

MASON'S MINNESOTA STATUTES

1927

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EMBRACING THE ORGANIC LAWS, THE CONSTITUTION, AND THE STAT-
UTES CONTAINED IN THE GENERAL STATUTES OF 1923, EXCEPT
THOSE WHICH HAVE BEEN REPEALED OR SUPERSEDED
BY THE SUBSEQUENT LEGISLATION OF 1925
AND 1927

AND ALSO EMBRACING LAWS OMITTED FROM THE GENERAL STATUTES
1923, AND THE LAWS OF THE 1925 AND 1927 SESSIONS OF THE
LEGISLATURE UNDER APPROPRIATE CLASSIFICATION.

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1927

and him there safely keep until the expiration of said
..... days, or until he shall be thence discharged
by due course of law.

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

J. P., Justice of the Peace.

Commitment After Arrest and Before Trial

State of Minnesota,)
County of) ss.

The State of Minnesota, to the Sheriff or Any Con-
stable, and to the Keeper of the Common Jail of
Said County:

Whereas, has been this day brought
before the undersigned, one of the justices of the peace
in and for said county, charged on the oath of
..... with having on the day of
....., 19...., at, in said county
(here state the offence as in the warrant); and, the
said not having given bail to appear
and answer for the said offence, therefore you, the
said constable, are commanded forthwith to convey and
deliver into the custody of the said keeper the body
of the said, and you, the said keeper, are
hereby commanded to receive the said
into your custody in the said jail, and him there safely
keep until he shall be required to be brought before
the court to be tried, or shall be otherwise discharged
by due course of law.

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

J. P., Justice of the Peace.

Order to Bring Up Prisoner

State of Minnesota,)
County of) ss.

The State of Minnesota, to the Keeper of the Common
Jail of Said County:

The undersigned, one of the justices of the peace in
and for said county, sitting as a court for the trial of
....., now in your custody in the common
jail of said county do hereby order you to bring the
said forthwith before me at my office in

the of, in said county,
together with the warrant by which he was committed
to your custody, in order that he may be tried.

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

J. P., Justice of the Peace.

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 Con-
stable 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), com-
mitted at the time and place aforesaid, of which of-
fence 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 here-
by 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) [7655]

CHAPTER 76

FORCIBLE ENTRY AND UNLAWFUL DETAINER

Table with 2 columns: Description and Section Number. Includes items like 'Forcible entry—Penalty', 'Unlawful detention of lands or tenements subject to fine', 'Recovery of possession', etc.

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) [7656]

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

Breach of condition of lease. (138-179, 164+807, 194+
102).

156-71, 194+102.

Municipal courts. 158-217, 197+209.

9148. Unlawful detention of lands or tenements sub-
ject to fine—When any person has made unlawful or
forcible entry into lands or tenements, and detains
the same, or, having peaceably entered, unlawfully de-
tains the same, he shall be fined, and the person en-
titled to the premises may recover possession thereof
in the manner hereinafter provided. (R. L. '05 § 4037,
G. S. '13 § 7657, amended '17 c. 227 § 1)

9147. Forcible entry—Penalty—No person shall
make entry into lands or tenements except in cases

Forcible entry statute inapplicable (127-93, 148+983).

In an action to foreclose a mortgage, where the mortgagor had died leaving a widow and children as his heirs at law, a receiver was appointed to take possession of the land mortgaged. The widow, as administratrix of her husband's estate and in her own right, was a party to the action, but the children were not. Prior to the appointment of the receiver, one of the children took possession of the land. Held, that the receiver could not recover possession by resorting to unlawful detainer proceedings. 157-485, 196+661.

9149. Recovery of possession—When any person holds over lands or tenements after a sale thereof on an execution or judgment, or on foreclosure of a mortgage and expiration of the time for redemption, or after termination of contract to convey the same, or after termination of the time for which they are demised or let to him or to the persons 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. (R. L. '05 § 4038, G. S. '13 § 7658, amended '17 c. 227 § 2)

157-485, 196+661, note under § 9148; 166-33, 206+944.

Complaint and objections thereto. 160-428, 200+470.

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).

The Municipal Court Act of the city of Minneapolis. c. 34, Special Laws 1889, as amended by chapter 407, Laws 1917, gives jurisdiction of action in unlawful detainer, whether the title to real estate is involved or not. 161-157, 201+299.

The lessee of a homestead, the lease being void because the wife of the lessor failed to sign it, becomes a tenant at will when he enters into possession under the lease, and is bound to pay rent in accordance with the terms thereof. If he fails to do so, he may be evicted under the unlawful detainer statute. 166-190, 207+498.

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.

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; 73-58, 61, 75+756.

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).

127-93, 148+983.

A month's notice to quit entitles lessor to possession (128-534, 150+1102; 138-179, 164+807). Unlawful de-

tainer judgment not a bar to action on title (162-330, 188+732; 154-228, 191+824; 194+722).

9150. 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) [7659]

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

9151. 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) [7660]

Requisites of complaint under § 9148 (19-174, 137. See 37-76, 33+440). Requisites of complaint under § 9149 (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).

9152. 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) [7661]

89-444, 95+314. Cited (101-253, 112+220).

9153. 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 § 9154, 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) [7662]

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, 94772; 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, 94772). 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 (21-393). Justice not required to wait an hour for appearance of defendant (22-37). Section 9153 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).

165-262, 206+168.

Practice in municipal court. 154-225, 194+722.

A justice of the peace cannot entertain motions for a new trial, nor should a judge of the municipal court, in actions of this nature, where he must follow the practice prescribed for a justice of the peace. 154-225.

The answer set forth matters strictly legal, and the court had jurisdiction to entertain the same. 157-161, 195+898.

The municipal court of Minneapolis in forcible entries and unlawful detainers cannot entertain (1) a motion for a new trial; (2) a motion for judgment notwithstanding the verdict. It can, however, (a) dismiss an action; (b) discharge a jury; (c) direct a verdict; (d) entertain and determine a motion for judgment on the pleadings. 158-217, 197+209.

9154. 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 § 9149, 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) [7663] 41-542, 547, 43+479; 72-100, 75+114.

9155. 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 § 9148, 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) [7664]

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 (63-456, 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.

Motion for new trial cannot be entertained by Justice or Municipal Judge (154-228, 191+824, 194+722).

Effect of judgment in such actions, following William Welsman Holding Co. v. Miller, 152 Minn. 330, 188 N. W. 722, 157-161, 195+898.

In an action in unlawful detainer, where a verdict was returned in favor of the party in possession, and the plaintiff on the same day executed a conveyance of the premises to a third party, who brought another action in unlawful detainer involving the same state of facts, held, that the former was res judicata. 161-157, 201+299.

9156. 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) [7665] 53-232, 233, 54-1118.

9157. 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) [7666]

29-432, 433, 13+676; 53-483, 55+630; 85-90, 88+426; 123-377, 143+980.

Plaintiff's eviction from the building in which he kept his property did not ipso facto deprive him of the right to remove the property. He had a reasonable time thereafter within which he might remove it. 161-135, 201+537.

9158. 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 § 9157, 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) [7667]

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). See 102-237, 113+383.

9159. 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) [7668]

85-90, 96, 88+426.

9160. 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) [7669]

9161. 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) [7670]

9162. 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) [7671]

9163. 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 all 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. (R. L. § 4051½, amended '09 c. 496 § 5) [7672]

138-180, 164+807.