

1940 Supplement  
To  
**Mason's Minnesota Statutes**  
1927

(1927 to 1940)  
(Superseding Mason's 1931, 1934, 1936 and 1938  
Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, 1937 and 1939 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.



Edited by  
**William H. Mason**  
*Assisted by*  
**The Publisher's Editorial Staff**

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**8992-199.** Name of act.—This act may be cited as the Minnesota Probate Code. For convenience only, the table of contents immediately preceding Article I shall be appended to and printed with this act im-

mediately preceding Article I. (Act Mar. 29, 1935, c. 72, §199.)

**8992-200.** Date of effect.—This act shall take effect and be in force from and after 12:01 A. M., July 1, 1935. (Act Mar. 29, 1935, c. 72, §200.)

## CHAPTER 75

## Courts of Justices of the Peace

## GENERAL PROVISIONS

**8993. Jurisdiction limited to county.**

Justice of peace may hold also office of city assessor. Op. Atty. Gen., Apr. 18, 1932.

Jurisdiction of justice of the peace in criminal cases in city of Northfield is limited to cases arising within county but not within city, municipal court having concurrent jurisdiction of misdemeanors committed outside city. Op. Atty. Gen. (266B-11), April 14, 1939.

**8994. Place of holding court.**

Does not authorize justice to regularly hold court in another town so as to usurp the office of the local justice. Op. Atty. Gen., Mar. 19, 1929.

If village of Deephaven does not adjoin city of Minneapolis a justice of the peace of the village is not authorized to hold court in Minneapolis. Op. Atty. Gen. (266b-23), Mar. 29, 1938.

**8996. Powers—Laws applicable.****2. Practice generally.**

A justice of the peace cannot act as collection agent without license. Op. Atty. Gen. (266a-3), Oct. 4, 1934.

Municipality cannot be compelled to furnish criminal forms to justice of the peace. Op. Atty. Gen. (266a-3), Oct. 4, 1934.

**9000. Docket—Contents.****1. In general.**

Justice of peace records are open to inspection of public except illegitimacy proceedings. Op. Atty. Gen. (851), July 1, 1935.

## COMMENCEMENT OF ACTIONS

**9004. Requisites of process.**

One appointed and commissioned by the commissioner of public safety of the city of St. Paul a special police officer, at the request of justice of the peace of 10th and 11th wards to serve process issued out of his court, is entitled to recover of an attorney, practicing in said court, for such process so served, at attorney's request, the fees therefor prescribed by Mason's Minn. St. 1927, §6996. Russ v. K., 285NW472. See Dun. Dig. 3753.

**9005. Summons—Service.**

174M608, 219NW452; note under §9110.

## PLEADINGS AND TRIAL

**9029. Title to real estate—Case certified.**

Removal to district court from municipal court forcible entry and detainer case. 178M282, 226NW847.

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.

## EXECUTION

**9069. Executions and transcripts where court discontinued.**

On adoption of municipal court in city of Springfield all books and records of discontinued justice court are delivered to municipal court which may issue all necessary executions and transcripts. Op. Atty. Gen., Mar. 17, 1934.

## REPLEVIN

**9072. Writ—When returnable.**

A writ of replevin issued pursuant to Laws 1895, c. 229, §22, is valid. 178M174, 226NW405.

## ATTACHMENT

**9084. Where defendant resides in another county.**

See Laws Sp. Ses. 1935-36, c. 88, establishing municipal court for St. Cloud.

## APPEALS

**9092. May be taken, when.**

Where an appeal is taken on questions of law and the judgment is reversed, the suit is no longer pending so as to bar a second suit on the same cause of action. 173M29, 216NW252.

**9093. Requisites.****¾. Time for appeal.**

Defaulting defendant in municipal court was not entitled to notice of entry of judgment as respected time for appeal. Anderson v. G., 183M336, 236NW483. See Dun. Dig. 486(74).

**2. Notice of appeal.**

Notice of appeal from municipal court cannot be served by mail. 178M366, 227NW200.

It is duty of one appealing from conviction of violation of village ordinance to proceed in same manner as from judgment from justice of the peace in civil actions and not in manner provided in §9129 and it is his duty to serve notice of appeal upon village or its attorney and not upon county attorney. Op. Atty. Gen. (779a-5), Nov. 20, 1935.

**3. Miscellaneous.**

Though notice of appeal served by mail was ineffective, the district court obtained jurisdiction where appellee moved there for judgment against garnishee. 178M366, 227NW200.

**4. Fees.**

Two dollar appeal fee applies only to civil actions and not to criminal appeals from justice court to district court. Op. Atty. Gen. (266b-1), May 29, 1934.

**9096. Appeals, how tried—Judgment.****1. Appeals on questions of law and fact.**

Where defendant appeals from a judgment rendered by a justice court to a superior court for trial de novo, such appeal constitutes a general appearance in action and amounts to a waiver of any previous want of jurisdiction. Minneapolis Sav. & Loan Ass'n v. K., 198M420, 270NW148. See Dun. Dig. 476, 479.

A party who appeals from justice court to district court upon questions of law and fact waives objections to irregularities in proceedings in justice court, including failure to file complaint. Schutt v. B., 201M106, 275NW413. See Dun. Dig. 5331.

**9099. Return or amendment compelled, when.**

Amendment of defective record on appeal from municipal court. Op. Atty. Gen., Dec. 9, 1930.

## CRIMINAL PROCEEDINGS

**9110. Jurisdiction.**

Justice of the peace in Golden Valley has no jurisdiction to try a criminal case for an offense committed in Minneapolis. 174M608, 219NW452.

Waiver gives no such jurisdiction. Id.

Village justices and constables have jurisdiction under criminal acts committed outside village boundaries except offenses committed within the limits of any city or village wherein a municipal court is organized and existing. Op. Atty. Gen., May 19, 1931.

County attorney is under no obligation to prosecute misdemeanor cases before justice of the peace except where duty is specifically imposed by law. Op. Atty. Gen. (121b), Aug. 23, 1937.

Village attorney is required to prosecute all violations of village ordinances before a justice of the peace, but is not obligated to prosecute violations of state laws or give aid, counsel and advice to justice of the peace. Id.

Jurisdiction of justice of the peace in criminal cases in city of Northfield is limited to cases arising within county but not within city, municipal court having concurrent jurisdiction of misdemeanors committed outside city. Op. Atty. Gen. (266B-11), April 14, 1939.

**9111. Same—To try and determine.**

A municipal court organized under the general law has no jurisdiction of gross misdemeanors punishable by a fine in excess of \$100, or by imprisonment in excess of three months. State ex rel. Ryan v. M., 182M368, 234NW453. See Dun. Dig. 6900b(63).

Justice court has no jurisdiction where penalty exceeds three months' imprisonment. Op. Atty. Gen. (266b-21), July 15, 1937.

**9112. Complaint—Warrant.**

Labeling complaint and warrant as though state of Minnesota were plaintiff was mere irregularity that did not affect jurisdiction of justice, and additional language "against the form of the statute in such case made and provided," when charging a violation of an ordinance, was mere surplusage. 177M617, 225NW286.

It is sufficient to state the facts and identify the ordinance by number. 177M617, 225NW286.  
Section is not applicable where the charge constitutes a felony. Op. Atty. Gen., Aug. 5, 1930.

#### 9114. Action, when tried.

Justice lost jurisdiction by failing to decide criminal prosecution within three days from date of hearing. Op. Atty. Gen. (266b-11), Oct. 1, 1937.

#### 9115. Bail—Commitment.

Justice of the peace cannot accept cash bail. Op. Atty. Gen. (266a-2), Aug. 28, 1934.

#### 9117. Arraignment.

Right of defendant to appeal after plea of guilty in municipal court. Op. Atty. Gen., Dec. 9, 1930.

#### 9119. Plea of not guilty.

One prosecuted for violation of a village ordinance is not entitled to a jury trial and city is not liable for jury fees. Op. Atty. Gen. (605a-11), Feb. 25, 1935.

**9127. Judgment on conviction.**—Whenever the accused is tried under the preceding provisions of this sub-division and found guilty, or is convicted on a plea of guilty, the justice shall render judgment thereon and inflict such punishment, either by fine or imprisonment or both as the nature of the case may require, provided, however, that when the facts of the case so warrant the justice shall have power in his discretion to suspend sentence or place the defendant on probation for a period not exceeding one year, or where a fine has been imposed to order such fine to be paid in installments over a period not exceeding one year. (As amended Mar. 8, 1937, c. 60, §1.)

Justice of peace has power to suspend sentence. Op. Atty. Gen. (266b-21), Sept. 16, 1937.

Justice lost jurisdiction by failing to decide criminal prosecution within three days from date of hearing. Op. Atty. Gen. (266b-11), Oct. 1, 1937.

After a sentence has been imposed and commitment issued, justice's jurisdiction is terminated and he cannot reduce fine or jail sentence imposed. Op. Atty. Gen. (266b-21), Apr. 7, 1938.

Village justice is entitled to his fees in prosecutions for violation of city ordinances, though prosecution is dismissed or sentence suspended. Op. Atty. Gen. (266b-8), July 1, 1938.

Where judge of municipal court allows offender to pay fine in installments or in one payment at some future date, judge can have offender picked up on a warrant and committed to jail for failure to pay fine, but only in event alternative sentence is imposed in first instance. Op. Atty. Gen. (199B-3), August 17, 1939.

#### 9129. Appeal—Requisites.

A cash bond may not be posted with justice of peace in lieu of recognizance with sureties. Op. Atty. Gen. (266b-1), May 29, 1934.

Two dollar appeal fee applies only to civil actions and not to criminal appeals from justice court to district court. Id.

It is duty of one appealing from conviction of violation of village ordinance to proceed in same manner as from judgment from justices of the peace in civil actions and not in manner provided in §9129 and it is his duty to serve notice of appeal upon village or its attorney and not upon county attorney. Op. Atty. Gen. (779a-5), Nov. 20, 1935.

Where city charter is silent on appeal from convictions of violation of ordinance in municipal court, appeals may be taken under this section. Op. Atty. Gen. (6h), June 11, 1937.

#### 9130. Allowance of appeal.

Where there is an appeal from conviction in justice court for violation of game and fish laws, revocation of defendants license is ineffective until conviction on appeal. Op. Atty. Gen.; Dec. 19, 1929.

#### 9131. How tried.

Roehrs v. T., 185M154, 240NW111; note under §9277.  
On appeal from a conviction in a justice court of violation of a municipal ordinance, district court has no jurisdiction to try and convict defendant for a crime against a statute which is beyond jurisdiction of justice court, there having been no new and original proceeding against defendant in district court. State v. Kartak, 195M188, 262NW221. See Dun. Dig. 5349.

Defendant may enter plea of guilty in district court on appeal from justice court conviction. Op. Atty. Gen. (341b), June 4, 1937.

#### 9136. Certificate of conviction, etc.

Amount paid attorney appointed by court to represent a defendant in justice court in a criminal case should not be included as part of costs in action. Op. Atty. Gen. (121b-17), Jan. 28, 1935.

Justice need not report prosecutions under village ordinances. Op. Atty. Gen. (266b-17), Dec. 3, 1937.

#### 9137. Report to county attorney.

Where grand larceny case against a number of boys was transferred from justice court to juvenile court, references to such case should be left entirely out of report unless boys were remanded to custody of justice court for the purpose of binding them over to district court. Op. Atty. Gen. (121b-17), Jan. 28, 1935.

Justice need not report prosecutions under village ordinances. Op. Atty. Gen. (266b-17), Dec. 3, 1937.

#### 9142. Judgment on conviction—Commitment—Execution.

A justice of the peace has no authority to permit a defendant to defer payment of any part of the fine, but he has authority to receive the fine at any time. Op. Atty. Gen., Sept. 5, 1931.

Justice of the peace must see that fines are paid or defendant committed to jail, but fines may be collected by execution. Op. Atty. Gen., Aug. 15, 1933.

Successor of deceased justice is not compelled to issue commitment on four-year-old judgment. Op. Atty. Gen., Oct. 3, 1933.

Whether judge of municipal court in Waseca may include fees paid jurors as part of costs in a criminal case discussed but not determined because it involved a pending case. Op. Atty. Gen. (306B), June 27, 1939.

#### 9145. Fines—How collected and paid over.

A justice of the peace, where the prescribed punishment is in the alternative as between a fine or jail sentence, may impose a straight jail sentence without the option of a fine, but where a defendant is sentenced to pay a fine and an alternative jail sentence is imposed in default of payment of the fine, the commitment should so state because the defendant is entitled to pay his fine to the sheriff any time after he is committed, and thereupon be released. Op. Atty. Gen., Feb. 28, 1931.

A justice of the peace has no authority to permit a defendant to defer payment of any part of the fine, but he has authority to receive the fine at any time. Op. Atty. Gen., Sept. 5, 1931.

Justice of the peace may not deduct costs in dismissed cases from fines collected in other cases, but should remit full amount and make a separate claim for any sum due him. Op. Atty. Gen. (199b-5), Jan. 13, 1938.

Fines collected for violation of ordinances or by-laws of a town regulating traffic on town roads must be paid into county treasury. Op. Atty. Gen. (989B-4), May 20, 1939.

## 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 plaintiffs' 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.

½. In general.

Minn. Bldg. & Loan Ass'n. v. C., 182M452, 234NW872.  
Landlord of apartment on which rent is payable from week to week cannot retake possession of premises when tenant defaults, unless he reserves the right, and is guilty of coercion in rendering apartment uninhabitable to force tenant to remove without resort to unlawful detainer proceedings. State v. Brown, 203M505, 282NW 136. See Dun. Dig. 5448.