CHAPTER 541

LIMITATION OF TIME FOR COMMENCING ACTIONS

541.01 LIMITATION; BAR APPLIES TO STATE; EXCEPTIONS.

HISTORY. R.S. 1851 c. 70 ss. 3, 13; P.S. 1858 c. 60 ss. 3, 13; G.S. 1866 c. 66 ss. 3, 12; G.S. 1878 c. 66 ss. 3, 12; G.S. 1894 ss. 5133, 5142; 1899 c. 65; R.L. 1905 ss. 4071, 4072; G.S. 1913 ss. 7694, 7695; G.S. 1923 ss. 9185, 9186; M.S. 1927 ss. 9185, 9186.

1. Generally
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1. Generally

The statute applies to actions at law and to suits in equity. Ozmun v Reynolds, 11 M 459 (341); Cock v Van Etten, 12 M 522 (431); McClung v Capehart, 24 M 17; Humphrey v Carpenter, 39 M 115, 39 NW 67; Lewis v Welch, 47 M 193, 48 NW 608.

The court may interpret but cannot extend or modiy the statute. Cock v Van Etten, 12 M 522 (431); Humphrey v Carpenter, 39 M 115, 39 NW 67.

The statute applies not only to actions at law and suits in equity, but also to all analogous proceedings. County of Redwood v Winona and St. Peter, 40 M 512, 41 NW 465, 42 NW 473.

The statute runs only against remedies; not against defenses. Aultman v Torrey, 55 M 492, 57 NW 211.

Where an insurance policy required, in case of a loss, that action be instituted within one year of the loss, and within the year after a loss, the insured made an assignment under the insolvency laws, such claim is not barred as to the fund in court by reason of the limitation in the policy. In re St. Paul Germain Insurance, 58 M 163, 59 NW 996.

Where notes more than six years overdue were received in evidence, without objection, and attention was not called to a plea of limitation until conclusion of the trial, the defense was waived. Savage v Madelia, 98 M 343, 108 NW 296.

The rights of riparian owners in land below the high-water mark are subject to the superior rights of the public; and, where a lake or other body of water is raised to a point not beyond the ordinary high-water mark, though ancient, the riparian owner is not entitled to compensation. State ex rel v District Court, 119 M 132, 137 NW 298.

A statute of limitation operates prospectively, unless a legislative intent to give it a retrospective operation is clear. State ex rel v General Accident, 134 M 21, 158 NW 715.

The effect of a new promise as an agency for the continuance or the revival of a cause of action operates only in the field of contractual obligation; and it follows that where notes are taken from a wrongdoer who was not personally enriched by the tort, wherein he is joined by comakers, there is an accord and satisfaction and the creation of a new liability resting on contract, and as such dischargeable in bankruptcy. Burleson v Langdon, 174 M 264, 219 NW 155.

The statute of limitations of actions affects the remedy, not the right. If it had run in the instant case, it could be waived as a defense. State ex rel v Kaml, 181 M 523, 233 NW 802.

The statute of limitations is a statute of repose. The courts have no power to extend or modify the period of limitation prescribed thereby. Roe v Widme, 191 M 251, 254 NW 274; Bachertz v Hayes, 201 M 171, 275 NW 694.

A limitation law cannot compel a resort to legal proceedings by one who is already in complete enjoyment of all he claims, nor can such law compel one party to forfeit his rights to another for failure to bring suit against such other party within the time specified to test validity of claim which latter asserts but takes improper steps to enforce. Hammon v Hatfield, 192 M 259, 256 NW 94.

Where a defense is set up, and a part of plaintiff's demand is barred, and part is not, the defendant is obliged to prove specifically the part that falls within the protection of the statute. Golden v Lerch, 203 M 211, 281 NW 249.

Contracts may be made stipulating a limited time within which an action may be brought, provided such stipulated time is not unreasonable under the circumstances. Hayfield v New Amsterdam, 203 M 522, 282 NW 265.

Notwithstanding the provisions of section 541.17, a defendant may be estopped to set up the statute as a defense by his oral promise before the statute has run, that if plaintiff would wait until the statute had run, he would make a new arrangement by which plaintiff would lose nothing by waiting. Albachten v Bradley, 212 M 359, 3 NW(2d) 783.

The repeal of a statute of limitations before cause of action arose restored plaintiff and defendant to their status, as it existed before passage of the statute. Wunderlich v National Surety, 24 F Supp 640.

Acquisition of stolen property by adverse possession for the statutory period. 15 MLR 714.

Mistake and statutes of limitation. 20 MLR 481.

2. When action accrues

In determining whether a cause of action is barred by the statute of limitations, the day on which it accrued is excluded. Nebola v Minnesota Iron, 102 M 89, 112 NW 880; Haack v Coughlan, 134 M 78, 158 NW 908.

An action in the courts of this state upon any judgment, domestic or foreign, must be brought within ten years from the rendition thereof, without reference to the residence of the judgment debtor during the ten years. Gaines v Grunewald, 102 M 245, 113 NW 450.

Vendee's right of action against the warrantor does not date from the time when the deed was delivered, so as to be barred by the statute of limitations at the end of six years thereafter. Brooks v Mohl, 104 M 404, 116 NW 931.

Where by contract the money is payable only upon demand in fact, the statute of limitations does not begin to run until an actual demand is made. Except in case of contemplation otherwise, the demand must be made within a reasonable time, ordinarily the period of the statute of limitations. Fallon v Fallon, 110 M 213, 124 NW 994.

The mortgage was without consideration and was made to protect the mortgagors from their own improvidence. The plaintiff's cause of action did not accrue until appellant refused to release the mortgage or until she asserted its validity. Burns v Burns, 124 M 176, 144 NW 761.

The condition or limitation in the Oklahoma statute is qualified by the tolling provision, and the action not being barred in Oklahoma may be maintained in Minnesota. Casey v American Bridge Co. 116 M 461, 134 NW 111.

Contract stipulations in an insurance contract, limiting the time within which an action may be brought, when not unreasonable, are valid, though the period fixed be at variance with the statutory provisions. Stewart v National Council, 125 M 512, 147 NW 651.

A director, officer, or stockholder of a domestic mining corporation is not debarred from asserting a claim against it when insolvent, and has the right to resort to the stockholders' double liability for its payment. Ebert v Scott, 177 M 72, 224 NW 454.

The two-year statute of limitations in a malpractice case does not commence to run until the treatment ends. Schanil v Branton, 181 M 381, 232 NW 708.

The claim that an action is prematurely brought because the recovery claimed is not due, is in the nature of a claim in abatement and must be raised in an appropriate manner in the trial court. Geib v Haynes, 185 M 295, 240 NW 907.

There was no agreement that the maturity of the debt was deferred by agreement until demand, or any other future event, so as to toll the statute of limitations. In re Noser, 189 M 45, 248 NW 292.

Where plaintiff cared for a daughter of the defendant, the quasi contract of the father to pay is continuing, and the limitation does not commence until the termination of the support, as in the instant case, the child reaches majority. Knutson v Haugen, 191 M 420, 254 NW 464.

The guaranty read "I will guaranty this bonds any time you don't want them I'll take them over." This was a continuing promise, and the limitation statute did not commence to run until demand for and refusal of performance. Wigdale v Anderson, 193 M 384, 258 NW 726.

The statute of limitations against the constitutional double liability of stockholders in a state bank begins to run when such bank closes its doors and ceases to function as a bank. Re Liquidation of Peoples State Bank, 197 M 479, 267 NW 482.

Where in case of the death of an employee in the course of his employment there are no dependents, and the employer must make the payment to the special compensation fund, the action to recover the amount must be commenced within six years from the accrual of the cause of action under section 541.05. Schmahl v School District, 200 M 294, 274 NW 168.

The statute commences to run against a cause of action from the time it accrues. Bachertz v Hayes, 201 M 171, 275 NW 694; Marquette National v Mullin, 205 M 562, 287 NW 233.

Under the provisions of section 80.26, a cause of action arising out of a violation of section 80.07, may be brought within one year from the effective date of section 80.26, although more than six years had elapsed since the delivery of the unregistered stock at the time of the enactment of section 80.26. Pomeroy v National City, 209 M 155, 296 NW 513; Donaldson v Chase Securities, 216 M 269, 13 NW(2d) 1; Pomeroy v National City Co. 216 M 278, 13 NW(2d) 6.

Statute of limitations only affects the remedy. It does not pay or discharge the debt. Pomeroy v National City Co. 216 M 228, 13 NW(2d) 6.

Limitation on county warrants begins to run from the date the county treasurer issues notice to the original holder that there is money in the fund with which to pay the warrants. The six year limitation applies. OAG March 6, 1944 (207a-9).

Application of statute of limitations between trustee and cestui que trust. 16 MLR 602.

3. Laches

The public had not, in the instant case, by laches or acquiescence, lost its right to open the road on the true line. Bice v Town of Walcott, 64 M 459, 67 NW 360.

The mere adjustment of the amount of the loss was not an admission on the part of the insurance company that a liability existed, and as more than a year elapsed, the action was barred by the statute of limitations. Willoughby v St. Paul German Insurance, 68 M 373, 71 NW 272.

Laches will not be imputed to one in the peaceable possession of land under an equitable title for delay in resorting to a court of equity for protection against the legal title. Hayes v Carroll, 74 M 134, 76 NW 1017.

Where one who may proceed in a suit in equity for rescission of the contract, or may sue at law for damages, brings an action at law; the equitable doctrine of laches has no application. Neibuhr v Gage, 99 M 149, 108 NW 884, 109 NW 1.

The respondent deposited with her brother, money, with the understanding he could use it until demanded. He died 23 years after the last deposit was made. Her claim for the money plus interest was not barred by the statute or by laches. Fallon v Fallon, 110 M 213, 124 NW 994.

If a rescission has been affected by a party defrauded within a reasonable time after discovery of the right to rescind, he is not bound to bring his action to recover his loss before the time has expired within which he must rescind. Krzyzanick v Maas, 182 M 83, 233 NW 595.

Delay in seeking relief, not for such time as to come within the statute of limitations, and for which the defendant is in part responsible, is not a bar to this action. Johnson v Independent, 189 M 293, 249 NW 177.

Laches may be asserted as a defense where one wilfully sleeps on his rights to another's detriment, but is excused when such person is in ignorance of his rights. Craig v Baumgartner, 191 M 42, 254 NW 440.

There is no statute of limitation governing actions for the reformation of instruments upon the grounds of mistake. Lapse of time in such cases operates as a bar only by the equitable doctrine of laches. Papke v Pearson, 203 M 130, 280 NW 183.

"The pith of the doctrine of laches is unreasonable delay in enforcing a known right." Keough v St. Paul Milk Co. 205 M 96, 285 NW 809.

There is no suggestion of fraud, concealment, fault, or neglect of duty in respect to the bonds by defendant or its officers that tolls the statute of limitations, so recovery is barred after the expiration of six years from their due date. Batchelder v City of Faribault, 212 M 251, 3 NW(2d) 778.

The doctrine of laches depends entirely upon the peculiar circumstances surrounding the case, upon the nature of the claim, whether the delay has been unnecessary and unreasonable, or, whether the opposite party will be prejudiced. State ex rel v Bentley, 216 M 146, 12 NW(2d) 347.

Neither the statute of limitations, nor laches will bar a suit under Laws 1925, Chapter 378. City of Minneapolis v Township of Independence, 216 M 485, 13 NW(2d) 375.

A partner's widow was not estopped by laches or limitations from claiming as partnership property certificates of deposit and a farm, title to which had been taken in the name of the copartner, where after partner's death widow and copartner carried on the partnership, the widow and her children and copartner doing the work and living as one family. Shanahan v Olmsted Bank, 217 M 454, 14 NW(2d) 433.

A corporation as well as its minority stockholders who claim injury by fraudulent acts of directors, or by ultra vires acts of the corporation, must act promptly. Erickson v Wells, 217 M 361, 15 NW(2d), 15 NW(2d) 163.

As regards laches, time does not begin to run in favor of one guilty of fraud until knowledge of the facts constituting fraud is brought home to the aggrieved party. Wingate v Rockwood, 69F(2d) 326.

A common carrier in continuous possession of Minnesota property from date of inception of its rights under contract to purchase right of way was not barred by laches from seeking specific performance of contract. Pike Rapids v Minneapolis, St. Paul and Soo, 99 F(2d) 902.

A cause of action accrues for purpose of limitations at time that action thereon can be commenced; and a cause of action against a county for recovery of real estate taxes which were levied and paid in the belief that the islands were within the United States accrued as soon as the fact that the islands were in Canada was demonstrable. Pettibone v Cook Co. 120 F(2d) 850.

Indefinite time of performance, 19 MLR 710.

4. Political divisions

The statute gives no appeal in proceedings to enforce taxes against real estate, and in case the court below declines to certify its statement of facts and decision, as provided by statute, there is no mode of bringing the record and proceedings to the supreme court for its determination, except by certiorari. County of Brown v Winona and St. Peter, 38 M 397, 37 NW 949.

The statute being applicable to the state and its political divisions, the state and divisions are entitled to a liberal construction equally with the citizens. County of Redwood v Winona and St. Peter, 40 M 512, 41 NW 465, 42 NW 473; City of St. Paul v Chicago, Milwaukee and St. Paul, 45 M 387, 48 NW 17.

The statute applies to municipalities acting in either sovereign or proprietary capacity. City of St. Paul v Chicago, Milwaukee and St. Paul, 45 M 387, 48 NW 17.

The law prior to Laws 1899, Chapter 65, permitted a citizen by occupation of a public street or square to acquire title by adverse possession. City of St. Paul

v Chicago, Milwaukee and St. Paul, 45 M 387, 48 NW 17; Village of Wayzata v Great Northern, 46 M 505, 49 NW 205; Village of Glencoe v Wadsworth, 48 M 402, 51 NW 377; St. Paul and Duluth v Village of Hinckley, 53 M 398, 55 NW 560; Bice v Town of Walcott, 64 M 459, 67 NW 360; St. Paul and Duluth v City of Duluth, 73 M 270, 76 NW 35; City of Hastings v Gillett, 85 M 331, 88 NW 987; Haramon v Krause, 93 M 455, 101 NW 791.

A person who takes possession of land in the erroneous belief that it is public land, with the intention of holding it under the federal homestead law, may acquire title thereto by adverse possession against the true owner. Statutes of limitation do not operate against state or federal government, unless there is an express provision or necessary implication to that effect, and title to public lands cannot be acquired by adverse possession. Maas v Burdetzke, 93 M 295, 101 NW 182.

To constitute title by adverse possession, the possession relied upon must be accomplished and characterized by an intention to claim tile adversely to the true owner. Sawbridge v City of Fergus Falls, 101 M 378, 112 NW 385; Morgan v City of Albert Lea, 129 M 59, 151 NW 532.

Title to lands granted to the state of Minnesota for use of its schools cannot be acquired by adverse possession as against the state. Murtaugh v Chicago, Milwaukee and St. Paul, 102 M 52, 112 NW 860; Kinney v Munch, 107 M 378, 120 NW 374.

Since the adoption of the 1881 amendment (Minnesota Constitution, Article 8, Section 2), title on the right to occupy swamp lands acquired by the state from the United States cannot be acquired by adverse possession against the state. Schofield v Schaeffer, 104 M 123, 116 NW 210.

The city acquired title by dedication and long continued user. Curtiss v City of Minneapolis, 123 M 344, 144 NW 150.

Title by adverse possession may be acquired despite the public easement. Rupley v Fraser, 132 M 311, 156 NW 350.

The control of the streets being vested in the city commission, it may consider how the abutting property is affected, and allot to owners such use of the street as may be consistent with the rights of the public. Bennett v Beaty, 156 M 293, 194 NW 627.

Title to the road by common law dedication not acquired by adverse possession. Carpenter v Gantzer, 164 M 105, 204 NW 550; Hopkins v Dahl, 183 M 393, 236 NW 706.

The statute of limitations does not apply to an action for a failure to pay the state for the timber removed under a permit, nor does it apply to his surety. State v Iowa Bonding Co. 180 M 160, 230 NW 484.

Title to the grounds and street had not been acquired by adverse possession. Stadtherr v Sauk Center, 180 M 496, 231 NW 210.

Title may have been acquired by adverse possession. Doyle v Babcock, 182 M 556, 235 NW 18.

An action in the district court for the enforcement of the lien of the inheritance tax under section 291.27 is not barred by the statute of limitations. State v Brooks, 183 M 251, 236 NW 316.

A tax title is a new and original grant from the sovereign state of title in fee, and is paramount against the world, and supersedes and bars all other titles, claims, and equities. Hacklander v Parker, 204 M 260, 283 NW 406.

The finding that the road in the instant case had not been abandoned is sustained. Freeman v Town of Pine City, 205 M 309, 286 NW 299.

A person cannot claim a franchise on the ground of municipal acquiescence, since under the statute no prescriptive right may be gained in a public street, or highway. Kuehn v Village of Mahtomedi, 207 M 518, 292 NW 187.

The non-use of a road is not such abandonment as would relieve the municipality from liability for negligence in the care of the road. Ollgaard v City of Marshall, 208 M 384, 294 NW 228.

The fact that the road was not maintained on the section line for a term of years did not estop the municipality from straightening the road and without payment of damages. 1938 OAG 265, July 15, 1938 (377-10(d)).

Town cannot acquire by user roadway across state land. 1938 OAG 391, Aug. 26, 1937 (700d-12).

Prior to Laws 1899, Chapter 65, a school district could acquire title to public streets by adverse possession. OAG Aug. 23, 1938 (622a-8).

Since 1899 the doctrine of acquisition of title by adverse possession has not applied to streets and alleys. OAG Aug. 12, 1944 (50).

Presumption of last grant as applied against the state. 25 MLR 101.

541.02 RECOVERY OF REAL ESTATE, 15 YEARS.

HISTORY. R.S. 1851 c. 70 s. 4; P.S. 1858 c. 60 s. 4; G.S. 1866 c. 66 s. 4; G.S. 1878 c. 66 s. 4; 1889 c. 91 s. 1; G.S. 1894 s. 5134; R.L. 1905 s. 4073; 1913 c. 239 s. 1; G.S. 1913 s. 7696; G.S. 1923 s. 9187; M.S. 1927 s. 9187.

1. Generally

Policy, theory, and practical purpose of the statute. Seymour v Carli, 31 M. 81, 16 NW 495; Bausman v Kelley, 38 M 197, 36 NW 333; Wood v Springer, 45 M 299, 48 NW 711; Dean v Goddard, 55 M 290, 56 NW 1060; Mineral Land v Bishop Iron, 134 M 417, 159 NW 966.

A person who enters into possession in an erroneous belief that the land is public, with the intention of holding it under the federal homestead law, may acquire title by adverse possession as against the true owner. Maas v Burdetzke, 93 M 295, 101 NW 182.

Short statutes of limitation such as actions to test the validity of tax sales do not apply to actions for the possession of real estate. Willard v Hodapp, 98 M 269, 107 NW 954.

The legal title to real property carries with it the right of possession, and the authority to institute an action to recover the property from one in possession. Norton v Frederick, 107 M 36, 119 NW 492.

No rights can be acquired by adverse possession in state school land, nor in land occupied under an agreement with the owner. Junes v Junes, 158 M 53, 196 NW 806.

Title once acquired by adverse possession is a legal title, though not a record title, and is not lost by ceasing to be an occupant. Fredericksen v Henke, 167 M 356, 209 NW 257.

Irregular tract acquired by adverse possession. Glidden v Twin City, 171 M 160, 213 NW 562.

Judgment in an action under section 559.25 is res judicata in a subsequent action in ejectment. Speer v Kramer, 171 M 488, 214 NW 283.

Title by adverse possession may be proved under an allegation of ownership. Speer v Kramer, 171 M 488, 214 NW 283.

This complaint in a cause of action, asking to annul an express trust of real and personal property, is bad because barred by the six-year limitation statute. Whitcomb v Wright, 176 M 274, 223 NW 294.

The six-year statute of limitations applies to an action to recover damages for an injury to real property caused by a municipality in grading a street. Forsythe v City of South St. Paul, 177 M 565, 225 NW 816.

An easement by prescription for the flooding of land may be acquired for limited or seasonable purposes only. Pahl v Long Meadow, 182 M 118, 233 NW 836.

A tax title is a new and original grant from the state as sovereign of title in fee, which is paramount as against the world and which supersedes and bars all other titles, claims, and equities. Hacklander v Parker, 204 M 260, 283 NW 406.

Section 541.02 does not permit a claimant of title to land by adverse possession in a boundary line dispute case to acquire title to the land by adverse possession as against a tax lien or tax title. Hacklander v Parker, 204 M 260, 283 NW 406.

In a suit to enforce stockholder's liability for debts incurred by a domestic corporation prior to the 1930 amendment of Minnesota Constitution, Article 10, Section 3, the liability of the stockholder is fixed by the constitution, and when the corporation is declared insolvent, the liability of the stockholder as surety becomes fixed, and the cause accrues. Knipple v Lipke, 211 M 238, 300 NW 620.

The state as an intervenor showed the ward was made under a misapprehension of the facts as to adverse possession with a result so grossly in disparate with the actual value of the property taken as to amount to a fraud upon the state, and to justify a return of the excess of the award. State ex rel v Riley, 213 M 448, 7 NW(2d) 770.

Prescription applies to incorporeal hereditaments; "adverse possession" to lands, but the term "title by prescription" means adverse possession. Romans v Nadler, 217 M 177, 14 NW(2d) 483.

Reasonable time in which administratrix should have applied and sold real estate. National Surety v Ellison, 88 F(2d) 404.

Title cannot be acquired to establish a highway by adverse possession, though the road has been abandoned and never was used. OAG April 28, 1933.

Mistake and statutes of limitation. 20 MLR 482.

2. Adverse possession

To be adverse possession must be actual, open, continuous, hostile, exclusion, and accompanied by an intention to claim adversely. Washburn v Cutter, 17 M 361 (335); Sherin v Brackett, 36 M 152, 30 NW 551; Costello v Edson, 44 M 135, 46 NW 299; Dean v Goddard, 55 M 290, 56 NW 1060; Brown v Kohout, 61 M 113, 63 NW 248; Butler v Drake, 62 M 229, 64 NW 559; McRoberts v McArthur, 62 M 310, 64 NW 903; Todd v Weed, 84 M 4, 86 NW 756; Glover v Sage, 87 M 526, 92 NW 471; Maas v Burdezke, 93 M 295, 101 NW 182; Young v Grieb, 95 M 396, 104 NW 131; Krueger v Market, 124 M 393, 145 NW 30.

The possession must be hostile to the title of the true owner and under claim of right. The claimant must have intended to occupy the land as owner in fee against the world. Washburn v Cutter, 17 M 361 (335); Seymour v Carli, 31 M 81, 16 NW 495; Lowry v Tilleny, 31 M 500, 18 NW 452; Costello v Edson, 44 M 135, 46 NW 299; Brown v Morgan, 44 M 432, 46 NW 913; Village of Wayzata v Great Northern, 46 M 505, 49 NW 205; Village of Glencoe v Wadsworth, 48 M 402, 51 NW 377; St. Paul and Duluth v Village of Hinckley, 53 M 398, 55 NW 560; Dean v Goddard, 55 M 290, 56 NW 1060; Swan v Munch, 65 M 500, 67 NW 1022; Sage v Rudnick, 67 M 362, 69 NW 1096; Carpenter v Coles, 75 M 9, 77 NW 424; Cool v Kelly, 78 M 102, 80 NW 861; Todd v Weed, 84 M 4, 86 NW 756; McGovern v McGovern, 84 M 143, 86 NW 1102; Collins v Colleran, 86 M 199, 90 NW 364; Glover v Sage, 87 M 526, 92 NW 471; Kistner v Beseke, 96 M 136, 104 NW 759.

The intent to claim adversely may be inferred from the nature of the occupancy; oral declarations are not necessary. Continued acts of ownership, occupying, using, and controlling the property as owner, constitute the usual and natural modes of asserting a claim of title. Seymour v Carli, 31 M 81, 16 NW 495; Costello

v Edson, 44 M 135, 46 NW 299; Village of Glencoe v Wadsworth, 48 M 402, 51 NW 377; Dean v Goddard, 55 M 290, 56 NW 1060; Brown v Kohout, 61 M 113, 63 NW 248; Swan v Munch, 65 M 500, 67 NW 1022; Cool v Kelly, 78 M 102, 80 NW 861; Wheeler v German, 80 M 462, 83 NW 442; Todd v Weed, 84 M 4, 86 NW 756; Sawbridge v City of Fergus, 101 M 378, 112 NW 385.

The title acquired by adverse possession is a title in fee simple. Seymour v Carli, 31 M 81, 16 NW 495; Kipp v Johnson, 31 M 360, 17 NW 957; Jellison v Halloran, 44 M 199, 46 NW 432; Costello v Edson, 44 M 432, 46 NW 913; Flynn v Lemieux, 46 M 458, 49 NW 238; Dean v Goddard, 55 M 290, 56 NW 1060; Sage v Rudnick, 67 M 362, 69 NW 1096; McArthur v Clark, 86 M 165, 90 NW 369; Ross v Cale, 94 M 513, 103 NW 561.

The holder of a title by adverse possession may bring ejectment against the holder of the paper title by whom he has been dispossessed. Sherin v Brackett, 36 M 152, 30 NW 551; McArthur v Clark, 86 M 165, 90 NW 561.

One in adverse possession of land may purchase the title of one person against whom he is holding adversely, without abandoning his adverse holding as to title of another person. City of St. Paul v Chicago, Milwaukee and St. Paul, 45 M 387, 48 NW 17.

The holding being adverse, it follows that it is also hostile. Dean v Goddard, 55 M 290, 56 NW 1060.

If there is a break in the continuity of the claim, or any recognition of the title of the paper owner, time will begin to run de novo from that date. City of St. Paul v Chicago, Milwaukee, and St. Paul, 63 M 330, 63 NW 267, 65 NW 649, 68 NW 458.

When the statute of limitation has run in favor of the disseisor no subsequent acknowledgment of the former owner's title, except by deed, will divest the title acquired by adverse possession. Sage v Rudnick, 67 M 362, 69 NW 1096.

The rule that the payment of taxes by the person claiming title to land by adverse possession is strong evidence in support of his claim of adverse occupancy applies with less force when the land is assessed under a description which includes land with reference to which such person is under legal duty to pay the taxes as actual owner. Curtiss v City of Minneapolis, 123 M 344, 144 NW 150.

There is no real forfeiture to the state for taxes, and what is sometimes termed forfeiture to the state upon the expiration of three years from date of sale to the state does not interrupt adverse possession. Rupley v Fraser, 132 M 311, 156 NW 350.

The statute making payment of taxes for at least five consecutive years upon land separately assessed, a prerequisite to the acquisition of title by adverse possession, applies in all cases where the possession had not ripened into title before the statute took effect. Post v Sumner, 137 M 201, 163 NW 161.

When a street is dedicated by plat, the city may choose its own time to occupy, open and use the street, and until it does so, possession of the street by the abutting owner who owns the fee of the street, is not regarded as hostile, and the statute of limitations will not commence to run. Pierro v City of Minneapolis, 139 M 394, 166 NW 766.

Where the owner of lot 9 claims title by adverse possession to an adjoining strip of lot 10 not separately assessed, it is not necessary under this section that he should have paid taxes on the disputed strip. Kelley v Green, 142 M 82, 170 NW 922; Skala v Lindbeck, 171 M 410, 214 NW 271; Wortman v Siedow, 173 M 145, 216 NW 782.

Actual and visible occupation is required to a greater degree in a settled than in a new country; and in the beginning, adverse possession may be a mere trespass. Skala v Lindbeck, 171 M 410, 214 NW 271.

The claimant may strengthen his adverse claim by taking conveyances. Skala v Lindbeck, 171 M 410, 214 NW 271.

The occupancy and slight use of lands involved by the successor in interest of the grantors in the flowage contract was permissive and did not constitute adverse possession. Pike Rapids v Schwintek, 176 M 324, 223 NW 612.

Evidence supports the finding that the claimant had acquired title by adverse possession. Patnode v May, 182 M 348, 234 NW 459; Deacon v Haugen, 182 M 540, 235 NW 23.

There can be no prescriptive right if the use originated in amity, and continued in recognition of the title of the owner. Lustman v Lustman, 204 M 228, 283 NW 387.

Where one of two adjoining owners takes and holds actual possession of land beyond the boundary of his own lot or tract, under a claim of title thereto as being a part of his own land, though under a mistake as to the location of the boundary line, such possession, for the purposes of the statute, is to be deemed adverse to the true owner and a disseizin. It is not necessary that the claimant should have paid the taxes on the disputed area. Mellenthin v Brantman, 211 M 336, 1 NW(2d) 141.

3. Mistake as to boundary line

Where one of two adjoining owners takes and holds actual possession of land beyond the boundary of his own lot or tract, under a claim of title thereto as being part of his own land, though under a mistake as to the location of the boundary line, such possession, for the purposes of the statute, is deemed adverse to the true owner and a disseizin. Seymour v Carli, 31 M 81, 16 NW 495; Brown v Morgan, 44 M 432, 46 NW 913; Ramsey v Glenny, 45 M 401, 48 NW 322; Diers v Ward, 87 M 475, 92 NW 402; Weeks v Upton, 99 M 410, 109 NW 828; Mellenthin v Brantman, 211 M 336, 1 NW(2d) 141.

Applied to federal surveys. Beardsley v Crane, 52 M 537, 54 NW 740; Thoen v Roche, 57 M 135, 58 NW 686; Butler v Drake, 62 M 229, 64 NW 559; Roy v Dannehr, 124 M 233, 144 NW 758.

The statute of limitations runs in favor of the public and against the abutting private owner in six years. It does not follow that by analogy the limitation in favor of the private owner and against the public should, in such case, be six years. Bice v Town of Walcott, 64 M 459, 67 NW 360.

The "practical location" of a boundary line can be established in one of three ways only: (1) The location relied upon must have been acquiesced in for a sufficient length of time to bar a right of action under the limitation statute; (2) the line must have been expressly agreed upon by interested parties, and afterwards acquiesced in; (3) the party whose rights are to be barred must, with the knowledge of the true line, have silently looked on, while the other party encroached thereon. Benz v City of St. Paul, 89 M 31, 93 NW 1038.

The evidence of practical location, consisting of fencing by one party on a varying line, cultivation of part unfenced to the line claimed, and a small amount of ditching within 15 years, does not warrant the appellant court in setting aside a verdict based on a finding that there was no practical location. Marek v Jelinek, 121 M 469, 141 NW 788.

The practical location of a boundary line can be established in three ways only: (1) The location relied upon must have been acquiesced in for a sufficient length of time to bar a right of entry under the statute of limitations; (2) the line must have been expressly agreed upon between the parties claiming the land on both sides thereof, and afterwards acquiesced in; or (3) the party whose rights are to be barred must, with knowledge of the true line, have silently looked on while the other party encroached upon it. Dunkel v North, 211 M 194, 300 NW 610.

4. Permissive possession

The possession of one tenant in common is presumed not to be adverse to his co-tenant; and the entry of a person on the common land under a license from either is presumed to be legal. Berthold v Fox, 13 M 501 (462); Lowry v Tilleny, 31 M 500, 18 NW 452; Lindley v Groff, 37 M 338, 34 NW 26; Ricker v Butler, 45 M 545, 48 NW 407; Cameron v Chicago, Milwaukee and St. Paul, 60 M 100, 61 NW 814; Sanford v Safford, 99 M 380, 109 NW 819.

An action for use and occupation will not lie by one tenant in common of real estate against his co-tenant in possession, without a demand for possession, and knowledge by the co-tenant of the other's rights. Holmes v Williams, 16 M 164 (146).

Where a mortgagor or his grantee remains in possession after the title to an undivided interest therein has passed by a foreclosure sale to a purchaser thereof,

his possession is presumed amicable, and in subordination to the title of the purchaser until the contrary appears. Lowry v Tilleny, 31 M 500, 18 NW 452; Kells v Williams, 69 M 272, 72 NW 112.

The statute does not run against the rights of reversioners pending an intervening life-estate where a deed runs to two grantees jointly, and only one enters into actual possession, such possession is not deemed adverse to the other joint owner or his heirs, until the assertion of some hostile claim denoting an intention to hold adversely. Lindley v Groff, 37 M 338, 34 M 26; Hansen v Ingwaldson, 77 M 533, 80 NW 702.

A mistake in a deed, whereby a portion of the premises intended to be conveyed have been omitted in the description, does not prevent the grantee from acquiring a title by prescription to the land so intended to be conveyed. Vandall v St. Martin, 42 M 163, 44 NW 525.

Although it may be adverse to third parties, the possession of a vendee under an executory contract of purchase is not adverse to the vendor so long as the purchase money is not paid or until the vendee is entitled to demand a deed. Dean v Goddard, 55 M 290, 56 NW 1060; Madsen v Madsen, 80 M 501, 83 NW 396; Johnson v Peterson, 90 M 503, 97 NW 384.

The vendee being a quasi-tenant of the vendor, is estopped from denying his title. Mitchell v Chisholm, 57 M 148, 58 NW 873; Thompson v Ellenz, 58 M 301, 59 NW 1023.

To make a permissive possession adverse, there must be some open assertion of hostile title and knowledge thereof brought home to the owner. Cameron v Chicago, Milwaukee and St. Paul, 60 M 100, 61 NW 814; Backus v Burke, 63 M 272, 65 NW 459; O'Boyle v McHugh, 66 M 390, 69 NW 37; Blomberg v Montgomery, 69 M 149, 72 NW 56; Hansen v Ingwaldson, 77 M 533, 80 NW 702; Omodt v Chicago, Milwaukee and St. Paul, 106 M 205, 118 NW 798; Board v Trustees, 183 M 485, 237 NW 181.

As between parent and child, the possession of the land of one by the other is presumed to be permissive and not adverse; and to make such possession adverse, there must be some open assertion of hostile title, other than mere possession, and knowledge thereof brought home to the owner. O'Boyle v McHugh, 66 M 390, 69 NW 37; Collins v Colleran, 86 M 199, 90 NW 364; Malone v Malone, 88 M 418, 93 NW 605.

The husband abandoned the possession to his wife, procured the tenants for her, paid the taxes and managed the premises as her agent, and not in his own right, and the statute ceased to run in his favor as against other tenants in common. Blomberg v Montgomery, 69 M 149, 72 NW 56.

As between a widow and heirs of the husband's estate. McGovern v McGovern, 84 M 143, 86 NW 1102.

Where a grantor remains in possession of land after a valid conveyance thereof, his possession, as well as that of those occupying the land under him, is presumed to be permissive. The presumption is not conclusive, for if the party so in possession asserts claim of title in himself, and his claim is made known to the grantee, his possession is hostile and adverse. Kelly v Palmer, 91 M 133, 97 NW 578.

Adverse claim not asserted. Coates v Cooper, 121 M 11, 140 NW 120.

Undisturbed use of a passway over the uninclosed lands of another raises a rebuttable use of a passway over the uninclosed lands of another raises a rebuttable presumption of a grant; but when the use in its inception was permissive, such use is not transformed into adverse or hostile use until the owner of the land has some notice of the intention of the user to claim a right adverse and hostile. Johnson v Hegland, 175 M 592, 222 NW 272; Johnson v Olson, 189 M 183, 248 NW 700.

Where the use originates in agreement between members of the same family, as in case of two brothers, there is an inference, or presumption, that the use of the one was not adverse to the other, but by permission. Lustman v Lustman, 204 M 228, 283 NW 387.

When the inception of the possession is permissive and not hostile or under claim or color of right, it is presumed to so continue and does not ripen into title

however long it may continue unless circumstances or declarations indicate an intent hostile to the true owner. Hoverson v Hoverson, 216 M 228, 12 NW(2d) 501.

Although a right of way granted by the United States through public domain may be amenable to the police power of the state, an individual cannot for private purposes, acquire by adverse possession under a statute of limitations of the state any portion of a right of way such as granted to the Northern Pacific Railway, overruling Northern Pacific v Townsend, 84 M 152, 86 NW 1007. Northern Pacific v Townsend, 190 US 267, 23 SC 671.

5. Actual possession

What state of facts will constitute an ouster and adverse possession is a question of law; but as to the existence of facts, amounting to such ouster and adverse possession, is a question for the jury. No general rule can be laid down. Washburn v Cutter, 17 M 361 (335); Murphy v Doyle, 37 M 113, 33 NW 280; Sage v Morosick, 69 M 167, 71 NW 930.

The title owner is constructively in possession, and if there is no adverse possession, the title draws to it the possession. Washburn v Cutter, 17 M 361 (335); Seymour v Carli, 31 M 81, 16 NW 495; Bradley v Morris, 63 M 156, 65 NW 357.

Possession to constitute adverse possession depends upon the character of the property, its location, and the purposes for which it is adopted. Murphy v Doyle, 37 M 113, 33 NW 220; Costello v Edson, 44 M 135, 46 NW 299; Wood v Springer, 45 M 299, 47 NW 811; Ricker v Butler, 45 M 545, 48 NW 407; Dean v Goddard, 55 M 290, 56 NW 1060; Butler v Drake, 62 M 229, 64 NW 559; Backus v Burke, 63 M 272, 65 NW 459; Sage v Morosick, 69 M 167, 71 NW 930; Wheeler v Gorman, 80 M 462, 83 NW 442.

The possessory acts must be such as to indicate and serve as a notice of an intention to appropriate the land, and not merely the products from or use of the land. Bazille v Murray, 40 M 48, 41 NW 238; Costello v Edson, 44 M 135, 46 NW 299; Wood v Springer, 45 M 299, 47 NW 811; Lambert v Stees, 47 M 141, 49 NW 662; Sage v Larson, 69 M 122, 71 NW 923; Wheeler v Gorman, 80 M 462, 83 NW 442.

The possession must be actual and of a nature calculated to give the true owner unequivocal notice of the adverse claim. Costello v Edson, 44 M 135, 46 NW 299; Wood v Springer, 45 M 299, 47 NW 811; Ricker v Butler, 45 M 545, 48 NW 407; Lambert v Stees, 47 M 141, 49 NW 662; Brown v Kohout, 61 M 113, 63 NW 248; Wheeler v Gorman, 80 M 462, 83 NW 442; Glover v Sage, 87 M 526, 92 NW 471; Young v Grieb, 95 M 396, 104 NW 131.

"It is necessary in an action that there be at all times some person against whom the real owner may recover the possession of the land." City of St. Paul v Chicago, Milwaukee and St. Paul, 45 M 387, 48 NW 17.

A fence around the land was not necessary. The plowing of the furrows around the land, other facts proven, was sufficient. Sage v Morosick, 69 M 167, 71 NW 930.

The sale of Hastings and Dakota indemnity lands granted by congress in 1866 to Russell Sage within three years after the dissolution was authorized by statute and vested in Sage the same right of selection as was granted to the original grantee, and that carried with it the right to bring an action to recover possession of the land. Norton v Frederick, 107 M 36, 119 NW 492; Morris v Svor, 118 M 344, 136 NW 852.

6. Open and visible possession

The possession must be open or notorious. It must be such as would charge the true owner with knowledge of the adverse holding. It must be visible. Bausman v Kelley, 38 M 197, 36 NW 333.

An anual entry upon uninclosed, wild land to cut natural grass upon part of it, will not, of itself, create adverse possession. Bazille v Murray, 40 M 48, 41 NW 238.

Proof of entry under color of title, by one not the owner, upon platted village lots covered with brush, and of the cutting and burning of the growth, the grub-

bing and clearing of the land, and payment of the taxes, is sufficient to sustain a holding of adverse possession. Costello v Edson, 44 M 135, 46 NW 299.

The facts in evidence were such that it was unnecessary to require a finding of adverse possession. Lambert v Stees, 47 M 141, 49 NW 662.

A way may be dedicated as a public highway even though it is a cul-de-sac. A common-law dedication is accomplished otherwise than by a plat executed and recorded as required by statute. A common-law dedication consists of the landowner's intention to dedicate, and an acceptance by the public. A dedication of a public highway cannot without the consent of the public revoke the dedication by an attempted substitution of another highway. Keiter v Berge, 219 M 374, 18 NW(2d) 35.

7. Exclusive possession

While it may be true the claimant under adverse possession "must keep his flag flying;" the statute of limitations, which the paper title owner is presumed to know, is a continual warning, and if, through his negligence of selfishness, he allows others to occupy, use, and improve his land for a long period of time, he must be deemed to have acquiesced in the possession of his adversary. Dean v Goddard, 55 M 290, 56 NW 1060.

In order to create an easement by prescription, the adverse user need not be exclusive in the sense that the easement must have been used by one person only. It must be only exclusive as to the community at large. Merrick v Schlender, 179 M 228, 228 NW 755.

Where the tenant pays rent to a third person, as well as to the lessor, there is no exclusive possession. Lamprey v American, 197 M 112, 266 NW 434.

The entry and possession of one tenant in common is regarded in law as the entry and possession of all the cotenants. Such possession is not adverse until there is an ouster. Hoverson v Hoverson, 216 M 232, 12 NW(2d) 501.

8. Continuous possession

The possession must be continuous for the statutory period. Acknowledgment by the adverse claimant of an owner's title before the statute has run in the claimant's favor, breaks the continuity, and the original period cannot be tacked to a subsequent period. Successive holders may be tacked together, but privity between them is indispensable. Sherin v Brackett, 36 M 152, 30 NW 551; Witt v St. Paul and Northern, 38 M 122, 35 NW 862; Vandall v St. Martin, 42 M 163, 44 NW 525; Morris v McClary, 43 M 346, 46 NW 238; Costello v Edson, 44 M 135, 46 NW 299; City of St. Paul v Chicago, Milwaukee and St. Paul, 45 M 387, 48 NW 17; Ramsey v Glenny, 45 M 401, 48 NW 322; Ricker v Butler, 45 M 545; 48 NW 407; City of St. Paul v Chicago, Milwaukee and St. Paul, 63 M 330, 63 NW 267; Sage v Rudnick, 67 M 362, 69 NW 1096; Blomberg v Montgomery, 69 M 149, 72 NW 56; Johnson v Peterson, 90 M 503, 97 NW 384.

Continuity of adverse possession is not interrupted by the possession of one who occupies as a tenant of the alleged adverse possessor. Sherin v Brackett, 36 M 152, 30 NW 551; City of St. Paul v Chicago, Milwaukee and St. Paul, 45 M 387, 48 NW 17; Ramsey v Glenny, 45 M 401, 48 NW 322.

The continuity of adverse possession is not broken by the party in possession taking written conveyances of the premises from other parties claiming an interest therein, as this may give him color of title, and perhaps define the boundaries. Dean v Goddard, 55 M 290, 56 NW 1060.

After the period of limitation has run, any interruption in possession is immaterial. Dean v Goddard, 55 M 290, 56 NW 1060; Sage v Rudnick, 67 M 362, 69 NW 1096.

The rule applies to an easement in real property, and when the claimant needs the use of the property from time to time, and so uses it, this is a sufficiently continuous use to be adverse, though not constant. Swan v Munch, 65 M 500, 67 NW 1022.

Application to public and government surveys and plats. Hall v Connecticut Mutual, 76 M 401, 79 NW 497.

Acknowledgment of the owner's title before the statute has run in his favor breaks the continuity of his adverse possession, and it cannot be tacked to any subsequent adverse possession. Olson v Burk, 94 M 456, 103 NW 335.

The defendant brought an action against plaintiff to determine adverse claims and concluding it had been brought prematurely, dismissed with consent of plaintiff. In the present action, it is held that the prior action did not interrupt the continuity of defendant's adverse possession. Holmgren v Isaacson, 104 M 84, 116 NW 205.

What is sometimes called forfeiture to the state upon the expiration of three years from date of sale to the state does not interrupt the continuity of adverse possession. Rupley v Fraser, 132 M 311, 156 NW 350.

The presence of a reservation in the record was sufficient to require further inquiry to ascertain the foundation and basis of the reserved right. Knudson v Trebesch, 152 M 8, 187 NW 613.

An easement created by a grant may be lost by abandonment. Non-user alone will not establish such abandonment, but such non-user must be accompanied by acts clearly evidencing an intention to abandon. Simms v William Simms Hardware, 216 M 283, 12 NW(2d) 783.

Possession must be hostile, under a claim of right, actual, open, continuous and exclusive. Occasional and sporadic occupation is not sufficient. Romans v Nadler, 217 M 174, 14 NW(2d) 482.

The home farm, standing in the name of J. W. Shanahan, but purchased with partnership funds, and so partnership property was continuously in the possession of Patrick J. Shanahan and his wife. Shanahan v Olmsted Bank, 217 M 460, 14 NW(2d) 433.

9. Tacking

Successive disseizins cannot be tacked for the purpose of constituting a continuous adverse possession, unless there is privity between successive disseizors. Sherin v Brackett, 36 M 152, 30 NW 551; Witt v St. Paul & Northern, 38 M 122, 35 NW 862; Ramey v Glenny, 45 M 401, 48 NW 322.

Privity exists between two successive disseizors when one takes under the other, as by descent, will, grant, or voluntary transfer of possession. Sherin v Brackett, 36 M 152, 30 NW 551; Vandall v St. Martin, 42 M 163, 44 NW 525; City of St. Paul v Chicago, Milwaukee and St. Paul, 45 M 387, 48 NW 17; Ramsey v Glenny, 45 M 401, 48 NW 322; Ricker v Butler, 45 M 545, 48 NW 407; Barber v Robinson, 78 M 193, 80 NW 968; McGovern v McGovern, 84 M 143, 86 NW 1102.

Continuity may be affected by any conveyance or understanding which has for its object a transfer of the rights of the possessor or of his possession when accompanied by an actual transfer of possession. Sherin v Brackett, 36 M 152, 30 NW 551; City of St. Paul v Chicago, Milwaukee and St. Paul, 45 M 387, 48 NW 17; Ramsey v Glenny, 45 M 401, 48 NW 322.

An instrument in writing is not required. Hall v Connecticut Mutual, 76 M 401, 79 NW 497.

10. Color of title

Although color of title is not necessary, it may be important, when entry is made and possession taken and held in accordance with it, to define the extent of the possession claimed. Washburn v Cutter, 17 M 361 (335); City of St. Paul v Chicago, Milwaukee and St. Paul, 45 M 387, 48 NW 17; Carpenter v Coles, 75 M 9, 77 NW 424.

A person has color of title when he has apparent, though not real title, founded upon a written instrument which purports to convey the property and title to him. Seigneuret v Fahey, 27 M 60, 6 NW 403; Wheeler v Merriman, 30 M 372, 15 NW 665; Hall v Torrens, 32 M 527, 21 NW 717.

One in possession of real estate under an instrument which, upon its face, does not appear to give him any title or right to possession, is not holding under color of title. O'Mulcahy v Florer, 27 M 449, 8 NW 166.

Where the occupant of land entered without color of title, there must be actual occupancy to constitute adverse possession, and the adverse possession in such

case is only coextensive with such occupancy. Coleman v N. P. 36 M 525, 32 NW 859; Brown v Kohout, 61 M 113, 63 NW 248; Cool v Kelly, 78 M 102, 80 NW 861.

Where a disseizor enters under color of title, his possession is ordinarily coextensive with the description in the deed. Murphy v Doyle, 37 M 113, 33 NW 220; Morris v McClary, 43 M 346, 46 NW 238; City of St. Paul v Chicago, 45 M 387, 48 NW 17; Miesen v Canfield, 64 M 513, 67 NW 632; Barber v Robinson, 78 M 193, 80 NW 968; 82 M 112, 84 NW 732.

The deed need not be valid, nor must it be recorded. Murphy v Doyle, 37 M 113, 33 NW 220; Costello v Edson, 44 M 135, 46 NW 299; Miesen v Canfield, 64 M 513, 67 NW 632.

To entitle the defendant in an ejectment suit to be allowed for improvements, the improvements must have been made by him, or those under whom he claims, while holding under color of title. McLellan v Omodt, 37 M 157, 33 NW 326.

An actual entry upon and possession of land, though in fact tortious and without color of title, may ripen into title by adverse possession. Village of Glencoe v Wadsworth, 48 M 402, 51 NW 377; Swan v Munch, 65 M 500, 67 NW 1022; Carpenter v Coles, 75 M 9, 77 NW 424; Cool v Kelly, 78 M 102, 80 NW 861.

The adverse possession of one distinct piece of land will not draw to it the constructive possession of another vacant and distinct piece owned by another person, although the adverse occupant holds a paper title by an instrument wherein the described boundaries are coextensive with both pieces of land. McRoberts v McArthur, 62 M 310, 64 NW 903.

Possession of a trespasser is limited to so much as he actually occupies, and he cannot claim title by adverse possession to wild and uninclosed land adjoining, from the mere fact that he cut natural hay thereon and let his stock pasture on it. Sage v Larson, 69 M 122, 71 NW 923; Barber v Robinson, 78 M 193, 80 NW 968; Florance v Goslin, 151 M 269, 186 NW 691.

"Claim of title," "claim of right," and "claim of ownership" mean nothing more than the intention of the disseizor to appropriate and use the land as his own to the exclusion of all others. Color of title and claim of right are not synonymous. Carpenter v Coles, 75 M 9, 77 NW 424.

One who enters without color of title cannot extend his otherwise acquired possession by obtaining color of title subsequent to his original entry. Barber v Robinson, 78 M 193, 80 NW 968.

A mortgagor who has expressly covenanted to pay the taxes on mortgaged premises is not thereby prohibited from acquiring a tax title thereon, if the same does not affect interests or rights arising from or accruing under the mortgage. Ross v Cale, 94 M 513, 103 NW 561.

The trial court's finding, on application to register land, that defendant's predecessor in title was never in adverse possession of the land as against the title asserted by the applicant is not sustained. Sinclair v Matter, 125 M 484, 147 NW 655.

11. Easements

To acquire a right by prescription to flow the lands of another, there must be (as of 1886) 20 years' uninterrupted adverse user or enjoyment. Mueller v Fruen, 36 M 273, 30 NW 886.

When the claimant needs the use of the property from time to time, and so uses it, is sufficiently continuous use to be adverse, even though it is not constant. Swan v Munch, 65 M 500, 67 NW 1022.

The use or enjoyment of an easement in the land of another which will constitute right by prescription, must be an uninterrupted adverse user for the same length of time which is necessary to defeat the title of the true owner of land by adverse possession. Schulenberg v Zimmerman, 86 M 70, 90 NW 156.

A right of way may be acquired by prescription, and when so acquired is an appurtenance to the land and passes with the land by deed, without specific reference thereto. Stapf v Wobbrock, 171 M 358, 214 NW 49.

A user of a way for trial, permissive in its inception, does not ripen into an easement until and unless there is a subsequent distinct and positive assertion of a hostile right by the claimant, and continued use after such hostile assertion for

the statutory time to acquire an easement by prescription or adverse possession. Johnson v Olson, 189 M 183, 248 NW 700.

Plaintiff having acquired a prescriptive right of way over defendant's land, on the request of defendant, ceased to use the roadway, but, at the request of defendant, did use another way over the same servient land. Plaintiff's right of action to enjoin the defendant from obstructing his right of way was sustained. Schmidt v Koecher, 196 M 178, 265 NW 347.

The defendant cheese factory had not obtained a prescriptive right to pollute the creek, for the pollution has not been continuous in substantially the same way or with the same injurious results during the entire statutory period. Satren v Hader, 202 M 553, 279 NW 361.

The same rules of adverse user apply in cases of easements by prescription as in those of title by adverse possession. Romans v Nadler, 217 M 174, 14 NW(2d) 482.

A user of a way of travel, permissive in its inception, does not ripen into an easement unless and until there is a subsequent distinct and postive assertion of a hostile right by the claimant and continued use under such assertion for the statutory time to acquire an easement by prescription. Aldrich v Dunn, 217 M 255, 14 NW(2d) 489.

12. Admissible evidence

Although void on its face, the deed under which the disseizor entered is admissible to show the nature and extent of his claim. Washburn v Cutter, 17 M 361 (335); Murphy v Doyle, 37 M 113, 33 NW 220; Ricker v Butler, 45 M 545, 48 NW 407.

Evidence of payment or non-payment of taxes is admissible. Murphy v Doyle, 37 M 113, 33 NW 220; Costello v Edson, 44 M 135, 46 NW 299; Dean v Goddard, 55 M 290, 56 NW 1060; Sage v Morosick, 69 M 167, 71 NW 930; Wheeler v Gorman, 80 M 462, 83 NW 442; Todd v Weed, 84 M 4, 86 NW 756.

Declarations by a deceased party, through whom the defendant claims title, and who the evidence tends to show was at the time in possession of the premises in dispute, to the effect that he was the owner thereof, are competent. Brown v Kohout, 61 M 113, 63 NW 248.

Declarations, conduct, and admissions subsequent to the statutory period are admissible to explain and characterize the antecedent possession. Todd v Weed, 84 M 4, 86 NW 756; Kistner v Beseke, 96 M 137, 104 NW 759; Knight Record v Village of Farmington, 126 M 488, 148 NW 296.

An intention to dedicate land as a highway may be inferred from such facts as the owner's long acquiescence in the use of his land as a highway, from his acts in furtherance of such use, from his recognition of the validity of the public's claim to the highway after it was used as such. The public's acceptance may be inferred from the fact of common user by the public. Keiter v Berge, 219 M 374, 18 NW(2d) 35.

13. Question for jury

What state of facts will constitute ouster and adverse possession is a question of law, but the existence of facts, amounting to such ouster and adverse possession in law, is a question for the jury. Washburn v Cutter, 17 M 361 (335); Village of Glencoe v Wadsworth, 48 M 402, 51 NW 377; Butler v Drake, 62 M 229, 64 NW 559; Sage v Morosick, 69 M 167, 71 NW 930; Todd v Weed, 84 M 4, 86 NW 756.

Whether or not there shall be a view by the jury rests in the discretion of the court. Brown v Kohout, 61 M 113, 63 NW 248.

The court below should have ordered judgment for the defendant, the fee owner of the land, notwithstanding the verdict of the jury, in effect, that plaintiff and his grantors had been in adverse possession for more than 15 years. Glover v Sage, 87 M 526, 92 NW 471.

14. Burden of proof

The burden was on the defendants to prove not only their adverse possession 20 years ago, but the continuity of that possession for the full period. Possession

of one claiming disseizin must be actual, open or visible, notorious, exclusive, distinct and continuous. Bazille v Murray, 40 M 48, 41 NW 238; St. Paul and Duluth v Village of Hinckley, 53 M 398, 55 NW 560; Brown v Kohout, 61 M 113, 63 NW 248.

Based upon no conveyance, the mere construction, maintenance, and occasional use by a railway company of a track across a platted but unused street, and before public convenience required the street be opened and used, does not constitute adverse possession against the public. St. Paul and Duluth v City of Duluth, 73 M 270, 76 NW 35.

Where the claimant of an easement makes out a prima facie case, the burden is on the owner of the servient estate to rebut the resulting presumption by evidence that the use was permissive. Merrick v Schlender, 179 M 228, 228 NW 755.

The burden of proof rests upon one asserting a prescriptive right or title. Simms v Fagan, 216 M 283, 12 NW(2d) 783.

15. Degree of proof required

The evidence to establish a title by prescription must be direct, clear, and convincing. Every presumption is to be indulged against the disseizor. Washburn v Cutter, 17 M 361 (335); Costello v Edson, 44 M 135, 46 NW 299; St. Paul and Duluth v City of Duluth, 73 M 270, 76 NW 35; Todd v Weed, 84 M 4, 86 NW 756; Glover v Sage, 87 M 526, 92 NW 471; Baxter v Newell, 88 M 110, 92 NW 525; Cluss v Hackett, 127 M 397, 149 NW 647; Cain v Highland, 134 M 430, 159 NW 830.

Proof required. Hoverson v Hoverson, 216 M 237, 12 NW(2d) 501; Simms v Fagan, 216 M 283, 12 NW(2d) 783.

16. Facts sufficient to constitute adverse possession

Building a house on the property of another, through mistake as to boundary line, is deemed adverse to the true owner, and is a disseizin; and if the disseizor or his grantee is suffered to remain continuously in possession for the statutory period, the remedy of the original owner is extinguished. Seymour v Carli, 31 M 81, 16 NW 495.

Claimant who lived on adjoining property built no buildings on the property claimed; but tapping trees, cutting grass and brush, ditching and draining the land, clearing, grubbing, and fencing a portion of the land and putting in crops was held sufficient. Murphy v Doyle, 37 M 113, 33 NW 220.

Cutting trees, grubbing and burning brush, digging out stumps, leaving tools and other property on the premises, paying taxes, camping on the property, and finally building a house, held sufficient. Costello v Edson, 44 M 135, 46 NW 299.

Enclosing tract by brush fence, cutting hay, and pasturing cattle. Wood v Springer, 45 M 299, 47 NW 811.

On land adapted to use as a hay farm, ditching and use as a hay farm was held sufficient. Ricker v Butler, 45 M 545, 48 NW 407.

Occupying an alley in a village and building a warehouse thereon gave title by prescription. Village of Glencoe v Wadsworth, 48 M 402, 51 NW 377.

Building a barn and shed, stabling horses, paying taxes, and piling and storing lumber on the lot deemed in compliance with the statute. Dean v Goddard, 55 M 290, 56 NW 1060.

Planting trees near the true boundary line between two farms, although the trees were over on the land of adjoining owner, the 15 years' occupation of the land by the trees constituted adverse possession. Butler v Drake, 62 M 229, 64 NW 559.

Living on the property and rasing crops thereon each year is sufficient, even if no fencing was done. Sage v Morosick, 69 M 167, 71 NW 930.

Fencing the entire tract and using it for a pasture. Barber v Robinson, 78 M 193, 80 NW 968.

The land being bottom land along the Mississippi river, the building of a shanty, living there at times, and cutting wood, hay, fencing a portion and pasturing cattle, held sufficient. Wheeler v Gorman, 80 M 462, 83 NW 442.

Title by adverse possession may be acquired by maintaining a dam across a stream, thereby causing lands to be submerged for the statutory period. Simons v Munch, 107 M 370, 120 NW 373, 121 NW 378.

17. Facts insufficient to constitute adverse possession

The mere cutting of timber without actual occupancy or cultivation, or inclosure of the land, or some part of it, when it is capable of such improvement, will not constitute adverse possession, but will be a mere trespass. Washburn v Cutter, 17 M 361 (335).

Cutting natural hay, and pasturing cattle on the wild, uninclosed land adjoining land actually occupied by the purchaser, is not adverse possession. Bazille v Murray, 40 M 48, 41 NW 238; Lambert v Stees, 47 M 141, 49 NW 662; Sage v Larson, 69 M 122, 71 NW 923.

Camping in a tent on vacant and unoccupied land, and cooking, and sleeping in the tent, and watching the property for several weeks to warn trespassers is not sufficient adverse possession to interrupt the running, in favor of a tax deed, of the Wisconsin statute of limitations. Musser v Tozer, 56 M 443, 57 NW 1072.

Although there were several occupants of the land over many years, there was no privity between the individuals, and no hostile declaration of ownership sufficient to constitute adverse possession. Glover v Sage, 87 M 526, 92 NW 471.

If one in possession recognized and conceded the title was in another, such possession, though it may be continuous, is not hostile, and therefor not adverse. Mitchell v Green, 125 M 24, 145 NW 404.

541.023 LIMITATION OF ACTIONS AFFECTING TITLE TO REAL ESTATE.

HISTORY. 1943 c. 529 ss. 1 to 4; 1945 c. 124 ss. 1 to 4.

NOTE: The apparent purpose of Laws 1943, Chapter 529, as amended by Laws 1945, Chapter 124, is to limit the time in which actions affecting the possession or title of real estate can be brought, making it possible to rely on the record title 50 years prior to the date of purchase in the examination of abstracts. The law attempts to definitely terminate all claims of every kind affecting real estate titles more than 50 years old so that if a good chain of title can be traced back 50 years, the title is good, regardless of the fact that prior to the 50 year period an outstanding, conflicting or contrary interest appears. The 1943 law limited actions to platted property but by the 1945 amendment all types of real estate are included.

Laws of this type have been adopted in Iowa, Michigan, Wisconsin, and other states. There is no question of the right of the legislature to pass statutes of this type. In a broad sense, the enactment is constitutional. The legislature may constitutionally require the recording of evidence of a pre-existing or vested right.

The examiner of titles, however, must appraise this law in the light of the possible existence of long term trust deeds, life estates, long term leases, condition subsequent clauses, liquor clauses with their forfeiture provisions, support bonds, persons in possession, and similar. It may be unsafe for the examiner to find the existence of a patent from the federal government and then pass on to the beginning date of the 50 year limitation period.

There is a possibility that Section 541.023, Subd. 2, reading as follows, "all actions founded upon the written instrument or transaction referred to in the notice shall be commenced within one year from the filing of said notice, and unless such action is so commenced all rights under such notice shall terminate" may cause some confusion and may even lead to astonishing results.

541.03 FORECLOSURE OF REAL ESTATE MORTGAGE.

HISTORY. R.S. 1851 c. 70 s. 12; P.S. 1858 c. 60 s. 12; G.S. 1866 c. 66 s. 11; 1870 c. 60 s. 1; G.S. 1878 c. 66 s. 11; 1887 c 69; G.S. 1894 s. 5141; 1901 c. 11; R.L. 1905 s. 4074; 1907 c. 197; 1909 c. 181 ss. 1, 2; G.S. 1913 ss. 7698, 7699; G.S. 1923 ss. 9188, 9189; M.S. 1927 ss. 9188, 9189.

The statute, limiting the time for commencing actions of contracts to six years, does not apply to actions to foreclose mortgages. Foreclosure is governed by the six-year limitation only so far as it is an action to procure a personal judgment. Ozmun v Reynolds, 11 M 459 (341); Connor v Howe, 35 M 518, 29 NW 314.

An absolute conveyance, intended as security for money, is a mortgage; an action may be maintained to have it declared as a mortgage; the right to redeem

and the right to foreclose are reciprocal. Under General Statutes 1866, Chapter 66, Section 11, the limitation was 20 years. Holton v Meighen, 15 M 69 (50); Bradley v Norris, 63 M 156, 65 NW 357; Evans v Staalle, 88 M 253, 92 NW 951.

That a debt is barred by failure to present it for allowance to commissioners to audit claims against the estate of the debtor, does not affect the right to foreclose a mortgage given to secure it. Jones v Tainter, 15 M 512 (423); Bradley v Norris, 63 M 156, 65 NW 357.

The right to redeem and the right to foreclose are reciprocal and commensurable. Laws 1870, Chapter 60, prescribed a ten-year limitation to foreclose a mortgage. King v Meighen, 20 M 264 (237); Archambau v Green, 21 M 520; Fisk v Stewart, 26 M 365, 4 NW 611; Bradley v Norris, 63 M 156, 65 NW 357.

Laws 1870, Chapter 60, which requires every action to foreclose a mortgage upon real estate to be commenced within ten years after the cause of action accrues, has no application to foreclosure by advertisement. Golcher v Brisbin, 20 M 453 (407).

Prior to Laws 1901, Chapter 11, the courts held that a partial payment which prevented the running of the statute against the mortgage debt would also prevent the statute from running against an action to foreclose the mortgage. Fisk v Stewart, 24 M 97; Austin v Barnum, 52 M 136, 53 NW 1132; Carson v Cochrane, 52 M 67, 53 NW 1130; Kenaston v Lorig, 81 M 454, 84 NW 323.

The exception in General Statutes 1866, Chapter 66, Section 15, from the time limited for commencing actions, at the time the defendant is absent from the state, applies to an action to foreclose a mortgage on real estate. (This was changed by Laws 1887, Chapter 69.) Whalley v Eldridge, 24 M 358; Rogers v Benton, 39 M 39, 38 NW 765; Foster v Johnson, 44 M 290, 46 NW 356.

At present and since Laws 1887, Chapter 69, the running of the statute is not affected by the non-residence of the defendant. Hill v Townley, 45 M 167, 47 NW 653.

Where in an action of foreclosure, the plaintiff seeks to obtain a personal judgment against the mortgagor for the debt, as well as a decree of foreclosure, the six-year limitation applies and not the 15-year limitation, so far as the action is one for a personal judgment. Slingerland v Sherer, 46 M 422, 49 NW 237.

When a mortgage is given to secure several separate notes, the payment of one of them as it falls due does not toll the statute as to the other notes nor as to the mortgage. McManaman v Hinchley, 82 M 296, 84 NW 1018.

Under Laws 1901, Chapter 11, where the mortgage was extended, the statute of limitations commenced to run from maturity of debt, and not from date of maturity as originally stated in the mortgage. Trudeau v Germann, 101 M 387, 112 NW 281; Jentzen v Pruter, 148 M 8, 180 NW 1004.

The mortgage shows on its face the date of maturity and the statute of limitations begins to run from that time. Polish Union v Kruszewski, 171 M 252, 213 NW 913; Noser v Ahneman, 183 M 465, 237 NW 22.

Absent a provision in a note and mortgage given to secure payment thereof and a direction in the decree of foreclosure for application of the proceeds of the foreclosure sale, the proceeds of such sale should be applied by the court as an involuntary payment according to justice and equity; and where there are no controlling equities which compel a different application, such proceeds should be applied first on the indebtedness for which personal liability is barred by the statute of limitations and then on the balance. Massachusetts Mutual v Paust, 212 M 56, 2 NW(2d) 410.

Where only defense to right to recover on ground of violation of Minnesota blue sky law was the statute of limitations, the statute began to run on date of sale of corporate stock involved; and where a New York corporation "departed" from and "resided out of" Minnesota, the subsequent period was a "time of absence" so that the present action is no barred by the statute of limitations. City Company v Stern, 110 F(2d) 601; Chase Security v Vogel, 110 F(2d) 607.

Conveyances under the probate code. 20 MLR 114.

Deduction of encumbrances on land. 20 MLR 356.

Liability of a senior mortgagee to account to a junior mortgagee for rents released to the mortgagor. 26 MLR 889.

Limitation as applied to real estate mortgage foreclosure, 26 MLR 889.

541.04 JUDGMENTS, TEN YEARS.

HISTORY. R.S. 1851 c. 70 s. 5; P.S. 1858 c. 60 s. 5; G.S. 1866 c. 66 s. 5; G.S. 1878 c. 66 s. 5; G.S. 1894 s. 5135; 1901 c. 279; R.L. 1905 s. 4075; G.S. 1913 s. 7600; G.S. 1923 s. 9190; M.S. 1927 s. 9190.

The statutory limitation will not be extended by resorting to or applying equitable remedies. Newell v Dart, 28 M 248, 9 NW 732; Dale v Wilson, 39 M 330, 40 NW 161; Reed v Siddall, 94 M 216, 102 NW 453.

A judgment constitutes of itself a cause of action, and, like other causes of action, and though no ground for equitable relief is shown, a suit may be brought upon it within the time limited by the statute, and suit may proceed to trial and judgment. Dale v Wilson, 39 M 330, 40 NW 161.

Where an action is commenced upon a judgment within ten years from the time of its rendition, it may be maintained and completed after the expiration of the ten years. Dale v Wilson, 39 M 330, 40 NW 161; Sandwich v Earl, 56 M 390, 57 NW 938; County of Blue Earth v Williams, 196 M 501, 265 NW 329.

A judgment of the United States circuit court for the district of Minnesota, stands on the same footing as a domestic judgment. Sandwich v Earl, 56 M 390, 57 NW 938.

The pending of an action in North Dakota between the same parties, and for the same cause of action, does not abate another action pending in this state. Sandwich v Earl, 56 M 390, 57 NW 938.

Plaintiff held a judgment against defendant which was about to outlaw, and defendant and a signer gave their note as a purported extension. Held, in a suit on the note, that although the judgment expired by limitation, the debt remained and was sufficient consideration to make the note valid and enforceable. Osborne v Heuer, 62 M 507, 64 NW 1151.

A judgment does not come within the rule by which a new promise or part payment suspends the operation of the statute of limitations and continues the cause of action. The above quoted rule applies to contracts, express or implied. Olson v Dahl, 99 M 433, 109 NW 1001.

An action in the courts of this state upon any judgment, whether domestic or foreign, must be brought within ten years from the rendition thereof, without reference to the residence of the judgment debtor during th ten years. Gaines v Grunewald, 102 M 245, 113 NW 450; Bieder v Rose, 138 M 121, 164 NW 586.

The allowance of a claim by a referee in bankruptcy is not "a judgment or decree of a court of the United States" within the meaning of section 541.04. Maxwell v Pappas, 173 M 263, 217 NW 126.

As to limitation, section 541.05 applies to an application and proceeding to obtain judgment for compensation payments in default, but section 541.04 does not so apply. Strizich v Zenith Furnace, 176 M 554, 223 NW 926.

Decrees of divorce not being subject to the limitations prescribed for the enforcement of ordinary judgments, the trial court was right in denying defendant's application under section 548.15 for a satisfaction of a lien upon real estate provided for in such a decree. Akerson v Anderson, 202 M 356, 278 NW 577.

A judgment of a sister state entered in pursuance of its illegitimacy statutes will be enforced by the courts of this state. A judgment payable in instalments is enforceable as to those payments less than ten years past due. Ladd v Martineau, 205 M 129, 285 NW 281.

If an order allowing a claim in probate court has the effect of a judgment, suit may be brought thereon at any time within ten years of the date when the right of action accrued. Marquette v Mullin, 205 M 562, 287 NW 233.

Limitations upon actions, executions, and liens. 24 MLR 660.

Application of Minnesota statutes as to homesteads; effect on creditor's rights. 25 MLR 76.

541.05 VARIOUS CASES, SIX YEARS.

HISTORY. R.S. 1851 c. 70 s. 6; P.S. 1858 c. 60 s. 6; G.S. 1866 c. 66 s. 6; 1877 c. 24 s. 1; G.S. 1878 c. 66 s. 6; G.S. 1894 s. 5136; 1895 c. 126; 1901 c. 357; R.L. 1905 s. 4076; G.S. 1913 s. 7601; G.S. 1923 s. 9191; M.S. 1927 s. 9191.

1. Generally
2. Six-year limitations

1. Generally

It is not necessary, in a plea of a statute of limitations, to negative exceptions to the same. McMillan v Cheeney, 30 M 519, 16 NW 404.

The defendant in both legal and equitable actions, by answering to the merits and going to trial without in any manner attempting to avail himself of the defense of statute of limitations, waives such defenses, although it appears on the face of the complaint that the statute has run. The distinction in this respect between the defense of the statute and laches noted. Schmitt v Hager, 88 M 413, 93 NW 110.

An agreement by the parties to an action limiting the time within which an appeal may be taken is valid, and cannot be enlarged by an ex parte order of the trial court. Krieg v Bofferding, 140 M 512, 167 NW 1047.

A new promise in writing made either before or after the debt is outlawed starts a new period of limitation. A promise to pay all claims of a class is sufficient. A letter to the public is sufficient. Big Diamond v C. M. & St. P. 142 M 181, 171 NW 799.

The federal employer's liability act of 1908 creates a new right of action, one not existing at common law, under which an action must be commenced within two years. The federal transportation act of 1920 does not revive actions already outlawed under the 1908 act. Kannellos v G. N. 151 M 157, 186 NW 389; Fullerton v N. P. 156 M 20, 194 NW 9.

Laws 1915, Chapter 187, covers the entire field under which a steam railroad employer engaged in interstate commerce is held liable for injury to employees, and the two-year limitation applies. Herr v C. M. & St. P. 154 M 182, 191 NW 607.

A thresher's lien being wholly statutory, expires, unless steps are taken to enforce it in the manner and within the time specified in the statute. Ehmke v Hartzell, 160 M 38, 199 NW 748.

Moneys received by the payee of a note from collateral pledged by the maker, and endorsed on the principal note, do not constitute partial payments so as to suspend the running of the statute of limitations. Metropolitan v Bolduc, 160 M 146, 199 NW 567.

The claim of a civil engineer in a ditch proceeding is not barred by the statute in the instant case. Gove v County of Murray, 161 M 66, 200 NW 833.

Actions for an accounting and to impress a trust upon land, a trust arising by implication under a contract, are governed by clause (1) of this section, and the six-year limitation began to run with the accrual of plaintiff's right to demand an accounting or enforce a trust. Jones v Hammond, 168 M 131, 209 NW 864.

No other reason appearing for the suspension for three months of the effect of the statute reducing the limitation upon from six to two years, the legislature intended to make the act applicable to causes of action existing at the time. Kozisek v Brigham, 169 M 57, 210 NW 622.

Large discretion is vested in the trial court in opening a judgment for the purpose of litigating an alleged defense where the application is based upon a defendant's inadvertence, mistake or excusable defect; and an answer interposes a meritorious defense in alleging that the defalcation of defendant's principal occurred in a term prior to that for which the bond in suit was given. City of Luverne v Skyberg, 169 M 234, 239, 240, 211 NW 5, 7.

The defense of the six-year statute of limitation is a bar to this action by creditors against directors to recover converted funds. Williams v Davis, 182 M 186, 234 NW 11.

A payment of interest voluntarily made by a debtor to one who had no authority to receive it but by whom it is immediately turned over to the creditor as the

"interest money" in question is sufficient to toll the running of the statute of limitations against the principal obligation. Kehrer v Weismueller, 182 M 474, 234 NW 690.

The correction of an error in bookkeeping which occurred years before, the correction being made after the statute had run, was not a part-payment which tolled the statute. In re Walker Estate, 184 M 164, 238 NW 58.

The new company in general terms passed a resolution taking over the debts of the old company. This was not an asknowledgment of plaintiff's claim so as to toll the statute. In re Estate of Walker, 184 M 164, 238 NW 58.

The six-year statute applies to an individual indebtedness by one partner to the other if neither owing by nor due to the partnership; and is not tolled by the fact there has been no partnership accounting. Estate of Crone, 184 M 225, 238 NW 480.

The time for commencement of an action to enforce stockholder's liability is not governed by the statutes in force when the order for sequestration was made and the receiver appointed, but by the applicable statute at the time the action is brought; and the time limited in the statute proviso appears adequate. Sweet v Richardson, 189 M 489, 250 NW 46.

When a right depends upon some contingency, the cause of action accrues, and the statute runs upon the fulfilment of the condition or the happening of the contingency. Bachertz v Hayes, 201 M 171, 275 NW 694.

The bar of the statute of limitations is an affirmative defense and must be pleaded by demurrer or answer. Rye or Phillips, 203 M 567, 282 NW 459.

Creditor's bills are of two types: (a) Where the judgment creditor seeks to satisfy his judgment out of his debtor's equitable assets, and the statute of limitation begins to run when the execution has been returned unsatisfied; (b) where property legally liable to execution has been fraudulently conveyed, and the creditor attempts to have the conveyance set aside, in which case the statute begins to run when the judgment is docketed. Lind v Johnson, 204 M 30, 282 NW 661.

The applicability of the statute will not be considered on appeal, if it was not passed upon by the trial court. Town v County of Yellow Medicine, 205 M 451, 286 NW 881.

If plaintiff's claim (as holder and payee of a check made and delivered as a gift be considered an implied trust, the statute of limitations began to run from the time when the act was done by which decedent (maker of check) became chargeable as trustee. Burton v Jerrel, 206 M 516, 289 NW 66.

In considering whether the stockholders have been diligent in discovering the fraud perpetrated upon the corporation, there is no presumption that the directors are dishonest which burdens the stockholders with the duty of investigating the books. Lenhart v Lenhart, 210 M 164, 298 NW 37.

An order appointing commissioners in eminent domain proceedings by the state is not a final one and is not appealable. State ex rel v Fuchs. 212 M 453, 4 NW(2d) 361.

A change in the constitution of a mutual benefit society, after the issuance of a benefit certificate, changing the time within which to sue from six years to six months, is unreasonable and void as to a member holding such certificate. Dawes v Brotherhood, 216 M 414, 13 NW(2d) 28.

Plaintiff's action based upon implied agreement to pay for services performed in 1929, expired at the end of 1935. Spensley v Oliver Iron Co. 216 M 451, 13 NW(2d) 425.

A bank account is a chose in action of depositor against bank. The statutory presumption that bank deposits, not dealt with or claimed by depositors for 20 years, are abandoned and hence escheat to the state, is rebuttable, but applies, in the absence of contrary showing or adverse inference from particular circumstances appearing. Abandonment is a fact issue. State v Aldons, 219 M 471, 18 NW(2d) 569.

Cause of action of a minority stockholder's suit for directors' failure to serve stockholders faithfully, is an equitable action, and the doctrine of laches applies as to time of commencement of suit. Backus v N. P. 21 F(2d) 4.

Bill in equity attacking Torrens registration decree for alleged defect in service of process is barred by laches when not brought for more than four years after the decree was rendered. Nitkey v McKnight, 87 F(2d) 916.

Under Minnesota law, an endorsement upon a note is not such "prima facie evidence" of payment as will toll the statute of limitations, unless the holder shows by proof dehors the indorsement that it was actually made at a time when it was against holder's interest to make it. Boyum v Johnson, 127 F(2d) 492.

Judgment of the supreme court of March 18, 1940, 110 F(2d) 601, vacated and set aside and held for naught, and appeal from district court dismissed. City Company v Stern, 142 F(2d) 449.

2. Six-year limitations

(1) In a suit on a promissory note, the contract will be construed according to the laws of the place where made, but the remedy on it must be prosecuted according to the laws of the country in which the remedy is sought; but as to the statute of limitations, the defendant may avail himself of the time of limitation most favorable. Fletcher v Spaulding, 9 M 64 (54); Muns v Muns, 29 M 115, 12 NW 343.

Limitation may run against each instalment separately, so in the instant case two of the three instalments are outlawed. Wood v Cullen, 13 M 394 (365).

The statute applies in case of an action by a mortgagor against a mortgagee to recover a surplus at a sale under a power. Ayer v Stewart, 14 M 97 (68).

Applies to action of a stage coach owner against the operator of a ferry on implied contract to carry safely. Blakeley v Le Duc, 22 M 476.

An action for accounting between partners is barred in six years from the time the cause of action accrues. McClung v Capehart, 24 M 17, Muns v Muns, 29 M 115, 12 NW 343; Thompson v Crosby, 62 M 324, 64 NW 823.

An action on the official bond of a constable accrues independently of the leave to sue by the court. Litchfield v McDonald, 35 M 167, 28 NW 191.

The vendee's right of action accrues when he is entitled to file his bill for specific performance of a contract for the sale of real estate. Lewis v Prendergast, 39 M 301, 39 NW 802.

In the instant case, the action to enforce an implied trust in real estate was barred by the statute of limitations. Burk v Western Land, 40 M 506, 42 NW 479; Stillwater v City of Stillwater, 66 M 176, 68 NW 836.

An account showing items sold and delivered at different dates, and payments made by the purchaser, is not a mutual, open, current account, within the meaning of the statute of limitations. Cousins v St. P. Mpls. and Manitoba, 43 M 219, 45 NW 429.

In an action of foreclosure where the plaintiff seeks to obtain a personal judgment, as well as a decree of foreclosure, the six-year limitation applies so far as the action is one to obtain a personal judgment. Slingerland v Sherer, 46 M 422, 49 NW 237.

In an action to secure refundment of money paid at a void tax sale, the remedy is not barred where less than six years have elapsed since the right to remedy accrued. State ex rel v Olson, 58 M 1, 59 NW 634.

In an action against a municipality to secure money on hand resulting from condemnation proceedings, the facts do not result in an implied trust, and the six-year limitation applies. Stillwater v City of Stillwater, 66 M 176, 68 NW 836.

In an action on the guardian's bond against the surviving surety, brought by the ward 22 years after she became of age, the court held that her laches, irrespective of any statute, was a bar to her recovery. Brandes v Carpenter, 68 M 388, 71 NW 402.

Plaintiff was a creditor, and as such, brought action on the bond given by administratrix conditioned upon her agreement to pay the debts, and the creditor's right was not barred by the statute of limitations. Olson v Fish, 75 M 228, 77 NW 818.

Where the parties to an executory contract for the sale of lands cannot be restored to the condition they were in before part performance, and substantial injustice will result from a failure of performance, equity will compel the parties to carry out their contract. Jorgenson v Jorgenson, 81 M 428, 84 NW 221.

In an action on a note, defendant's counter-claim having accrued more than six years prior to the bringing of the action, is barred by the statute. Woodworth v Carroll, 104 M 65, 112 NW 1054, 115 NW 946.

The vendee's right of action against the warrantor does not date from the time the deed is delivered, but from the time when the covenants of the deed are broken by loss of title. Brooks v Mohl, 104 M 404, 116 NW 931; Order of St. Benedict v Steinhauser, 179 F 137.

The two-year limitation under Laws 1895, Chapter 8, Section 347, applies in this case, and the action herein is barred by that statute. Thornton v City of East Grand Forks, 106 M 233, 118 NW 834.

The contract was executed, though by its terms it provided for a conveyance in the future. The six-year limitation did not as of the date of the contract. Coates v Cooper, 121 M 11, 140 NW 120.

An action for the breach of an executory contract to convey land is barred by a six-year limitation. Trovaten v N. P. 125 M 88, 145 NW 799.

The six-year limitation of actions applies to a cause of action on a liquor dealer's bond. Lynch v Brennan, 131 M 136, 154 NW 795.

The statute of limitation is not a bar, because six years have not elapsed since plaintiff elected to take under the third provision of the policy. Collopy v Modern Brotherhood, 133 M 409, 158 NW 625.

Repairs were made during three successive years on separate orders. The statutes of limitation began to run as to each separate job upon its completion. Steele v City of Duluth, 136 M 288, 161 NW 593.

A member of a relief association made application to be placed on the pension roll, (or to be placed in an advance classification), which application was denied. No further steps were taken within six years, and then action was brought. The cause of action was barred. Lund v Minneapolis Relief, 137 M 395, 163 NW 742; Stevens v Minneapolis Relief, 219 M 276, 17 NW(2d) 645.

The agreement being that the son's earnings were not payable until after the father's death, the statute began to run upon the death of the father. Wagner v Seaberg, 138 M 37, 163 NW 975.

An agreement by the parties to an action limiting the time within which an appeal may be taken and cannot be enlarged by an ex parte order of the trial court. Krieg v Bofferding, 140 M 512, 167 NW 1047.

An action as brought rests on a contract, and the six-year limitation applies. Burke v Maryland, 149 M 481, 184 NW 32.

The transactions constituted a continuing contractual relation, and the items do not constitute separate or independent contracts. Welsh v Welsh, 151 M 498, 187 NW 610.

An employer who has paid the compensation awarded under the workmen's compensation act and has been subrogated to the rights of the dependents, may commence an action as against a third person as prescribed in section 573.02. Fidelity and Casualty v St. Paul Gas, 152 M 197, 188 NW 265.

Specific performance may be barred under section 541.05, but where the equitable owner had been in continuous possession of Minnesota property from date of inception of its rights under contract to purchase right of way, limitations could not be interposed as a bar to its claim to equitable title. Pike Rapids v Minneapolis, St. P. & Soo, 99 F(2d) 903.

If it appears that the statute has run, the defendant is entitled to a directed verdict. McIntyre v Albers, 175 M 411, 221 NW 526.

The statute did not begin to run until the ascertainment of the amount of land that would be flooded by the dam. Pike Rapids v Schwintex, 176 M 324, 223 NW 612.

Approval of a workmen's compensation adjustment is not a judgment, and the six-year limitation applies. Strizich v Zenith, 176 M 554, 223 NW 926.

As far as beneficial owner has an interest, his cause of action did not accrue or note payable to third party until the maturity of the last renewal. Timmins v Pfeifer, 180 M 1, 230 NW 260.

Plaintiff was not entitled to any money from the defendent until it had received pay for the land. A cause of action accrued on date of payment. Ellingson v State Bank, 182 M 510, 234 NW 867.

The maturity of an established debt was not deferred by agreement, and the claim is barred. Noser v Ahneman, 183 M 465, 237 NW 22; 189 M 45, 248 NW 292.

An ordinary promissory note payable on demand is to be treated as due immediately, and an action thereon against the maker is barred by the statute, unless brought within six years. Estate of Gertrude Nygren, 188 M 612, 248 NW 215.

Although the six-year cause of action applied as to this action to recover license fee, evidence was admissible of a practical construction going back beyond six years prior to suit. City of South St. Paul v Northern States, 189 M 26, 248 NW 288.

The time for the commencement of an action to enforce super-added stockholder's liability is not governed by the statute in force when the order for sequestration was made and a receiver appointed, but by the applicable statute at the time the action is brought. Sweet v Richardson, 189 M 489, 250 NW 46.

The findings of the trial court that the payments were made by the direction of the defendant, and the cause of action is not barred. Erickson v Husemoller, 191 M 177, 253 NW 361; Ross v Simser, 193 M 407, 258 NW 582.

A judgment having been reopened, and the cause reinstated for trial, the defense that the complaint on its face indicated that the cause was barred by the statute may be taken by answer or demurrer. Roe v Widme, 191 M 251, 254 NW 274.

In this action on an insurance policy, the cause accrued and began to run at the time when proofs of death were furnished. Sherman v Minnesota Mutual, 191 M 607, 255 NW 113.

The right of descission is denied both because of laches and the statute of limitations. Burzinski v Kinyon, 192 M 335, 256 NW 233.

The plaintiff's cause of action did not accrue until redelivery, and suit was brought within the allowable time, and the amended complaint stood in place of the original. Stebbins v Friend, Crosby, 193 M 446, 258 NW 824.

The time within which an infant may disaffirm is for the jury. Kelly v Furlong, 194 M 465, 261 NW 460.

Laws 1899, Chapter 272, (316.17 to 316.23); did not bring foreign corporations within its scope. It follows that the proviso in section 316.20 does not apply to an action brought to enforce the statutory liabiliy of a stockholder in a foreign corporation. Johnson v Johnson, 194 M 617, 261 NW 450.

The action was brought less than six years from the time when payment of the cost of the line was to be made, and the action was not barred by the statute of limitations. Bjornstad v Northern States, 195 M 439, 263 NW 289.

Tested by requirements of section 541.17, defendant's letter furnished sufficient acknowledgment to toll the statute of limitations. Olson v Myrland, 195 M 626, 264 NW 129.

Plaintiff's complaint negates the theory of an open and running account. Meyers v Barrett, 196 M 276, 264 NW 769.

There was a valid contract between plaintiff, a minor and the decedent, and this action for specific performance is tenable, and brought within proper time after the cause of action accrued. Hanson v Bowman, 199 M 70, 271 NW 127.

Where there are no dependents, and the employer is obliged to make payment to the special compensation fund, the employer's liability is one created by statute, as an action to recover must be commenced within six years. Schmahl v School District, 200 M 294, 274 NW 168.

The time within which to file a claim, required to be filed against the estate of a decedent, not barred during his lifetime, is governed by the limitation of the probate code, and not by the general statute of limitations. Orjala v Borg, 200 M 470, 274 NW 621.

The statute of limitations is one of repose; and a cause of action for a breach of contract accrues immediately on breach, though actual damages resulting therefrom do not occur until afterwards. Bachertz v Hayes, 201 M 171, 275 NW 694.

The statute of limitations pleaded as a defense, barred plaintiff's cause of action, predicated upon ownership of shares of stock in defendant corporation. Falkenhagen v Montevideo, 202 M 278, 278 NW 32.

Decrees of divorce not being subject to the limitations prescribed for the enforcement of ordinary judgments, the trial court is sustained in denying defendant's application under section 548.15 for a satisfaction of a lien upon real estate. Akerson v Anderson, 202 M 356, 278 NW 577.

The limitation period commences to run against an action on a bond of an administrator from the time of the entry of the final decree of distribution. Burns v New Amsterdam, 205 M 391, 285 NW 885.

An action by a township to recover from the county, tax moneys withheld, may be brought as for moneys had and received and commenced within six years. Town of Normania v County of Yellow Medicine, 205 M 451, 286 NW 881.

The cause of action against the endorser had not accrued within six years. Campbell v Lenzen, 206 M 387, 288 NW 833.

Where the grantees assume and agree to pay an encumbrance, their liability accrues when they fail to pay the encumbrance as it falls due, and from that date the statute of limitations runs. Johnson v Freberg, 207 M 61, 289 NW 835.

An unqualified and unconditional acknowledgment of a debt implies a promise to pay it, and the effect is to place the debt on the footing of one contracted at the time of such acknowledgment. Reconstruction Finance v Osven, 207 M 146, 290 NW 230.

Where facts pleaded show cause barred by statute of limitations, and no facts are shown to forestall its operation, demurrer to complaint should be sustained. Parsons v Town of New Canada, 209 M 129, 132, 295 NW 907, 909.

The duration of liability to pay royalty for a patent license is determined by the terms of the contract. Miller v McClintock, 210 M 152, 297 NW 724.

Acts, though more than six years past, are subject of consideration in the discipline of a lawyer. In re Larson, 210 M 414, 298 NW 707.

As to whether a payment made by a joint obligor tolled the statute is for the jury. Greve v State Bank, 211 M 175, 300 NW 594.

In case of a mortgage foreclosure, and where there are no controlling equities to compel a different application, proceeds should be applied first on the indebtedness for which personal liability is barred by the statute of limitations. Massachusetts Mutual v Paust, 212 M 56, 2 NW(2d) 410.

Where there is no suggestion of fraud or similar to toll the statute of limitations, recovery on city of Faribault bonds is barred after the expiration of six years from their date. Batchelder v City of Faribault, 212 M 251, 3 NW(2d) 778.

Notwithstanding the provisions of section 541.17, an oral promise before the statute of limitations has run, that if payee will wait until the statute expires, he will arrange settlement, may estop the defendant from reliance on the statute. Albachten v Bradley, 212 M 359, 3 NW(2d) 783.

Where before the statute had run, the defendant, one of the comakers on the note, assured the payee that the other comaker would make a payment, which he did, the statute is tolled as to both. Bernloehr v Fredrickson, 213 M 505, 7 NW(2d) 328.

The contract was to the effect the son was to receive certain real estate upon the death of his parents; and plaintiff's cause of action accrued upon the death of the surviving parent, and he could commence action any time within six years. Seitz v Sitze, 215 M 452, 10 NW(2d) 427.

Where it appears from a contract that it is the intention of the parties, that the money or claim which is the subject matter thereof is to be paid upon a demand in fact, the statute of limitations does not begin to run until actual demand for payment is made, and the demand must be made in a reasonable time, which is ordinarily the period of the statute of limitations. But where the parties contemplate a delay in making the demand to some indefinite time in the future, the statutory period for bringing the action is not controlling as to the question of reasonable time, but ordinarily is a fact question. Bannitz v Hardware Mutual, 219 M 235, 17 NW(2d) 372.

While a carrier has the right to recover from a shipper for the full authorized rate notwithstanding an illegal agreement to the contrary, such carrier must bring action for the additional amount claimed due within six years from maturity of

the carrier's claim for the additional amount involved. Hawley v Little Falls Mill Co. 220 M —, 19 NW(2d) 161.

Suit for cancelation of transfer of shares for fraud and duress not barred by limitation when brought within six years after discovery of facts constituting fraud. "Laches" is inexcusable delay in assertion of rights as distinguished from mere lapse of time. Wingel v Rockwood, 69 F(2d) 326.

Recovery of money paid as taxes more than six years before institution of this case in 1939, was barred by the statute of limitations notwithstanding the stipulation. Pettibone v Cook Co. 31 F. Supp. 882; 120 F(2d) 850.

A claim valid at the time of the filing of a petition in bankruptcy remains valid and enforceable against the trust estate in the bankruptcy court. In re Berg, 33 F. Supp. 700.

The defendant's departure from the state tolled the statute of limitations, and the departure occurred when the defendant withdrew and appointed the secretary of state its agent to accept service. Chase Securities v Vogel, 110 F(2d) 607.

Where, by the law of the state which has created a right of action, (workmen's compensation act) it is made a condition of that right that it shall expire after a certain period of limitation has elapsed; no action commenced after such period has elapsed can be maintained in any state. Maki v Cooke, 124 F(2d) 663.

Bank certificate of deposit outlaws six years after its due date, and where payable 30 days after demand, time begins to run 30 days after demand. OAG Feb. 25, 1933.

Money paid to county auditor for redemption of land sold for taxes may not be recovered by holder of certificate, after expiration of six years from date of notice. OAG Dec. 13, 1938 (423i).

Part payment by one joint debtor by procurement of the other as tolling the statute of limitations as to both. 18 MLR 887.

Prospective inability in the law of contracts. 20 MLR 384.

Mistake and statute of limitations. 20 MLR 482.

Assignability after breach of covenants against encumbrances. 21 MLR 597.

Extension of statutory period as to guarantor by payments made by principal debtor. 22 MLR 282.

Non-claim statutes as superseding statutes of limitation. 22 MLR 289.

Blending of causes of action. 22 MLR 506.

Running of the statute of limitations against the maker and endorser of a demand note. 22 MLR 724.

Orders involving the merits or in effect determining the action. 24 MLR 860.

(2) An action by a creditor to enforce liability created by General Statutes 1878, Chapter 34, Section 142, is subject to the provisions of the three-year limitation. Merchants' National v Northwestern Car, 48 M 349, 51 NW 117.

Prior to Laws 1902, Chapter 2, Section 82, proceedings for the enforcement of taxes came within this provision. Easton v Sorenson, 53 M 309, 55 NW 128.

Prior to Laws 1902, Chapter 2, Section 2, this provision applied to an action for the refundment of money paid at a void tax sale. Easton v Sorenson, 53 M 309, 55 NW 128.

Whether the six-year limitations begin to run at the maturity of the debt against the bank, or at the time conditions arise which authorize an action to enforce stockholders' liability, quaere. Harper v Carroll, 62 M 152, 64 NW 145; 66 M 487, 69 NW 610, 1069.

The holder of a tax title, which more than 15 years after it had accrued was adjudged invalid at the suit of the owner, may apply for and receive refundment, and the auditor may extend a levy accordingly. State v Murphy, 81 M 254, 83 NW 991.

The filing of complaints in this insolvency action by the creditors exhibiting claims against the corporation tolled the statute of limitations as to it and its stockholders. London v St. Paul Park, 84 M 144, 86 NW 872.

The defendant stockholder could not be held liable in an action to enforce the superadded stockholder's liability because the cause of action as to him was barred by the limitation statute. Hunt v Doran, 92 M 423, 100 NW 222.

An action to recover for timber trespass upon state land is for a penalty, and the three-year limitation applies. State v Buckman, 95 M 272, 104 NW 240, 289; State v Bonness, 99 M 392, 109 NW 703.

The cause of action against a stockholder in a domestic corporation arising out of the "double liability" imposed by the state constitution accrues, so as to set the statute of limitations running when the receiver is appointed to wind up is affairs. Shearer v Christy, 136 M 111, 161 NW 498; Miller v Ahneman, 183 M 12, 235 NW 622.

The statute does not begin to run upon a claim for services, to be paid out of decedent's estate, until her death. Savage v Minnesota Loan, 142 M 187, 171 NW 778; Colby v Street, 146 M 290, 178 NW 599.

If the statute of limitations is pleaded as a defense, it is proper to charge the jury that the defendant has the burden of proof on that issue. Matteson v Blaisdell, 148 M 352, 182 NW 442; Golden v Lerch, 203 M 211, 281 NW 249.

Where a person, other than a parent, supports a child, a continuing contract is presumed that the parent will pay for the support, and an action thereon may be deferred until the child reaches majority, and the statute of limitations does not begin to run until such termination. Knutson v Haugen, 191 M 420, 254 NW 464.

An illegitimacy proceeding is not barred under section 541.05, where it is commenced during the minority of the child and while the father is under a continuing obligation to provide for its care, maintenance and education. State v Johnson, 216 M 427, 13 NW(2d) 26.

A foreign corporation which has ceased doing business in the state and withdrawn therefrom, except that, in obedience to statute, it has left here a continuing agent for personal service of process in actions arising from its Minnesota business, is, in contemplation of law, continuously present here for service; hence, the running of the statute of limitations is not tolled by its qualified departure from the state. Pomeroy v National City, 209 M 155, 296 NW 513.

Bank receiver's cause of action against director for making excess loans was barred six years after loans were made in absence of circumstances preventing the statute from running. Andresen v Thompson, 56 F(2d) 642.

The statute began to run on the date of the sale of corporate stock involved. City Co. v Stern, 110 F(2d) 601.

If, by the law of the state which has created a right of action, it is made a condition of the right that it shall expire after a certain period of limitation has elapsed, no action commenced after such period has elapsed can be maintained in any state. Maki v Cooke, 124 F(2d) 663.

No notice of the expiration of the time of redemption upon any certificate of tax judgment sale issued to an actual purchaser may be served after the expiration of six years from the date of the tax judgment sale. If the certificate is a state assignment certificate, the period runs from the date of the assignment certificates. 1936 OAG 422, June 10, 1935 (425b-7).

(3) When the injury to land is a continuing one, but subject to remedy and not in its nature permanent, a recovery may be had for damages accruing within six years of suit brought, though the cause of the injury arose prior to the six-year period; and in such case, one who purchases land after the cause of the inquiry arose, may recover damages accruing while he was owner not antedating the six-year period. Skinner v G. N. 129 M 113, 151 NW 968; Forsythe v City of So. St. Paul, 177 M 565, 225 NW 816.

The six-year statute of limitations applies to an action to recover damages for an injury to real property caused by a municipality in grading a street. Forsythe v City of So. St. Paul, 177 M 565, 225 NW 816.

(4) The statute does not begin to run against the owner of stolen property, while the property is kept concealed, and the identity of the person in possession is hidden. Commercial Union v Connolly, 183 M 1, 235 NW 634.

Where an executor embezzled funds and thereafter fraudulently obtained his appointment as trustee and distributed the fund to himself as trustee, the limitation of right to bring action on the executor's bond did not begin to run until discovery by the beneficiary of the fraud. Shave v American Surety, 199 M 538, 272 NW 597.

If a creditor first obtains a judgment, the limitation of time within which to set aside a fraudulent conveyance begins to run on the date the judgment is obtained. Lind v Johnson, 204 M 30, 282 NW 661.

Plaintiff did not discover, and on account of confidential relations existing between himself and the president of the corporation, was excusable in not discovering the frauds perpetrated on him at a time in excess of provisions of the statute of limitation. Keough v St. Paul Milk Co. 205 M 96, 285 NW 809; Stark v Equitable Life, 205 M 138, 295 NW 466.

The applicability of the statute of limitations will not be considered on appeal, if it has not been passed upon by the trial court. Town of Normania v County of Yellow Medicine, 205 M 451, 286 NW 881.

The six-year statute of limitations did not commence to run against action to recover purchase price of stock which was sold without having first been registered as required by Minnesota blue sky law, until date when purchaser discovered that stock had not been registered. Shepard v City Company, 24 F. Supp. 682.

(5) Actions for personal injuries are within this provision. Brown v Village of Heron Lake, 67 M 146, 69 NW 710; Ott v G. N. 70 M 50, 72 NW 833; Ackerman v C. St. P. & Omaha, 70 M 35, 72 NW 1134.

Action against a municipality to recover damages for injuries to employee is governed by the provisions of this section. Quackenbush v Village of Slayton, 120 M 373, 139 NW 716; Forsythe v City of So. St. Paul, 177 M 565, 225 NW 816.

A claim for malicious prosecution of a civil action is governed by the provisions of this section. Virtue v Creamery Package, 123 M 17, 142 NW 930.

The statute of limitations of Minnesota for actions founded on injury to the person, as the law of the forum, governs as to the time within which an action for damages for death may be brought in Minnesota under Iowa Code 1935, Sections 10957 to 10959. Whitney v Daniel, 208 M 420, 294 NW 465.

Leaving a can of oil which exploded, injuring plaintiff, came under this section, and not under section 541.07. Villaume v Wilkinson, 209 M 330, 296 NW 176.

(6) An action by the principal against his agent for fraudulent conversion of the funds of the principal is governed by this section. Cock v Van Etten, 12 M 522 (431).

The statute begins to run upon the discovery of the fraud. It begins to run from the time it should have been discovered; and the means of knowledge are equivalent to knowledge. Cock v Van Etten, 12 M 522 (431); Board v Smith, 22 M 97, Humphrey v Carpenter, 39 M 115, 39 NW 67; Lewis v Welch, 47 M 193, 48 NW 608; Lundquist v Peterson, 134 M 279, 158 NW 426, 159 NW 569; Stephen v Topic, 147 M 263, 180 NW 221.

Clause six applies to legal and equitable actions. Cock v Van Etten, 12 M 522 (431); Humphrey v Carpenter, 39 M 115, 39 NW 67; Lewis v Welch, 47 M 193, 48 NW 608.

An action by a county against its treasurer for fraudulent conversion of county funds falls within this section. Board v Smith, 22 M 97.

Constructive notice of a record in a deed in the register's office is insufficient to set the statute running. Berkey v Judd, 22 M 287; Duxbury v Boice, 70 M 119, 72 NW 838.

An action to set aside a fraudulent conveyance is governed by this section. McMillan v Cheeney, 30 M 519, 16 NW 404; Duxbury v Boice, 70 M 119, 72 NW 838; Brasie v Minneapolis Brewing, 87 M 456, 92 NW 340; Schmitt v Hager, 88 M 413, 93 NW 110.

An action to remove a cloud upon title is not barred by the general statute of limitations as an action for relief on the ground of fraud. Bausman v Kelley, 38 M 197, 36 NW 333.

Action by heirs to surcharge an administrator or action on his bond. Lewis v Welch, 47 M 193, 48 NW 608; Howard v Farr, 115 M 86, 131 NW 1071; Shave v United States Fidelity, 199 M 538, 272 NW 597.

An action by stockholders to have a corporation deed set aside for fraud. Morrill v Little Falls, 53 M 371, 55 NW 547.

When an action is brought more than six years after the commission of the acts constituting the fraud, the burden is on the plaintiff to allege and prove that

he did not discover the fraud until within six years before the commencement of the action. Morrill v Little Falls, 53 M 371, 55 NW 547; Duxbury v Boice, 70 M 113, 72 NW 838; Minneapolis Threshing v Jones, 89 M 184, 94 NW 551; Modern Life v Todd, 184 M 36, 237 NW 686; Olesen v Retzlaff, 184 M 624, 238 NW 12, 239 NW 672.

The evidence justified the jury in finding that the failure of the plaintiff to discover within six years, the facts constituting the alleged fraud was inconsistent with the exercise reasonable diligence, and was the result of plaintiff's own negligence. First National v Strait, 71 M 69, 73 NW 645; Keough v St. Paul Milk Co. 205 M 96, 285 NW 809.

Plenary evidence found to justify the jury in finding that the non-payment of the note was fraudulently concealed from the board of directors, and that the directors were not chargeable with a lack of due diligence. First National v Strait, 75 M 396, 78 NW 101.

The title of a fraudulent grantee is protected by the statute of limitations, and, unless defrauded creditors effect a cancelation thereof in some appropriate action brought within six years from the discovery of the fraud, his title becomes absolute and unassailable. Brasie v Minneapolis Brewing, 87 M 456, 92 NW 340.

There is no statute of limitations in this state barring the bringing of an action for the reformation and correction of a written instrument upon the ground of mistake. Wall v Meilke, 89 M 232, 94 NW 688.

The statute of limitations does not commence to run against an action to set aside a partnership accounting on the ground of fraud until discovery of the fraud. Johnston v Johnston, 107 M 109, 119 NW 652.

An action by a creditor to force stockholders to pay balance unpaid on their stock, they having fraudulently represented that stock had been paid in full. Downer v Union Land, 113 M 410, 129 NW 777.

The complaint in an action to annul an express trust of real and personal property brought by the heir at law of the settlor is bad, because brought more than six years after the cause of action accrued. Whitcomb v Wright, 176 M 274, 223 NW 294.

The promise of plaintiff was a continuing one, and the statute of limitations did not begin to run until demand for and refusal of performance. Wigdale v Anderson, 193 M 384, 258 NW 726.

Where a party, since deceased, entered into an executory contract, which for more than six years he performed and the benefits of which he enjoyed, an action to rescind for fraud was barred by the statute of limitations before his death, and the bar applies equally to a suit by his heir. Rowell v City of Minneapolis, 196 M 210, 264 NW 692.

Where a railroad company has complied with an act of congress, granting land to Minnesota for railroad purposes, and with the state law transferring the grant to it, a transfer of the grant by the state to another company is a constructive fraud, as the state holds the lands in trust for the former company, and this section is applicable as to limitations of time for bringing an action for equitable relief. Sage v St. P. S. & T. F. Ry. 44 F 817; St. P. S. & T. F. Ry. v Sage, 49 F 315.

The six-year statute of limitations did not commence to run against action to recover purchase price of stock which was sold without having first been registered as required by Minnesota blue sky law, until date when purchaser discovered that stock had not been registered. Vogel v Chase, 19 F. Supp. 564, Shepard v City Company, 24 F. Supp. 682.

Where stockholders, seeking to set off allegedly illegal bonuses paid to controlling stockholder of corporation against such stockholder's claim in bankruptcy, failed to deny knowledge that bonuses were being paid and payments were reflected in annual financial statements, it must be presumed that the stockholders acquiesced within Minnesota six-year limitation on actions based on fraud, and providing that the cause of action does not accrue until discovery of facts constituting fraud. Boyum v Johnson, 41 F. Supp. 355; Boyum v Johnson, 127 F(2d) 491.

Suit for cancelation of transfer of shares for fraud and duress is not barred by limitation when brought within six years after discovery of facts constituting fraud. Winget v Rockwood, 69 F(2d) 326.

Constructive notice as discovery of fraud. 17 MLR 99.

Minimum standard of knowledge; duty to know. 22 MLR 665.

Legislative neutrality; experiments in collective security. 23 MLR 623.

Government and the milk industry; federal delegation of partial sovereignty. 23 MLR 829.

(7) The mere fact that contract creates a relation in the nature of a trust, or that the action to enforce the obligations growing out of such contract is of an equitable nature, does not bring the action within this provision. McClung v Capehart, 24 M 17.

The statute begins to run against an express trust only from the time of a breach, disavowal or repudiation thereof by the trustee as made known to the cestui que trust. Randall v Constans, 33 M 329, 34 NW 272; Smith v Glover, 44 M 260, 46 NW 406; Donahue v Quackenbush, 62 M 132, 64 NW 141; Thompson v Crosley, 62 M 324, 64 NW 823; Lamberton v Youmans, 84 M 109, 86 NW 894; Johnston v Johnston, 107 M 109, 119 NW 652.

It appears upon the face of the complaint that this action, which was one to enforce an implied trust in real property, was barred by the statute of limitation Burk v Western Land, 40 M 506, 42 NW 479.

In the instant case, the trust being an implied trust, the statute does not apply. Stillwater v City of Stillwater, 66 M 176, 68 NW 836.

Where the testator held a statutory homestead at the time of his decease, and the surviving wife, for whom provision was made in the will, lived for more than two years after the expiration of the six-month period, without exercising her option as to such will, children who survive both parents have no interest in the homestead devised to another person. Jones v Jones, 75 M 53, 81 NW 549.

Express trusts are created by contracts and agreements which directly and expressly point out the persons, property, and purposes of the trust. Implied trusts are those which the law implies from the language of the contract, and the evident intent and purpose of the parties. Wilson v Welles, 79 M 53, 81 NW 549; Burton v Jerrel, 206 M 516, 289 NW 66.

Mere lapse of time, without inquiry into trusteeship, does not constitute such laches as to preclude recovery. Johnston v Johnston, 107 M 109, 119 NW 652; Naddo v Bardon, 47 F 782.

Evidence sustains the court's findings that plaintiff's claim did not accrue within six years, next preceding date of death of decedent against whose estate claim was sought to be enforced. Burton v Jerrel, 206 M 516, 289 NW 66.

The repudiation of the bonds occurred when they were not paid on their due date, not when presented for payment. Batchelder v City of Faribault, 212 M 253, 3 NW(2d) 778.

Laches on the part of stockholders in bringing suit for an accounting by an officer of the corporation. Boxrud v Ronning, 217 M 518, 15 NW(2d) 115.

(8) Laws 1893, Chapter 42, Section 156, prescribing that no action should be commenced unless "recommended" within four years from date of filing new bond or expiration of term of office, is inoperative because incapable of rational construction. Board v Miller, 101 M 294, 112 NW 276.

Action against the sheriff and his sureties sustained, as controlled by this section. Adams v Overboe, 105 M 295, 117 NW 496.

Right of action accrues, and period of limitation begins to run as to sureties on a school treasurer's bond from date of expiration of term of office, during which closing of bank occurred. OAG Sept. 30, 1933.

541.06 AGAINST SHERIFFS, CORONERS, OR CONSTABLES; FORFEITURES, THREE YEARS.

HISTORY. R.S. 1851 c. 70 s. 7; P.S. 1858 c. 60 s. 7; G.S. 1866 c. 66 s. 7; G.S. 1878 c. 66 s. 7; G.S. 1894 s. 5137; R.L. 1905 s. 4077; G.S. 1913 s. 7602; G.S. 1923 s. 9192; M.S. 1927 s. 9192

1. Against officials

2. Upon a penalty or forfeiture

1. Against officials

The leave required in order to sue a constable is no part of the cause of action. The applicable statute of limitation commences to run from the same time that it would if no such leave was required. Litchfield v McDonald, 35 M 167, 28 NW 191.

The mere failure of a sheriff, receiving money on a redemption of real estate, to pay the same to the party entitled thereto before demand, is not the omission of an official duty, and not subject to the three-year limitation. Hall v Swensen, 65 M 391, 67 NW 1024.

This section does not apply to an action for money had and received against a sheriff on account of money obtained from the county upon verified bills for services alleged to be untrue. Megaarden v County of Hennepin, 102 M 134, 112 NW 899.

The property in escrow with the sheriff was sold by him, and the conversion took place when the sale was made under execution, and for purpose of limitation, the statute commenced to run at that time. Adams v Overboe, 105 M 295, 117 NW 496.

Where the deputy is alleged to have misappropriated surplus money remaining in his hands after chattel mortgage foreclosure, the sheriff cannot recover on the bond of a deputy because (1) he has suffered no loss, and (2) more than three years have elapsed. Johnson v American Surety Co. 163 M 410, 204 NW 158.

The statute applies in actions against individuals for acts done in assisting the officer, and the action must be brought within three years, even though it involves negligence. Dahl v Halverson, 178 M 174, 226 NW 405.

Bonds accepted as legal securities in connection with granting of off-sale liquor license cannot be released until expiration of the license period. 1942 OAG 161, June 17, 1941 (218-L).

Sheriffs and constables; liability to third parties for wrongful levy; effect of Minnesota statute. 23 MLR 810.

2. Upon a penalty or forfeiture

A creditor suffering damages peculiar to himself may maintain an action at law against an unfaithful official, and is not compelled to resort to an action in equity on behalf of all the creditors. National Bank v Northwestern Guaranty, 61 M 375, 63 NW 1079.

An action by a creditor of a corporation to recover the amount of his debt from the officers of the corporation, on the ground that they were guilty of fraud in the discharge of their official duties, is not an action for the recovery of a penalty. This over rules Merchants v Northwestern, 48 M 349. Flowers v Bartlett, 66 M 213, 68 NW 976.

Where grain, deposited for storage with a company engaged in storing grain for hire, is wrongfully disposed of by fraud of the directors, officers, or members, the owner of the grain suffers a loss peculiar to himself, and may maintain an action under General Statutes 1894, Section 2600, Subdivision 3. Rice v Madelia, 78 M 124, 80 NW 853.

An action to recover for timber taken and converted by trespassers upon land owned by the state for the enhanced damages above its value, brought under the provisions of Laws 1895, Chapter 163, Section 7, is for a penalty, and must be commenced within three years. State v Buckman, 95 M 272, 104 NW 240, 289.

Under the provisions of Laws 1895, Chapter 163, Section 7, to recover treble damages for wilful trespass to pine timber of the state, the time limit for bringing the action is three, not two, years. State v Bonness, 99 M 392, 109 NW 703.

The action in conversion, brought by the state to recover the value of timber, was not barred by the statute of limitations applying to actions based upon section 541.06, clause (2), or section 541.07, clause (2). State v Rat Portage, 106 M 1, 115 NW 162, 117 NW 922.

The six-year limitation applies to actions under section 620.73. Olesen v Retzlaff, 184 M 624, 238 NW 12, 239 NW 672.

Laws 1931, Chapter 205, does not repeal or modify any of the provisions of sections 541.05, 541.06, or 541.07. Sweet v Richardson, 189 M 495, 250 NW 46.

Foreign corporations are not within the scope of sections 316.17 to 316.23; and it follows that the proviso added to section 316.20 does not apply to an action brought to enforce the statutory liability of a stockholder in a foreign corporation. Johnson v Johnson, 194 M 617, 261 NW 450.

An heir at law, who requests the representative of an estate in which she is beneficially interested to appeal from an order of the probate court allowing a claim in favor of the representative, and against another estate in a sum substantially less than that stated in the claim, is a "person aggrieved" within the meaning of section 525.712. Owens v Owens, 207 M 489, 292 NW 89.

541.07 TWO YEAR LIMITATIONS.

HISTORY. R.S. 1851 c. 68 s. 15; R.S. 1851 c. 70 s. 8; 1857 c. 39 s. 17; 1858 c. 92; P.S. 1858 c. 55 s. 15; P.S. 1858 c 60 s. 8; P.S. 1858 c. 129 s. 17; G.S. 1866 c. 31 s. 17; G.S. 1866 c. 60 s. 12; G.S. 1866 c. 66 s. 8; 1876 c. 100 s. 1; G.S. 1878 c. 31 s. 17; G.S. 1878 c. 60 s. 12; G.S. 1878 c. 66 s. 8; G.S. 1894 ss. 2369, 4761, 5138; 1895 c. 30; R.L. 1905 s. 4078; G.S. 1913 s. 7603; G.S. 1923 s. 9193; 1925 c. 113 s. 1; M.S. 1927 s. 9193; 1935 c. 80 s. 1; 1945 c. 513 s. 1.

1. For libel and certain other torts
2. Statute for penalty or forfeiture
3. Damages caused by dam other than commercial
4. Against master for breach of indenture

1. For libel and certain other torts

Section 541.07, clause (1), includes an action for malicious prosecution. Bryant v American Surety, 69 M 30, 71 NW 826.

The proviso, suspending the period of limitation during period of insanity, and extending the period for one year after the disability ceases, is controling and valid. Langer v Newmann, 100 M 27, 110 NW 68.

The limitation of two years, prescribed by section 541.07, clause (1), does not apply to actions to recover damages for personal injuries received through another's negligence. Quackenbush v Village of Slayton, 120 M 373, 139 NW 716.

An action against a physician for negligent treatment is based on breach of contract to treat plaintiff with ordinary skill, and is an action on a contract, and the six-year limitation applies. Finch v Bursheim, 122 M 152, 142 M 143 Burke v Maryland, 149 M 481, 184 NW 32.

A claim for malicious prosecution of a civil suit is controlled as to limitation by section 541.05, clause (5), allowing the bringing of the action within six years, and not by section 541.07. Virtue v Creamery Package, 123 M 19, 142 NW 930.

The six-year limitation applies to a cause of action on a saloon keeper's bond. Lynch v Brennan, 131 M 136, 154 NW 795.

The cause of action accrued before the enactment of Laws 1925, Chapter 113, changing the limitation for the bringing of actions regarding malpractice. The three-month suspension of the statute was not unreasonable. Kozisek v Brigham, 169 M 57, 210 NW 622.

In cases of malpractice, the limitation does not begin to run until the treatment ends. Schmitt v Esser, 178 M 82, 226 NW 196; Bush v Cress, 178 M 482, 227 NW 432; Schanil v Branton, 181 M 381, 232 NW 708; Schmit v Esser, 183 M 354, 236 NW 622.

In an action to recover from a municipality for death by wrongful act, under sections 465.09 and 465.11, the action must be commenced within one year from the occurrence of the loss or injury. Kuhlman v City of Fergus, 178 M 489, 227 NW 653.

In the instant malpractice action, the question as to whether the cause of action was barred by the statute was for the jury. Bush v Cress, 181 M 590, 233 NW 317.

Time limited in proviso for commencement of action to enforce stockholder's liability under section 316.20 is adequate. Sweet v Richardson, 189 M 489, 250 NW 46.

The evidence is conclusive that more than two years elapsed after the alleged cause of action for malpractice accrued and this action was begun; hence the trial court did not err in ordering judgment for defendant. Plotnik v Lewis, 195 M 130, 261 NW 867.

Actions for personal injuries due to negligence are governed by the six-year limitation statute. Villaume v Wilkinson, 209 M 332, 296 NW 176.

Limitation of actions; malpractice; when action accrues. 15 MLR 245.

Courts and doctors. 17 MLR 234.

Limitation of actions; subsequent treatment as postponing the accrual of a cause of action for malpractice. 20 MLR 97.

Mistake and statutes of limitation. 20 MLR 482.

Liability of a physician to one not a patient. 22 MLR 221.

2. Statutory penalty

In an action for treble damages for wilful trespass to pine timber of the state, the time limit within which the action may be brought is three, not two, years. State v Bonness, 99 M 392, 100 NW 703.

An action brought by the state to recover the value of the timber which had not been removed within the time prescribed by the permit was not barred by the statute of limitations applying to actions based upon a statute for a penalty or forfeiture, section 541.06, or to actions for a penalty or forfeiture to the state, section 541.07. State v Rat Portage, 106 M 1, 115 NW 162, 117 NW 922.

3. Damages caused by dam other than commercial

In an action to effect the removal of a dam, held, an action to abate a nuisance, cannot be maintained against a mere continuer of it, without notice to him, before action brought, to abate it. Thornton v Smith, 11 M 15 (1).

The time limited within which an action for damages caused by erecting and maintaining a mill-dam must be brought, begins to run, not from the time when the dam was erected, but from the time when the damage is occasioned. Thornton v Turner, 11 M 336 (237); Hempsted v Cargill, 46 M 118, 48 NW 558.

Public Statutes 1858, Chapter 60, Section 12, fixing a limitation of ten years, is applicable to an action brought for removal of a dam, or the erection of same so as to injure plaintiff's premises. Eastman v St. Anthony Water Power, 12 M 137; Thornton v Webb, 13 M 498 (457).

When government land, held by a preemptor, is flowed with water by reason of a dam erected before the patent is issued, and subsequently to the issuance of the patent and within two years thereafter, he brings action, the certificate of the register of the land office is competent evidence to show the filing of the declaratory statement. Dorman v Ames, 12 M 451 (347).

A statute of limitations affects only the remedy, and every case is governed by the law in force when suit is brought; and a law limiting the time for commencing an action for damages does not cover actions to abate or enjoin a nuisance. Cook v Kendall, 13 M 324 (297).

Relating allegation and proof of special damages. Barrows v Fox, 39 M 61, 38 NW 777.

The limitation for bringing an action for damages caused by permanently increasing the height of a dam is not affected by the fact that damages had, several years before, been caused by temporary addition to the dam. Hempsted v Cargill, 46 M 118, 48 NW 558.

No action for damages for overflowing lands by the erection and maintenance of a permanent mill-dam, can be maintained unless it is brought within two years next after damages are first sustained by reason of the dam. Priebe v Ames, 104 M 419, 116 NW 829.

Section 541.07, clause (3), applies to an action to recover damages for flooding caused by a dam erected by a public service corporation for the purpose of generating electric current to be distributed and sold to the public for lighting, heating, and power purposes. Zamani v Ottertail Power, 182 M 355, 234 NW 457.

541.071 LAWS 1945. CHAPTER 513, RETROACTIVE; LIMITATION.

HISTORY. 1945 c. 513 s. 2.

541.08 LOCAL IMPROVEMENT CERTIFICATES; LIMITATION; LIEN SUPERSEDED.

HISTORY. 1907 c. 183 s. 1; G.S. 1913 s. 7704; G.S. 1923 s. 9194; M.S. 1927 s. 9194.

Laws 1907, Chapter 183, which prohibits the maintaining of an action for the refundment of money paid for assessment sale certificates under the charter of the city of St. Paul, after two years from the date when notice of expiration of the period of redemption could have lawfully been given, is unconstitutional as applied to the facts in this case; the same being in violation of the contract under which such certificates were sold by the city. Gray v City of St. Paul, 105 M 19, 116 NW 1111.

541.09 ACTION TO BE COMMENCED WITHIN ONE YEAR.

HISTORY. 1915 c. 222 ss. 1, 2; G.S. 1923 ss. 9195, 9196; M.S. 1927 ss. 9195, 9196.

Any proceeding resulting in a judgment in favor of one party and against another is an "action" within the meaning of Laws 1915, Chapter 222. Berg v Burkholder, 164 M 81, 204 NW 923.

Judgment by confession, under a power of attorney, from the debtor is vacated, because the cause of action was not commenced within one year after the accrual of the action. Berg v Burkholder, 164 M 81, 204 NW 923.

541.10 MUTUAL ACCOUNTS.

HISTORY. R.S. 1851 c. 70 s. 10; P.S. 1858 c. 60 s. 10; G.S. 1866 c. 66 s. 9; G.S. 1878 c. 66 s. 9; G.S. 1894 s. 5139; R.L. 1905 s. 4079; G.S. 1913 s. 7705; G.S. 1923 s. 9197; M.S. 1927 s. 9197.

If credit is given for an article of personal property delivered by the debtor to his creditor at a valuation agreed upon, the account is within the provisions of this section Distinguishing Leyde v Martin, 16 M 38 (24). Taylor v Parker, 17 M 469 (447).

An account showing on one side items for goods sold and delivered at different dates, and payments made by the purchaser on the other side, is not a mutual, open, current account, within the meaning of the statute of limitations; and its operation is not suspended, as respects the earlier items of the account, until the date of the last item proved therein. Cousins v St. Paul, Minneapolis and Manitoba, 43 M 219, 45 NW 429.

Plaintiff's complaint negates the theory of an open and running account, as the main purpose was one to accomplish an accounting. Meyers v Barrett, 196 M 276, 264 NW 769.

Where transactions are separate and distinct, no open or running account can be claimed. Meyers v Barrett, 196 M 276, 264 NW 769.

Since the action is for an accounting, it is not governed by section 541.10, but is controlled, since fraud is alleged by section 541.05, clause (6), which provides that the cause of action is not deemed to have accrued until discovery of the facts constituting the fraud. Keough v St. Paul Milk Co. 205 M 104, 285 NW 809.

There must be an express or implied agreement between the parties that the account be open, current and mutual in order to be so construed for purposes of the statute of limitations; and where the carrier has the right to recover from a shipper for the full authorized rate notwithstanding an illegal agreement to the contrary, such carrier must bring the action for the additional amount claimed due within six years from maturity of the carrier's claim for the additional amount involved. Hawley v Little Falls Mill Co. 220 M —, 19 NW(2d) 161.

541.11 FOR A PENALTY GIVEN TO PROSECUTOR.

HISTORY. R.S. 1851 c. 70 s. 11; P.S. 1858 c. 60 s. 11; G.S. 1866 c. 66 s. 10; G.S. 1878 c. 66 s. 10; G.S. 1894 s. 5140; R.L. 1905 s. 4080; G.S. 1913 s. 7706; G.S. 1923 s. 9198; M.S. 1927 s. 9198.

541.115 LIMITATIONS OF ACTIONS RELATING TO MAINTENANCE OF WATER LEVELS.

HISTORY. 1941 c. 409 s. 1.

541.12 WHEN ACTION DEEMED BEGUN; PENDENCY.

HISTORY. R.S. 1851 c. 70 ss. 14, 15; R.S. 1851 c. 82 s. 34; P.S. 1858 c. 60 ss. 14, 15; P.S. 1858 c. 72 s. 34; G.S. 1866 c. 66 ss. 13, 14; G.S. 1878 c. 66 ss. 13, 14; G.S. 1894 ss. 5143, 5144; R.L. 1905 s. 4081; G.S. 1913 s. 7707; G.S. 1923 s. 9199; M.S. 1927 s. 9199.

Had Hooper never been served at all, the demand being against him as a joint contractor with Frazier, the court would have become possessed of jurisdiction over his person the moment the service was served upon Frazier. Hooper v Farwell, 3 M 106 (58).

After a judgment is reversed and a cause remanded, the action is pending until it is disposed of. Capehart v Van Campen, 10 M 158 (127).

An attachment against property may be issued simultaneously with the summons. Blackman v Wheaton, 13 M 326 (299).

Personal service or delivery to the officer for service. Blackman v Wheaton, 13 M 326 (299); Auerbach v Maynard, 26 M 421, 4 NW 816; Steinmetz v St. Paul Trust, 50 M 445, 52 NW 915; Foot v Ofstie, 70 M 212, 73 NW 4.

An administrator cannot maintain an action for the purpose of procuring the issue of an execution recovered in the district court by his intestate. Such execution should be procured by motion in the action in which the judgment was recovered. Lough v Pitman, 25 M 120.

Defendant died while the publication was being made; and the service not being complete, the court had no jurisdiction, and no authority to order the action revived. Auerbach v Maynard, 26 M 421, 4 NW 816.

Plaintiff, owner of certain judgments, debarred from any right to redeem from a foreclosure sale. Bartleson v Thompson, 30 M 161, 14 NW 795.

An action to foreclose a mechanic's lien is properly dismissed for want of prosecution within the statutory time. Steinmetz v St. Paul Trust Co, 50 M 445, 52 NW 915.

Service on owner not service on lienholders in mechanic's lien action. Smith v Hurd, 50 M 503, 52 NW 922.

Where the parties to an action are before a court of competent jurisdiction, it may order judgment against the defendant, no matter how stale or absurd the claim may be. There is no remedy except by appeal. Carlson v Phinney, 56 M 476, 58 NW 38.

Where prior proceedings are ineffectual, the right to institute new proceedings cannot be barred by the lapse of time between the instiution of the original proceedings and the judicial determination of their invalidity. State v Kipp, 70 M 286, 73 NW 164.

Service of a summons on a non-resident defendant in accordance with Laws 1901, Chapter 63, Section 1, is simply a substitute for service by publication, and must be predicated upon a strict compliance with the statute. Spencer v Koell, 91 M 226, 97 NW 974.

Before the recording of a lis pendens can be effectual, the action must be commenced by service of the summons as prescribed by statute. When the service is by publication, the full period of the publication need not have expired. Spencer v Koell, 91 M 226, 97 NW 974.

An action against a non-resident for the recovery of money may be brought in any county in the state, and a writ of attachment may therein issue, directed to the sheriff of any other county for service. Clements v Utley, 91 M 352, 98 NW 188.

Notice of lis pendens, duly filed, affects subsequent incumbrancers only, and does not operate retroactively. Rights acquired prior to such filing are paramount to the adverse claim of parties to the litigation. Moulton v Kolodzik, 97 M 423, 107 NW 154.

In case of ineffective service, the garnishee proceeding may be dismissed, and the garnishee discharged on motion of the defendant appearing specially for that

purpose. A garnishee summons is issued when delivered to the proper officer for service upon the garnishee, or if sent by mail, when the papers are received by the officer. Webster v Penrod, 103 M 69, 114 NW 257.

An action is deemed commenced when the summons is delivered to the proper officer for service, and if such service be completed within the prescribed time, and if pending takes precedence of a subsequent action in the federal court. Bond v Pennsylvania, 124 M 195, 144 NW 942; McCormick v Robinson, 139 M 483, 167 NW 271; Melin v Aronson, 205 M 353, 285 NW 836.

A pending application to register title may be pleaded in abatement of a subsequent action to quiet title. Seeger v Young, 127 M 416, 149 NW 735.

The action, wherein the judgment sought to be attacked was rendered, was already begun, within the purview of this section when the attachment was levied; and neither the action nor the attachment was abandoned by delay in service of the summons. Wagner v Farmers Cooperative, 147 M 376, 180 NW 231.

The life of a mechanic's lien is limited to one year, and no person can be bound by the judgment in an action to foreclose the lien, unless he is made a party thereto by service of the summons upon him within the year. Thompson v Standard Home, 161 M 142, 201 NW 300.

A delay of nine months in making a personal service of a summons without the state, after the making of the sheriff's return that the defendant cannot be found, is as a mater of law unreasonable, and the report will not support and sustain the service. Haney v Haney, 163 M 114, 203 NW 614.

More than two years after the death occurred, plaintiff amended the complaint by eliminating the allegation that decedent was an employee of defendant. Defendant demurred on the ground that the amendment stated a new cause of action (573.02), and was barred by the two-year limitation. The demurrer was properly overruled. Edelbrock v Mpls. St. Paul, and Soo, 166 M 1, 206 NW 945.

A mechanic's lien must be asserted within one year after the date of the last item; the lien was seasonably filed and the action commenced within the statutory period; and the action is not controlled by section 541.12. Botsford v Fuller, 170 M 130, 212 NW 22.

Affidavit for publication of summons must be filed and publication of summons be commenced within a reasonable time after the sheriff's return "of not found" is made. A delay of over seven months is an unreasonable time. Wiik v Russell, 173 M 580, 218 NW 10.

To constitute the issuance of a summons, it must be either served or delivered to the proper officer for service. Borgen v Corty, 181 M 349, 232 NW 512.

An amended complaint served more than six years after the cause of action accrued did not state a different cause of action and is not barred by the statute of limitation. Stebbins v Friend, 193 M 446, 258 NW 824.

A garnishment action is begun by the service of summons as of the date thereof, and a supplimental complaint in the garnishment is a continuation of the garnishment so begun and not the commencement of a separate action. Gilloley v Sampson, 203 M 233, 281 NW 3.

Proceeding by dependent of deceased employee, who during his lifetime had begun procedings and received compensation, before the industrial commission is a mere reopening of the proceedings commenced by the employee and not barred by the statute of limitations. Johnson v Pillsbury, 203 M 347, 281 NW 290.

An attorney at law is not a statutory "officer" for the service of a summons. He stands in no better position in respect to authority to make service of summons than any other private citizen. Melin v Aronson, 205 M 353, 285 NW 830.

541.13 EFFECT OF ABSENCE FROM STATE.

HISTORY. R.S. 1851 c. 70 s. 16; P.S. 1858 c. 60 s. 16; G.S. 1866 c. 66 s. 15; G.S. 1878 c. 66 s. 15; G.S 1894 s. 5145; R.L. 1905 s. 4082; G.S. 1913 s. 7708; G.S. 1923 s. 9200; M.S. 1927 s. 9200.

The defendant has the privilege of availing himself of that law of limitations most favorable to him and chosing the Minnesota statute if he has been a resident of Minnesota more than six years prior to the commencement of this action. Fletcher v Spaulding, 9 M 64 (54); Hoyt v McNeil, 13 M 390 (362).

The statute of limitations of Minnesota does not begin to run in favor of a party to be charged until he comes within the jurisdiction. Hoyt v McNeil, 13 M 390 (362).

When a cause of action accrues against a person absent from the state, the action may be commenced within the statutory time after his return. Town v Washburn, 14 M 268 (199); Wilkinson v Estate of Peter Winne, 15 M 159 (123); Duke v Balme, 16 M 306 (270); Gill v Bradley, 21 M 15.

The departure from and residence out of the state must be not merely temporary or occasional, but of such character and with such intent as to constitute a change of the debtor's home or place of abode. Venable v Paulding, 19 M 488 (422); Keller v Carr, 40 M 428, 42 NW 292; Kerwin v Sabin, 50 M 320, 52 NW 642.

A debtor may remain outside the state for so long a period that so far as the attachment statutes are concerned, he would be a non-resident, even though his political domicile is in Minnesota. It is a question of actual residence, and not domicile merely, and this is determined by the ordinary and obvious indicia of residence. Keller v Carr, 40 M 428, 42 NW 292; Lawson v Adlard, 46 M 243, 48 NW 1019; Kerwin v Sabin, 50 M 320, 52 NW 642.

The statute of limitations does not operate to bar relief against one standing in the relation of trustee under an express trust so long as the trust relation is not repudiated; and the defendant having been a non-resident, the action is not barred by the statute. Smith v Glover, 44 M 260, 46 NW 406.

In 1880 there was no statute which fixed a time limit within which a claim against the estate of a deceased person could be presented; and the statute limiting the time for bringing actions to recover such claims would furnish a limit of time after the death within which claims might be presented. O'Mulcahey v Gragg, 45 M 112, 47 NW 543.

The statutes of limitation are applicable to actions brought by the state or municipal corporation, whether brought in its sovereign or proprietary capacity. City of St. Paul v Chi. Milwaukee & St. Paul, 45 M 387, 48 NW 17.

As the disseisor, or his successor, may continue adverse possession by his tenants or agents, against whom the owner may have action, the absence of the disseisor from the state does not interrupt the running of the statute. City of St. Paul v Chi. Milwaukee & St. Paul, 45 M 387, 48 NW 17; Ramsey v Glenny, 45 M 401, 48 NW 322.

As respects promissory notes made in a foreign state by a resident thereof, the statute of limitations of this state does not bar an action against the maker in the absence of proof that he had become a resident of this state. The action is not barred by the law of the foreign state in the absence of proof of the foreign law. Way v Colyer, 54 M 14, 55 NW 744.

"House of his usual abode" means a person's customary dwelling place or residence. It is not in all particulars equivalent to domicile, for one's place of abode or home once acquired does not necessarily continue until another is obtained. Missouri v Norris, 61 M 256, 63 NW 634.

Section 541.13 applies to actions, the subject matter of which arises or originates in this state, and the debtor is out of the state when the cause of action accrues, or afterwards departs therefrom; while section 541.14 applies to causes not covered by the first, that is, to actions, the subject matter of which arises out of the state. Powers v Blethen, 91 M 339, 97 NW 1056.

Making the note payable in Minnesota does not make this section applicable. Drake v Bigelow, 93 M 112, 100 NW 664.

An action in the courts of this state upon any judgment, whether domestic or foreign, must be brought within ten years from the rendition thereof, without reference to the residence of the judgment debtor during the ten years. Gaines v Grunewald, 102 M 245, 113 NW 450.

The time at which an action in tort is deemed as commenced and all other matters pertaining to procedure are determined exclusively by the law of the forum; and the provisions of the code relating to the commencement of actions must be construed as a whole, and so as to give effect to the intention to provide a single uniform course of procedure which shall apply alike to all civil actions. Bond v Pennsylvania, 124 M 195, 144 NW 942.

A court of equity will not bar a claim, enforceable in an action at law, for a delay of less than the statutory period, unless the enforcement of the claim will result in injury to innocent parties. McRae v Feigh, 143 M 241, 173 NW 655.

If no action could be maintained on a cause of action in the state where it arose, because of the bar of the statute of limitations, none can be maintained in the courts of this state, unless plaintiff has been a citizen thereof ever since the cause of action accrued. Moe v Shaffer, 150 M 114, 184 NW 785.

A foreign corporation which has ceased doing business in the state and withdrawn therefrom, except that, in obedience to statute, it has left here an agent for personal service of process, is, in contemplation and as result of law, continuously present here for service. Hence, the running of the statute of limitations is not tolled by its qualified departure from the state. Pomeroy v National City, 209 M 155, 296 NW 513.

The statute requires departure from and residence out of the state as a condition to tolling the statute, and makes no exception in case of withdrawal and appointment of an agent for service of process. Stern v National City Co. 25 F. Supp. 948; City Co. v Stern, 110 F(2d) 601; 142 F(2d) 449; Chase Securities v Vogel, 110 F(2d) 607.

Mistake and statutes of limitation. 20 MLR 482.

Withdrawal of foreign corporation from state on right to assert statute of limitations as a defense where such corporation has remained amenable to service. 23 MLR 829; 25 MLR 527.

541.14 WHEN CAUSE OF ACTION ACCRUES OUT OF STATE.

HISTORY. R.S. 1851 c. 82 s. 39; P.S. 1858 c. 72 s. 39; G.S. 1866 c. 66 s. 16; G.S. 1878 c. 66 s. 16; G.S. 1894 s. 5146; R.L. 1905 s. 4083; G.S. 1913 s. 7709; G.S. 1923 s. 9201; M.S. 1927 s. 9201.

The statute does not begin to run against the party to be charged until he comes within the jurisdiction; and the defendant may avail himself of the law of limitations of this state or of the state from which he came, whichever is most favorable. Fletcher v Spaulding, 9 M 64 (54); Hoyt v McNeil, 13 M 390 (362); Smith v Glover, 44 M 260, 46 NW 406; O'Mulcahey v Gragg, 45 M 112, 47 NW 543; Way v Colyer, 54 M 14, 55 NW 744.

The time of limitations of actions upon contract depends upon the law of the place where such actions are brought. Bigelow v Ames, 18 M 527 (471).

Where a cause of action not arising in this state nor accruing to a citizen thereof is barred by the law of another state, it is barred in Minnesota. Luce v Clarke, 49 M 356, 51 NW 1162; Drake v Bigelow, 93 M 112, 100 NW 664; Pattridge v Palmer, 201 M 387, 277 NW 18.

This section applies to actions, the subject matter of which arises out of the state, as distinguished from section 541.13, which applies to actions, the subject matter of which originates in this state, and the debtor is out of the state when the cause of action accrues or afterwards departs therefrom. Powers v Blethen, 91 M 339, 97 NW 1056.

This section does not apply in case where suit is brought on an Illinois judgment, the law of that state providing that an execution on a judgment shall not issue after seven years, and no action may be brought thereon after 20 years. Bieder v Rose, 138 M 121, 164 NW 586.

The contract was a Florida, and not a Minnesota transaction, although the defendant was a Minnesota corporation with its principal offices here. The claim for services being barred in Florida is also barred here. Kamper v Hunter, 146 M 337, 178 NW 747; Moe v Shaffer, 150 M 117, 184 NW 785; Burkhardt v Northern States, 180 M 560, 231 NW 239; Klemme v Long, 184 M 97, 237 NW 882; Estate of Daniel, 208 M 420, 294 NW 465; Estate of Superior, 211 M 108, 300 NW 393.

Limitation of actions; choice of law; effect of residence of parties. 22 MLR 882.

Duration of enforceability of the judgment. 24 MLR 663.

Enforcement of a right created by a foreign statute containing unexpired time limitation where period of limitations of forum has expired. 24 MLR 868.

541.15 PERIODS OF DISABILITY NOT COUNTED.

HISTORY. R.S. 1851 c. 70 ss. 17, 19 to 22; P.S. 1858 c. 60 ss. 17, 19 to 22; G.S. 1866 c. 66 ss. 17, 20 to 23; 1869 c. 60 s. 1; G.S. 1878 c. 66 ss. 17, 20 to 23; G.S. 1894 ss. 5147, 5150 to 5153; R.L. 1905 s. 4084; G.S. 1913 s. 7710; G.S. 1923 s. 9202; M.S. 1927 s. 9202.

The bankruptcy act in force in 1878 does not prohibit the commencement of an action upon a provable claim against a person who has been adjudged bankrupt, and in the instant case, the period from the date when the petition was filed until the discharge was denied cannot be relied upon to toll the statute. Davidson v Fisher, 41 M 363, 43 NW 79.

A claim against a fund in the hands of an assignee under the involvency laws is not barred by the one-year limitation in the policy. In re St. Paul German Ins. Co. 58 M 163, 59 NW 996.

The time of an infant's disability is not a time limited for commencement of an action, except that the period within which action must be brought cannot be extended longer than one year after the disability ceases. Backus v Burke, 63 M 272, 65 NW 459; Minnesota Debenture v Dean, 85 M 473, 89 NW 848; Martz v McMahon, 114 M 34, 129 NW 1049.

The disability which will arrest the running of the statute of limitations must exist at the time the action accrues. If the statute once begins to run against a party, it so continues until the bar is complete. Kelley v Gallup, 67 M 169, 69 NW 812.

The filing of complaints in sequestration proceedings by creditors exhibiting their claims against the corporation tolled the statute of limitations both to it and its stockholders. London v St. Paul Park, 84 M 144, 86 NW 872; Potts v St. Paul Athletic, 84 M 217, 87 NW 604.

As applied to contests in the general land office, whenever a person is prevented from exercising his legal remedy by some paramount authority, the time during which he is thus prevented is not to be counted against him in determining whether the statute of limitations has barred his right. St. Paul, Mpls. & Manitoba v Olson, 87 M 117, 91 NW 294; Sage v Rudnick, 91 M 325, 98 NW 89, 100 NW 106; Lagerman v Casserly, 107 M 491, 120 NW 1086.

In view of the plaintiff's restoration, after having been adjudged insane, the one-year proviso is controlling. Langer v Newmann, 100 M 27, 110 NW 68.

In determining whether a cause of action is barred by the statute of limitations, the day on which it accrued is excluded. Where the actionable negligence of another and the resulting insanity occur on the same day, the two events are simultaneous, and the disability of insanity existed at the time the action accrued. Nebola v Minnesota Iron, 102 M 89, 112 NW 880.

When it appears from the complaint that, after the cause of action accrued, the time allowed by statute for bringing suit thereon expired before suit was brought, and the complaint indicates nothing in avoidance, a demurrer is rightly sustained. Ferrier v McCabe, 129 M 342, 152 NW 734; McKitrick v Travelers, 174 M 354, 219 NW 286.

A cause of action to recover payments for the transportation of freight in excess of statutory rates accrued when the payments were made, and not upon dissolution of an injunction then in force, restraining the putting into effect of the statutory rates. Christian v Chi. Milwaukee, & St. Paul, 135 M 45, 159 NW 1082.

The statute begins to run when the cause of action accrues, and the courts have no power to extend or modify the periods of limitation provided therein. When the statute once begins to run, it will not cease to do so by reason of any event not within the saving of the statute. Weston v Jones, 160 M 32, 199 NW 431.

In absence of fraudulent concealment, the running of the statute is not prevented, although the party having a right of action was ignorant of its existence. Weston v Jones, 160 M 32, 199 NW 431.

When a party, against whom a cause of action exists in favor of another, by fraudulent concealment prevents such other from obtaining acknowledgment thereof, the statute of limitation will commence to run only from the time the cause of action is discovered or might have been discovered by the exercise of diligence. Schmucking v Mayo, 183 M 37, 235 NW 633.

The plaintiff did not bring his action to rescind the transactions until within two days of seven months after reaching majority. Whether this was within a reasonable time was for the jury. The finding of the jury against the plaintiff is sustained. Kelly v Furlong, 194 M 467, 261 NW 460.

The statute of limitations does not run against a father's violation of his duty to support his minor child though the child be illegitimate. State v Johnson, 216 M 427, 13 NW(2d) 26.

Effect of disability of infant upon father's cause of action for loss of services. 23 MLR 232.

541.16 PERIOD BETWEEN DEATH OF PARTY AND GRANTING OF LETTERS.

HISTORY. R.S. 1851 c. 70 s. 18; R.S. 1851 c. 78 s. 6; P.S. 1858 c. 60 s. 18; P.S. 1858 c. 68 s. 6; G.S. 1866 c. 66 ss. 18, 19; G.S. 1878 c. 66 ss. 18, 19; G.S. 1894 ss. 5148, 5149; R.L. 1905 s. 4085; G.S. 1913 s. 7711; G.S. 1923 s. 9203; M.S. 1927 s. 9203.

The note matured Dec. 24, 1856. The maker of the note died before the note came due. The widow of the maker was appointed administratrix on Aug. 5, 1856, left the state, and did not return until 1864. Commissioners were appointed to examine claims and appoint a successor to the administratrix in 1863. Where no commissioners were appointed, the failure to present the claim to the commissioners for more than six years did not bar the debt; and the time that the administrator was absent from the state was no part of the time for commencing action. Wilkinson v Winne, 15 M 159 (123).

An action for an injury causing death must be commenced within two years after the act or omission by which the death was caused. Rugland v Anderson, 30 M 386, 15 NW 676.

Where the mortgagee has gone into possession as "mortgagee in possession," and so remains, (the mortgage being unpaid), until the right of action by the mortgagor to redeem is barred, he become vested with the title to the premises. Rogers v Benton, 39 M 39, 38 NW 765.

Sections 18 and 19, General Statutes 1878, Chapter 66, are to be construed together. These two sections are now merged into section 541.16. St. Paul Trust v Sargent, 44 M 449, 47 NW 51; Wood v Bragg, 75 M 527, 78 NW 93.

Under Laws 1887, Chapter 69, the statute of limitations as applicable to the instant case was applied to non-residents. It took effect six months after its passage, and is constitutional. Hill v Townley, 45 M 167, 47 NW 653.

Action by an administrator to recover land conveyed, the deed being obtained by fraud, the facts being discovered by the heirs, the administrator appointed, and the suit commenced more than seven years after the discovery, is barred by the statute of limitations. Howard v Farr, 115 M 86, 131 NW 1071.

The time within which to file a claim against the estate of a decedent, not barred during his lifetime, is governed by the limitation of the probate code and not by section 541.05. Orjala v Borg, 200 M 470, 274 NW 621.

The tolling provisions of statute of limitations relating to actions by and against executors or administrators relate only to actions which survive the deceased. The statute creating right of action for wrongful death and tolling statute applicable to actions by or against executors or administrators are not "in pari materia," since the former relates to rights arising by reason of death and the latter to actions which survive death. Cashman v Hedberg, 215 M 463, 10 NW(2d) 388.

Plaintiff's right of action against the special representative, either in his individual or representative capacity, expired six years from Nov. 7, 1920. The trial court properly sustained the demurrer to the complaint where the allegations clearly indicated that the action was barred by the statute of limitations. Schueller v Palm, 218 M 469, 16 NW(2d) 773.

Where an agent was permitted to retain and use for certain purposes property belonging to his principal, which authority had not been withdrawn at the time of his death, limitations did not begin to run until that time against an action by the principal to recover the property unexpended. Order of St. Benedict v Steinhauser, 179 F 137.

541.17 NEW PROMISE MUST BE IN WRITING.

HISTORY. R.S. 1851 c. 70 s. 23; P.S. 1858 c. 60 s. 23; G.S. 1866 c. 66 s. 24; G.S. 1878 c. 66 s. 24; G.S. 1894 s. 5154; R.L. 1905 s. 4086; G.S. 1913 s. 7712; G.S. 1923 s. 9204; M.S. 1927 s. 9204.

1. Acknowledgment; promise
2. Partial payment

1. Acknowledgment; promise

One of two partners, after a dissolution, cannot waive the statute of limitations upon a claim already barred so as to bind the other. Whitney v Reese, 11 M 138 (87).

"You are hereby authorized to compromise with Charles Hoyt on his collateral note, and we agree that the balance of our draft shall be charged against us. Reese & Heylin." The above is not a promise to pay, which will take the debt out of the statute of limitations. Whitney v Reese, 11 M 138 (87).

When the statute of limitations has run against a debt due from a school district, the authority to so acknowledge the debt so as to remove the bar, rests with the inhabitants of the district in meeting assembled. Sanborn v School District, 12 M 17 (1).

Where the debtor makes a sufficient acknowledgment of the debt to take it out of the statute of limitations, the acknowledgment cannot be withdrawn so as to restore the bar. Sanborn v School District, 12 M 17 (1).

The existence of the debt after a remedy is barred is good consideration for a promise to pay; and the promise may be implied from an unqualified acknowledgment of an existing debt, but such acknowledgment must be consistent with an intention and promise to pay. Smith v Moulton, 12 M 352 (229).

Where the plaintiff holds more than one note against the defendant, a mere general acknowledgment of indebtedness, not referring to either claim in particular, does not take any of the notes out of the operation of the statute. Smith v Moulton, 12 M 352 (229).

In case of a conditional promise, the debt does not accrue, and the statute does not begin to run until the condition is performed. McNab v Stewart, 12 M 407 (291).

A debt barred by the statute of limitations is not revived, unless by an express promise or by such acknowledgment of the indebtedness as reasonably leads to the inference that the debtor intended to renew his promise or to waive the benefit of the statute. Denny v Marrett, 29 M 361, 13 NW 148.

"I hereby acknowledge the indebtedness of this note" endorsed on a note takes the note out of the operation of the statute; and it is immaterial whether the acknowledgment is made before or after the running of the statute. Drake v Sigafoos, 39 M 367, 40 NW 257; Russell v Davis, 51 M 482, 53 NW 766.

The acknowledgment or promise must be in writing signed by the party to be charged. Erpelding v Ludwig, 39 M 518, 40 NW 829; Olson v Myrland, 195 M 626, 264 NW 120.

A statement of an account which is not supported by evidence of some writing signed by the party to be charged, will not prevent the running of the statute against previously existing liabilities included therein. Erpelding v Ludwig, 39 M 518, 40 NW 829.

A judgment is not a contract and does not come within the rule by which a new promise or part payment suspends the operation of the statutes of limitations and revives and continues the cause of action. Olson v Dahl, 99 M 433, 109 NW 1001.

In order to prevent the running of the statute of limitations, a payment upon the debt must be made voluntarily by the debtor in person, or for him by one having authority, or for him and in his name by one without authority and subsequently ratified by the debtor. Woodcock v Putnam, 101 M 1, 111 NW 639.

A conveyance of land by the owner who had previously entered into a contract with another for the logging of the standing timber, did not relieve the vendor

from liability for damages for having violated the terms of the logging contract; and a decree entered in an action subsequently brought by the vendee to the effect that the logging contractor had no interest in the land, was not a bar to an action for damages by such contractor against the vendor. Gulledge v Wenatchee, 111 M 418, 127 NW 395, 923.

A new promise in writing, made either before or after the debt is outlawed, starts a new period of limitation. The new promise must identify the debt, but specific reference to it is not necessary if the language with certainty covers it. A promise to pay all claims of a class is sufficient. Big Diamond v Chi. Milwaukee, & St. Paul, 142 M 181, 171 NW 799.

The services rendered, and the goods sold and delivered by plaintiff to decedent on different dates and times during a long series of years, arose out of a continuing contract relation between them, and the items do not constitute separate and independent contracts. Welsh v Estate of Welsh, 151 M 498, 187 NW 610.

Where notes are taken from a wrongdoer who was not personally enriched by the tort, wherein he is joined by others as co-makers, there is an accord and satisfaction and creation of a new liability resting in true contract. As such, it is dischargeable in bankruptcy. Burleson v Langdon, 174 M 264, 219 NW 155.

Correction of an error in bookkeeping which occurred years before, which correction was made after the statute had run, was not a part payment which tolled the statute. Estate of Walker, 184 M 164, 238 NW 58.

Though the letter written and signed by defendant and addressed to plaintiff sufficiently acknowledges a subsisting indebtedness upon an outlawed note; no promise to pay same can be implied therefrom. Berghuis v Burges, 205 M 151, 285 NW 464.

The giving of a chattel mortgage, in the usual form to secure a note after its due date, was an acknowledgment and tolled the statute so that it began to run from the date of the chattel mortgage. Reconstruction v Osven, 207 M 146, 290 NW 230.

A defendant may be estopped to set up the statute as a defense by his oral promise before the statute has run that, if plaintiff would wait until after the statute has run, he would make a new arrangement or settlement of plaintiff's claim. Albachten v Bradley, 212 M 359, 3 NW(2d) 783.

Duration of actionability of judgment. 24 MLR 662.

2. Partial payment

Where creditor holds separate claims, and the debtor makes general payment on indebtedness without directing or authorizing application upon anyone, all of which are barred, the bar is not removed as to any. Smith v Moulton, 12 M 352 (229); Anderson v Nystrom, 103 M 168, 114 NW 742.

To take a debt out of the statute, a part payment must be such that a promise to pay the remainder may be inferred. Brisbin v Farmer, 16 M 215 (187).

A partial payment upon a promissory note by one of the joint and several makers thereof, and endorsed upon it before the note is barred by the statute of limitations, and within six years before suit is brought, is inoperative to prevent the running of the statute as to the others. Willoughby v Irish, 35 M 63, 27 NW 379; Atwood v Lammers, 97 M 214, 106 M 310; Kranz v Kranz, 188 M 374, 247 NW 243.

Where a payment is made by an unauthorized person on account of another, and the later afterwards assents thereto, he is bound by it, and it has the same effect as though made by himself. Clarkin v Brown, 80 M 361, 83 NW 351.

Two notes, secured by the same mortgage, were made payable, one in 1880 and the other in 1881. The paying of the note which came due in 1880 does not toll the statute as to the note coming due in 1881. McManaman v Hinchley, 82 M 296, 84 NW 1018.

A partial payment made upon a partnership debt, after the dissolution of the firm, will suspend the operation of the statute of limitations as to other partners in favor of a creditor receiving such payment, who has had dealings with the partnership and has no notice of its dissolution. Robertson v Anderson, 96 M 527, 105 NW 972.

The endorsement upon a promissory note of the proceeds of the sale of collateral securities which were deposited with the note at the time it was given does not constitute a part payment which will interrupt the running of the statute of limitations. Atwood v Lammers, 97 M 214, 106 NW 310; Metropolitan v Bolduc, 160 M 146, 199 NW 567.

Partial payments by the principal debtor will not prevent the running of the statutes of limitations as to the guarantor of a promissory note, unless the contract of guaranty expressly so provides. Northwest v Dahltorp, 104 M 130, 116 NW 106.

Where a note shows on its face that it is more than six years past due, if the holder relies upon part payment to avoid the bar of the statute of limitations, the burden is upon him to prove it. When endorsement of payment showing payment made within six years appears on the note, it is error to charge the jury that the burden is on the defendant to prove that the payment was not made at the date of the endorsement. Riley v Mankato, 133 M 289, 158 NW 391.

A payment of interest voluntarily made by a debtor to one who had no authority to receive it, but by whom it is immediately turned over to the creditor as the "interest money" in question, is sufficient to toll the running of the statute of limitations against the principal obligation. Kehrer v Weismueller, 182 M 474, 234 NW 690.

A voluntary partial payment by the debtor on an indebtedness which had outlawed, the acknowledged receipt and retention by the debtor of a requested written statement of account in which appeared a credit for such payment, and two letters written by debtor expressly agreeing to pay the debt, created a new and binding agreement on which the statute of limitations had not run at the time of debtor's death. Hartnagel v Alexander, 183 M 31, 235 NW 521.

The payments on the note were made by defendant's son-in-law, a co-maker, at defendant's request and with his consent. This tolled the statute. Erickson v Husemoller, 191 M 177, 253 NW 361; Ross v Simser, 193 M 407, 258 NW 582.

541.18 NEW ACTION IN CASE OF REVERSAL.

HISTORY. R.S. 1851 c. 70 s. 25; P.S. 1858 c. 60 s. 25; G.S. 1866 c. 66 s. 25; G.S. 1878 c. 66 s. 25; Ex. 1881 c. 24 s. 1; G.S. 1894 s. 5155; R.L. 1905 s. 4087; G.S. 1913 s. 7713; G.S. 1923 s. 9205; M.S. 1927 s. 9205.