

1934 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1934)
(Superseding Mason's 1931 Supplement)

Containing the text of the acts of the 1929, 1931, 1933 and 1933-34 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state, federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota



Edited by

WILLIAM H. MASON, Editor-in-Chief
W. H. MASON, JR. }
R. O. MASON } Assistant Editors
J. S. O'BRIEN }

CITER- DIGEST CO.
SAINT PAUL, MINNESOTA.
1934

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., 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., 249NW580. See Dun. Dig. 6242.

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., 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., 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).

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.

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.

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

CHAPTER 77

Civil Actions

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

A private school held not negligent as to a spectator at a football game injured when players accidentally rolled out of bounds. Ingerson v. S., 185M16, 239NW667. See Dun. Dig. 6988, 8673.

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., 185M89, 239NW900. See Dun. Dig. 2559-2569.

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 fraud, but that is ordinarily a question of fact. Osborn v. W., 183M205, 236NW197. See Dun. Dig. 10100(55).

2. Conflict of laws.

See notes under §154.

3. Contract or tort.

Where defendant counterclaims for money or property wrongfully obtained, he waives tort and elects to

rely on implied contract of plaintiff to repay money or pay value of property taken. Kubat v. Z., 186M122, 242NW477. See Dun. Dig. 88.

4. Criminal acts.

That defendant's conduct is criminal does not preclude civil remedy by injunction. State v. Nelson, 248NW751. See Dun. Dig. 4190, 7271.

5. Abatement of actions.

Abatement of action for former action pending. 172M8, 214NW669.

Where laundry building was leased and personal property therein concurrently sold under conditional sales contract, pendency of replevin action and retaking of personal property did not abate unlawful detainer under lease. Steinberg v. S., 186M640, 244NW105. See Dun. Dig. 5.

6. Common counts.

An action for money had and received did not lie to recover money paid to purchaser at foreclosure, but owner could recover from such purchaser money received by the latter from the sheriff on a subsequent redemption by a creditor who was entitled to the land because the owner failed to file his certificate. 177M563, 225NW815.

Where a contract is completed, an action will lie on the common counts for the balance due. 178M275, 226NW933.

7. Equitable remedies.

In an action for equitable relief on account of the breach of a contract for maintenance and care of an aged person, given to him in consideration of a deed of his property, the court may grant such relief as the facts will in equity and good conscience justify. Johnson v. J., 183M262, 238NW483. See Dun. Dig. 3142(60).

Where relief is sought for alleged excessive corporation salaries, and plaintiff is barred by covenant not to sue for original corporate act fixing such salaries, equity will not afford relief against their continuance.