

# REVISED LAWS

# MINNESOTA

## 1905

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EDITED AND ANNOTATED BY  
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COMMITMENT WHERE JUSTICE, ON THE TRIAL, FINDS HE HAS NOT JURISDICTION

State of Minnesota, }
County of..... } ss.

The State of Minnesota, to the sheriff or any constable of said county:

Whereas, ....., of....., has been brought this day before the undersigned, one of the justices of the peace of said county, charged on the oath of.....with having on the.....day of....., 19...., at....., in said county, committed the offence of (here state the offence charged in the warrant), and, in the progress of the trial on said charge, it appearing to the said justice that there is probable cause to believe that said.....had been guilty of the offence of (here state the new offence found on the trial), committed at the time and place aforesaid, of which offence the said justice has not final jurisdiction; and whereas, after examination had, in due form of law, touching the said charge and offence last aforesaid, the said justice did adjudge that the said offence had been committed, and that there was probable cause to believe the said..... to be guilty thereof; and whereas the said.....has not offered sufficient bail for his appearance to answer for said offence, you are therefore commanded forthwith to take the said....., and him convey to the common jail of said county, the keeper whereof is hereby required to detain him in custody in said jail until he shall be thence discharged according to law.

Given under my hand this.....day of....., 19....

J. P., Justice of the Peace.

(5130)

CHAPTER 76

FORCIBLE ENTRY AND UNLAWFUL DETAINER

4036. Forcible entry—Penalty—No person shall make entry into lands or tenements except in cases where his entry is allowed by law, and in such cases he shall not enter by force, but only in a peaceable manner. If any person does to the contrary, he shall be punished by fine. (6108)

19-174, 137; 66-416, 418, 69+218; 72-446, 75+701; 85-90, 88+426.

4037. Forcible entry or detainer—Restitution—When any person has made unlawful or forcible entry into lands or tenements, and detains the same, or, having peaceably entered, unlawfully and forcibly detains the same, he shall be fined, and the person entitled to the premises may recover possession thereof in the manner hereinafter provided. (6109, 6116; '97 c. 241)

4038. Tenant, etc., holding over—Removal—When any person holds over lands or tenements after a sale thereof on an execution or judgment, or on foreclosure of a mortgage by advertisement, and expiration of the time for redemption, or after termination of the time for which they are demised or let to him, or to the person under whom he holds possession, or contrary to the conditions or covenants of the lease or agreement under which he holds, or after any rent becomes due according to the terms of such lease or agreement, or when any tenant at will holds over after the determination of any such estate by notice to quit, in all such cases the person entitled to the premises may recover possession thereof in the manner hereinafter provided. (6118)

1. Election of remedies—53-483, 487, 55+630.

2. Nature and object of action—8-524, 467; 14-170, 131; 25-183; 28-267, 273, 9+772; 28-388, 389, 10+417; 53-483, 486, 55+630; 67-449, 451, 70+567; 81-445, 450, 84+454; 62-370, 64+911.

3. Jurisdiction—Original jurisdiction limited to justice and municipal courts (53-483, 55+630).

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**4. When action will lie**—Conventional relation of landlord and tenant essential (28-267, 273, 9+772; 30-393, 15+678; 47-269, 50+227; 81-445, 451, 84+454. See 8-524, 467; 73-108, 75+1039). Unnecessary that detainer be forcible (36-80, 30+446). Will lie against tenant withholding possession after expiration of his term (28-267, 273, 9+772; 30-393, 15+678; 31-430, 18+151; 47-1, 49+327; 53-456, 55+603; 70-102, 72+841); contrary to the conditions or covenants of the lease or agreement (28-267, 273, 9+772; 36-80, 30+446; 29-432, 13+676; 32-291, 20+232; 36-102, 30+400; 51-358, 53+805; 67-449, 451, 70+567; 89-444, 95+314); after rent becomes due according to the terms of the lease or agreement whether the lease contains a re-entry clause or not (22-37; 72-100, 75+114; 41-542, 546, 43+479; 45-26, 47+397; 61-448, 63+1099; 21-398; 26-99, 1+820; 74-279, 77+3).

**5. Who may maintain**—Grantee of lessor (81-445, 84+454). Subsequent lessee from lessor (30-393, 15+678).

**6. Parties defendant**—Subtenants (31-430, 18+151; 34-470, 26+602). Servants, agents or members of family of tenant (34-470, 26+602).

**7. Demand—Notice to quit**—If the action is based on the ground of non-payment of rent no notice to quit or demand of rent is necessary before suit whether the tenancy is for a fixed term or at will (21-398; 22-37; 72-100, 75+114; 36-173, 30+457; 74-279, 77+3). If the action is based on the ground of expiration of a fixed term no notice to quit is necessary before suit (30-122, 14+510); otherwise if tenancy is at will (See § 3332).

**8. Actions against mortgagors holding over**—37-76, 33+440; 47-269, 50+227; 60-6, 61+818; 66-262, 68+1087; 67-197, 69+887; 73-58, 61, 75+756; 22-349; 30-27, 14+56.

**9. Actions against debtor holding over after execution sale**—25-183; 35-367, 368, 29+3; 4-298, 215. See 37-76, 33+440.

**4039. Limitation**—No restitution shall be made under 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 quiet possession for three years next before the filing of the complaint, after the determination of the leasehold estate that he may have had therein. (6119)

45-26, 47+397; 81-445, 453, 84+454.

**4040. Complaint and summons**—The person complaining shall file a complaint with a justice of the peace, describing the premises of which possession is claimed, stating the facts which authorize the recovery, and praying for restitution thereof. The justice shall thereupon issue a summons, directed to the sheriff or any constable of the county, commanding him to summon the person against whom such complaint is made to appear before him on a day and at a place in such summons named, which shall not be less than three nor more than ten days from the day of issuing the same. A copy of the complaint shall be attached to the summons, which shall state that it is so attached, and that the original has been filed. (6110, 6127)

Requisites of complaint under § 4037 (19-174, 137. See 37-76, 33+440). Requisites of complaint under § 4038 (30-122, 14+510; 43-458, 45+864; 1-88, 67; 1-179, 153; 9-34, 23; 21-398). Pleadings to be construed as in ordinary civil actions (53-456, 459, 55+603). Cited (28-461, 462, 11+63).

**4041. Summons, how served**—The summons shall be served at least three days before the return day thereof, by delivering a copy to the person against whom it is issued, or, if such person be a corporation, a minor under fourteen years of age, or a person under guardianship, by delivering a copy as provided in the case of the service of a summons in a civil action in the district court; but, in case such person cannot be found in the county, the summons may be served on him, at least six days before the return day thereof, by leaving a copy thereof at his last and usual place of abode with a member of his family or person residing at such place of suitable age and discretion, or, if he have no such place of abode, by leaving a copy thereof upon the premises described in the complaint, with a person of suitable age and discretion occupying or in charge of the same, or any part thereof. (6111, 6113; '03 c. 373)

89-444, 95+314.

**4042. Answer—Trial**—After the return of the summons, at the time and place appointed therein, if the defendant appear, he may answer the complaint, and all matters in excuse, justification, or avoidance of the allegations thereof shall be set up in the answer; and thereupon the justice shall hear and determine the action, unless he shall adjourn the trial as provided in § 4043, but either party may demand a trial by jury. The proceedings in such action

shall be the same as in other civil actions in a justice's court, except as in this chapter otherwise provided. (6112, 6115, 6125)

Defendant must answer, if at all, on the return day or at such other time as the justice may designate (42-35, 43+687). Oral plea of not guilty (89-444, 95+314). Matters requiring affirmative equitable relief cannot be set up by answer (23-267, 273, 9+772; 31-392, 18+101; 53-456, 55+603; 73-108, 113, 75+1039; 68-328, 331, 71+395, 72+71). Matters which control the legal effect of the lease may be set up (28-267, 273, 9+772). Held not a defence (36-80, 30+446; 67-449, 70+567; 61-448, 63+1099; 53-204, 209, 54+112). Defendant cannot set up a counterclaim (67-449, 70+567. See 14-469, 351). If the complaint is insufficient defendant may move to dismiss (28-388, 390, 10+417). Judgment on the pleadings (53-456, 55+603; 61-448, 63+1099). Burden of proof (8-524, 467; 89-444, 446, 95+314). Waiver of jury trial (21-398). Justice not required to wait an hour for appearance of defendant (22-37).

**4043. Adjournment—Security for rent**—The justice, in his discretion, may adjourn the trial, but not beyond six days after the return day, unless by consent of parties; but in all cases mentioned in § 4038, except in an action upon a written lease signed by both parties thereto, if the defendant, his agent or attorney, shall make oath that he cannot safely proceed to trial for want of a material witness, naming him, and that he has made due exertion to obtain said witness, and believes that, if such adjournment be allowed, he will be able to procure the attendance of such witness at the trial, or his deposition, and shall give bond conditioned to pay to the plaintiff all rent which may accrue during the pendency of the action, and all costs and damages consequent upon such adjournment, the justice shall adjourn the trial for such time as may appear necessary, not exceeding three months. (6114)

41-542, 547; 43+479; 72-100, 75+114.

**4044. Judgment—Fine—Execution**—If, upon the trial, the justice or jury find the defendant or any of several defendants guilty of the allegations in the complaint, the justice shall thereupon enter judgment that the plaintiff have restitution of the premises, and tax the costs for him, and, when the action is brought under § 4037, shall impose such a fine against the defendant, not exceeding one hundred dollars, as he may deem just. The justice shall issue execution in favor of the plaintiff for such costs, and also issue a writ of restitution. If the justice or jury shall find that the defendant is not guilty as aforesaid, he shall enter judgment for the defendant, tax the costs against the plaintiff, and issue execution therefor. (6116, 6118)

Justice has reasonable time to enter judgment (21-398). Judgment on default without proof unauthorized (28-461, 11+63). Findings (26-99, 1+820; 28-461, 11+63). Judgment of dismissal on appeal (40-211, 41+972). Judgment as a bar (68-328, 330, 71+395, 72+71). Cited (89-444, 446, 95+314). Form of judgment held sufficient (53-456, 55+603). Damages for withholding or for rent cannot be recovered. The only judgment that can be rendered is for restitution and costs (53-483, 487, 55+630).

**4045. Disagreement**—If the jury cannot agree upon a verdict, the justice may discharge them, and issue a venire, returnable forthwith, or at some other time agreed upon by the parties or fixed by the justice, for the purpose of impaneling a new jury. (6117)

53-232, 233, 54+1118.

**4046. Writ of restitution—Effect of appeal**—If the party against whom judgment for restitution is rendered, or his attorney, state to the justice that he intends to take an appeal, a writ of restitution shall not issue for twenty-four hours after judgment: Provided, that in an action upon a written lease, signed by both parties thereto, against a tenant holding over after expiration of the term thereof, such writ may issue forthwith, notwithstanding such notice of appeal, if the plaintiff give bond conditioned to pay all costs and damages in case on the appeal the judgment of restitution be reversed and a new trial ordered. (6119)

29-432, 433, 13+676; 53-483, 55+630; 85-90, 88+426.

**4047. Appeal—Stay**—If either party feels aggrieved by the judgment, he may appeal within ten days, as in other cases triable before justices of the peace, except that, if the party appealing remains in possession of the premises,

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his bond shall be conditioned to pay all costs of such appeal and abide the order the court may make therein, and pay all rents and other damages justly accruing to the party excluded from possession during the pendency of the appeal. Upon the taking of such appeal, all further proceedings in the case shall be stayed, except that in an action upon a written lease, signed by both parties thereto, against a tenant holding over after expiration of the term thereof, if the plaintiff give bond as provided in § 4046, a writ of restitution shall issue as if no appeal had been taken, and the appellate court shall thereafter issue all needful writs and processes to carry out any judgment which may be rendered in such court. (6120, 6121)

Defective bond. Right to file new bond (59-107, 60+1083). Right of possession on appeal by defendant with stay bond (85-90, 88+426). Cited (23-415, 419).

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**4048. Appeal after issuance of writ—Stay—**If a writ of restitution has issued before the taking of an appeal, the justice shall give the appellant a certificate of the allowance thereof, and, upon service of such certificate upon the officer having the writ, he shall cease all further proceedings thereunder, and, if the writ has not been completely executed, the defendant shall remain in possession of the premises until determination of the appeal; but this section shall not apply to a case where judgment for restitution has been entered in an action on a written lease, signed by both parties thereto, against a tenant holding over after the expiration of the term thereof. (6122)

85-90, 96, 88+426.

**4049. Not to be dismissed for form—Amendments—Return—**In all cases of appeal, the appellate court shall not dismiss or quash the proceedings for want of form only, provided they have been conducted substantially in accordance with the provisions of this chapter. Amendments may be allowed at any time, upon such terms as to the court may appear just, in the same cases and manner and to the same extent as in civil actions. The court may compel the justice, by attachment, to make or amend any return which is withheld or improperly or insufficiently made. (6123, 6124, 6126)

**4050. Form of verdict—**The verdict of the jury or the finding of the court in favor of the plaintiff in an action under this chapter shall be substantially in the following form:

At a court held at ....., on the ..... day of ....., 19...., before ....., a justice of the peace in and for the county of ....., in an action between ....., plaintiff, and ....., defendant, the jury (or, if the action be tried without a jury, the court) find that the facts alleged in the complaint are true, and that the said defendant is guilty thereof, and the said plaintiff ought to have restitution of the premises therein described without delay. ....

If the verdict or finding be for the defendant, it shall be sufficient to find that the facts alleged in the complaint are not true, and that the defendant is not guilty. (6127)

**4051. Forms of summons and writ—**The summons and writ of restitution may be substantially in the following forms:

FORM OF SUMMONS

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State of Minnesota, }  
County of..... } ss.

The State of Minnesota, to the sheriff or any constable of the county aforesaid:

Whereas, ....., of ....., hath filed with the undersigned, a justice of the peace in and for said county, a complaint against ....., of ....., a copy whereof is hereto attached: Therefore you are hereby commanded to summon the said ....., if to be found in said county, to appear before the undersigned on the ..... day of ....., 19...., at ..... o'clock .... m., at ..... then and there to make answer to and defend against the complaint aforesaid, and further to be dealt

with according to law; and make due return to me of this summons, with your doings thereon.

Dated at ....., this ..... day of ....., 19....

Justice of the Peace.

FORM OF WRIT OF RESTITUTION

State of Minnesota, }
County of..... } ss.

The State of Minnesota, to the sheriff or any constable of the county aforesaid:

Whereas, ....., plaintiff, of ....., in an action for an unlawful or forcible entry and detainer (or for an unlawful detainer, as the case may be), at a court held at ....., in the county aforesaid, on the ..... day of ....., 19...., before ....., a justice of the peace in and for said county, by the consideration of the court, recovered a judgment against ....., of ....., to have restitution of (here describe the premises as in the complaint):

Therefore, you are hereby commanded that, taking with you the force of the county, if necessary, you cause the said ..... to be immediately removed from the aforesaid premises, and the said ..... to have peaceable restitution of the same. You are also hereby commanded that of the goods and chattels of the said ..... within said county you cause to be levied, and, the same being disposed of according to law, to be paid to the said ..... the sum of ..... dollars, being the costs taxed against the said ..... for the said ..... at the court aforesaid, together with twenty-five cents for this writ; and thereof, together with this writ, make due return within thirty days from the date hereof, according to law.

Dated at ....., this ..... day of ....., 19....

Justice of the Peace.

(6127)

CHAPTER 77

CIVIL ACTIONS

4052. One form of action—Parties how styled—The distinction between actions at law and suits in equity, and the forms of such actions and suits, are abolished. There shall be in this state but one form of action for the enforcement or protection of private rights and the redress of private wrongs. This shall be called a civil action, and the party complaining shall be styled the plaintiff, and the adverse party the defendant. (5131, 5132)

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1-162, 136; 6-420, 284; 14-394, 300; 21-308; 64-505, 67+637; 72-143, 75+122; 77-20, 79+587; 86-365, 90+767.

PARTIES

4053. Real party in interest to sue—When one may sue or defend for all—Except when otherwise expressly provided by law, every action shall be prosecuted in the name of the real party in interest; but this section shall not authorize the assignment of a thing in action not arising out of contract: Provided, that when the question is one of common or general interest to many persons, or when those who might be made parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all. (5156; '99 c. 4)

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1. Held real party in interest—An assignee, legal or equitable, of a thing in action (1-162, 136; 5-352, 283; 14-145, 113; 15-132, 99; 2-44, 32; 3-332, 232; 35-434, 29+169; 36-198, 30+879; 54-272, 55+1130; 56-14, 57+218; 59-378, 61+29; 67-41, 69+477; 69-156, 71+1028; 75-527, 78+93; 79-275, 82+634; 46-185, 48+777; 64-57, 65+930); the party holding the legal