188 N. W. 722, 157-161, 195+898.

In an action in unlawful detainer, where a verdict was returned in favor of the party in possession, and the plaintiff on the same day executed a conveyance of the premises to a third party, who brought another action in unlawful detainer involving the same state of facts, held, that the former was res judicata. 161-157, 201+299.

9156. Disagreement—If the jury cannot agree upon a verdict, the justice may discharge them, and issue a venire, returnable forthwith, or at some other time agreed upon by the parties or fixed by the justice, for the purpose of impaneling a new jury. (4045) [7665] 53-232, 233, 54-1118.

9157. Writ of restitution—Effect of appeal—If the party against whom judgment for restitution is rendered or his attorney state to the justice that he intends to take an appeal, a writ of restitution shall not issue for twenty-four hours after judgment: Provided, that in an action on a lease, against a tenant holding over after the expiration of the term thereof, or a termination thereof by a notice to quit, such writ may issue forthwith notwithstanding such notice of appeal, if the plaintiff give a bond conditioned to pay all costs and damages in case on the appeal the judgment of restitution be reversed and a new trial ordered. (R. L. § 4046, amended '09 c. 496 § 2) [7666]

29-432, 433, 13+676; 53-483, 55+630; 85-90, 88+426; 123-377, 143+980.

Plaintiff's eviction from the building in which he kept his property did not ipso facto deprive him of the right to remove the property. He had a reasonable time thereafter within which he might remove it. 161-135, 201+537.

9158. Appeal—Stay—If either party feels aggrieved by the judgment he may appeal within ten days as in other cases triable before justices of the peace except that if the party appealing remains in possession of the premises, his bond shall be conditioned to pay all costs of such appeal and abide the order the court may make therein and pay all rents and other damages justly accruing to the party excluded from possession during the pendency of the appeal. Upon the taking of such appeal all further proceedings in the case shall be stayed, except that in an action on a lease against a tenant holding over after the expiration of the term thereof or termination thereof by notice to quit, if the plaintiff give bond as provided in § 9157, a writ of restitution shall issue as if no appeal had been taken and the appellate court shall thereafter issue all needful writs and processes to carry out any judgment which may be rendered in such court. (R. L. § 4047, amended '09 c. 496 § 3) [7667]

Defective bond. Right to file new bond (59-107, 60+1083). Right of possession on appeal by defendant with stay bond (85-90, 88+426). Cited (23-415, 419). See 102-237, 113+383.

9159. Appeal after issuance of writ—Stay—If a writ of restitution has issued before the taking of an appeal, the justice shall give appellant a certificate of

the allowance thereof and upon service of such certificate upon the officer having the writ he shall cease all further proceedings thereunder and if the writ has not been completely executed the defendant shall remain in possession of the premises until the determination of the appeal, but this section shall not apply to a case where judgment for restitution has been entered on a lease against a tenant holding over after the expiration of the term thereof or determination thereof by notice to quit. (R. L. § 4048, amended '09 c. 496 § 4) [7668]

85-90, 96, 88+426.

9160. Not to be dismissed for form—Amendments—Return—In all cases of appeal, the appellate court shall not dismiss or quash the proceedings for want of form only, provided they have been conducted substantially in accordance with the provisions of this chapter. Amendments may be allowed at any time, upon such terms as to the court may appear just, in the same cases and manner and to the same extent as in civil actions. The court may compel the justice, by attachment, to make or amend any return which is withheld or improperly or insufficiently made. (4049) [7669]

9161. Form of verdict—The verdict of the jury or the finding of the court in favor of the plaintiff in an action under this chapter shall be substantially in the following form:

At a court held at on the day of, 19..., before, a justice of the peace in and for the county of..... in an action between, plaintiff, and, defendant, the jury (or, if the action be tried without a jury, the court) find that the facts alleged in the complaint are true, and that the said defendant is guilty thereof, and the said plaintiff ought to have restitution of the premises therein described without delay.

If the verdict or finding be for the defendant, it shall be sufficient to find that the facts alleged in the complaint are not true, and that the defendant is not guilty. (4050) [7670]

9162. Forms of summons and writ—The summons and writ of restitution may be substantially in the following forms:

Form of Summons

State of Minnesota,)
County of) ss.
The State of Minnesota, to the Sheriff or Any Constable of the County Aforesaid:

Whereas,, of, hath filed with the undersigned, a justice of the peace in and for said county, a complaint against, of, a copy whereof is hereto attached: Therefore you are hereby commanded to summon the said, if to be found in said county, to appear before the undersigned on the day of, 19..., at o'clock ... m., at, then and there to make answer to and defend against the complaint aforesaid, and further to be dealt with according to law; and make due return to me of this summons, with your doings thereon.

Dated at, this day of, 19...
Justice of the Peace.

Form of Writ of Restitution

State of Minnesota,)
County of) ss.
The State of Minnesota, to the Sheriff or Any Constable of the County Aforesaid:

Whereas,, plaintiff, of, in an action for an unlawful or forcible entry and detainer (or for an unlawful detainer, as the case may be), at a court held at, in the county aforesaid, on the day of, 19..., before, a justice of the peace in and for said county, by the consideration of the court, recovered a judgment against, of, to have restitution of (here describe the premises as in the complaint):

Therefore, you are hereby commanded that, taking with you the force of the county, if necessary, you cause the said to be immediately removed from the aforesaid premises, and the said to have peaceable restitution of the same. You are also hereby commanded that of the goods and chattels of the said within said county you cause to be levied, and, the same being disposed of according to law, to be paid to the said the sum of dollars, being the costs taxed against the said for the said, at the court aforesaid, together with twenty-five cents for this writ; and thereof, together with this writ, make due return within thirty days from the date hereof, according to law.

Dated at, this day of, 19...

Justice of the Peace.
(4051) [7671]

9163. Execution of the writ of restitution—The officer holding the writ of restitution shall execute the same by making a demand upon defendant if he can be found in the county or any adult member of his family holding possession of the premises, or other person in charge thereof, for the possession of the same, and that the defendant remove himself, his family and all of his personal property from such premises within twenty-four hours after such demand. If defendant fails to comply with the demand, then the officer shall take with him, necessary, the force of the county and whatever assistance may be necessary, at the cost of the complainant, remove the said defendant, his family and all his personal property from said premises detained, immediately and place the plaintiff in the possession thereof. In case defendant cannot be found in said county, and there is no person in charge of the premises detained, so that no demand can be made upon the defendant, then the officer shall enter into the possession of said premises, breaking in if necessary, and shall remove all property of the defendant at the expense of the plaintiff. The plaintiff shall have a lien upon all of the goods upon said premises for the reasonable costs and expenses incurred for removing said personal property and for the proper caring and storing the same, and the costs of transportation of the same to some suitable place of storage, in case defendant shall fail or refuse to make immediate payment for all the expenses of such removal from said premises and plaintiff shall have the right to enforce such lien by detaining the same until paid, and in case of nonpayment for sixty days after the execution of the writ, shall have the right to enforce his lien and foreclose the same by public sale as provided for in case of sales under chapter 328 of the general laws of 1905. (R. L. § 4051½, amended '09 c. 496 § 5) [7672]

138-180, 164+807.

1940 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1940)
(Superseding Mason's 1931, 1934, 1936 and 1938
Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, 1937 and 1939 General Sessions, and the 1933-34, 1935-36, 1936 and 1937 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.



Edited by
William H. Mason
Assisted by
The Publisher's Editorial Staff

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1940

It is sufficient to state the facts and identify the ordinance by number. 177M617, 225NW286.
Section is not applicable where the charge constitutes a felony. Op. Atty. Gen., Aug. 5, 1930.

9114. Action, when tried.

Justice lost jurisdiction by failing to decide criminal prosecution within three days from date of hearing. Op. Atty. Gen. (266b-11), Oct. 1, 1937.

9115. Bail—Commitment.

Justice of the peace cannot accept cash bail. Op. Atty. Gen. (266a-2), Aug. 28, 1934.

9117. Arraignment.

Right of defendant to appeal after plea of guilty in municipal court. Op. Atty. Gen., Dec. 9, 1930.

9119. Plea of not guilty.

One prosecuted for violation of a village ordinance is not entitled to a jury trial and city is not liable for jury fees. Op. Atty. Gen. (605a-11), Feb. 25, 1935.

9127. Judgment on conviction.—Whenever the accused is tried under the preceding provisions of this sub-division and found guilty, or is convicted on a plea of guilty, the justice shall render judgment thereon and inflict such punishment, either by fine or imprisonment or both as the nature of the case may require, provided, however, that when the facts of the case so warrant the justice shall have power in his discretion to suspend sentence or place the defendant on probation for a period not exceeding one year, or where a fine has been imposed to order such fine to be paid in installments over a period not exceeding one year. (As amended Mar. 8, 1937, c. 60, §1.)

Justice of peace has power to suspend sentence. Op. Atty. Gen. (266b-21), Sept. 16, 1937.

Justice lost jurisdiction by failing to decide criminal prosecution within three days from date of hearing. Op. Atty. Gen. (266b-11), Oct. 1, 1937.

After a sentence has been imposed and commitment issued, justice's jurisdiction is terminated and he cannot reduce fine or jail sentence imposed. Op. Atty. Gen. (266b-21), Apr. 7, 1938.

Village justice is entitled to his fees in prosecutions for violation of city ordinances, though prosecution is dismissed or sentence suspended. Op. Atty. Gen. (266b-8), July 1, 1938.

Where judge of municipal court allows offender to pay fine in installments or in one payment at some future date, judge can have offender picked up on a warrant and committed to jail for failure to pay fine, but only in event alternative sentence is imposed in first instance. Op. Atty. Gen. (199B-3), August 17, 1939.

9129. Appeal—Requisites.

A cash bond may not be posted with justice of peace in lieu of recognizance with sureties. Op. Atty. Gen. (266b-1), May 29, 1934.

Two dollar appeal fee applies only to civil actions and not to criminal appeals from justice court to district court. Id.

It is duty of one appealing from conviction of violation of village ordinance to proceed in same manner as from judgment from justices of the peace in civil actions and not in manner provided in §9129 and it is his duty to serve notice of appeal upon village or its attorney and not upon county attorney. Op. Atty. Gen. (779a-5), Nov. 20, 1935.

Where city charter is silent on appeal from convictions of violation of ordinance in municipal court, appeals may be taken under this section. Op. Atty. Gen. (6h), June 11, 1937.

9130. Allowance of appeal.

Where there is an appeal from conviction in justice court for violation of game and fish laws, revocation of defendants license is ineffective until conviction on appeal. Op. Atty. Gen.; Dec. 19, 1929.

9131. How tried.

Roehrs v. T., 185M154, 240NW111; note under §9277.
On appeal from a conviction in a justice court of violation of a municipal ordinance, district court has no jurisdiction to try and convict defendant for a crime against a statute which is beyond jurisdiction of justice court, there having been no new and original proceeding against defendant in district court. State v. Kartak, 195M188, 262NW221. See Dun. Dig. 5349.

Defendant may enter plea of guilty in district court on appeal from justice court conviction. Op. Atty. Gen. (341b), June 4, 1937.

9136. Certificate of conviction, etc.

Amount paid attorney appointed by court to represent a defendant in justice court in a criminal case should not be included as part of costs in action. Op. Atty. Gen. (121b-17), Jan. 28, 1935.

Justice need not report prosecutions under village ordinances. Op. Atty. Gen. (266b-17), Dec. 3, 1937.

9137. Report to county attorney.

Where grand larceny case against a number of boys was transferred from justice court to juvenile court, references to such case should be left entirely out of report unless boys were remanded to custody of justice court for the purpose of binding them over to district court. Op. Atty. Gen. (121b-17), Jan. 28, 1935.

Justice need not report prosecutions under village ordinances. Op. Atty. Gen. (266b-17), Dec. 3, 1937.

9142. Judgment on conviction—Commitment—Execution.

A justice of the peace has no authority to permit a defendant to defer payment of any part of the fine, but he has authority to receive the fine at any time. Op. Atty. Gen., Sept. 5, 1931.

Justice of the peace must see that fines are paid or defendant committed to jail, but fines may be collected by execution. Op. Atty. Gen., Aug. 15, 1933.

Successor of deceased justice is not compelled to issue commitment on four-year-old judgment. Op. Atty. Gen., Oct. 3, 1933.

Whether judge of municipal court in Waseca may include fees paid jurors as part of costs in a criminal case discussed but not determined because it involved a pending case. Op. Atty. Gen. (306B), June 27, 1939.

9145. Fines—How collected and paid over.

A justice of the peace, where the prescribed punishment is in the alternative as between a fine or jail sentence, may impose a straight jail sentence without the option of a fine, but where a defendant is sentenced to pay a fine and an alternative jail sentence is imposed in default of payment of the fine, the commitment should so state because the defendant is entitled to pay his fine to the sheriff any time after he is committed, and thereupon be released. Op. Atty. Gen., Feb. 28, 1931.

A justice of the peace has no authority to permit a defendant to defer payment of any part of the fine, but he has authority to receive the fine at any time. Op. Atty. Gen., Sept. 5, 1931.

Justice of the peace may not deduct costs in dismissed cases from fines collected in other cases, but should remit full amount and make a separate claim for any sum due him. Op. Atty. Gen. (199b-5), Jan. 13, 1938.

Fines collected for violation of ordinances or by-laws of a town regulating traffic on town roads must be paid into county treasury. Op. Atty. Gen. (989B-4), May 20, 1939.

CHAPTER 76

Forcible Entry and Unlawful Detainer

9148. Unlawful detention of lands or tenements subject to fine.

In forcible entry and detainer, exclusion of evidence of defendants of nondelivery of quitclaim deed to plaintiffs, held not error in absence of showing that it affected plaintiff's actual possession. Mutual Trust Life Ins. Co. v. B., 187M503, 246NW9. See Dun. Dig. 3244.

Evidence that plaintiff had been in actual possession of building for over a year and that defendant entered unlawfully, warranted directed verdict for restitution. Mutual Trust Life Ins. Co. v. B., 187M503, 246NW9. See Dun. Dig. 3783.

It is not necessary to prove that detention was forcible, but it is sufficient to prove it to be unlawful. Mutual Trust Life Ins. Co. v. B., 187M503, 246NW9. See Dun. Dig. 3783.

In forcible entry and detainer, court did not err in excluding from evidence decree to which defendants were not parties or privies. Mutual Trust Life Ins. Co. v. B., 187M503, 246NW9. See Dun. Dig. 5156.

9149. Recovery of possession.

½. In general.

Minn. Bldg. & Loan Ass'n. v. C., 182M452, 234NW872.
Landlord of apartment on which rent is payable from week to week cannot retake possession of premises when tenant defaults, unless he reserves the right, and is guilty of coercion in rendering apartment uninhabitable to force tenant to remove without resort to unlawful detainer proceedings. State v. Brown, 203M505, 282NW 136. See Dun. Dig. 5448.

4. When action will lie.

Force is not a necessary element to authorize action. 178M282, 226NW847.

To render a constructive eviction a defense tenant must abandon or surrender premises on account thereof. Leifman v. P., 186M427, 243NW446. See Dun. Dig. 6425.

Description of property in lease and in contract for deed held substantially same and sufficient to readily identify property. Gruenberg v. S., 188M568, 248NW724. See Dun. Dig. 3785.

Mortgagee in possession is entitled to hold it as against mortgagor in action of forcible entry and detainer, mortgagor being in default. Schmit v. D., 189M420, 249NW580. See Dun. Dig. 6242.

In a proceeding under §2188, plaintiff's tax title being found defective, a lien was adjudged against premises and judgment entered, execution levied, and sale made to plaintiff pursuant thereto, held, no confirmation of sale was necessary under §§2185, 2186, and an unlawful detainer action was proper action to recover possession during existence of defendant's life estate, which was subject to specific lien of tax judgment. Trask v. R., 193M213, 258NW164. See Dun. Dig. 9531.

All that is necessary to entitle lessor to summary relief is to show that rent is unpaid. State v. Brown, 203M505, 282NW136. See Dun. Dig. 5449.

5. Who may maintain.

Lessee held real party in interest as against one in possession of property holding over after cancellation of a contract for deed. Gruenberg v. S., 188M568, 248NW724. See Dun. Dig. 3783.

Sheriff may maintain action against tenant on land bid in by state for non-payment of taxes. Op. Atty. Gen. Sept. 3, 1929.

In unlawful detainer action to recover land acquired by state for taxes, county attorney may appear as sole counsel, but there can be no eviction for two years after forfeiture for taxes for 1926 or 1927. Op. Atty. Gen. (525), Sept. 12, 1937.

6. Parties defendant.

Husband of person holding under contract for deed could be ejected in separate action against him alone. 178M282, 226NW847.

In forcible entry, evidence held to sustain finding that defendant was mortgagee in possession. Schmit v. D., 189M420, 249NW580. See Dun. Dig. 6238.

7. Demand—notice to quit.

Where a tenant is in default in the payment of rent, the landlord's right of action for forcible entry and unlawful detainer is complete notwithstanding the lease contains a right to terminate optional with the landlord and effective upon sixty days' notice. First Minneapolis Trust Co. v. L., 185M121, 240NW459. See Dun. Dig. 6440(88).

10. Transfer to district court.

In action in justice court under unlawful detainer statute, cause is not removable to district court, on ground that title to real estate is involved, unless and until such title comes in issue on evidence presented in that court. Minneapolis Sav. & Loan Ass'n v. K., 198M420, 270NW148. See Dun. Dig. 3784.

9151. Complaint and summons.

A party who appeals from justice court to district court upon questions of law and fact waives objections to irregularities in proceedings in justice court, including failure to file complaint. Schutt v. B., 201M106, 275NW413. See Dun. Dig. 5331.

9152. Summons—How served.

Herreid v. D., 193M618, 259NW189; note under §9155.

9153. Answer—Trial.

In forcible entry and unlawful detainer cases, municipal court of Minneapolis has no power to entertain a motion for a new trial or a motion for judgment in favor of defendant notwithstanding decision for plaintiff. Olson v. L., 196M352, 265NW25. See Dun. Dig. 3784.

9155. Judgment—Fine—Execution.

Judgment in previous action for wrongful detainer, held not estoppel in second action for same relief. Steinberg v. S., 186M640, 244NW105. See Dun. Dig. 5159, 5163, 5167.

Judgment for vendor in unlawful detainer was res judicata in action to recover purchase money paid on theory that vendor repudiated contract for deed. Herreid v. D., 193M618, 259NW189. See Dun. Dig. 5161, 5162, 5163.

In action for damages for being kept out of possession, finding that, in a former action to vacate a judgment for restitution entered in municipal court district court had found that said judgment has never been vacated or modified and that plaintiff has not waived his right to proceed thereunder, is decisive against defendants. Hermann v. K., 198M331, 269NW836. See Dun. Dig. 3783.

Reasonable value of seed used for sowing a crop upon a farm by occupant who has vacated same, for which there can be no recovery quasi ex contractu, cannot be allowed in mitigation of damages recovered by owner against occupant for a violation of his covenant to surrender possession of premises in good repair at expiration of term. Mehl v. N., 201M203, 275NW843. See Dun. Dig. 5471.

9157. Writ of restitution.

Defendant evicted from premises under a writ of restitution has a right to appeal and have a trial de novo. 178M460, 227NW656.

Injunction of federal court restraining enforcement of a judgment of restitution in unlawful detainer action pending review by order of referee in bankruptcy did not give defendant any rights as an occupant of land except that it prevented plaintiff from enforcing restitution, as affecting right of defendant to recover value of seed planted by him during operation of restraining order. Mehl v. N., 201M203, 275NW843. See Dun. Dig. 5473.

An owner who obtains possession of his land acquires title to all crops growing on land at time. Id.

9158. Appeal.

178M460, 227NW656; note under §9157.

Roehrs v. T., 185M154, 240NW111; note under §9277.

9163. Execution of the writ of restitution.

A tenant in default in payment of rent is entitled to remain in possession until dispossessed by writ of restitution. State v. Brown, 203M505, 282NW136. See Dun. Dig. 5473.

One moving back day following his removal under writ of restitution and using seed and grain belonging to owner is not guilty of trespass but may be prosecuted for larceny and also for unlawful entry. Op. Atty. Gen. (494b-20), Nov. 26, 1934.

CHAPTER 77

Civil Actions

9164. One form of action—Parties, how styled.

In an action to recover damages for the failure of a bank to perform an agreement with a customer to pay, out of funds placed in its hands, an existing mortgage upon the customer's real property, general damages for injury to the customer's credit standing and for mental suffering are not recoverable. Swanson v. F., 185M39, 239NW900. See Dun. Dig. 2559-2569.

Forms of action being abolished, nature of a cause of action is to be determined by facts alleged and not by formal character of complaint. Walsh v. M., 201M58, 275NW377. See Dun. Dig. 7526a, 7528b.

While law and equity are under the code only within jurisdiction of and administered by the same court, there still remains substantial remnants of old systems. Lind v. O., 204M30, 282NW661. See Dun. Dig. 94.

A party is put to election only between inconsistent remedies, and there is no occasion for election when remedies are consistent with one another and there is no inconsistency between remedy on note of one guilty of tort and cause of action in tort against maker of the note and joint tortfeasor. Penn Anthracite Mining Co. v. C., 287NW15. See Dun. Dig. 2910.

COMMON LAW
DECISIONS RELATING TO ACTIONS
IN GENERAL**1. Election of remedy.**

Election of remedies. 171M65, 212NW738.

Action to recover on an express contract, held not an election of remedies so as to bar a subsequent action in conversion. 178M93, 226NW417.

A judgment entered on a verdict directed for the defendant on the ground that the defendant was not authorized by the law under which it was organized to execute the promissory notes alleged as causes of action by the receiver of the payee bank is not a bar to action for money had and received. Turner v. V., 182M115, 233NW856. See Dun. Dig. 5169.

Where the party defrauded has performed his contract to a substantial extent before discovering the fraud, he may elect to continue performance and sue for the fraud, without attempting to rescind. Osborn v. W., 183M205, 236NW197. See Dun. Dig. 10092(61), (62).

If the defrauded party relies solely on a guaranty or warranty, there can be no recovery on the ground of