

GENERAL STATUTES

OF

MINNESOTA

1913

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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.

(4035)

CHAPTER 76.

FORCIBLE ENTRY AND UNLAWFUL DETAINER.

7656. 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. (4036)

19-174, 137; 66-416, 418, 69+218; 72-446, 75+701; 85-90, 88+426; 110-186, 124+1094.

7657. 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. (4037)

7658. 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. (4038)

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; 62-370, 64+911; 67-449, 451, 70+567; 81-445, 450, 84+454.

3. Jurisdiction—Original jurisdiction limited to justice and municipal courts (53-483, 55+630). Municipal court of Minneapolis has no jurisdiction in proceedings based on breach of contract of lease of lands partly within and partly without Hennepin county (99-426, 109+827).

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; 29-432, 13+676; 32-291, 20+232; 36-80, 30+446; 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 (21-398; 22-37; 26-99, 1+820; 41-542, 546, 43+479; 45-26, 47+397; 61-448, 63+1099; 72-100, 75+114; 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; 36-173, 30+457; 72-100, 75+114; 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 § 6811).

8. Actions against mortgagors holding over—22-349; 30-27, 14+56; 37-76, 33+440; 47-269, 50+227; 60-6, 61+818; 66-262, 68+1087; 67-197, 69+887; 73-53, 61, 75+756, 72 Am. St. Rep. 603.

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

10. Transfer to district court—An action for forcible entry and unlawful detainer, transferred to district court after it appears that title to real estate is involved, is in effect an action in ejectment (105-348, 117+512).

7659. 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. (4039)

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

7660. 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. (4040)

Requisites of complaint under § 7657 (19-174, 137. See 37-76, 33+440). Requisites of complaint under § 7658 (1-88, 67; 1-179, 153; 9-34, 23; 21-398, 30-122, 14+510; 43-458, 45+864). Pleadings to be construed as in ordinary civil actions (53-456, 459, 55+603). Cited (28-461, 462, 11+63).

Summons in municipal court of St. Paul, when returnable (101-253, 112+220, 11 L. R. A. [N. S.] 831, 11 Ann. Cas. 60).

7661. 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 a service of 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 usual place of abode with a member of his family, or a person of suitable age and discretion residing at such place, or if he had no place of abode, by leaving a copy thereof upon the premises described in the complaint with a person of suitable age and discretion occupying the same or any part thereof: Provided, that in case the defendant has no usual place of abode and cannot be found in the county, of which the return of the officer, shall be prima facie proof, and further that there is no person actually occupying the premises described in the complaint, then upon the filing of an affidavit by the plaintiff or his attorney in the court, in which said action is brought stating that no person is actually occupying said premises and that he believes the defendant is not in said state, or cannot be found therein, and either that he has mailed a copy of the summons to the defendant at his last known address, or that such address is not known to him, service of the summons may be made upon such defendant by posting the summons in a conspicuous place on said premises one week and by one week's published notice thereof in some newspaper printed and published in the county wherein said action is brought, or, if there be no newspaper therein, then in some newspaper printed and published at the capitol of the

state and if upon the return day the said defendant or his attorney does not appear in said court in said action then the trial thereof shall be continued for one week to enable the defendant to make his appearance and defend therein. (R. L. § 4041, amended '09 c. 496 § 1)

89-444, 95+314. Cited (101-253, 112+220, 11 L. R. A. [N. S.] 831, 11 Ann. Cas. 60).

7662. 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 § 7663, 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. (4042)

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 (28-267, 273, 9+772; 31-392, 18+101; 53-456, 55+603; 68-328, 331, 71+395, 72+71; 73-108, 113, 75+1039). Matters which control the legal effect of the lease may be set up (28-267, 273, 9+772). Matters in "excuse, justification, or avoidance" are such as constitute "new matter" under general practice act (101-155, 111+962). Held not a defence (36-80, 30+446; 53-204, 209, 54+112; 61-448, 63-1099; 67-449, 70+567). 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). Section 7664 deals only with judgment upon a trial on merits, and is not inconsistent with entry of judgment when there is no such trial (102-237, 113+383).

7663. 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 § 7658, 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. (4043)

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

7664. 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 § 7657, 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. (4044)

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).

See 102-237, 113+383, cited under § 7662.

7665. 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. (4045)

53-232, 233, 54+1113.

7666. 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 on a lease, against a tenant holding over after the expiration of the term thereof, or a termination thereof by a notice to quit, such writ may issue forthwith notwithstanding such notice of appeal, if the plaintiff give a bond conditioned to pay all costs and damages in case on the appeal the judgment of restitution be reversed and a new trial ordered. (R. L. § 4046, amended '09 c. 496 § 2)

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

7667. 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, 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 on a lease against a tenant holding over after the expiration of the term thereof or termination thereof by notice to quit, if the plaintiff give bond as provided in § 7666, 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. (R. L. § 4047, amended '09 c. 496 § 3)

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).

Judgment in favor of defendant, dismissing action and for costs, on withdrawal of plaintiff, is final judgment, and appealable by him. Appeal is given by this section, and not by § 7601 (102-237, 113+383).

7668. Appeal after issuance of writ—Stay—If a writ of restitution has issued before the taking of an appeal, the justice shall give 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 the determination of the appeal, but this section shall not apply to a case where judgment for restitution has been entered on a lease against a tenant holding over, after the expiration of the term thereof or determination thereof by notice to quit. (R. L. § 4048, amended '09 c. 496 § 4)

85-90, 96, 88+426.

7669. 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. (4049)

7670. 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. (4050)

7671. Forms of summons and writ—The summons and writ of restitution may be substantially in the following forms:

FORM OF SUMMONS

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
(4051)

7672. Execution of the writ of restitution—The officer holding the writ of restitution shall execute the same by making a demand upon defendant if he can be found in the county or any adult member of his family holding possession of the premises, or other person in charge thereof, for the possession of the same, and that the defendant remove himself, his family and all of his personal property from such premises within twenty-four hours after such demand. If defendant fails to comply with the demand, then the officer shall take with him, necessary, the force of the county and whatever assistance may be necessary, at the cost of the complainant, remove the said defendant, his family and all his personal property from said premises detained, immediately and place the plaintiff in the possession thereof. In case defendant cannot be found in said county, and there is no person in charge of the premises detained, so that no demand can be made upon the defendant, then the officer shall enter into the possession of said premises, breaking in if necessary, and shall remove all property of the defendant at the expense of the plaintiff. The plaintiff shall have a lien upon ail of the goods upon said premises for the reasonable costs and expenses incurred for removing said

personal property and for the proper caring and storing the same, and the costs of transportation of the same to some suitable place of storage, in case defendant shall fail or refuse to make immediate payment for all the expenses of such removal from said premises and plaintiff shall have the right to enforce such lien by detaining the same until paid, and in case of nonpayment for sixty days after the execution of the writ, shall have the right to enforce his lien and foreclose the same by public sale as provided for in case of sales under chapter 328 of the general laws of 1905 [7036-7040]. (R. L. c. 76, amended '09 c. 496 § 5)

CHAPTER 77

CIVIL ACTIONS

7673. 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. (4052)

1-162, 136; 6-420, 284, 80 Am. Dec. 456; 14-394, 300; 21-308, 18 Am. Rep. 398; 64-505, 67+637; 72-143, 75+122; 77-20, 79+587; 86-365, 90+767, 58 L. R. A. 735.

PARTIES

7674. 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. (4053)

1. Held real party in interest—An assignee, legal or equitable, of a thing in action (1-162, 136; 2-44, 32; 3-332, 232; 5-352, 283; 14-145, 113, 100 Am. Dec. 205; 15-132, 99; 35-434, 29+169; 36-198, 30+879; 46-185, 48+777; 54-272, 55+1130, 40 Am. St. Rep. 325; 56-14, 57+218; 59-378, 61+29, 50 Am. St. Rep. 417; 64-57, 65+930; 67-41, 69+477; 69-156, 71+1028; 75-527, 78+93; 79-275, 82+634); the party holding the legal title to property, although others may have an equitable interest therein (23-359; 46-277, 48+1113; 60-140, 61+1134); a pledgee of a note payable to order and not indorsed to him (14-27, 21, 100 Am. Dec. 190. See 2-44, 32); the holder of a note payable to order (2-107, 89); the holder of a certificate of deposit payable to order (30-86, 14+363); the owner of a note, although the note by mistake was indorsed to his agent (30-436, 15+875); the holder of a note unconditionally indorsed by the payee (45-305, 47+970; 54-323, 56+38, 40 Am. St. Rep. 336); the payee of a bill of exchange made payable really, but not expressly, for collection (37-191, 33+555; 49-395, 52+33); a cestui que trust, the trustee having died and no successor appointed (30-380, 15+672); an executor (81-324, 84+118); an infant (17-497, 473, 10 Am. Rep. 166; 48-82, 50+1022; 52-386, 54+185).

2. Held not real party in interest—An indorsee "for collection" (21-385; 23-263. See 37-191, 33+555; 49-395, 52+33); a public officer (9-172, 159; 50-290, 52+652). Commission merchant to whom property is consigned for sale, without prior contract or advances made to shipper (109-513, 124+377, 26 L. R. A. [N. S.] 437).

3. Pleading—An allegation that the plaintiff is not the real party in interest is a conclusion of law (82-462, 85+238, 718).

4. Assignments—It is the general rule that a right of action for a personal tort is not assignable and the statute leaves this rule unaffected (26-500, 5+376; 47-557, 50+614, 14 L. R. A. 512; 53-249, 54+1108. See 67-420, 70+2).

5. One or more suing for many—74-67, 76+1026, 73 Am. St. Rep. 326. Mandamus, brought by a legal voter, on behalf of himself and all other legal voters in county, was authorized (100-49, 110+364).

7675. Action by assignee—Setoff saved—Exception—If a thing in action be assigned, an action thereon by the assignee shall be without prejudice to any setoff or defence existing at the time or before notice of the assignment; but this section does not apply to negotiable paper, transferred in good faith and upon good consideration before due. (4054)

1. General rule—It is the general rule that an assignee of a non-negotiable thing in action takes it subject to all equities existing against it in the hands of his assignor at the time of the assignment or before notice thereof (23-175; 25-404; 5+273, 217; 54-14, 55+744.