GENERAL STATUTES

OF THE

STATE OF MINNESOTA

IN FORCE

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ANNOTATIONS AND GENERAL INDEX TO BOTH VOLUMES.

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§ 2. Manner of bringing action.

An action brought under this chapter, in the district court of the state, against a steam-boat, *eo nomine*, plying upon the Minnesota river, for breach of contract of affreightment, is an attempt to exercise an admiralty jurisdiction vested alone in the federal district courts. Griswold v. Steam-Boat Otter, 12 Minn. 465, (Gil. 364.)

Under *c.* 76, Comp. St., courts of this state have jurisdiction to entertain actions against vessels by name. Such action is not a proceeding in admiralty, but a common-law remedy. Reynolds v. Steam-Boat Favorite, 10 Minn. 243, (Gil. 190;) Morin v. Steam-Boat F. Sigel, 10 Minn. 250, (Gil. 195.)

CHAPTER 84.

FORCIBLE ENTRIES AND UNLAWFUL DETAINERS.*

See Steele v. Bond, 28 Minn. 267, 272, 9 N. W. Rep. 772; Gray v. Hurley, 28 Minn. 388, 10 N. W. Rep. 417; State v. Municipal Court, 26 Minn. 162, 2 N. W. Rep. 166; Hoffman v. Parsons, 27 Minn. 236, 6 N. W. Rep. 797; Whitaker v. McClung, 14 Minn. 170, (Gil. 131.)

§ 2. Jurisdiction of justices of the peace.

To maintain the action under §§ 1 and 2, the entry need not be forcible, but the detainer must be unlawful, and with force and strong hand; that is, under circumstances of actual violence or terror. Davis v. Woodward, 19 Minn. 174, (Gil. 137.)

See Hennessey v. Pederson, 28 Minn. 461, 11 N. W. Rep. 63; Petsch v. Biggs, 31 N. W. Rep. 392, 18 N. W. Rep. 101.

§ 3. Complaint and summons.

A complaint under *c.* 84, Gen. St., for "forcible entry and detainer," which alleges the plaintiff's actual possession of the premises by his wife, and that defendant did make an unlawful and forcible entry into and upon, and has ever since unlawfully and forcibly detained, the premises, sufficiently alleges plaintiff's possession, and defendant's entry and detainer. Davis v. Woodward, 19 Minn. 174, (Gil. 137.)

The complaint in an action for forcible entry and detainer must particularly describe the premises. Lewis v. Steele, 1 Minn. 89, (Gil. 67.)

§ 5. Hearing.

In proceedings under this chapter, by a landlord against his tenant, to recover possession of premises for non-payment of rent, no previous demand of the rent is required. Spooner v. French, 22 Minn. 37.

In an action before a justice, if defendant fails to call for a jury trial, he will be deemed to have waived his right thereto. Gibbens v. Thompson, 21 Minn. 398.

A justice of the peace has a reasonable time after the submission of the case in which to consider the same and enter his judgment. Two days held not an unreasonable time. Id.

See Hennessey v. Pederson, 28 Minn. 461, 11 N. W. Rep. 63.

§ 6. Summons—Service by leaving copy—Return.

If, at the time of making said complaint, it appears that the person against whom said complaint is made is absent from the county, the justice before whom the same is made shall issue his summons as hereinbefore provided, and make the same returnable not less than six, nor more than ten, days from the time of issuing the same; and such summons may be served by leaving a true and attested copy thereof at the last and usual place of such person's abode, *not less than six days before the return-day thereof.* Such copy shall be left with some member of the family, or some person residing at such place, of suitable age and discretion, to whom the contents thereof shall

* Jurisdiction of municipal courts in cases of forcible entries and unlawful detainers, see *ante, c.* 64.

be explained by the officer; and the said officer shall make a special return of the time and manner of serving said summons; and the action shall thereafter proceed as though a personal service were made of such summons. And if the officer cannot find in his county said person against whom such complaint is made, and said person has no last and usual place of abode therein, then such summons may be served by leaving a true and certified copy thereof upon the premises described in such complaint, not less than six days before the return-day thereof. Such copy may be left with any person using, occupying, or in charge of said premises, or any part thereof, and such action shall thereupon proceed as though a personal service were made of said summons. (*As amended* 1881, *c.* 50, § 1.)

§ 7. Adjournments—Security for rent.

The justice of the peace may, at his discretion, adjourn any trial under this chapter, not exceeding six days, but in all cases mentioned in section eleven of this chapter, except a case brought upon a written lease, signed and acknowledged by both parties thereto, when the defendant, his agent or attorney, makes oath that he cannot safely proceed to trial for the want of some material witness, naming him; that he has made due exertion to obtain said witness, and believes if such an adjournment is allowed he will be able to procure the attendance of said witness, or his deposition, in season to produce the same upon such trial; and if such person will give bond, with one or more sufficient sureties, conditioned to pay the said complainant for all rent which may accrue during the pendency of such action, and all costs and damages consequent upon such adjournment,—the justice shall adjourn said cause for such reasonable time as appears necessary, not exceeding three months; but no such adjournment shall be allowed where the action is brought upon a written lease, executed as aforesaid. (*As amended* 1881, *Ex. Sess.* c. 9, § 1.)

§ 9. Judgment when defendant found guilty.

See Gibbens v. Thompson, 21 Minn. 398; Hennessey v. Pederson, 28 Minn. 461, 11 N. W. Rep. 63.

§ 11. Proceedings to eject tenants, etc.

This remedy applies only to the conventional relation of landlord and tenant, and was not intended as a substitute for the action of ejectment, nor to afford means of enforcing agreements to surrender possession of real estate where that relation does not exist, or has not existed, as the foundation of the lessee's possession. Steele v. Bond, 28 Minn. 268, 9 N. W. Rep. 772.

One who, as lessee from the owner, is entitled to the possession of real property, may maintain proceedings to recover possession under the statute relating to unlawful detainers, against a prior lessee of such owner holding over after the expiration of his term. Burton v. Rohrbeck, 30 Minn. 393, 15 N. W. Rep. 678.

Proceedings for restitution cannot be maintained against a tenant who has been in possession of the premises more than three years, under a lease, his term not having ended. Brown v. Brackett, 26 Minn. 292, 3 N. W. Rep. 705.

In an action under this section, against a tenant holding over after his term expires, all who are in possession under the tenant may be joined with him as defendants. Judd v. Arnold, 31 Minn. 430, 18 N. W. Rep. 151.

An under-tenant, in possession of demised premises under a lease from the original tenant, cannot lawfully be dispossessed, in proceedings under the forcible entry and detainer statute, by the landlord against the tenant, to which such under-tenant is not made a party. Bagley v. Sternberg, 34 Minn. 470, 26 N. W. Rep. 602. The action may proceed jointly against the tenant and any and all under-tenants. Id.

It is not essential that the possession of defendant be maintained by force. Gluck v. Elkan, 36 Minn. 80, 30 N. W. Rep. 446.

The fact of a demand by the landlord upon the tenant for the payment of rent and taxes, is not jurisdictional in proceedings under the statute relating to forcible entries and unlawful detainers. Chandler v. Kent, 8 Minn. 536, (Gil. 479;) Gibbens v. Thompson, 21 Minn. 398.

The complaint need not state that plaintiff is the owner, or that he is entitled to the possession, of the demised premises, if it show a leasing by him to defendant, and an

entry and possession by the latter under such leasing. Engels v. Mitchell, 30 Minn. 122, 14 N. W. Rep. 510.

In such proceedings the justice may proceed to hear the case at the time appointed in the summons, without waiting an hour, as required in Gen. St. c. 65, § 19. Spooner v. French, 22 Minn. 37.

That title to real estate is involved must appear from the evidence. Radley v. O'Leary, 36 Minn. 173, 30 N. W. Rep. 457.

In an action in the municipal court of St. Paul, under the chapter on forcible entries and detainers, the plaintiff, to entitle himself to judgment of restitution, must prove his case. Such judgment cannot properly be rendered simply upon defendant's default. Hennessey v. Pederson, 28 Minn. 461, 11 N. W. Rep. 63.

See Barker v. Walbridge, cited in note to c. 66, § 97, subd. 2; Petsch v. Biggs, cited in note to c. 64, § 81, *supra;* Bassett v. Fortin, 30 Minn. 27, 14 N. W. Rep. 56; Wright v. Gribble, 26 Minn. 99, 1 N. W. Rep. 820; Ferguson v. Kumler, 25 Minn. 183; Steele v. Bond, 32 Minn. 14, 18 N. W. Rep. 830; Pond v. Holbrook, 32 Minn. 291, 20 N. W. Rep. 232; Goenen v. Schroeder, 18 Minn. 66, (Gil. 51;) Knight v. Valentine, 35 Minn. 367, 29 N. W. Rep. 4; Clementson v. Gleason, 36 Minn. 102, 30 N. W. Rep. 400.

§ 12. Restitution.

No restitution shall be made under the provisions of this chapter of any lands or tenements of which the party complained of or his ancestors, or those under whom he holds the premises, have been in the quiet possession for three years next before the entering of the complaint, after the determination of the leasehold estate that he may have had therein; nor shall a writ of restitution issue in any case for twenty-four hours after judgment, if the party against whom judgment is rendered, or his attorney, states to the justice that he intends to take an appeal: *provided,* that if said action is brought upon a written lease, executed by both parties thereto, against a tenant holding over, after the expiration of said lease, restitution of said premises shall be made forthwith; and if the party against whom judgment is rendered, in such case gives notice to the justice that he intends to take an appeal, the justice shall thereupon, as a condition to the issuance of the writ of restitution, require of the complainant a bond, with two sufficient sureties, conditioned that the complainant will pay all costs and damages, if on said appeal said judgment of restitution shall be reversed or a new trial ordered; and upon the filing of such bond the writ of restitution shall issue in the same manner as if no notice of appeal had been given. (*As amended* 1881, *Ex. Sess. c.* 9, § 2.)

See Brown v. Brackett, 26 Minn. 292, 3 N. W. Rep. 705; State v. Burr, 29 Minn. 433, 13 N. W. Rep. 676.

§ 13. Appeal and bond.

If either party feels aggrieved at the verdict of the jury, or decision of the justice, he may appeal within ten days, as in other cases tried before justices of the peace, except that in all cases where the party appealing remains in possession of the property, his bond shall be, with two or more sufficient sureties, to be approved by said justice, conditioned to pay all costs of such appeal, and abide the order the court may make therein, and pay all rent and other damages justly accruing to the party who is excluded from possession of the property during the pendency of such appeal. (*Id.* § 3.)

An appeal lies from the district court in a proceeding under c. 84, for non-payment of rent. Barker v. Walbridge, 14 Minn. 469, (Gil. 351.)

§ 14. Stay of proceedings.

Upon the taking of such appeal, all further proceedings in the case shall be stayed, except in case of actions brought upon a written lease, for the recovery of possession of property, after the expiration of the term thereof, in which case the writ of restitution shall issue the same as if no appeal had been taken, upon the execution and filing of a bond by the complainant as hereinbefore provided; and the appellate court shall thereafter issue all needful writs and processes to carry out the provisions of this chapter according to the true intent and meaning thereof. (*Id.* § 4.)

§ 15. Appeal after issuance of writ—Certificate—Stay.

If a writ of restitution has been issued previous to the taking of an appeal, as provided in this chapter, the justice shall forthwith give the appellant a certificate of the allowance of such appeal, except in case where judgment has been entered in an action brought upon a written lease to recover possession of the property therein described, after the expiration of such lease. Upon the service of such certificate upon the officer having such writ of restitution, the said officer shall forthwith cease all further proceedings by virtue of such writ, except in the cases as hereinbefore provided; and, if such writ has not been completely executed, the defendant shall remain in the possession of the premises until the appeal is determined, except in case where the action is brought upon a written lease to recover possession after the expiration of the term in said lease specified. (*Id.* § 5.)

§ 18. Answer.

This language is very broad and comprehensive, and would seem to embrace every character of defense which would defeat the complainant's right to a restitution. Steele v. Bond, 28 Minn. 272, 9 N. W. Rep. 772.

CHAPTER 86.

APPEALS IN CIVIL ACTIONS.

§ 1. Appeal from district court.

No appeal lies to the supreme court from a mere opinion of the district court. Thompson v. Howe, 21 Minn. 1.

An appeal will not lie from the statement filed (on trial by the court without a jury) of the court's findings of fact and law. The appeal should be from the judgment entered upon it. Von Glahn v. Sommer, 11 Minn. 203, (Gil. 132.)

Except in such special proceedings as the statute has provided for, this court acquires jurisdiction only by writ of error, or appeal. Parties cannot confer it by stipulation. Rathbun v. Moody, 4 Minn. 364, (Gil. 273.)

The supreme court will not review a judgment of the district court, after it has been settled by the parties. Babcock v. Banning, 3 Minn. 191, (Gil. 123.)

McNamara v. Minn. Cent. Ry. Co., 12 Minn. 388, (Gil. 269;) Conter v. St. Paul & S. C. R. Co., 24 Minn. 313.

§ 3. Notice of appeal.

The notice of appeal to this court, filed with the clerk of the district court, is not rendered invalid, because addressed to the attorney for the opposite party instead of to the clerk. Baberick v. Magner, 9 Minn. 232, (Gil. 217.)

See Hodgins v. Heaney, 15 Minn. 185, (Gil. 142, 146.)

§ 4. Return on appeal.

Upon an appeal to the supreme court, where there is no "statement of the case," or bill of exceptions in the record, the evidence, even though consisting of depositions, will not be considered. Claflin v. Lawler, 1 Minn. 297, (Gil. 231.) Case dismissed for want of a return, the place of which cannot be supplied by a stipulation, as attempted in this instance. American Ins. Co. v. Schroeder, 21 Minn. 331.

This court will strike from the record any matter or paper improperly included in it, and allow proof by affidavit of the facts on which the impropriety depends. Daniels v. Winslow, 2 Minn. 113, (Gil. 93.) An extract from the minutes of a referee attached to the return to this court, there being no case settled or agreement by the parties in regard to it, is improperly embraced in the return, and will be struck out. Robinson v. Bartlett, 11 Minn. 410, (Gil. 302.)

See Keegan v. Peterson, 24 Minn. 1, 3; Hodgins v. Heaney, 15 Minn. 185, (Gil. 142.)