CHAPTER 531

ACTIONS AND PROCEEDINGS IN CIVIL CASES

COMMENCEMENT OF ACTIONS

531.01 ACTIONS, HOW COMMENCED.

HISTORY. R.S. 1851 c. 69 art. 4 s. 8; P.S. 1858 c. 59 s. 8; G.S. 1866 c. 65 s. 8; G.S. 1878 c. 65 s. 10; G.S. 1894 s. 4964; R.L. 1905 s. 3891; G.S. 1913 s. 7509; G.S. 1923 s. 9002; M.S. 1927 s. 9002.

Defendant by appearing generally in a cause, waives his right to object to a defect in the service of the summons, or the return of service by the officer. Johnson v Knoblauch, 14 M 16 (4).

An objection that a justice's summons is "served by leaving a copy" and not "by reading" is waived by an appearance before such justice without raising such objection. Tyrrell v Jones, 18 M 312 (281).

Even though the city marshal may not have been authorized to serve the summons, the appearance of the defendant and his taking part in the trial without objection was a waiver, and so the justice acquired jurisdiction. Steinhart v Pitcher, 20 M 102 (86).

A corporation, after appearing generally and pleading to the merits in an action in a justice court, cannot afterwards object that the summons was not served in conformity with the requirements of the statute. Anderson v Southern Co. 21 M 30.

The amount claimed was in excess of $100.00 as was also the amount proven. At the close of plaintiff's testimony, the defendant moved to dismiss because of lack of jurisdiction, whereupon the plaintiff, by leave of court, amended his complaint by reducing the amount claimed to $100.00, and both parties proceeded with the trial, and judgment was rendered for the plaintiff. Held, the conduct of the parties and the proceedings had after the amendment, was sufficient to give the justice jurisdiction. Lamberton v Raymond, 22 M 129.

A summons issued by a justice in blank, as to the return-day, or in blank and filled in by one other than the justice is insufficient to confer jurisdiction. Craighead v D. C. Martin, 25 M 41.

An action pending before a justice at the time of his retirement is not transferred by operation of law to his successor; but where, in such case, both parties appear before the successor justice and make complaint and answer, and the case is adjourned to a certain day, the justice has acquired jurisdiction by reason of the appearance, and consent and an objection at a later date is too late. This overrules Rahilly v Lane, 15 M 447. Anderson v Hanson, 28 M 400, 10 NW 429.

Under Special Laws 1885, Chapter 74, justices of the peace acquire no jurisdiction over parties served with process within the city of Minneapolis, and neither the presence in court, nor a special appearance by denying the jurisdiction of the court, confers jurisdiction on the justice. Hibbins v Beveridge, 35 M 285, 28 NW 506.

In an action commenced by attachment, the justice may, upon a plea in abatement for misnomer of the defendant, order the process and proceedings corrected by inserting the true name. It is not necessary that the process state that defendant's true name is unknown. Morse v Barrows, 37 M 239, 33 NW 706.

When a party appears specially and objects to the jurisdiction of the court, he does not waive his objections by proceeding with the trial after his objection has been overruled by the court. Perkins v Meilicke, 66 M 409, 69 NW 220.

In transferring an action to another justice, a justice should make an entry in his docket stating the name of the justice to whom the case is transferred, and the time and place when and where the parties are to appear, and if the justice to whom the case is transferred, in the absence and without the consent of one

of the parties, tries the case at some other place, the judgment is void as to such party. Larson v Dukleth, 74 M 402, 77 NW 220.

In a case tried before a justice, the jury disagreed and was discharged. The docket did not show any entry regarding a continuance until two weeks when defendant applied "for a new venire for retrial." Plaintiff's attorney objected, and the objection being overruled, another trial was had. Held, the lapse of two weeks before taking action caused the justice to lose jurisdiction, and plaintiff's objection, timely taken, was sufficient to have his rights. May v Grawert, 86 M 210, 90 NW 383.

531.02 SECURITY FOR COSTS.

HISTORY. R.S. 1851 c. 69 art. 4 s. 9; P.S. 1858 c. 59 s. 9; G.S. 1866 c. 65 s. 9; G.S. 1878 c. 65 s. 11; G.S. 1894 s. 4965; R.L. 1905 s. 3892; G.S. 1913 s. 7510; G.S. 1923 s. 9003; M.S. 1927 s. 9003.

The obligation assumed by giving the statutory security for costs in an action in justice's court extends to costs incurred in the district court upon appeal thereto. Starlocki v Williams, 34 M 543, 26 NW 909.

531.03 REQUISITES OF PROCESS.

HISTORY. R.S. 1851 c. 69 art. 4 s. 10; P.S. 1858 c. 59 s. 10; G.S. 1866 c. 65 s. 10; G.S. 1878 c. 65 s. 12; 1885 c. 66; G.S. 1894 s. 4966; 1895 c. 55; 1899 c. 57; R.L. 1905 s. 3893; G.S. 1913 s. 7511; G.S. 1923 s. 9004; M.S. 1927 s. 9004; 1945 c. 100 s. 1.

A summons issued by the justice in blank, even if filled in by some other person, is a void summons. Craighead v Martin, 25 M 41.

The summons designated the time for appearance as "ten o'clock in the ——— noon" on the day named. It was void, but the defect was waived when the defendant thereafter appealed on questions of fact. Seurer v Horst, 31 M 479, 18 NW 283.

The summons was complete in every detail and was properly served, but the name of the plaintiff was omitted from the copy left with the defendant. Held, to be a mere irregularity which did not render the service void. Martin v Lindstrom, 73 M 121, 75 NW 1038.

One appointed a special police officer at the request of a qualified justice is entitled to recover his fees from an attorney who employs him to serve papers. Russ v Kane, 205 M 186, 285 NW 472.

It is advisable that cases be prosecuted by the service of process and trials be had during the hours set out in the statute, and that trials be not had on Sundays or holidays, but the justice is not bound by such hours in criminal cases, and if he tries the cases in irregular hours, he should come within the provisions of section 614.31 or 629.31. 1926 OAG 107, Dec. 7, 1925.

531.04 SUMMONS; SERVICE.

HISTORY. R.S. 1851 c. 69 art. 4 s. 11; P.S. 1858 c. 59 s. 11; G.S. 1866 c. 65 s. 11; G.S. 1878 c. 65 s. 13; G.S. 1894 s. 4967; 1895 c. 32; 1901 c. 345; R.L. 1905 s. 3894; 1909 c. 348 s. 1; G.S. 1913 s. 7512; G.S. 1923 s. 9005; M.S. 1927 s. 9005.

Irregularity of service is waived by a general appearance. Tyrrell v Jones, 18 M 312 (281).

The summons must be issued by the justice and is the commencement of the action. He determines and sets the return-day, and if the return-day date is left blank or is filled in by someone other than the justice, the summons is void. Craighead v Martin, 25 M 41.

It is presumed, unless it otherwise clearly appears, that the service was regular and valid. Goener v Woll, 26 M 154, 2 NW 163; Vaule v Miller, 64 M 485, 67 NW 540.

Service of the summons on the 11th, and returnable on the 17th, was six days before the time of appearance and good service. Smith v Force, 31 M 119, 16 NW 704.

Under Special Laws 1885, Chapter 74, justice of the peace acquires no jurisdiction within the city of Minneapolis. Higgins v Beveridge, 35 M 285, 28 NW 506.

A writ of attachment, commencing suit, gives the justice jurisdiction if it be in the form prescribed by statute, requiring the defendant to be summoned to appear at the office of the justice in a specified county. The town need not be specified. Beseman v Weber, 53 M 174, 54 NW 1053.

The summons being in proper form and served in the manner prescribed by statute, the fact that the copy was defective did not render the service void. Martin v Lindstrom, 73 M 121, 75 NW 1038.

In an action in justice's court commenced by attaching personal property of the defendant, the defendant residing in another county in the state, the summons may be served upon him personally in the county of his residence, and such service gives the justice jurisdiction to render a judgment which will be valid, at least to the property attached. Flohrs v Forsyth, 78 M 87, 80 NW 852.

Laws 1909, Chapter 348, did not repeal or modify the prior special laws creating justice courts in the city of St. Paul. A special statute will not be construed as repealed or modified by a subsequent general act, unless the intent to repeal or alter the special law is manifest. Metcalf v Baker, 114 M 209, 130 NW 999.

As chapter 531 fails to specifically provide the manner of service where a village is defendant, service as prescribed in section 543.06 is regular and valid. Getty v Alpha, 115 M 500, 133 NW 159.

A justice of the peace of the village of Golden Valley does not have jurisdiction to try a criminal case for an offense committed in Minneapolis, and a writ of prohibition will lie. Meister v Stanway, 174 M 608, 219 NW 452.

In garnishment cases, section 593.02 prescribes the same manner of service on the garnishee as is prescribed in section 531.04, except that the service on the garnishee must be personal. Service on the garnishee and on the defendant are separate, and fees may be charged accordingly. 1916 OAG 603, Sept. 11, 1916.

531.05 SERVICE BY PUBLICATION.

HISTORY. 1860 c. 38 s. 1; G.S. 1866 c. 65 s. 12; G.S. 1878 c. 65 s. 14; G.S. 1894 s. 4968; R.L. 1905 s. 3895; G.S. 1913 s. 7513; G.S. 1923 s. 9006; M.S. 1927 s. 9006.

In an action commenced by attachment levied on the property of a non-resident defendant, the summons was by publication. As less than six days elapsed between the expiration of the period of publication and the day on which the justice entered the judgment, the justice had no jurisdiction, and proceedings under the judgment were void. Bird v Norquist, 46 M 318, 48 NW 1132.

531.06 WHEN RETURNABLE; MAILING.

HISTORY. 1860 c. 38 s. 2; G.S. 1866 c. 65 s. 13; G.S. 1878 c. 65 s. 15; G.S. 1894 s. 4969; R.L. 1905 s. 3896; G.S. 1913 s. 7514; G.S. 1923 s. 9007; M.S. 1927 s. 9007.

In an action commenced by attachment levied on the property of a non-resident defendant, the summons was by publication. As less than six days elapsed between the expiration of the period of publication and the day on which the justice entered the judgment, the justice had no jurisdiction, and proceedings under the judgment were void. Bird v Norquist, 46 M 318, 48 NW 1132.

531.07 SERVICE BY PRIVATE PERSON.

HISTORY. R.S. 1851 c. 69 art. 4 s. 17; P.S. 1858 c. 59 s. 17; G.S. 1866 c. 65 s. 14; G.S. 1878 c. 65 s. 16; 1889 c 158 s. 1; G.S. 1894 s. 4970; R.L. 1905 s. 3897; G.S. 1913 s. 7515; G.S. 1923 s. 9008; M.S. 1927 s. 9008.

Babb commenced an action against Carel and caused an attachment to issue. No affidavit was filed. The justice was without jurisdiction. He directed the constable to levy, and a levy was made. The constable was not an officer of the county where the levy was made, and no showing was made in compliance with the statute, and the action was properly dismissed. Carel v Haedecke, 123 M 435, 143 NW 1124.

The justice had jurisdiction of the subject matter and the docket recites due service. The judgment having been a matter of record for two years is presumed

to be regular, and as to collateral attack, the presumption is conclusive. Whitney v Welnitz, 153 M 162, 190 NW 57.

Jurisdiction outside of his county is not conferred on a justice by section 530.07. Thomas v Hector, 216 M 215, 12 NW(2d) 769.

531.08 FAILURE TO EXECUTE; FALSE RETURNS.

HISTORY. R.S. 1851 c. 69 art. 4 s. 18; P.S. 1858 c. 59 s. 18; G.S. 1866 c. 65 s. 15; G.S. 1878 c. 65 s. 17; G.S. 1894 s. 4971; R.L. 1905 s. 3898; G.S. 1913 s. 7516; G.S. 1923 s. 9009; M.S. 1927 s. 9009.

531.09 NEXT FRIEND FOR INFANT PLAINTIFF.

HISTORY. R.S. 1851 c. 69 art. 4 s. 20; P.S. 1858 c. 59 s. 20; G.S. 1866 c. 65 s. 16; G.S. 1878 c. 65 s. 18; G.S. 1894 s. 4972; R.L. 1905 s. 3899; G.S. 1913 s. 7517; G.S. 1923 s. 9010; M.S. 1927 s. 9010.

The authority of a next friend to prosecute an action for an infant is not ended by an appeal to the district court, and it is not necessary to have a guardian appointed. Covell v Porter, 81 M 302, 85 NW 107.

531.10 GUARDIAN FOR INFANT DEFENDANT.

HISTORY. R.S. 1851 c. 69 art. 4 s. 22; P.S. 1858 c. 59 s. 22; G.S. 1866 c. 65 s. 17; G.S. 1878 c. 65 s. 19; G.S. 1894 s. 4973; R.L. 1905 s. 3900; G.S. 1913 s. 7518; G.S. 1923 s. 9011; M.S. 1927 s. 9011.

531.11 TRANSFER OF ACTION.

HISTORY. R.S. 1851 c. 69 art. 4 s. 45; 1858 c. 15 s. 1; P.S. 1858 c. 59 s. 79; G.S. 1866 c. 65 s. 18; G.S. 1878 c. 65 s. 20; G.S. 1894 s. 4974; 1897 c. 136; R.L. 1905 s. 3901; G.S. 1913 s. 7519; G.S. 1923 s. 9012; M.S. 1927 s. 9012.

A party may have a cause transferred from one justice to another on the ground of prejudice any time before the commencement of a trial on the merits, and the right to a transfer is not waived by going to trial after the application for transfer is denied. Curtis v Moore, 3 M 29 (7).

The justice must enter on his docket the name of the justice to whom transferred, and the time and place where the parties are to appear. If the justice without consent of the parties and in the absence of one of the parties proceeds to try the case at another place, the judgment is not binding on the non-consenting party. Rahilly v Lane, 15 M 447 (360).

On a question of jurisdiction regarding a transfer, informalities and inaccuracies of expression in the entries in the docket will be disregarded, if the meaning is ascertainable and conformable to law. McGinty v Warner, 17 M 41 (23).

Where no time is expressed in the transfer papers, the effect is to require the parties to appear forthwith before the justice to whom the case is transferred. State v Bliss, 21 M 458.

An attorney is guilty of misconduct, where, finding the justice to whom a case has been transferred had not qualified, he advises and assists the justice in qualifying by dating back the qualifying papers. In re Arctander, 26 M 25.

An action pending before a justice of the peace at the time of his retirement is not transferred to his successor by operation of law, but the successor may acquire jurisdiction if the parties voluntarily appear and submit to his jurisdiction, even if only by requesting an adjournment. Anderson v Hanson, 28 M 400, 10 NW 429.

Where a transfer is from one justice to another, the fact that the defendant was described as Frank Rafferty, when the true name was Francis Rafferty, is immaterial, and the transfer is effective. Lyons v Rafferty, 30 M 526, 16 NW 420.

Section 531.11 applies only to actions and proceedings which the justice has the power to hear and determine, and consequently does not apply to examinations of a person accused of crime. State v Bergman, 37 M 407, 34 NW 737.

Defendant is not entitled to a change of venue after the case is called for trial, a jury demanded and granted, and the cause continued to a future day at which the venire was returnable. Lueck v Duluth Railroad, 57 M 30, 58 NW 821.

Where a party, upon an insufficient affidavit, obtains a transfer to another justice, he cannot afterwards be heard to raise the objection that the cause was improperly transferred. Oltman v Yost, 62 M 261, 64 NW 564.

Where the justice to whom the case is transferred in the absence and without the consent of one of the parties, tries the case at a place other than the place to which the case was transferred, the judgment is void as to the party not appearing. Larson v Dukleth, 74 M 402, 77 NW 220.

If a justice transfers an action to a person not, in fact, a justice, and appoints a time and place for an appearance, and adjourns his own court as to such action, he has lost jurisdiction, and may not thereafter transfer to another justice. State v Gran, 76 M 32, 78 NW 862.

A town within which a village is located is an adjoining town within the meaning of the statute. An action may be transferred to a justice of the same village or to a town adjoining the village, but not to a justice in a town adjoining the town in which the village is located. Wadena v Gaylord, 93 M 199, 101 NW 72.

Jurisdiction of justices in enforcement of the game and fish laws. 1940 OAG 14, Aug. 28, 1939 (2089).

The duties of a justice of the peace are divided into those that are ministerial and those that are judicial. The application being regular, he has no right to refuse to issue a summons in a matter in which he has jurisdiction. 1940 OAG 25, Oct. 31, 1940.

531.12 TIME FOR APPEARANCE.

HISTORY. R.S. 1851 c. 69 art. 4 s. 23; P.S. 1858 c. 59 s. 23; G.S. 1866 c. 65 s. 19; G.S. 1878 c. 65 s. 21; G.S. 1894 s. 4975; R.L. 1905 s. 3902; G.S. 1913 s. 7520; G.S. 1923 s. 9013; M.S. 1927 s. 9013.

Where the record shows that jurisdiction has once attached, silence in respect to subsequent jurisdictional steps, is not fatal. In the instant case, it did not affirmatively appear that the justice did not wait the prescribed hour for the defendant to appear. Ellegaard v Haukaas, 72 M 246, 75 NW 128.

Where a domestic corporation "resident" in a county other than that wherein the justice of the peace has jurisdiction, is served in a garnishment action, the justice does not acquire jurisdiction except where he has jurisdiction in the main action. In the instant case the defendant properly and timely appeared specially and moved to set aside the process. Thomas v Hector, 216 M 209, 12 NW(2d) 769.

Sections 531.03 and 531.12 apply to civil actions only, and do not apply to criminal proceedings within the jurisdiction of the justice. 1926 OAG 107, Dec. 7, 1926.

531.13 FAILURE OF PARTIES TO APPEAR.

HISTORY. R.S. 1851 c. 69 art. 4 s. 57; P.S. 1858 c. 59 s. 63; G.S. 1866 c. 65 s. 20; 1872 c. 68 s. 1; G.S. 1878 c 65 s. 22; G.S. 1894 s. 4976; R.L. 1905 s. 3903; G.S. 1913 s. 7521; 1917 c. 309 s. 1; G.S. 1923 s. 9014; M.S. 1927 s. 9014.

The failure of the defendant to appear and answer is not a confession of judgment within the meaning of section 531.43. Plaintiff must prove his case notwithstanding the default of the defendant. Larson v Kelly, 72 M 116, 75 NW 13.

The rules regarding an offer of judgment by the defendant do not apply in relation to taxation of costs to the municipal court for the city of Ortonville, established under Laws 1895, Chapter 229. Thompson v Ferch, 78 M 520, 81 NW 520.

PLEADINGS AND TRIAL

531.14 PLEADINGS IN JUSTICES' COURTS.

HISTORY. R.S. 1851 c. 69 art. 4 s. 24; P.S. 1858 c. 59 s. 24; G.S. 1866 c. 65 s. 21; G.S. 1878 c. 65 s. 23; G.S. 1894 s. 4977; R.L. 1905 s. 3904; G.S. 1913 s. 7522; 1919 c. 177 s. 1; G.S. 1923 s. 9015; M.S. 1927 s. 9015.

A justice of the peace has no power to receive pleadings in an action after one week from the return-day of the summons. Consent, after the plaintiff's complaint is filed, to adjourn the cause for more than a week, is not a consent that the defendant may file an answer on the day to which the case is adjourned. Holgate v Broome, 8 M 243 (209); Mattice v Litcherding, 14 M 142 (110); O'Brien v Pomroy, 22 M 130.

On the return-day, the defendant answered and set up an unverified counter-claim in an amount greater than the amount claimed by the plaintiff. Plaintiff did not reply. At an adjourned hearing, the defendant did not appear. Held, that on proper proof, the plaintiff rightfully had judgment, and the counter-claim was not admitted, because of lack of a reply. Thompson v Killian, 25 M 111.

On the return-day, the plaintiff appeared and filed his proof. There was no appearance by defendant. Held, the justice did not lose jurisdiction by holding the case open until the second day thereafter to receive proof. A judgment for an amount greater than the complaint justifies cannot be attacked in a collateral action. Gillett v Truax, 27 M 528, 8 NW 767.

Case returnable July 20 at nine o'clock, and adjourned for hearing to July 20 at ten o'clock, at which time all parties pleaded. The defendant objected and thereafter appealed that on the ground that it was one week and one hour between the return-day and the filing of the pleading. Held, the court will not notice the fraction of a day, and the hearing is in every way regular. Rauen v Burg, 38 M 389, 37 NW 946.

In an action in municipal court of the city of Minneapolis for the possession of certain lands, against a mortgagor holding over, the summons was made returnable February 12, at which time both parties appeared, plaintiff's complaint being on file. By consent, the case was continued from week to week until March 12, when defendant filed his answer. The answer was stricken as not being filed within the statutory time, and the case was affirmed on appeal. Universalist v Bottineau, 42 M 35, 43 NW 687.

The case being returnable on April 1, the parties appeared, and without pleading adjourned to April 10. Thereafter on April 7, the parties in writing stipulated that the hearing be on April 14, and said stipulation was filed on April 9. Held, the stipulation was effective, and gave jurisdiction by consent and notwithstanding the statute. Johnson v Hagberg, 48 M 221, 50 NW 1037.

On the return-day, September 6, the parties agreed to an adjournment to September 14, the pleadings to be filed on the adjourned date. On the 13th, the parties appeared in court and mutually agreed to adjournment to Sept. 20, and on that date filed their pleadings without objection and went to trial. Held, the justice did not lose jurisdiction. West v Berg, 66 M 287, 68 NW 1077.

In an action against a tenant for holding over, and the pleadings being closed, the justice adjourned the hearing one week, by consent of the parties; the justice did not lose jurisdiction. Caley v Rogers, 72 M 100, 75 NW 114.

When the pleadings are filed by consent of parties at a time to which the case had been adjourned, either party, as a matter of right, is entitled to an adjournment of one week from the day on which the pleadings are closed. Johnson v Little, 82 M 69, 84 NW 648.

A justice of the peace has no power with respect to the time when pleadings shall take place, except as conferred by statute. The pleadings cannot take place before the time mentioned in the summons for the appearance of the parties. Taylor v Walther, 97 M 490, 107 NW 162.

When the parties appear on the return-day, and on motion of the plaintiff, the hearing is adjourned one week; by implication, the justice designates the adjourned day as the day on which pleadings may be filed. Nohre v Wright, 98 M 477, 108 NW 865.

On the return-day, plaintiff and defendant appeared, and on plaintiff's motion, there was an adjournment for nine days. On the sixth day after the return-day, defendant filed an unverified answer. Held, although the answer was a nullity, for any other purpose it was a sufficient appearance to constitute a consent to the otherwise irregular setting of the adjourned date. Quaker v Carlson, 124 M 147, 144 NW 449.

A justice in the performance of his duties acts in a ministerial capacity only in the issuance of a summons, and if he has apparent jurisdiction, and if the complaint states or attempts to state a cause of action, it is his duty to issue the summons. His judicial functions come at the time of trial. 1940 OAG 25, Oct. 31, 1940.

Note amendment, Laws 1919, Chapter 177.

531.15 PLEADINGS; NAME AND CONTENTS.

HISTORY. R.S. 1851 c. 69 art. 4 s. 25; P.S. 1858 c. 59 s. 25; G.S. 1866 c. 65 s. 22; G.S. 1878 c. 65 s. 24; G.S. 1894 s. 4978; R.L. 1905 s. 3905; G.S. 1913 s. 7523; G.S. 1923 s. 9016; M.S. 1927 s. 9016.

On the return-day, plaintiff and defendant appeared, and on plaintiff's motion, there was an adjournment for nine days. On the sixth day after the return-day, defendant filed an unverified answer. Held, although the answer was a nullity, for any other purpose it was a sufficient appearance to constitute a consent to the otherwise irregular setting of the adjourned date. Quaker v Carlson, 124 M 147, 144 NW 449.

531.16 ORAL OR IN WRITING.

HISTORY. R.S. 1851 c. 69 art. 4 s. 26; P.S. 1858 c. 59 s. 26; G.S. 1866 c. 65 s. 23; G.S. 1878 c. 65 s. 25; G.S. 1894 s. 4979; R.L. 1905 s. 3906; G.S. 1913 s. 7524; G.S. 1923 s. 9017; M.S. 1927 s. 9017.

On appeal, it will be presumed that all proceedings in the justice court were regular, unless the record shows otherwise. Davidson v Farrell, 8 M 258 (225).

Where there has been a trial in justice and district courts, and the defendant for the first time raises the question of jurisdiction of the justice in an appeal to the supreme court, the defendant does not waive jurisdiction, but such objection thus raised for the first time is not entitled to favor but the rule that error must be shown affirmatively will be strictly applied. Barber v Kennedy, 18 M 216 (196).

A complaint before a justice "that the defendant is indebted to him in the sum of $1.50 for services to defendant in looking up title to property in the fall of 1883" sufficiently states a cause of action. Guthrie v Olson, 32 M 465, 21 NW 557.

An entry in the justice's docket, "Plaintiff replies orally; denies that he owes defendant the sum of $75.00 or any sum whatever; verified," is sufficient pleading. Rauen v Burg, 38 M 389, 37 NW 946.

Under the rule that pleadings must be construed with great liberality, the following held sufficient: "Defendant admits the purchase of the suit of clothes from McGrath, but denies that any promissory note was given therefor at any time. Defendant alleges that said goods were purchased in 1875, and that the statute of limitations has fully run against said indebtedness, which statute the defendant pleads in bar to this action." McGrath v O'Brien, 42 M 13, 43 NW 486.

Pleadings in justice court should be construed liberally, and after judgment therein, every reasonable intendment is in favor of the regularity and validity of the proceedings. Polk v American, 68 M 169, 70 NW 1078; Harm v Davies, 79 M 311, 82 NW 585.

An oral complaint entered on the docket as follows: "Plaintiff for his complaint files with the court verified a certain promissory note on which there appears to be due the sum of forty dollars, for which amount they ask judgment," held to be sufficient. Continental v Richardson, 69 M 433, 72 NW 458.

531.17 COMPLAINT.

HISTORY. R.S. 1851 c. 69 art. 4 s. 27; P.S. 1858 c. 59 s. 27; G.S. 1866 c. 65 s. 24; G.S. 1878 c. 65 s. 26; G.S. 1894 s. 4980; R.L. 1905 s. 3907; G.S. 1913 s. 7525; G.S. 1923 s. 9018; M.S. 1927 s. 9018.

531.18 ANSWER.

HISTORY. R.S. 1851 c. 69 art. 4 s. 28; P.S. 1858 c. 59 s. 28; G.S. 1866 c. 65 s. 25; G.S. 1878 c. 65 s. 27; G.S. 1894 s. 4981; R.L. 1905 s. 3908; G.S. 1913 s. 7526; G.S. 1923 s. 9019; M.S. 1927 s. 9019.

A defendant cannot oust a justice of jurisdiction by putting in a counterclaim exceeding $100.00. Barber v Kennedy, 18 M 216 (196).

531.19 REPLY.

HISTORY. R.S. 1851 c. 69 art. 4 s. 29; P.S. 1858 c. 59 s. 29; G.S. 1866 c. 65 s. 26; G.S. 1878 c. 65 s. 28; G.S. 1894 s. 4982; R.L. 1905 s. 3909; G.S. 1913 s. 7527; G.S. 1923 s. 9020; M.S 1927 s. 9020.

Admissions found in an unauthorized pleading may be considered and treated by the court in the nature of formal admissions made by the party upon the trial of the cause. Warder v Willyard, 46 M 531, 49 NW 300.

531.20 DENIAL OF KNOWLEDGE OR INFORMATION.

HISTORY. R.S. 1851 c. 69 art. 4 s. 30; P.S. 1858 c. 59 s. 30; G.S. 1866 c. 65 s. 27; G.S. 1878 c. 65 s. 29; G.S. 1894 s. 4983; R.L. 1905 s. 3910; G.S. 1913 s. 7528; G.S. 1923 s. 9021; M.S. 1927 s. 9021.

531.21 ACCOUNTS AND INSTRUMENTS; INSPECTION BY ADVERSE PARTY.

HISTORY. R.S. 1851 c. 69 art. 4 s. 31; P.S. 1858 c. 59 s. 31; G.S. 1866 c. 65 s. 28; G.S. 1878 c. 65 s. 30; G.S. 1894 s. 4984; R.L. 1905 s. 3911; G.S. 1913 s. 7529; G.S. 1923 s. 9022; M.S. 1927 s. 9022.

A verified itemized statement filed with the justice is equivalent to a proper complaint. Taylor v Parker, 17 M 469 (447).

Where the complaint was insufficient, and on the trial, the original note was introduced as evidence, which note corresponded as to amount due to the amount claimed in the complaint, the instrument may be considered as an amendment, thus curing the defect in the complaint. Royce v Ray, 21 M 329.

In an action on a promissory note, the note was produced at the trial, and a judgment docketed thereon; the failure to file the note with the justice is not such an omission as to be ground for reversal. Tune v Sweeney, 34 M 295, 25 NW 628.

Failure to file a security bond is not a jurisdictional defect rendering the judgment void, but is an irregularity only. Vaule v Miller, 69 M 440, 72 NW 458.

531.22 PLEADINGS VERIFIED.

HISTORY. R.S. 1851 c. 69 art. 4 s. 32; P.S. 1858 c. 59 s. 32; G.S. 1866 c. 65 s. 29; G.S. 1878 c. 65 s. 31; G.S. 1894 s. 4985; R.L. 1905 s. 3912; G.S. 1913 s. 7530; G.S. 1923 s. 9023, M. S. 1927 s. 9023.

The statute is imperative that pleadings be verified, but in the instant case the parties went to trial without objection, and consequently waived the irregularity. Taylor v Bissell, 1 M 225 (186); Burt v Bailey, 21 M 403; Thompson v Killian, 25 M 111.

The docket is not required to contain the verification of the proceedings. Tyrrell v Jones, 18 M 312 (251).

Where the record of the proceedings in an action in a justice's court is silent as to verification of the complaint, it will be presumed to be verified. Burt v Bailey, 21 M 403.

An unverified answer is a nullity, and must be so treated, unless the plaintiff, by some act, so recognized its validity as a pleading as to preclude him from raising the objection of want of verification. Thompson v Killian, 25 M 111.

Although an answer may be a nullity as an answer, it does constitute an appearance sufficient to waive objection to the irregularities of the plaintiff or justice. Quaker v Carlson, 124 M 147, 144 NW 449.

531.23 ADMISSION BY FAILURE TO DENY; PROOF ON DEFAULT.

HISTORY. R.S. 1851 c. 69 art. 4 s. 33; P.S. 1858 c. 59 s. 33; G.S. 1866 c. 65 s. 30; G.S. 1878 c. 65 s. 32; G.S. 1894 s. 4986; R.L. 1905 s. 3913; G.S. 1913 s. 7531; G.S. 1923 s. 9024; M.S. 1927 s. 9024.

Where the answer contains a setoff or counter-claim, failure to reply affects only the plaintiff's right to produce testimony adverse to the allegations in the setoff or counter-claim. Taylor v Bissell, 1 M 225 (186); Walker v McDonald, 5 M 455 (368).

Failure of defendant to answer is not a confession of judgment, and the plaintiff must prove his case. Larson v Kelly, 72 M 116, 75 NW 13; Thompson v Killian, 25 M 111.

In an action to recover unliquidated damages, there must be proof of the amount of the damage to authorize recovery. Nohre v Wright, 98 M 477, 108 NW 865.

Though the answer may be a nullity as an answer, it constitutes an appearance for all purposes. Quaker v Carlson, 124 M 147, 144 NW 449.

531.24 OBJECTIONS TO PLEADINGS.

HISTORY. R.S. 1851 c. 69 art. 4 s. 34; P.S. 1858 c. 59 s. 34; G.S. 1866 c. 65 s. 31; G.S. 1878 c. 65 s. 33; G.S. 1894 s. 4987; R.L. 1905 s. 3914; G.S. 1913 s. 7532; G.S. 1923 s. 9025; M.S. 1927 s. 9025.

A defective complaint is cured by intendment where the parties go to trial without objection, and where matters not expressly stated may be implied. Chesterson v Munson, 27 M 498, 8 NW 893; Rauen v Burg, 38 M 389, 37 NW 946.

It is error for the justice to dismiss an action for defects in the complaint without first ordering an amendment of the pleadings. Middelstadt v McIntyre, 55 M 69, 56 NW 464.

531.25 VARIANCE.

HISTORY. R.S. 1851 c. 69 art. 4 s. 35; P.S. 1858 c. 59 s. 35; G.S. 1866 c. 65 s. 32; G.S. 1878 c. 65 s. 34; G.S. 1894 s. 4988; R.L. 1905 s. 3915; G.S. 1913 s. 7533; G.S. 1923 s. 9026; M.S. 1927 s. 9026.

Mere variance between pleadings and proof should be disregarded, unless it appears that the adverse party is prejudiced thereby. Johnston v Clark, 30 M 308, 15 NW 252; Olson v Minnesota, 89 M 280, 94 NW 871.

531.26 AMENDMENT.

HISTORY. R.S. 1851 c. 69 art. 4 s. 36; P.S. 1858 c. 59 s. 36; G.S. 1866 c. 65 s. 33; G.S. 1878 c. 65 s. 35; G.S. 1894 s. 4989; R.L. 1905 s. 3916; G.S. 1913 s. 7534; G.S. 1923 s. 9027; M.S. 1927 s. 9027.

When the complaint properly expresses the amount due, and the amount the plaintiff seeks to recover, the delivery of a note to the justice may be considered an amendment and in effect cures defects in the complaint. Royce v Gray, 21 M 329.

A justice acts in a ministerial capacity only in issuing a summons, and it is the duty of the justice to issue the summons on demand, if the complaint attempts to state a cause of action, and if he have jurisdiction. 1940 OAG 25, Oct. 31, 1940.

531.27 ADJOURNMENT WHEN PLEADINGS CLOSED.

HISTORY. R.S. 1851 c. 69 art. 4 s. 37; P.S. 1858 c. 59 s. 37; G.S. 1866 c. 65 s. 34; 1872 c. 67 s. 1; G.S. 1878 c. 65 s. 36; G.S. 1894 s. 4990; R.L. 1905 s. 3917; G.S. 1913 s. 7535; G.S. 1923 s. 9028; M.S. 1927 s. 9028.

When a justice has adjourned a cause, and entered the adjournment in his docket, he cannot, in the absence of the parties, change the day to which it was adjourned. Wardlow v Besser, 3 M 317 (223).

When the pleadings are closed, the justice, without any showing of cause, may adjourn the hearing one week. The right to plead must be exercised on the return-day, or at such other time, within one week thereafter, as the justice with the consent of the parties, may appoint. O'Brien v Pomroy, 22 M 130; Johnson v Little, 82 M 69, 84 NW 648.

The fact that the justice does not state on whose motion the adjournment was made, does not cause the justice to lose jurisdiction. Wheeler v Paterson, 64 M 231, 66 NW 964.

Where the answer of the defendant does not state a defense and is sham, he cannot, on appeal, take advantage that from the return-day, the date of continuance was less than one week. Larson v Shook, 68 M 30, 70 NW 775.

The pleadings being closed, defendant asked for one week's continuance, and immediately departed, and thereafter the justice denied the motion, and the plaintiff proved up his case, and obtained judgment. Held, the defendant may still ask for a review, although he was not present to take an exception to the rulings of the justice. Franek v Vaughan, 81 M 236, 83 NW 982.

The pleadings being closed, the defendant is entitled to an adjournment for not exceeding one week, as a matter of right. Kennedy v Kellum, 90 M 325, 96 NW 792.

The first appearance is for the purpose of interposing pleadings under section 531.14, and the second for the trial under section 531.27. Adjournments may be taken under sections 531.27 and 531.29. Thomas v Hector, 216 M 217, 12 NW(2d) 769.

531.28 TITLE TO REAL ESTATE; CASE CERTIFIED.

HISTORY. R.S. 1851 c. 69 art. 4 s. 38; P.S. 1858 c. 59 s. 38; G.S. 1866 c. 65 s. 35; G.S. 1878 c. 65 s. 37; G.S. 1894 s. 4991; R.L. 1905 s. 3918; G.S. 1913 s. 7536; G.S. 1923 s. 9029; M.S. 1927 s. 9029.

A justice of the peace cannot certify a cause to the district court until the title to real estate comes in question on the evidence. Goenen v Schroeder, 8 M 387 (344); 18 M 66 (51); Radley v O'Leary, 36 M 173, 30 NW 457; Bank v Vogt, 178 M 282, 226 NW 847.

Plaintiff brought an action in justice court to recover possession of certain real property, and the justice at the instance of the defendant, and before any evidence was offered, certified the case to the district court. Later the plaintiff brought an original action in the district court for the same cause, and the defendant pleaded another action pending. Held, the defense was good. The first action was pending until disposed of, and it was improperly certified in the original case. Merriam v Baker, 9 M 40 (28).

The statute of forcible entry and unlawful detainer is not designed to provide a mode of trying title to real estate. It affords a summary remedy for recovery of possession where there is no real controversy as to title. When it does appear by the evidence that the question of title is involved, the justice certifies the case to the district court, whereupon it becomes, for practical purposes, an action for the recovery of real property in the nature of a common law ejectment. Ferguson v Kumler, 25 M 183; Steele v Bond, 28 M 267, 9 NW 772; State v Cotton, 29 M 187, 12 NW 529; Bassett v Fortin, 30 M 27, 14 NW 56.

A prosecution before a justice for obstructing a highway is a criminal action of which a justice has jurisdiction, unless on trial it appears that title to real estate is involved. State v Cotton, 29 M 187, 12 NW 529; State v Sweeney, 33 M 23, 21 NW 847.

In the instant action on a lease, the question as to the title to real estate is not involved, and the justice has jurisdiction. Judd v Arnold, 31 M 430, 18 NW 151; Suchaneck v Smith, 45 M 26, 47 NW 397; Herrick v Newall, 49 M 198, 51 NW 819.

During the trial, title to real estate appeared to be in question, and the justice lost jurisdiction. Tordsen v Gummer, 37 M 211, 34 NW 20.

A justice has no power to certify a cause to the district court until the title to real estate comes in issue on the evidence. The fact that the pleadings show such issue is not sufficient. An improper certification ousts both courts of jurisdiction. Sorenson v Torvestad, 94 M 410, 103 NW 15.

Prior to the appointment of a receiver to take possession of mortgaged lands upon the death of the mortgagor, one of the children and heirs took possession. Held, unlawful detainer proceedings is not the proper remedy to obtain possession. Buff v Schafer, 157 M 485, 196 NW 661.

Where defendant appeals from a judgment rendered by a justice court to a superior court for trial de novo, upon law and fact, such appeal constitutes a general appearance in the action and amounts to a waiver of any previous want of jurisdiction. Minneapolis v King, 198 M 420, 270 NW 148.

531.29 ADJOURNMENT SUBSEQUENT TO FIRST.

HISTORY. R.S. 1851 c. 69 art. 3 s. 39; P.S. 1858 c. 59 s. 39; G.S. 1866 c. 65 s. 36; G.S. 1878 c. 65 s. 38; G.S. 1894 s. 4992; R.L. 1905 s. 3919; G.S. 1913 s. 7537; G.S. 1923 s. 9030; M.S. 1927 s. 9030.

A party who asks for an adjournment subsequent to the first adjournment, must in his affidavit, show by facts, that such adjournment is necessary. Board v McCoy, 1 M 100 (78).

A justice cannot adjourn a cause of his own motion. An adjournment must be either by consent or sufficient cause shown. School District v Thompson, 5 M 280 (221).

Whether, after the commencement of a trial before a jury, it is error or abuse of discretion on the part of the justice to adjourn court for six days, without the consent of the appellant, is not decided, but in the instant case, it was waived by the appellant failing to except thereto, and by his appearing and proceeding to trial at the time to which it was adjourned. Mead v Sanders, 57 M 108, 58 NW 683.

531.30 WHEN DEMANDS MAY BE SET-OFF.

HISTORY. R.S. 1851 s. 69 art. 4 ss. 44, 46; P.S. 1858 c. 59 ss. 44, 46; G.S. 1866 c. 65 ss. 37, 39; G.S. 1878 c. 65 ss. 39, 41; G.S. 1894 ss. 4993, 4995; R.L. 1905 s. 3920; G.S. 1913 s. 7538; G.S. 1923 s. 9031; M.S. 1927 s. 9031.

In an action on a contract, a claim for use and occupation of real estate, held adversely by plaintiff, cannot be pleaded as a counter-claim. Folsom v Carli, 6 M 420 (284).

In an action in replevin, defendant's claim for damages for detention of the horse during the pending of the proceedings is not a counter-claim, and consequently no reply is necessary. Ward v Anderberg, 36 M 300, 30 NW 890.

531.31 SET-OFFS AGAINST ASSIGNEES.

HISTORY. R.S. 1851 c. 69 art. 4 s. 45; P.S. 1858 c. 59 s. 45; G.S. 1866 c. 65 s. 38; G.S. 1878 c. 65 s. 40; G.S. 1894 s. 4994; R.L. 1905 s. 3921; G.S. 1913 s. 7539; G.S. 1923 s. 9032; M.S. 1927 s. 9032.

Differing from the common law, the statute puts an overdue note or bill upon the same footing as any other chose in action, and, if assigned after due, a set-off to the amount of the note or bill may be made of any demand existing against any person who has assigned or transferred such note or bill after it became due, if the demand is such as might have been set off against the assignor while the note or bill belonged to him. La Due v Bank, 31 M 33, 16 NW 426.

531.32 JUDGMENT ON SET-OFF.

HISTORY. R.S. 1851 c. 69 art. 4 ss. 48, 49; P.S. 1858 c. 59 ss. 48, 49; G.S. 1866 c. 65 ss. 41, 42; G.S. 1878 c. 65 ss. 43, 44; G.S. 1894 ss. 4997, 4998; R.L. 1905 s. 3922; G.S. 1913 s. 7540; G.S. 1923 s. 9033; M.S. 1927 s. 9033.

TRIAL BY JURY

531.33 DEMAND FOR JURY.

HISTORY. 1857 c. 10 s. 2; P.S. 1858 c. 68 s. 68; G.S. 1866 c. 65 s. 54; G.S. 1878 c. 65 s. 56; G.S. 1894 s. 5010; 1899 c. 299; R.L. 1905 s. 3923; G.S. 1913 s. 7541; G.S. 1923 s. 9034; M.S. 1927 s. 9034.

The party demanding a jury must pay the jurors' fees in advance, otherwise the justice may try the case without a jury. Rollins v Nolting, 53 M 232, 54 NW 1118.

Where a justice of the peace denies a jury trial in a civil action to a party entitled to it, the party has an adequate remedy by appeal and is not entitled to a writ of mandamus to compel enforcement of the right. Gresham v Delaney, 213 M 217, 6 NW(2d) 97.

531.34 JURY, HOW CHOSEN.

HISTORY. R.S. 1851 c. 69 art. 4 s. 58; 1857 c. 10 s. 2; P.S. 1858 c. 59 s. 64; G.S. 1866 c. 65 ss. 54, 55; G.S. 1878 c. 65 ss. 56, 57; G.S. 1894 ss. 5010, 5011; R.L. 1905 s. 3924; G.S. 1913 s. 7542; G.S. 1923 s. 9035; M.S. 1927 s. 9035.

531.35 VENIRE.

HISTORY. R.S. 1851 c. 69 art. 4 s. 58; P.S. 1858 c. 59 s. 64; G.S. 1866 c. 65 ss. 55, 56; G.S. 1878 c. 65 ss. 57, 58; G.S. 1894 ss. 5011, 5012; R.L. 1905 s. 3925; G.S. 1913 s. 7543; G.S. 1923 s. 9036; M.S. 1927 s. 9036.

Where a justice of the peace denies a jury trial in a civil action to a party who is entitled to it, the party has an adequate remedy by appeal, and its not entitled to a writ of mandamus to compel enforcement of the right. Gresham v Delaney, 213 M 217, 6 NW(2d) 97.

531.36 TALESMEN.

HISTORY. R.S. 1851 c. 69 art. 4 s. 58; P.S. 1858 c. 59 s. 64; G.S. 1866 c. 65 s. 56; G.S. 1878 c. 65 s. 58; G.S. 1894 s. 5012; R.L. 1905 s. 3926; G.S. 1913 s. 7544; G.S. 1923 s. 9037; M.S. 1927 s 9037.

NOTE: Under the statute in relation to struck juries, no peremptory challenges are allowed to any of the jurors composing the panel as finally made up.

531.37 JURY SWORN AND KEPT TOGETHER.

HISTORY. R.S. 1851 c. 69 art. 4 s. 58; P.S. 1858 c. 59 s. 64; G.S. 1866 c. 65 s. 56; G.S. 1878 c. 65 s. 58; G.S. 1894 s. 5012; R.L. 1905 s. 3927; G.S. 1913 s. 7545; G.S. 1923 s. 9038; M.S. 1927 s. 9038.

After the jury has retired for deliberation, the justice should not enter the jury room, but whether such a visit is sufficient to require that a verdict be set aside, must depend upon the conduct of the justice and the facts of the particular case. Hoberg v State, 3 M 262 (181); Helmbrecht v Helmbrecht, 31 M 504, 18 NW 449.

Where a justice has jurisdiction, the same presumption as to regularity and formality attaches to his proceedings as to those of a court of record. Clague v Hodgson, 16 M 329 (291).

The officer in charge of the jury should be sworn; the requirement, however, is not jurisdictional, and if by inadvertance, the justice overlooks administering the oath, and no objection is made at the time, the requirement is deemed waived. Robert v Brooks, 23 M 138.

531.38 VERDICT; JUDGMENT.

HISTORY. R.S. 1851 c. 69 art. 4 s. 58; P.S. 1858 c. 59 s. 64; G.S. 1866 c. 65 s. 57; G.S. 1878 c. 65 s. 59; G.S. 1894 s. 5013; R.L. 1905 s. 3928; G.S. 1913 s. 7546; G.S. 1923 s. 9039; M.S. 1927 s. 9039.

531.39 FAILURE TO AGREE.

HISTORY. R.S. 1851 c. 69 art. 4 s. 59; P.S. 1858 c. 59 s. 65; G.S. 1866 c. 65 s. 58; G.S. 1878 c. 65 s. 60; G.S. 1894 s. 5014; R.L. 1905 s. 3929; G.S. 1913 s. 7547; G.S. 1923 s. 9040; M.S. 1927 s. 9040.

Jury being out all night and unable to agree were discharged. The defendant demanded another jury, but refused to advance a second jury fee, and the justice proceeded to try the case without a jury. The defendant left the court. Held regular. Rollins v Nolting, 53 M 232, 544 NW 1118.

The jury being unable to agree were discharged on March 19. The docket did not show any continuance or other disposition of the cause until April 3. Held, the justice had lost jurisdiction by delay, and did not have power to issue a new venire. May v Grawert, 86 M 210, 90 NW 383.

531.40 FAILURE TO APPEAR; PUNISHMENT.

HISTORY. R.S. 1851 c. 69 art. 4 s. 60; P.S. 1858 c. 59 s. 66; G.S. 1866 c. 65 s. 59; G.S. 1878 c. 65 s. 61; G.S. 1894 s. 5015; R.L. 1905 s. 3930; G.S. 1913 s. 7548; G.S. 1923 s. 9041; M.S. 1927 s. 9041.

531.41 CHALLENGES.

HISTORY. R.L. 1905 s. 3931; G.S. 1913 s. 7549; G.S. 1923 s. 9042; M.S. 1927 s. 9042.

531.42 TRIAL WITHOUT JURY.

HISTORY. R.L. 1905 s. 3932; G.S. 1913 s. 7550; G.S. 1923 s. 9043; M.S. 1927 s. 9043.

JUDGMENTS

531.43 BY CONFESSION.

HISTORY. 1858 c. 13 ss. 1, 2; P.S. 1858 c. 59 ss. 73, 74; G.S. 1866 c. 65 ss. 63, 64; G.S. 1878 c. 65 ss. 65, 66; G.S. 1894 ss. 5019, 5020; R.L. 1905 s. 3933; G.S. 1913 s. 7551; G.S. 1923 s. 9044; M.S. 1927 s. 9044.

531.44 COSTS; JUDGMENT ROLL.

HISTORY. 1858 c. 13 s. 3; P.S. 1858 c. 59 s. 75; G.S. 1866 c. 65 s. 65; G.S. 1878 c. 65 s. 67; G.S. 1894 s. 5021; R.L. 1905 s. 3934; G.S. 1913 s. 7552; G.S. 1923 s. 9045; M.S. 1927 s. 9045.

531.45 TIME OF ENTRY.

HISTORY. R.S. 1851 c. 69 art. 4 s. 46; P.S. 1858 c. 59 s. 80; G.S. 1866 c. 65 s. 66; G.S. 1878 c. 65 s. 68; G.S. 1894 s. 5022; R.L. 1905 s. 3935; G.S. 1913 s. 7553; G.S. 1923 s. 9046; M.S. 1927 s. 9046.

Where the verdict was rendered on Saturday night, and with the consent of both parties, the judgment was not formerly entered until Tuesday, the judgment debtor will not be heard to raise objection on appeal. Rucker v Miller, 50 M 360, 52 NW 958.

Forthwith means reasonable time having regard to the circumstances. Verdict at one o'clock P.M. Saturday entered Monday was sufficient compliance. Sorenson v Swenson, 55 M 58, 56 NW 350.

A judgment which upon its face appears to have been rendered after the period fixed by the statute is void. Murray v Mills, 56 M 75, 57 NW 324; May v Grawert, 86 M 210, 90 NW 383.

Failure of the defendant to appear is not a confession, and it is necessary for the plaintiff to prove his case, and the justice must enter the judgment within the time stated in the statute. Larson v Kelly, 72 M 116, 75 NW 13.

When the justice in his decision ignores one of two defenses, in an appeal taken upon questions of law alone, the appellate court is authorized to pass upon both questions raised. Neuhauser v Banish, 84 M 286, 87 NW 774.

Formality is not required. It is sufficient if the docket states that the court rendered judgment in favor of the plaintiff and states the amount, and the amount of additional costs. Glaucke v Gerlich, 91 M 282, 98 NW 94.

531.46 FOR COSTS ON DISMISSAL.

HISTORY. R.S. 1851 c. 69 art. 4 s. 154; P.S. 1858 c. 59 s. 167; G.S. 1866 c. 65 s. 67; G.S. 1878 c. 65 s. 69; G.S. 1894 s. 5023; R.L. 1905 s. 3936; G.S. 1913 s. 7554; G.S. 1923 s. 9047; M.S. 1927 s. 9047.

Where in an action a third party intervened, defendant demurred as to the right of the intervenor, and the demurrer was overruled, and subsequently both plaintiff and intervenor withdrew. Held, the defendant may tax costs against both plaintiff and intervenor, but can collect from only one. Thief River v Bank, 131 M 193, 154 NW 953.

531.47 MUTUAL JUDGMENTS SET-OFF.

HISTORY. R.S. 1851 c. 69 art. 4 s. 62; P.S. 1858 c. 59 s. 70; G.S. 1866 c. 65 s. 60; G.S. 1878 c. 65 s. 62; G.S. 1894 s. 5016; R.L. 1905 s. 3937; G.S. 1913 s. 7555; G.S. 1923 s. 9048; M.S. 1927 s. 9048.

531.48 SET-OFF WHEN BEFORE DIFFERENT JUSTICES.

HISTORY. R.S. 1851 c. 69 art. 4 s. 63; P.S. 1858 c. 59 s. 71; G.S. 1866 c. 65 s. 61; G.S. 1878 c. 65 s. 63; G.S. 1894 s. 5017; R.L. 1905 s. 3938; G.S. 1913 s. 7556; G.S. 1923 s. 9049; M.S. 1927 s. 9049.

531.49 DUTY OF JUSTICE.

HISTORY. R.S. 1851 c. 69 art. 4 s. 64; P.S. 1858 c. 59 s. 72; G.S. 1866 c. 65 s. 62; G.S. 1878 c. 65 s. 64; G.S. 1894 s. 5018; R.L. 1905 s. 3939; G.S. 1913 s. 7557; G.S. 1923 s. 9050; M.S. 1927 s. 9050.

531.50 BOND FOR RESTITUTION.

HISTORY. G.S. 1866 c. 65 s. 68; 1869 c. 74 s. 1; G.S. 1878 c. 65 s. 70; G.S. 1894 s. 5024; R.L. 1905 s. 3940; G.S. 1913 s. 7558; G.S. 1923 s. 9051; M.S. 1927 s. 9051.

Prior to the adoption of General Statutes 1866, Chapter 65, Section 68, and the enactment of Laws 1869, Chapter 74, payment by garnishee, without execution, of the judgment against him discharges him, though the judgment was upon default, upon service by publication, and subsequent to the payment, within the year, it was set aside, and the defendant succeeded in his defense. Troyer v Schweizer, 15 M 241 (187).

It is not essential to the validity of a judgment obtained without personal service that the docket or judgment disclose the fact that a security bond was filed before the judgment was taken. Such bond is no part of the judgment. Vaule v Miller, 64 M 485, 67 NW 540; 69 M 440, 72 NW 452.

531.51 OPENING DEFAULT.

HISTORY. 1860 c. 38 s. 6; G.S. 1866 c. 65 s. 69; 1869 c. 74 s. 1; G.S. 1878 c. 65 s. 71; G.S. 1894 s. 5025; R.L. 1905 s. 3941; G.S. 1913 s. 7559; G.S. 1923 s. 9052; M.S. 1927 s. 9052.

Prior to the adoption of General Statutes 1866, Chapter 65, Section 68, and the enactment of Laws 1869, Chapter 74, payment by garnishee, without execution, of the judgment against him discharges him, though the judgment was upon default, upon service by publication, and subsequent to the payment, within the year, it was set aside, and the defendant succeeded in his defense Troyer v Schweizer, 15 M 241 (187).

531.52 TRANSCRIPT; DOCKETING IN DISTRICT COURT.

HISTORY. R.S. 1851 c. 69 art. 4 s. 73; P.S. 1858 c. 59 s. 87; 1865 c. 23 s. 1; G.S. 1866 c. 65 s. 70; G.S. 1878 c. 65 s. 72; G.S. 1894 s. 5026; R.L. 1905 s. 3942; G.S. 1913 s. 7560; G.S. 1923 s. 9053; M.S. 1927 s. 9053.

A certified copy of the docketing in the district clerk's office is not sufficient evidence. The judgment may be proved by copies of the transcript and docket, authenticated by the clerk. Herrick v Ammerman, 32 M 544, 21 NW 836; Todd v Johnson, 50 M 310, 52 NW 864.

Where a cause is heard, the judgment entered by the clerk of the court must be in exact accord with the conclusions of law, and the order of judgment. He

has no authority to include anything not authorized by such conclusions or order. Ramaley v Ramaley, 69 M 491, 72 NW 694.

The transcript filed with the clerk must be literal copy of the judgment of the justice, and not a mere abstract of same. Boe v Irish, 69 M 493, 72 NW 842.

531.53 EFFECT OF FILING TRANSCRIPT; EXECUTION.

HISTORY. R.S. 1851 c. 69 art. 4 s. 74; P.S. 1858 c. 59 s. 88; 1861 c. 37 s. 1; G.S. 1866 c. 65 s. 71; G.S. 1878 c. 65 s. 73; G.S. 1894 s. 5027; R.L. 1905 s. 3943; G.S. 1913 s. 7561; G.S. 1923 s. 9054; M.S. 1927 s. 9054.

An execution from the district court is presumed to be valid. Herrick v Ammerman, 32 M 544, 21 NW 836.

531.54 EXECUTION, ON WHAT LEVIED.

HISTORY. G.S. 1866 c. 65 s. 72; G.S. 1878 c. 65 s. 74; G.S. 1894 s. 5028; R.L. 1905 s. 3944; G.S. 1913 s. 7563; G.S. 1923 s. 9056; M.S. 1927 s. 9056.

Garnishment and bankruptcy. 27 MLR 50.

531.55 PRESUMPTION IN FAVOR OF JUDGMENT.

HISTORY. 1871 c. 70 s. 1; G.S. 1878 c. 65 s. 75; G.S. 1894 s. 5029; R.L. 1905 s. 3945; G.S. 1913 s. 7564; G.S. 1923 s 9057; M.S. 1927 s. 9057.

Where a justice has jurisdiction, the same presumption as to regularity and formality attaches to his proceedings as to those of a court of record. Clague v Hodgson, 16 M 329 (291); Gillett v Truax, 27 M 528, 8 NW 767; Vaule v Miller, 64 M 485, 67 N W540.

Where a justice has jurisdiction, a judgment rendered upon the merits cannot be assailed and shown collaterally not to be true in fact. Nor do irregularities, even if apparent on the face of the record, make the judgment void. Gillett v Truax, 27 M 528, 8 NW 767; Vaule v Miller, 64 M 485, 67 NW 540; 69 M 440, 72 NW 452.

A judgment of conviction, even though erroneous, will sustain a plea of former conviction, and is protection from being put "twice in jeopardy of punishment." State v Bowen, 45 M 145, 47 NW 650.

This statute is a mere rule of evidence, and where a judgment was obtained by publication, but no property attached, and no appearance by the non-resident defendant, the proceeding was a nullity, and no bar to another suit on the same cause of action. Plummer v Hatton, 51 M 181, 53 NW 460.

A justice court judgment which recites jurisdictional facts and has remained undisturbed of record for two years or more, is presumptively valid. The presumption is conclusive as against collateral attacks, and the judgment cannot be impeached by an extrinsic showing of lack of jurisdiction. Whitney v Welnitz, 153 M 162, 190 NW 57.