

REVISED LAWS OF
MINNESOTA 94

SUPPLEMENT 1909

CONTAINING

THE AMENDMENTS TO THE REVISED LAWS,
AND OTHER LAWS OF A GENERAL AND
PERMANENT NATURE, ENACTED
BY THE LEGISLATURE IN
1905, 1907, AND 1909

WITH HISTORICAL AND EXPLANATORY NOTES TO PRIOR STATUTES
AND FULL AND COMPLETE NOTES OF ALL
APPLICABLE DECISIONS

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§ [3999—]1 FORCIBLE ENTRY AND UNLAWFUL DETAINER. (Ch. 76

ordinances or by-laws of the city or village shall be examined or tried by the municipal court therein existing; provided that this act shall not apply to any cities or villages having justice of the peace courts established by home rule charter, nor to territory within one-half mile of the outer limits of the state fair grounds. (G. S. 1894, § 5093, as amended by Laws 1905, c. 104, and Laws 1907, c. 234.)

Historical.—"An act to amend section five thousand and ninety-three of the General Statutes of Minnesota for the year one thousand eight hundred and ninety-four relating to jurisdiction of justices of the peace," approved April 5, 1905 (Laws 1905, c. 104), as amended by "an act to amend section one of chapter one hundred and four of the General Laws of the State of Minnesota for the year one thousand nine hundred and five, relating to jurisdiction of justices of the peace," approved April 18, 1907 (Laws 1907, c. 234).

G. S. 1894, § 5093, was section 130 of G. S. 1866, c. 65, which was repealed by R. L. § 5518; the provisions of said section being incorporated in R. L. § 3999.

4000. Same—To try and determine.

G. S. 1894, § 5094, cited in State ex rel. Rosckes v. Dreger, 97 Minn. 221, 106 N. W. 904; State v. Marciniak, 97 Minn. 355, 105 N. W. 965.

4018. Appeal—Requisites.

Bond.—A bond conditioned that defendant shall be and appear at the first general term of the district court, and shall not depart thence without leave duly granted, does not conform to the statutory requirements, and is void. State v. Mattson, 105 Minn. 63, 117 N. W. 227.

A bond which does not contain the condition "that the defendant abide by the judgment of the court" to which the appeal was taken, fails to conform to the requirements of this section. State v. Mattson, 105 Minn. 164, 117 N. W. 503.

4025. Certificate of conviction—Duty of clerk of district court—Statement of costs.—Every justice, within twenty days after any conviction had before him, shall make and cause to be filed with the clerk of the district court of his county a certificate, under his hand, briefly stating therein the offense charged, the conviction and judgment, and the amount of fine collected. The clerk of the district court where the same is filed shall thereupon record, docket, index and make a permanent record of such conviction in books kept for that purpose in his office, and shall receive for such services the same compensation as is now by statute provided for entering and indexing all other similar actions coming into his office. And within ten days after the trial of any criminal action before him, such justice shall prepare an itemized statement of the costs taxed therein against the state, and file the same with the county auditor. No bills for justice fees shall be allowed by the county board until such statement is filed as herein provided, and until all fines collected by such justice have been forwarded as provided by law. For each of such reports, required to be made by this section, the justice may include in his taxable costs twenty-five cents. (R. L. § 4025, as amended by Laws 1907, c. 317.)

CHAPTER 76.

FORCIBLE ENTRY AND UNLAWFUL DETAINER.

4038. Tenant, etc., holding over—Removal.

Jurisdiction.—The municipal court of Minneapolis has no jurisdiction in proceedings based on breach of the contract of a lease of lands, part of which were within, and part without, Hennepin county. The breach gave rise to one indivisible cause of action, which could not be split, so as to make two suits and thus bring them within the jurisdiction of the court. Bunker v. Hanson, 99 Minn. 426, 109 N. W. 827.

Transfer to district court.—An action for forcible entry and unlawful detainer, transferred to the district court after it appears that the title to real

and sales of real estate made under and pursuant to said execution without first having an execution issued and returned unsatisfied in justice court as provided by law, such levies and sales made thereunder are hereby in all things legalized and said sales declared as valid and effective in all respects as if the execution had been duly issued and been returned unsatisfied in justice court before said transcript had been issued and filed in the district court, provided this act shall not apply to any action now pending. ('05 c. 258 § 1)

Historical.—"An act legalizing sales of real estate under execution issued out of the district court upon judgment rendered by justices of the peace and transcribed to district court before executions were issued by the justice." **Ap-**proved April 18, 1905.

By section 2 the act took effect January 1, 1906.

APPEALS.

3981. May be taken, when.

Cited in *Van Vlissingen v. Oliver*, 102 Minn. 237, 113 N. W. 383.

3985. Appeals, how tried—Judgment.

Cited in *State ex rel. Hall v. Long*, 103 Minn. 29, 114 N. W. 248.

3986. Entry on calendar—Effect of omission.

Cited in *Elandin v. Brennin*, 106 Minn. 353, 119 N. W. 57.

3989. Defective bond.

Application in general.—This section applies to appeals in civil actions only. *State v. Mattson*, 105 Minn. 63, 117 N. W. 227.

3991. Judgment, when affirmed—Against sureties.

Cited in *Blandin v. Brennin*, 106 Minn. 353, 119 N. W. 57.

Dismissal of appeal—Effect.—This section gives the court the power, but does not require it, to affirm the judgment upon dismissal of an appeal for any cause, or upon default of appellant to appear and prosecute his appeal. Where defendant, upon conviction, took an appeal, which was dismissed on his own motion, a warrant of commitment was properly issued by the justice. *State ex rel. Hall v. Long*, 103 Minn. 29, 114 N. W. 248.

CRIMINAL PROCEEDINGS.

3999. Jurisdiction.

See section [3999—]1.

G. S. 1894, § 5093, cited in *State ex rel. Rosckes v. Dreger*, 97 Minn. 221, 106 N. W. 904.

Jurisdiction—Death of justice.—A prosecution pending and undetermined before a justice terminates upon his death, and is not a bar to further prosecution on the same charge. *State ex rel. Faughnan v. Miesen*, 96 Minn. 466, 105 N. W. 555.

[3999—]1. **Same.**—Justices of the peace have power and jurisdiction, throughout their respective counties, as follows:

First—To cause to be kept all laws made for the preservation of the peace;

Second. To cause to come before them, or any of them, persons who break the peace, and commit them to jail, or bail them, as the case may require.

Third. To arrest and cause to come before them, persons who attempt to break the peace, persons who keep houses of ill fame, or frequenters of the same, or common prostitutes, and compel them to give security for their good behavior, and to keep the peace.

Fourth. To cause to come before them persons who are charged with committing any criminal offense and commit them to jail, or bail them, as the case may require; provided, however, that no justices of the peace shall have jurisdiction of any offenses committed within the limits of any city or village wherein a municipal court is organized and existing, but such offenses, otherwise cognizable by justices of the peace, and those arising under the charter

estate is involved, is thereafter in substance and effect an action in ejectment. The plea of not guilty, which is proper in such action in a municipal or justice court, may, after such transfer, stand as a general denial, and defendant may introduce thereunder any evidence which tends to disprove the facts alleged in the complaint showing the source and chain of plaintiff's title and right of possession. *Bartleson v. Munson*, 105 Minn. 348, 117 N. W. 512.

4040. Complaint and summons.

Summons.—A summons in the municipal court of St. Paul is returnable on the first day of a regular weekly term, being not less than three nor more than ten days from the date of its issuance. *Kenny v. Seu Si Lun*, 101 Minn. 253, 112 N. W. 220, 11 L. R. A. (N. S.) 831.

4041. 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, as amended by Laws 1909, c. 496, § 1.)

Cited in *Kenny v. Seu Si Lun*, 101 Minn. 253, 112 N. W. 220, 11 L. R. A. (N. S.) 831.

See note under section 4040.

4042. Answer—Trial.

Excuse, justification, etc.—Matters in "excuse, justification, or avoidance," required to be pleaded, are such as constitute "new matter" under the general practice act. *Sodini v. Gaber*, 101 Minn. 155, 111 N. W. 962.

"Other civil actions."—Section 4044 deals only with the judgment upon a trial on the merits, and is not inconsistent with entry of judgment when there is no such trial. *Van Vlissingen v. Oliver*, 102 Minn. 237, 113 N. W. 383.

See note under section 4047.

4044. Judgment—Fine—Execution.

Cited in *Van Vlissingen v. Oliver*, 102 Minn. 237, 113 N. W. 383.

See note under section 4042.

4046. 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

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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, as amended by Laws 1909, c. 496, § 2.)

4047. 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 section 4046, 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, as amended by Laws 1909, c. 496, § 3.)

Right of appeal—Final judgment.—A judgment in favor of defendant, dismissing the action and for costs, upon withdrawal of plaintiff from the trial, is a final judgment, and appealable by him. The right of appeal is given by this section, and not by section 3981. *Van Vlissingen v. Oliver*, 102 Minn. 237, 113 N. W. 383.

4048. 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, as amended by Laws 1909, c. 496, § 4.)

4051½. 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 non-payment 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. c. 76, as amended by Laws 1909, c. 496, § 5.)

Historical.—R. L. 1905, c. 76, was amended, by adding thereto a new section, by "An act to amend sections 4041, 4046, 4047 and 4048 of the Revised Laws of Minnesota, 1905, relating to forcible entry and unlawful detainer, and to add thereto a new section to be known as section 4051½." Approved April 24, 1909.

CHAPTER 77.

CIVIL ACTIONS.

PARTIES.

4053. Real party in interest to sue—When one may sue or defend for all.

Common interest.—Mandamus, brought by a legal voter, on behalf of himself and all other legal voters in the county, was authorized by this section. *Kaufer v. Ford*, 100 Minn. 49, 110 N. W. 364.

4057. Infants and insane persons—Guardians ad litem.

Pleading appointment.—The complaint sufficiently alleged that the guardian had been duly appointed by the proper court. *Patterson v. Melchior*, 102 Minn. 363, 113 N. W. 902.

See note under section 3838.

4059. Parent or guardian may sue for seduction.

Action by female.—Except where there are confidential relations or peculiar circumstances, no right of action exists by a woman for seduction against the offender. *Welsund v. Schueller*, 98 Minn. 475, 108 N. W. 433.

4060. Parent or guardian may sue for injury to child or ward—Bond—Settlement.—A father, or, in case of his death or desertion of his family, the mother, may maintain an action for the injury of a minor child, and a general guardian may maintain an action for the injury of his ward. Provided, that if no such action is brought by the father or mother, an action for such injury may be maintained by a guardian ad litem, either before or after the death of such parent. Before any such parent shall receive any money or other property in settlement or compromise of any action so brought, or in satisfaction of any judgment obtained therein, such parent shall file a bond as security therefor, in such form and with such sureties as the court shall prescribe and approve; and no settlement or compromise of any such action shall be valid unless the same shall be approved by a judge of the court in which such action is pending. (R. L. § 4060, as amended by Laws 1907, c. 58.)

Cited in *Patterson v. Melchior*, 102 Minn. 363, 113 N. W. 902.

See note under section 3838.

Settlement prior to amendment of 1907.—It seems that a father might settle the claim of his child. Where a father, mother, and minor son were injured, and suits for damages were commenced by the father and mother, and before trial a settlement was made, it did not conclusively appear that the son's claim was included. *Johnson v. Minneapolis & St. L. R. Co.*, 101 Minn. 396, 112 N. W. 534.

Conceding that under sections 4060 and 4503 settlement without the approval of the court is not void, settlement of an action by the parent, without advice of counsel and without direction of the court, is subject to review. The court does not lose jurisdiction by mere entry of a formal order directing entry of judgment of dismissal. The court was justified in setting aside such order and the stipulation for settlement, and in reinstating the case. The order setting