

1938 Supplement
To
Mason's Minnesota Statutes
1927

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

Containing the text of the acts of the 1929, 1931, 1933, 1935, and 1937 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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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.*, 183M568, 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.*, 183M568, 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).

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.

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.

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.

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.

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

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

Where mortgagee of chattels obtained judgment and levied upon mortgaged property under execution, release of levy was not an election of remedies so as to bar right to proceed under mortgage. *First Nat. Bank v. F.*, 190M102, 250NW806. See Dun. Dig. 2914.

Doctrine of election of remedies is an application of law of estoppel. *Id.*

Premature suit by lessor for damages to property, held only mistaken bona fide effort to pursue an available remedy and not to bar a subsequent suit for rent. *Donaldson v. M.*, 190M231, 251NW272. See Dun. Dig. 2914, n. 56.

Summary proceeding against attorney to compel repayment of embezzled funds did not preclude action against bank for improper payment of check with forged indorsement. *Rosacker v. C.*, 191M553, 254NW824. See Dun. Dig. 2914.