CHAPTER 566

FORCIBLE ENTRY AND UNLAWFUL DETAINER

566.01 FORCIBLE ENTRY; PENALTY.

HISTORY. R.S. 1851 c. 87 s. 1; P.S. 1858 c. 77 s. 1; G.S. 1866 c. 84 s. 1; G.S. 1878 c. 84 s. 1; G.S. 1894 s. 6108; R.L. 1905 s. 4036; G.S. 1913 s. 7656; G.S. 1923 s. 9147; M.S. 1927 s. 9147.

Although the husband had deserted his wife she remained in legal possession of the premises as his agent and in his name. Davis v Woodward, 19 M 174 (137); Mastin v May, 127 M 93, 148 NW 983.

If a person lawfully entitled to the possession of real property can make peaceable entry, even while another is in occupation, the entry, in contemplation of law, gives or restores him to complete possession. Mercil v Broulette, 60 M 416, 69 NW 218.

The purpose of sections 566.01, 566.02 is to give a speedy remedy to those whose possession of real property has been invaded, and not to take the place of an action in ejectment. Mere constructive possession is insufficient, although an actual foothold is not always absolutely required. O'Neill v Jones, 72 M 446, 75 NW 701.

The purpose of the legislature in the enactment of the forcible entry and unlawful detainer statute was to prevent those claiming a right of entry or possession of land adversely held from redressing their own wrongs by entering into possession in a violent or forcible manner. Lobdell v Keene, 85 M 90, 88 NW 426.

One in peaceable possession and occupancy of land may maintain an action to restrain repeated and continuing trespasses by one asserting title in himself. Baldwin v Fisher, 110 M 186, 124 NW 1094.

The lessor accepted rent with knowledge that a part of the building had been sublet; but the remainder of the building was sublet thereafter, and the lessor is entitled to reenter for the subsequent breach of the covenant against subletting. Zotalis v Cannellos, 138 M 179, 164 NW 807.

A judge of municipal court of Minneapolis cannot entertain a motion for a new trial of an action in forcible entry and unlawful detainer. Lilienthal v Tordoff, 154 M 225, 191 NW 823.

On appeal from a justice court to the muncipal court of the city of St. Paul, the municipal court acquires jurisdiction of the action when the justice's return is filed in the appellate court, and not before. Kelly v Anderson, 156 M 71, 194 NW 102.

The municipal court in 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) charge a jury; (c) direct a verdict; and (d) entertain and determine a motion for judgment on the pleadings. Clark v Dye, 158 M 217, 197 NW 209.

A sublease of a part of the premises for the entire term of an original lease is an assignment of the original lease as to that part of the premises. One who holds possession by permission of the owner, but without a fixed term, is a tenant at will. Weidemann v Brown, 190 M 34, 250 NW 724.

Farm leases are made with reference to spring crops. Planting winter wheat in the fall does not save defendant's right of possession so as to plant the spring crop the following season or a right of occupancy of the premises. By the terms of his lease he has the right to harvest his winter wheat. Jennison v Priem, 202 M 338, 278 NW 517.

566.02 UNLAWFUL DETENTION OF LANDS OR TENAMENTS SUBJECT TO FINE.

HISTORY. R.S. 1851 c. 87 ss. 2, 9; P.S. 1858 c. 77 ss. 2, 9; G.S. 1866 c. 84 ss. 2, 9; G.S. 1878 c. 84 ss. 2, 9; G.S. 1894 ss. 6109, 6116; 1897 c. 241; R.L. 1905 s. 4037; G.S. 1913 s. 7657; 1917 c. 227 s. 1; G.S. 1923 s. 9148; M.S. 1927 s. 9148.

Unlawful detention, unaccompanied with force, where the original possession was taken peaceably and under claim of right, is not sufficient to authorize proceedings under section 566.02. Ejectment is the remedy in such cases. Mastin v May, 127 M 93, 148 NW 983.

Garnishment of vendee is not a defense to an action for possession. Lilienthal v Tordoff, 154 M 228, 191 NW 823.

Prior to the appointment of a receiver in a foreclosure action, one of the children of the deceased mortgagor went into possession. In his answer to an action by the receiver to obtain possession of the premises, the defendant was not limited to his lease in justifying under a general denial, but might assert a right of possession as heir. Buff v Schafer, 157 M 487, 196 NW 661.

The partial eviction, in an action for unlawful detainer, was in the nature of a constructive eviction and was not a defense, and to render a constructive eviction a defense the tenant must surrender the premises. Leifman v Percansky, 186 M 427, 243 NW 446.

A directed verdict for restitution was proper where evidence showed plaintiff was and for over a year had been in actual possession, and that defendant entered one apartment and unlawfully detained the same. He entered under a deed. It is not necessary for plaintiff to prove the detention forcible; it was sufficient to prove it unlawful. Mutual Trust v Berg, 187 M 503, 246 NW 9.

The moratorium act is remedial in its purpose and is to be construed liberally to make its objectives realizable in its application to existing legal rights and remedies. It is the duty of the court, within the limits of the act, so to construe it as to avoid forfeitures. Tomasko v Cotton, 200 M 70, 273 NW 628.

The unlawful detainer statute is not designed to try title to real estate, nor serve as a substitute for ejectment. Original jurisdiction is confined to the justice or municipal court. Counter-claims cannot be litigated. Rent may not be recovered. Judgment in unlawful detainer proceedings is not a bar to an action to have determined the legal title or the equitable rights of the parties. Keller v Henvit, 219 M 580, 18 NW(2d) 545.

566.03 RECOVERY OF POSSESSION.

HISTORY. R.S. 1851 c. 87 s. 12; P.S. 1858 c. 77 s. 12; G.S. 1866 c. 84 s. 11; G.S. 1878 c. 84 s. 11; G.S. 8194 s. 6118; R.L. 1905 s. 4038; G.S. 1913 s. 7658; 1917 c. 227 s. 2; G.S. 1923 s. 9149; M.S. 1927 s. 9149.

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1. Generally

That a court of inferior jurisdiction is empowered to proceed and reach the same result as could be reached in district court, but in a more summary manner, is no reason for asserting that a court of superior jurisdiction can use the same summary methods. It is not a question of jurisdiction, it is one of practice. State ex rel v District Court, 53 M 483, 55 NW 630.

A judgment in an unlawful detainer action merely determines the right to present possession. It does not determine the ultimate rights of the parties and is not a bar to an action involving title to the property. Weisman v Miller, 152 M 330, 188 NW 732; Lilienthal v Tordoff, 154 M 228, 191 NW 823, 194 NW 722.

Whether building and loan companies only should be distinguished and favored by permitting them, in limited instances, to take as security for a loan executory contracts for real estate and have a strict foreclosure or 30 days' notice without redemption, is a question of policy for the legislature. Minn. B. & L. v Closs, 182 M 456, 234 NW 872.

Landlord found guilty of coercion, under section 621.56, who renders an apartment uninhabitable in order to force tenant to remove without resorting to detainer proceedings. State v Brown, 203 M 506, 282 NW 136.

Measure of vendor's damages where vendee wrongfully remains in possession after cancelation of executory contract. 16 MLR 726.

2. Nature and object of action

The sole object of this statute as originally adopted was to provide a summary remedy by which landlords may be restored to the possession of leased premises on the expiration of the lease, or the failure of the lessee to comply with the provisions of the lease. Any other right which the landlord may have arising out of his contract must be enforced by some other remedy. Chandler v Kent, 8 M 524 (467); Whitaker v McClung, 14 M 170 (131); Ferguson v Kumler, 25 M 183.

The act concerning forcible entries and unlawful detainers, so far as it affords a remedy for landlords against tenants who unlawfully detain premises after default in payment of rent, or the expiration of the term, must be construed to apply only to the conventional relation of landlord and tenant. It is not intended as a substitute for an action in ejectment, nor to afford means of enforcing other agreements to surrender possession of real estate. Steele v Bond, 28 M 273, 9 NW 772.

In the municipal court of Minneapolis an appeal can only be taken from the final judgment. Gray v Hurley, 28 M 389, 10 NW 417.

This act, providing that in actions for recovery of real property held under lease after expiration thereof restitution of the premises shall be made notwithstanding an appeal, has no application to actions originally brought in district court. State ex rel v District Court, 53 M 483, 55 NW 630.

Under this act, when the tenant tenders the amount due with interest and costs, and these facts are alleged in the answer and are admitted on trial, plaintiff is not entitled to restitution, the money being paid into court. George v Mahoney, 62 M 370, 64 NW 911.

That a landlord has violated a covenant in his lease to keep premises in good repair, and that damages resulted, is no defense in these summary proceedings. Peterson v Kreuger, 67 M 451, 70 NW 567.

While these proceedings are not a substitute for an action in ejectment, yet it gives the remedy to any party entitled to possession of the demised premises, whether he be the lessor or his grantee or some one claiming under him, against a party in possession who has been a lessee thereof, or who claims under such lessee. Alworth v Gordon, 81 M 445, 84 NW 454.

3. Jurisdiction

Original jurisdiction is limited to justice and municipal courts. State ex rel v District Court, 53 M 483, 55 NW 30.

Municipal court of Minneapolis has no jurisdiction in case based on breach of contract for lease of lands where part of the leasehold is outside Hennepin county. Bunker v Hanson, 99 M 426, 109 NW 827.

The municipal court act of the city of Minneapolis, Ex. Laws 1889, Chapter 34, as amended by Laws 1917, Chapter 407, gives jurisdiction of action in unlawful detainer whether the title to real estate is involved or not. Nellas v Carline, 161 M 157, 201 NW 299.

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. If he fails to do so he may be evicted under the unlawful detainer statute. Fisher v Heller, 166 M 190, 207 NW 498.

4. When action will lie

The provisions of the unlawful detainer statute apply after rent becomes due according to the terms of the lease or agreement. The lease need not contain a reentry clause. Gibbens v Thompson, 21 M 398; Spooner v French, 22 M 37; Wright v Gribble, 26 M 99, 1 NW 820; Woodcock v Carlson, 41 M 542, 43 NW 479; Suchauck v Smith, 45 M 26, 47 NW 397; Lloyd v Secord, 61 M 448, 63 NW 1099; Caley v Rogers, 72 M 100, 75 NW 114; Seeger v Smith, 74 M 279, 77 NW 3.

The action will lie when the lessee acts contrary to the conditions or covenants of the lease or agreement. Steele v Bond, 28 M 267, 9 NW 772; State ex rel v Burr, 29 M 432, 13 NW 676; Pond v Holbrook, 32 M 291, 20 NW 232; Gluck v Elkan, 36 M 80, 30 NW 446; Clementson v Gleason, 36 M 102, 30 NW 400; Bauer v Noble, 51 M 358, 53 NW 805; Peterson v Kreuger, 67 M 449, 70 NW 567; Berryhill v Healey, 89 M 444, 95 NW 314.

The conventional relation of landlord and tenant is essential. Steele v Bond, 28 M 267, 9 NW 772; Burton v Rohrbeck, 30 M 393, 15 NW 678; Pioneer Savings v Powers, 47 M 269, 50 NW 227; Tilling v Knoblauch, 73 M 108, 75 NW 1039; Alworth v Gordon, 81 M 445, 84 NW 454.

It is not essential that the detainer be forcible. Gluck v Elkan, 36 M 80, 30 NW 446; Mercantile State v Vogt, 178 M 283, 226 NW 847.

The action will lie against a tenant withholding possession after expiration of his term. Steele v Bond, 28 M 267, 9 NW 772; Burton v Rohrbach, 30 M 393, 15 NW 678; Judd v Arnold, 31 M 430, 18 NW 151; Hunter v Frost, 47 M 1, 49 NW 327; Norton v Beckman, 53 M 456, 55 NW 603; Ingalls v Oberg, 70 M 102, 72 NW 841.

The unlawful detention where the original possession was taken peaceably under claim of right does not, in the instant case, warrant unlawful detainer proceedings. Ejectment is the proper remedy. Mastin v May, 127 M 93, 148 NW 983.

Breach of lease by sale of liquor. Midwest Realty v Standard Garage, 160 M 429, 200 NW 470.

The partial eviction pleaded as a defense was in the nature of a constructive eviction and was not a defense. To render a constructive eviction a defense the tenant must abandon or surrender the premises on account thereof. Leifman v Percansky, 186 M 427, 243 NW 446.

The descriptions in the lease and in the canceled executory contract, while not identical, were so nearly the same as to sustain the lessee's action. Gruenberg v Saumweber, 188 M 568, 248 NW 724.

A mortgagee in possession may hold possession against a mortgagor in default. Schmit v Dixon, 189 M 420, 249 NW 580.

The tax title being found defective, an unlawful detainer action was the proper action to recover possession during the existence of defendant's life estate, which was subject to the specific lien of the judgment. Trask v Russell, 193 M 213, 258 NW 164.

Although a tenant has defaulted in rent payments, his possession is lawful against a landlord who never properly terminated the tenancy, and who did not reserve the right to enter upon default. State v Brown, 203 M 506, 282 NW 136.

See as to proceedings against parties withholding land forfeited to the state for taxes. OAG Sept. 12, 1937 (525).

5. Who may maintain

A subsequent lessee from the lessor may recover possession under this act. Burton v Rohrbeck, 30 M 393, 15 NW 678;

As also may the grantee of the lessor. Alworth v Gordon, 81 M 445, 84 NW 454.

The lessor accepted rent knowing part of the building had been sublet; but the remainder of the building was sublet thereafter, and he is entitled to reenter for this subsequent breach of the conditions of the lease. Zotalis v Cannellos, 138 M 179, 164 NW 807.

The receiver in a mortgage foreclosure action cannot bring action in unlawful detainer against an heir of the mortgagor in possession. Buff v Shafer, 157 M 486, 196 NW 661.

The lessee may maintain an action as against the vendee holding over after a cancelation of his contract. Gruenberg v Saumweber, 188 M 568, 248 NW 724.

6. Parties defendant

In an action against a tenant holding over, all who are in possession under the tenant may be joined as defendants. Judd v Arnold, 31 M 430, 18 NW 151; Bagley v Sternberg, 34 M 470, 26 NW 602.

The occupation or possession of the family, servants or agents of the tenant will be construed to be his possession. Bagley v Sternberg, 34 M 470, 26 NW 602.

The lessee of a homestead, the lease being void, is a tenant at will and may be evicted. Fisher v Heller, 166 M 190, 207 NW 498.

One who enters into and remains in possession of real estate as a member of the family of the purchaser thereof, and the contract is duly canceled, may be joined as defendant or may be proceeded against in a separate action after judgment of restitution against the purchaser. Mercantile Bank v Vogt, 178 M 283, 226 NW 847.

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. Gibbens v Thompson, 21 M 398; Spooner v French, 22 M 37; Radley v O'Leary, 36 M 173, 30 NW 457; Caley v Rogers, 72 M 100, 75 NW 114; Seeger v Smith, 74 M 279, 77 NW 3.

A tenant at will must be served with a notice to quit, but if the action is based on the ground of expiration of a fixed term no notice to quit is necessary before suit. Engels v Mitchell, 30 M 122, 14 NW 510.

A month's notice to quit the premises leased from month to month entitled the plaintiff to possession. Anderson v Meyer, 128 M 534, 150 NW 1102.

Where a tenant is in default in the payment of rent, the landlord's right under the unlawful detainer act is complete, and is not limited by a 60-day optional clause in the lease. First Mpls. v Lancaster, 185 M 131, 240 NW 459.

8. Actions against mortgagors holding over

An action may be brought under the unlawful detainer act against one holding over after a sale upon foreclosure of a mortgage, the time of redemption having expired. McArthur v Craigie, 22 M 349; Anderson v Schultz, 37 M 76, 33 NW 440.

The issue of title being involved, the municipal court of the city of Stillwater must certify the case to the district court. Bassett v Fortin, 30 M 27, 14 NW 56.

The provisions of the mortgage did not empower the mortgagee to bring action in unlawful detainer before foreclosure. Pioneer Svgs. v Powers, 47 M 269, 50 NW 227; Cullen v Minn. Loan, 60 M 6, 61 NW 818; Heaton v Darling, 66 M 262, 68 NW 1087; Preiner v Meyer, 67 M 197, 69 NW 887.

Tenant entitled to crops grown during period of redemption. Aultman v O'Dowd, 73 M 58, 75 NW 756.

9. Actions against debtor holding over after execution sale

A justice of the peace has no jurisdiction to recover possession of real estate against the former owner who holds over after a sale on execution, and before the expiration of the period of redemption. Stone v Bassett, 4 M 298 (215).

The unlawful detainer statute was designed to be a summary mode of getting possession where no question of title is involved; but in practice, the action is used to try the question of title, because of the provision of certifying the case to the district court where trial may be had. Ferguson v Kumler, 25 M 183; Knight v Valentine, 35 M 367, 29 NW 3.

10. Transfer to district court

An action for forcible entry and unlawful detainer, transferred to the district court after it appears that title to real estate is involved, is in effect an action in ejectment. Bartleson v Munson, 105 M 348, 117 NW 512.

After foreclosure of a mortgage. Truman v Lovell, 166 M 33, 206 NW 944.

An unlawful detainer proceeding in justice court is not removable to the district court on the ground that title to real estate is involved unless and until such title comes in issue on the evidence presented. Mpls Svgs. v King, 198 M 420, 270 NW 148.

566.04 LIMITATION.

HISTORY. R.S. 1851 c. 87 s. 13; P.S. 1858 c. 77 s. 13; G.S. 1866 c. 84 s. 12; G.S. 1878 c. 84 s. 12; Ex. 1881 c. 9 s. 2; G.S. 1894 s. 6119; R.L. 1905 s. 4039; G.S. 1913 s. 7659; G.S. 1923 s. 9150; M.S. 1927 s. 9150.

Since the enactment of Ex. Laws 1881, Chapter 9, proceedings against a tenant for restitution of leased premises may be maintained during the pendency of the lease, and for three years after the expiration of the leasehold estate. Suchonek v Smith, 45 M 26, 47 NW 397; Alworth v Gordon, 81 M 446, 84 NW 454.

566.05 COMPLAINT AND SUMMONS.

HISTORY. R.S. 1851 c. 87 ss. 3, 24; P.S. 1858 c. 77 ss. 3, 24; G.S. 1866 c. 84 ss. 3, 20; G.S. 1878 c. 84 ss. 3, 20; G.S. 1894 ss. 6110, 6127; R.L. 1905 s. 4040; G.S. 1913 s. 7660; G.S. 1923 s. 9151; M.S. 1927 s. 9151.

Requisites of a complaint under section 566.03. Lewis v Steele, 1 M 88 (67); Fallman v Gilman, 1 M 179 (153); Pinney v Fridley, 9 M 34 (23); Dorr v McDonald, 43 M 458, 45 NW 864.

To maintain an action under section 566.02 it is necessary for the plaintiff to prove that defendant is guilty of an unlawful detainer of the premises by force and strong hand; that is, by some circumstances of actual violence or terror. Davis v Woodward, 19 M 174 (137); Anderson v Schultz, 37 M 76, 33 NW 440.

A complaint defective for lack of adequate description is cured by the failure of defendant to seasonably take the proper objection, and by putting in an answer. Gibbens v Thompson, 21 M 398.

Plaintiff, to entitle himself to judgment of restitution, must prove his case. Such judgment cannot properly be rendered simply upon defendant's default. Hennessy v Pederson, 28 M 462, 11 NW 63.

Pleadings are to be construed as in ordinary civil proceedings. Norton v Beckman, 53 M 456, 55 NW 603.

The summons in detainer cases in the municipal court of St. Paul is returnable on the first day of a regular weekly term, being not less than three nor more than ten days from the date of its issuance. Kenny v Seu Si Lun, 101 M 253, 112 NW 220.

A party who appeals from justice to district court upon questions of law and fact waives objections to irregularities in proceedings in justice court. Schult v Brown, 201 M 106, 275 NW 413.

566.06 SUMMONS; HOW SERVED.

HISTORY. R.S. 1851 c. 87 ss. 4, 6; P.S. 1858 c. 77 ss. 4, 6; G.S. 1866 c. 84 ss. 4, 6; G.S. 1878 c. 84 ss. 4, 6; 1881 c. 50 s. 1; G.S. 1894 ss. 6111, 6113; 1903 c. 373; R.L. 1905 s. 4041; 1909 c. 496 s. 1; G.S. 1913 s. 7661; G.S. 1923 s. 9152; M.S. 1927 s. 9152.

Under General Statutes 1894, Section 6113 (section 566.06), jurisdiction of the court does not depend upon its being made to appear at the time of filing the complaint that the defendant is absent from the county, in order to make substituted service of the summons, but jurisdiction depends upon the fact of such absence; and, if the summons was duly issued and served, it was not error to permit the complaint to be amended at the time of the trial to show the fact of

such absence. Berryhill v Healey, 89 M 444, 95 NW 314; Kenny v Seu Si Lun, 101 M 253, 112 NW 220.

In a suit to recover payments made under a canceled contract for a deed, the fact that detainer proceedings had been had and the instant plaintiff evicted, raised the doctrine of res judicata. Herried v Deaver, 193 M 618, 259 NW 189.

The defendant, although he resided in the premises in litigation, was elusive and personal service though attempted, did not succeed. The service by publication was sustained. Mpls. Svgs. v King, 198 M 420, 270 NW 148.

566.07 ANSWER; TRIAL.

HISTORY. R.S. 1851 c. 87 ss. 5, 8, 22; P.S. 1858 c. 77 ss. 5, 8, 22; G.S. 1866 c. 84 ss. 5, 8, 18; G.S. 1878 c. 84 ss. 5, 8, 18; G.S. 1894 ss. 6112, 6115, 6125; R.L. 1905 s. 4042; G.S. 1913 s. 7662; G.S. 1923 s. 9153; M.S. 1927 s. 9153.

A judgment for plaintiff in unlawful detainer proceedings was reversed because of insufficient proof. Chandler v Kent, 8 M 524 (467).

A debtor holding his creditor's over-due promissory note has no right to tender it in payment of his debt for rent. Barker v Walbridge, 14 M 469 (351).

In an action before a justice, an omission by defendant to call for a jury trial, is deemed a waiver of his right to such trial. Gibbens v Thompson, 21 M 398.

In detainer proceedings the justice may proceed to hear the case at the time appointed in the summons, without waiting an hour. Spooner v French, 22 M 37.

Matters which control the legal effect of the lease may be set up by answer. Steele v Bond, 28 M 267, 9 NW 772; Weisman v Cohen, 157 M 161, 195 NW 898.

Matters requiring affirmative equitable relief cannot be set up by answer. Steele v Bond, 28 M 273, 9 NW 772; Petsch v Biggs, 31 M 392, 18 NW 101; Norton v Beckman, 53 M 456, 55 NW 603; Lundberg v Davidson, 68 M 328, 71 NW 395, 72 NW 71; Tilling v Knoblouch, 73 M 108, 75 NW 1039.

If the complaint is insufficient the defendant may move to dismiss. Gray v Hurley, 28 M 390, 10 NW 417.

Allegations and proof not a defense. Gluck v Elkan, 36 M 80, 30 NW 446; Douglas v Herms, 53 M 204, 54 NW 1112; Lloyd v Secord, 61 M 448, 63 NW 1099; Peterson v Kreuger, 67 M 449, 70 NW 567.

Defendant must answer if at all, on the return day, or at such other time as the justice may designate. Universalist Conv. v Bottineau, 42 M 35, 43 NW 687.

In proceedings by a landlord against his tenant, judgment on the pleadings may be ordered as in other cases. Norton v Beckman, 53 M 456, 55 NW 603; Lloyd v Secord, 61 M 448, 63 NW 1099.

An oral plea of not guilty may be entered. Berryhill v Healey, 89 M 444, 95 NW 314.

The lease provided the premises should not be sublet without consent of the lessor. In the absence of written consent, the lease is prima facie evidence that no consent had been given. Berryhill v Healey, 89 M 444, 95 NW 314.

Matters in "excuse, justification, or avoidance" are such as constitute "new matter" under the general practice act. Sodini v Gaber, 101 M 155, 111 NW 962.

A judgment in favor of the defendants in justice court, dismissing an action in unlawful detainer, and for costs, upon the withdrawal of the plaintiff from the trial of the case, is a final judgment and appealable by plaintiff. Van Vlismingen v Oliver, 102 M 237, 113 NW 383.

Neither justice of the peace, nor a judge of municipal court who follows justice practice, may entertain a motion for a new trial. Lilienthal v Tordoff, 154 M 225, 191 NW 823.

In forcible entry and unlawful detainer cases the municipal court of the city of Minneapolis cannot entertain a motion for a new trial, or a motion for judgment notwithstanding the verdict. It can dismiss a case, charge a jury, direct a verdict, or entertain and determine a motion for judgment on the pleadings. Clark v Dye, 158 M 217, 197 NW 209; Olson v Lichten, 196 M 352, 265 NW 25.

Appeal from justice court to the municipal court of city of St. Paul. As the defendant pleaded no equitable defense, and had no maintainable legal defense

the holding of the justice was properly affirmed. Zucher v Woodward, 165 M 262, 206 NW 168.

566.08 ADJOURNMENT; SECURITY FOR RENT.

HISTORY. R.S. 1851 c. 77 s. 7; P.S. 1858 c. 77 s. 7; G.S. 1866 c. 84 s. 7; G.S. 1878 c. 84 s. 7; Ex. 1881 c. 9 s. 1; G.S. 1894 s. 6114; R.L. 1905 s. 4043; G.S. 1913 s. 7663; G.S. 1923 s. 9154; M.S. 1927 s. 9154.

Holding being adverse to the defendant, he appealed to district court, giving the stay-appeal bond and remaining in possession. The decision in the district court was also adverse. After the commencement of the action but before judgment in district court he severed, harvested and removed a crop. The grain belonged to the lessee. Woodcock v Carlson, 41 M 542, 43 NW 479.

In an action in unlawful detainer for non-payment of rent, after the pleadings were closed, the justice did not lose jurisdiction by adjourning, with the consent of all parties, the proceedings for one week. Caley v Rogers, 72 M 100, 75 NW 114.

566.09 JUDGMENT; FINE; EXECUTION.

HISTORY. R.S. 1851 c. 87 ss. 8, 12; P.S. 1858 c. 77 ss. 8, 12; G.S. 1866 c. 84 ss. 8, 11; G.S. 1878 c. 84 ss. 8, 11; G.S. 1894 ss. 6115, 6118; R.L. 1905 s. 4044; G.S. 1913 s. 7664; G.S. 1923 s. 9155; M.S. 1927 s. 9155.

Delay in entering judgment of two days after submission was not unreasonable. Gibbens v Thompson, 21 M 398.

Findings entitle plaintiff to restitution of premises. Wright v Gribble, 26 M 99, 1 NW 820; Hennessy v Pederson, 28 M 461, 11 NW 63.

A judgment in unlawful detainer cannot properly be rendered simply upon the defendant's default. Hennessy v Pederson, 28 M 461, 11 NW 63.

In a judgment of dismissal it was proper to award restitution of possession to the defendant. Fish v Toner, 40 M 211, 41 NW 972.

The judgment in the instant case, while informal, was sufficient in substance, for it expressed the decision of the court, and the relief granted. Norton v Beckman, 53 M 456, 55 NW 603.

Damages for withholding or for rent cannot be recovered. The only judgment that can be rendered is for restitution and costs. State ex rel v District Court, 53 M 483, 55 NW 603.

Judgment as a bar. Lundberg v Davidson, 68 M 328, 72 NW 71; Berryhill v Healey, 89 M 444, 95 NW 314.

A judgment in favor of defendants in justice court, dismissing an action in unlawful detainer and for costs, upon the withdrawal of the plaintiff from the trial of the case, is a final judgment, and appealable by the plaintiff. Van Vlissingen v Oliver, 102 M 237, 113 NW 383.

A justice of the peace or a municipal judge controlled by justice practice cannot entertain a motion for a new trial. Lilienthal v Tordoff, 154 M 225, 191 NW 823.

Effect of judgment in unlawful detainer cases. Weisman v Miller, 152 M 330, 188 NW 732; Weisman v Cohen, 157 M 161, 195 NW 898.

The municipal court act of the city of Minneapolis, Ex. Laws 1889, Chapter 34, as amended by Laws 1917, Chapter 407, gives jurisdiction of action in unlawful detainer whether the title to real estate is involved or not. Nellas v Carline, 161 M 157, 201 NW 299.

A judgment in a previous action for wrongful detainer is no estoppel against this the second action, the issue now determinative having been withdrawn expressly and of record from consideration at the trial of the earlier case. Steinberg v Silverman, 186 M 640, 244 NW 105.

In an action in the district court to uncover payments made by the vendee, where the vendee had previously been evicted, the doctrine of res judicata applies. Herried v Deaver, 193 M 618, 259 NW 189.

The finding in a former action to vacate a judgment for restitution is decisive against the defendant in this action for damages for being kept out of possession. Hermann v Kohner, 198 M 331, 269 NW 836.

The reasonable value of seed used in sowing a crop by an occupant who has vacated the farm, for which there is no recovery quasi ex contractu, cannot be allowed in mitigation of damages recovered by the owner against the occupant for a violation of his covenant to surrender possession of the premises in good repair at the expiration of the term. Mehl v Norton, 201 M 203, 275 NW 843.

566.10 DISAGREEMENT.

HISTORY. R.S. 1851 c. 87 s. 10; P.S. 1858 c. 77 s. 10; G.S. 1866 c. 84 s. 10; G.S. 1878 c. 84 s. 10; G.S. 1894 s. 6117; R.L. 1905 s. 4045; G.S. 1913 s. 7665; G.S. 1923 s. 9156; M.S. 1927 s. 9156.

In an action in unlawful detainer in justice court there was no abuse of discretion in discharging a jury because of their inability to disagree. Rollins v Nolting, 53 M 232, 54 NW 1118.

566.11 WRIT OF RESTITUTION; EFFECT OF APPEAL.

HISTORY. R. S. 1851 c. 87 s. 13; P.S. 1858 c. 77 s. 13; G.S. 1866 c. 84 s. 12; G.S. 1878 c. 84 s. 12; Ex. 1881 c. 9 s. 2; G.S. 1894 s. 6119; R.L. 1905 s. 4046; 1909 c. 496 s. 2; G.S. 1913 s. 7666; G.S. 1923 s. 9157; M.S. 1927 s. 9157.

Noting a distinction between the terms "expiration of the term of the lease" and "breach of covenants" in a lease, the writ in the instant case was properly denied. State ex rel v Burr, 29 M 432, 13 NW 676.

In cases where a written lease has expired, that restitution shall be made notwithstanding an appeal, has no application to actions originally brought in district court. State ex rel v District Ct. 53 M 483, 55 NW 630.

Pending an appeal the owner of the property has no right, during defendant's temporary absence, to take possession and forcibly resist defendant's return to the premises. Lobdell v Keene, 85 M 90, 88 NW 426.

The defendant municipal court should have issued a writ of restitution, under Revised Laws 1905, Section 4047, as amended by Laws 1909, Chapter 496, (section 566.12), which provides for issuance of a writ notwithstanding appeal on plaintiff's giving a bond. State ex rel v Municipal Court, 123 M 377, 143 NW 978.

Plaintiff's eviction from the building in which he stored his property did not ipso facto deprive him of the right to remove the property. Shepard v Alden, 161 M 135, 201 NW 537, 202 NW 71.

Plaintiff's contention that defendant, in the instant case, who had been evicted, was required to give a supersedeas bond is not correct. Such bond is only required in case defendant remains in possession of the premises pending the appeal. Strand v Hand, 178 M 460, 227 NW 656.

Occupant who has vacated a farm, cannot be allowed credit for sowing the crop, in mitigation of damages claimed by the owner for breach of a covenant to keep in repair. Mehl v Norton, 201 M 203, 275 NW 843.

566.12 APPEAL; STAY.

HISTORY. R.S. 1851 c. 87 ss. 17, 18; P.S. 1858 c. 77 ss. 17, 18; G.S. 1866 c. 84 ss. 13, 14; G.S. 1878 c. 84 ss 13, 14; Ex. 1881 c. 9 ss. 3, 4; G.S. 1894 ss. 6120, 6121; R.L. 1905 s. 4047; 1909 c. 496 s. 3; G.S. 1913 s. 7667; G.S. 1923 s. 9158; M.S. 1927 s. 9158.

An appeal to the district court, from an order of the probate court, does not stay the operation of such order while appeal is pending. Whether it would be competent for the district or the probate court to direct a stay of proceedings on the order, quaere. Dutcher v Culver, 23 M 419.

The rule that where a bond is defective a new one may be furnished, applies to unlawful detainer proceedings. Mills v Wilson, 59 M 107, 60 NW 1083.

An appeal by defendant, a proper supersedeas bond being filed, from a judgment in detainer proceedings, not founded on a written lease the terms of which

have expired, awarding possession to plaintiff, stays all proceedings, preserves all rights, and secures the defendant the right to remain in possession pending appeal. Lobdell v Keene, 85 M 90, 88 NW 426.

A judgment in favor of defendants in justice court, dismissing an action in unlawful detainer and for costs, is a final judgment, and appealable by the plaintiff, although in justice he may have withdrawn from the trial. Van Vlissingan v Oliver, 102 M 237, 113 NW 383.

A defendant evicted under a writ of restitution may appeal to the district court and have a trial de novo. Strand v Hand, 178 M 460, 227 NW 656.

In an unlawful detainer action defendant gave an appeal bond on appeal from justice to district court, and another appeal bond from district to supreme court. The two sets of sureties were so affected as to justify a joinder of the obligee's causes of action in one suit. Roehrs v Thompson, 185 M 154, 240 NW 111.

Contracts to farm on shares. 2 MLR 46.

566.13 APPEAL AFTER ISSUANCE OF WRIT; STAY.

HISTORY. R.S. 1851 c. 87 s. 19; P.S. 1858 c. 77 s. 19; G.S. 1866 c. 84 s. 15; G.S. 1878 c. 84 s. 15; Ex. 1881 c. 9 s. 5; G.S. 1894 s. 6122; R.L. 1905 s. 4048; 1909 c. 496 s. 4; G.S. 1913 s. 7668; G.S. 1923 s. 9159; M.S. 1927 s. 9159.

See Lobdell v Keene, 85 M 96, 88 NW 826.

566.14 NOT TO BE DISMISSED FOR FORM; AMENDMENTS; RETURN.

HISTORY. R.S. 1851 c. 87 ss. 20, 21, 23; P.S. 1858 c. 77 ss. 20, 21, 23; G.S. 1866 c. 84 ss. 16, 17, 19; G.S. 1878 c. 84 ss. 16, 17, 19; G.S. 1894 ss. 6123, 6124, 6126; R.L. 1905 s. 4049; G.S. 1913 s. 7669; G.S. 1923 s. 9160; M.S. 1927 s. 9160.

566.15 FORM OF VERDICT.

HISTORY. R.S. 1851 c. 87 s. 24; P.S. 1858 c. 77 s. 24; G.S. 1866 c. 84 s. 20; G.S. 1878 c. 84 s. 20; G.S. 1894 s. 6127; R.L. 1905 s. 4050; G.S. 1913 s. 7670; G.S. 1923 s. 9161; M.S. 1927 s. 9161.

566.16 FORMS OF SUMMONS AND WRIT.

HISTORY. R.S. 1851 c. 87 s. 24; P.S. 1858 c. 77 s. 24; G.S. 1866 c. 84 s. 20; G.S. 1878 c. 84 s. 20; G.S. 1894 s. 6127; R.L. 1905 s. 4051; G.S. 1913 s. 7671; G.S. 1923 s. 9162; M.S. 1927 s. 9162.

566.17 EXECUTION OF THE WRIT OF RESTITUTION.

HISTORY. 1909 c. 496 s. 5; (R.L. 1905 s. 4051½); G.S. 1913 s. 7672; G.S. 1923 s. 9163; M.S. 1927 s. 9163.

By accepting rent after knowledge of a breach of the conditions of the lease, the lessee waives the right to reenter for such breach, but does not waive the right to reenter for a similar breach committed thereafter. Zotalis v Cannellos, 138 M 179, 164 NW 807.

A landlord who attempts by force to compel a tenant to surrender his lawful possession is guilty of the crime of coercion under section 621.56. State v Brown, 203 M 505, 282 NW 136.