

1936 Supplement  
To  
**Mason's Minnesota Statutes**  
1927

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

Containing the text of the acts of the 1929, 1931, 1933 and 1935 General Sessions, and the 1933-34 and 1935-36 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.



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upon payment of the proceeds in accordance with the terms thereof, unless before such payment the company shall have knowledge that such beneficiary has taken or procured to be taken the life upon which such policy or certificate is issued, or that such beneficiary has caused or procured a disability of the person upon whose life such policy or certificate is issued. (G. S. 8734) (Act Mar. 29, 1935, c. 72, §193.)

**8992-194. State patents.**—Where patents for public lands have been or may be issued, in pursuance of any law of this state, to a person who has died before the date of such patent, the title to the land designated therein shall inure to and become vested in the heirs, devisees, or assignees of such deceased patentees as if the patent had been issued to the deceased person during life. (G. S. 8721) (Act Mar. 29, 1935, c. 72, §194.)

**8992-195. Federal patents.**—Whenever any person holding a homestead or tree claim entry under the laws of the United States has died before making final proof and final proof has afterwards been made by his heirs, devisees, or representatives, and a patent has been granted to his "heirs" or "devisees," the district court of the county in which the real estate so patented is situated, may determine who are such heirs or devisees, and may determine their respective shares in such homestead or tree claim. The provisions of the code of civil procedure relating to the determination of adverse claims to real estate insofar as the same may be applicable, shall pertain to and

govern the procedure in the action provided for in this section. (G. S. 8733, 8733-1; L. 1921, c. 36, Sec. 2) (Act Mar. 29, 1935, c. 72, §195.)

**8992-196. Repeal.**—Chapter 74, Mason's Minnesota Statutes of 1927, Chapter 74, the 1934 Supplement to Mason's Minnesota Statutes of 1927 (except laws relating to salaries and clerk hire, curative laws, G. S. 8833, 8976 as amended by Laws 1931, c. 301, 8977, 8979, 8980, 8981, 8982), G. S. 7581, Laws 1931, c. 33, Laws 1931, c. 259, and all other laws inconsistent herewith are repealed. (Act Mar. 29, 1935, c. 72, §196.)

**8992-197. G. S. Defined.**—Unless the context otherwise indicates, the term "G. S." as used in this act means "Mason's Minnesota Statutes of 1927, Section." The term (G. S.—) or (L.— c.—) at the end of a Section indicates its origin only. (Act Mar. 29, 1935, c. 72, §197.)

**8992-198. Constitutionality.**—If any part of this act be declared unconstitutional, no other part shall be affected thereby. (Act Mar. 29, 1935, c. 72, §198.)

**8992-199. Name of act.**—This act may be cited as the Minnesota Probate Code. For convenience only, the table of contents immediately preceding Article I shall be appended to and printed with this act immediately preceding Article I. (Act Mar. 29, 1935, c. 72, §199.)

**8992-200. Date of effect.**—This act shall take effect and be in force from and after 12:01 A. M., July 1, 1935. (Act Mar. 29, 1935, c. 72, §200.)

## CHAPTER 75

### Courts of Justices of the Peace

#### GENERAL PROVISIONS

##### 8993. Jurisdiction limited to county.

Justice of peace may hold also office of city assessor. Op. Atty. Gen., Apr. 18, 1932.

##### 8994. Place of holding court.

Does not authorize justice to regularly hold court in another town so as to usurp the office of the local justice. Op. Atty. Gen., Mar. 19, 1929.

##### 8996. Powers—Laws applicable.

**2. Practice generally.**  
A justice of the peace cannot act as collection agent without license. Op. Atty. Gen. (266a-3), Oct. 4, 1934.  
Municipality cannot be compelled to furnish criminal forms to justice of the peace. Op. Atty. Gen. (266a-3), Oct. 4, 1934.

##### 9000. Docket—Contents.

**1. In general.**  
Justice of peace records are open to inspection of public except illegitimacy proceedings. Op. Atty. Gen. (851), July 1, 1935.

#### COMMENCEMENT OF ACTIONS

##### 9005. Summons—Service.

174M608, 219NW452; note under §9110.

#### PLEADINGS AND TRIAL

##### 9029. Title to real estate—Case certified.

Removal to district court from municipal court forcible entry and detainer case. 178M282, 226NW847.

#### EXECUTION

##### 9069. Executions and transcripts where court discontinued.

On adoption of municipal court in city of Springfield all books and records of discontinued justice court are delivered to municipal court which may issue all necessary executions and transcripts. Op. Atty. Gen., Mar. 17, 1934.

#### REPLEVIN

##### 9072. Writ—When returnable.

A writ of replevin issued pursuant to Laws 1895, c. 229, §22, is valid. 178M174, 226NW405.

#### ATTACHMENT

##### 9084. Where defendant resides in another county.

See Laws Sp. Ses. 1935-36, c. 88, establishing municipal court for St. Cloud.

#### APPEALS

##### 9092. May be taken, when.

Where an appeal is taken on questions of law and the judgment is reversed, the suit is no longer pending so as to bar a second suit on the same cause of action. 173M29, 216NW252.

##### 9093. Requisites.

**½. Time for appeal.**  
Defaulting defendant in municipal court was not entitled to notice of entry of judgment as respected time for appeal. Anderson v. G., 183M336, 236NW483. See Dun. Dig. 486(74).

##### 2. Notice of appeal.

Notice of appeal from municipal court cannot be served by mail. 178M366, 227NW200.

##### 3. Miscellaneous.

Though notice of appeal served by mail was ineffective, the district court obtained jurisdiction where appellee moved there for judgment against garnishee. 178M366, 227NW200.

##### 4. Fees.

Two dollar appeal fee applies only to civil actions and not to criminal appeals from justice court to district court. Op. Atty. Gen. (266b-1), May 29, 1934.

##### 9099. Return or amendment compelled, when.

Amendment of defective record on appeal from municipal court. Op. Atty. Gen., Dec. 9, 1930.

#### CRIMINAL PROCEEDINGS

##### 9110. Jurisdiction.

Justice of the peace in Golden Valley has no jurisdiction to try a criminal case for an offense committed in Minneapolis. 174M608, 219NW452.

Waiver gives no such jurisdiction. Id.  
Village justices and constables have jurisdiction under criminal acts committed outside village boundaries except offenses committed within the limits of any city or village wherein a municipal court is organized and existing. Op. Atty. Gen., May 19, 1931.

##### 9111. Same—To try and determine.

A municipal court organized under the general law has no jurisdiction of gross misdemeanors punishable by a fine in excess of \$100, or by imprisonment in excess of three months. State ex rel. Ryan v. M., 182M368, 234NW453. See Dun. Dig. 690b(63).

##### 9112. Complaint—Warrant.

Labeling complaint and warrant as though state of Minnesota were plaintiff was mere irregularity that did not affect jurisdiction of justice, and additional language

"against the form of the statute in such case made and provided," when charging a violation of an ordinance, was mere surplusage. 177M617, 225NW286.

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.

**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.

**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.

**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.**

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

**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.

**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.

**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.

**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.

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.**

Minn. Bldg. & Loan Ass'n. v. C., 182M452, 234NW872.

**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. 5425.

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.

**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.

**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. 5440(88).

**9152. Summons—How served.**

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

**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.

**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.

**9158. Appeal.**

178M460, 227NW656; note under §9157. Rochrs v. T., 185M154, 240NW111; note under §9277.

**9163. Execution of the writ of restitution.**

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.