

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.



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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