

CHAPTER 542

VENUE OF ACTIONS

542.01 VENUE; GENERAL RULE; EXCEPTION.

HISTORY. R.L. 1905 s. 4088; G.S. 1913 s. 7714; G.S. 1923 s. 9206; M.S. 1927 s. 9206.

Defendant by his conduct, waived his right to a change of venue. *Nystrom v Quinby*, 68 M 4, 70 NW 777.

The final hearing upon the petition for assessment of stockholders was held in an adjoining county. Since the adjournment to the adjoining county was by consent of both parties the order was legal. *Finch v Vanasek*, 132 M 9, 155 NW 754.

In garnishment proceedings the place of trial may be changed, on application of the intervenor, for convenience of witnesses. *State ex rel v District Court*, 150 M 498, 185 NW 1019.

The provision of Laws 1909, Chapter 126, that certain cases cannot be tried in Virginia without the written consent of the parties, is a rule of procedure or practice, and a party who goes to trial without raising an objection to the place of trial cannot after decision raise the point. *Estate of Marttinen*, 171 M 475, 214 NW 469.

It is the duty of the state court to examine the petition and bond for the removal of a case to the federal court, and if they are legally sufficient to "accept" the same and "proceed no further". *Pearson v Zacher*, 177 M 182, 225 NW 9.

In an action brought in St. Louis county the venue was changed to Ramsey county upon the joint demand of three defendants. Motion to remand to St. Louis was properly denied as the joint demand of the defendants ipso facto removed the cause to Ramsey county. *State ex rel v District Court*, 192 M 541, 257 NW 277.

The place of trial is governed by statute. In a transitory action, defendant being a non-resident, the cause is triable in any county designated by plaintiff. *Closeman v Feeney*, 211 M 266, 300 NW 818.

Jurisdiction of venue. 20 MLR 617, 641.

542.02 ACTIONS RELATING TO LAND, SITUS TO GOVERN.

HISTORY. R.S. 1851 c. 70 s. 39; P.S. 1858 c. 60 s. 39; G.S. 1866 c. 66 s. 38; 1876 c. 51 s. 1; G.S. 1878 c. 66 s. 47; 1885 c. 169; G.S. 1878 Vol. 2 (1888 Supp.) c. 66 s. 47a; G.S. 1894 ss. 5182, 5183; R.L. 1905 s. 4089; G.S. 1913 s. 7715; G.S. 1923 s. 9207; M.S. 1927 s. 9207.

The objection to the place of trial designated in the complaint is not to be taken by demurrer. Prior to the enactment of Laws 1885, Chapter 169, if the county designated in the complaint was not the proper county the action might nevertheless be tried therein unless the defendant, before the time for answering expired, demanded that the trial be had in the proper county. *Gill v Bradley*, 21 M 15; *Kipp v Cook*, 46 M 535, 49 NW 257; *Kretschmar v Meehan*, 74 M 211, 77 NW 41.

This section is not applicable to proceedings for the appointment of a receiver in insolvency. *Rollins v Rice*, 60 M 358, 62 NW 325.

This section applies to actions for injuries to land within this state; but not to an action for injuries to land in another state. *Little v Chic. St. P. & Omaha*, 65 M 48, 67 NW 846.

Generally the tendency is to treat all actions as transitory which are not clearly and wholly local. *Little v Chic. St. P. Omaha*, 65 M 48, 67 NW 846; *Hunt v Dean*, 91 M 96, 97 NW 574; *State ex rel v District Court*, 94 M 370, 102 NW 869; *Yess v Ferch*, 213 M 593, 5 NW (2d) 641.

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While the effect of the last clause in this section is not clear, it is not to be construed as meaning that the court has no jurisdiction of the subject matter of the action, in the full sense in which that term is ordinarily used. *Kretzschmar v Meehan*, 74 M 211, 77 NW 41; *Smith v Barr*, 76 M 513, 79 NW 507; *Hunt v Dean*, 91 M 96, 97 NW 574.

By consent of parties a court may try an action for the recovery of real estate lying in another county. *Smith v Barr*, 76 M 513, 79 NW 507.

This section is not applicable to an action by heirs to avoid an administrator's sale of lands, to recover land in the hands of purchasers and for an accounting and recovery of the sales. *Smith v Barr*, 76 M 513, 79 NW 507.

This section is applicable to an action to cancel a real estate mortgage and to expunge the record thereof. *Kommer v Harrington*, 83 M 114, 85 NW 939; *State ex rel v District Court*, 184 M 504, 239 NW 143; *State ex rel v District Court*, 197 M 239, 266 NW 756.

This section does not apply to an action to set aside a judgment and the levy thereunder on real estate. *State ex rel v District Court*, 85 M 283, 88 NW 755.

An action to set aside certain deeds of real property, situated in more than one county, as a fraud upon creditors, may be brought in either county. *Hunt v Dean*, 91 M 96, 97 NW 574.

This section does not apply to an action to cancel a contract for the sale of land on the ground of fraud. *State ex rel v District Court*, 94 M 370, 102 NW 869.

This section applies to an action to set aside a mortgage foreclosure and redeem. *Casserly v Morrow*, 101 M 16, 111 NW 654.

This section does not authorize a change of venue in an action to which a municipal corporation is a party defendant from the county in which the municipality is located, though a majority of the individual defendants unite in demanding a change to the county of their residence. *State ex rel v District Court*, 120 M 458, 139 NW 947; *Hjelm v City of St. Cloud*, 129 M 240, 152 NW 408.

An action to set aside deeds on the ground they were procured by fraud, and that by decree the title be reinvested in plaintiff, is local and not transitory, and the case must be tried in the county where the lands are situated. *State ex rel v District Court*, 120 M 526, 139 NW 613.

An action to recover damages for breach of a contract to establish a railway station upon plaintiff's land is not within the statute. The action is transitory, not local. *Grimes v Minneapolis, St. Paul & Rochester*, 133 M 442, 158 NW 719.

An action for damages for false representations made to plaintiff by defendants as to certain lands sold by them to him is transitory. *State ex rel v Jelley*, 134 M 332, 159 NW 788; *State ex rel v District Court*, 136 M 471, 162 NW 351, 357; *Delasca v Grimes*, 144 M 67, 174 NW 523.

An action to cancel a contract even though real estate be involved may be transitory and not local. *State ex rel v District Court*, 146 M 422, 178 NW 1004.

Generally an action is triable in the county where the real estate is situated. *State ex rel v District Court*, 150 M 512, 185 NW 953.

Action to establish a copartnership, obtain an accounting, and a transfer of an interest in certain mining leases is partly local and partly transitory, and the change of venue was properly granted. *State ex rel v District Court*, 154 M 397, 191 NW 814.

Where an action is brought to cancel a contract on the ground of fraud, the subject matter is the contract and the primary relief sought is its cancellation, and the action is triable where the defendant resides, although it may involve the determination of rights in real estate. *State ex rel v District Court*, 164 M 433, 205 NW 284.

By filing an affidavit for the attachment of property, plaintiff did not elect to treat the action as purely local. *Foshay v Mercantile Trust*, 166 M 442, 208 NW 203.

A suit by a minority stockholder to compel the assignment of a mining lease to his corporation, based on an allegation that the directors had taken the lease in the name of another corporation, is not local. *Quinn v Butler*, 167 M 463, 209 NW 270.

When plaintiff acquiesces in change of venue to and trial in county where defendant resides, he cannot demand that second trial, ordered by the supreme court, be in the county where action was brought. *State ex rel v District Court*, 168 M 519, 210 NW 405.

Action for rescission of contract for exchange of land for personal property is a transitory, not local, action. *State ex rel v District Court*, 169 M 515, 211 NW 469.

Action based upon claim that decedent agreed plaintiff should have certain property upon decedent's death is based upon a contract and is transitory. *State ex rel v District Court*, 178 M 373, 227 NW 202.

A suit for fraud in the sale of diseased cows where damages sought included damage to land because of germs from cows purchased is not local, but is transitory. *State ex rel v Tiffit*, 184 M 567, 239 NW 252.

Although the relief demanded the title to land the action was transitory because recovery dependent upon the enforcement of a contract. *State ex rel v District Court*, 202 M 75, 277 NW 353.

Jurisdiction or venue. 20 MLR 641.

542.03 OFFICIAL MISCONDUCT, WHERE CAUSE AROSE.

HISTORY. R.S. 1851 c. 70 s. 40; P.S. 1858 c. 60 s. 40; G.S. 1866 c. 66 s. 39; G.S. 1878 c. 66 s. 48; G.S. 1894 s. 5184; R.L. 1905 s. 4090; G.S. 1913 s. 7716; G.S. 1923 s. 9208; M.S. 1927 s. 9208.

This section does not affect jurisdiction. It gives the officer a personal privilege, which he may waive, and he cannot insist upon it, for the first time, upon a motion for a new trial. *Tullis v Brawley*, 3 M 277 (191).

An action for the claim and delivery of personal property, wrongfully taken, may be tried in the county where plaintiff resides, though the taking was by the defendant, as sheriff in another county. *Leonard v Maginnis*, 34 M 506, 26 NW 733; *Hinds v Backus*, 45 M 170, 47 NW 655.

An action by a creditor of a corporation to recover the amount of his debt from officers of the corporation, alleging fraud, is not an action to recover a penalty within the meaning of section 542.03. *Flowers v Bartlett*, 66 M 213, 68 NW 976; *State ex rel v District Court*, 120 M 458, 139 NW 947.

An action against a sheriff for alleged abuse of legal process, in which the plaintiff in the writ was co-defendant, is properly brought in the county of the sheriff's residence, and a change of venue cannot be effected by joint demand of both defendants, under Laws 1895, Chapter 28. *State ex rel v District Court*, 92 M 402, 100 NW 2.

In actions not made local by sections 542.03 to 542.08, a resident defendant is not deprived of the right to have the place of trial changed to the county of his residence by joining a foreign corporation as party defendant. Actions upon the bonds of public contractors are not local. *State ex rel v Tryholm*, 139 M 389, 166 NW 533.

An action on a drainage bond is a local action under section 542.03. *County v Bisballe*, 166 M 499, 207 NW 648.

The complaint was too vague to connect acts of the sheriff with service of judicial process so as to bring cases within the purview of section 542.03; hence application for mandamus to remand cases to Hennepin County is denied. *State ex rel v District Court*, 179 M 583, 229 NW 318.

An action against members of the state industrial commission to compel reinstatement of a dismissed employee is, under section 542.03, triable in Ramsey county, where the commission maintains its office. *State ex rel v District Court*, 206 M 54, 287 NW 601.

Jurisdiction or venue. 20 MLR 641.

542.04 ACTIONS ON FORFEITED BAIL BONDS.

HISTORY. 1923 c. 100 s. 1; G.S. 1923 ss. 9209, 10596; M.S. 1927 ss. 9209, 10596.

The oral agreement, by the county attorney and the attorney for the accused, that the accused need not appear in court for trial until after his discharge from

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the army, entered into without the knowledge or consent of either the surety or the court, does not discharge the surety from the obligation to produce the accused for trial when notified to do so. *State v Cooper*, 147 M 272, 180 NW 99. Jurisdiction or venue. 20 MLR 642.

542.05 COST BOND; RECOGNIZANCES; NON-RESIDENTS.

HISTORY. R.S. 1851 c. 70 s. 42; P.S. 1858 c. 60 s. 42; G.S. 1866 c. 66 s. 41; G.S. 1878 c. 66 s. 50; 1893 c. 52 s. 1; G.S. 1894 ss. 5186, 5187; 1899 c. 335; R.L. 1905 s. 4091; G.S. 1913 s. 7717; G.S. 1923 s. 9210; M.S. 1927 s. 9210.

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 issue therein directed to the sheriff of any other county for service. *Clements v Utley*, 91 M 352, 98 NW 188.

The provisions of section 542.10 do not authorize a change of venue in an action to which a municipal corporation is a party defendant from the county in which such municipality is located, though a majority of the individual defendants unite in demanding a change. *State ex rel v District Court*, 120 M 458, 139 NW 947.

In actions not made local by the provisions of sections 542.02 to 542.08, a resident defendant is not deprived of the right to have the place of trial changed to the county of his residence by joining a foreign corporation as a party defendant, and actions on bonds of public contractors are not made local under the provisions of sections 574.26 to 574.31. *State ex rel v Tryholm*, 139 M 389, 166 NW 533.

542.06 REPLEVIN.

HISTORY. R.S. 1851 c. 70 ss. 39, 41; P.S. 1858 c. 60 ss. 39, 41; G.S. 1866 s. 66 ss. 38, 40; 1876 c. 51 s. 1; 1877 c. 68 s. 1; 1878 c. 38 s. 1; G.S. 1878 c. 66 ss. 47, 49; Ex. 1881 c. 25 s. 1; G.S. 1894 ss. 5182, 5185; R.L. 1905 s. 4092; G.S. 1913 s. 7718; G.S. 1923 s. 9211; M.S. 1927 s. 9211.

An action for the claim and delivery of personal property, wrongfully taken, may be tried in the county where the plaintiff resides, though the taking was by the defendant, as sheriff, in another county. *Leonard v Maginnis*, 34 M 506, 26 NW 733.

Under the proviso in General Statutes 1878, Chapter 66, Section 49 (542.06), an action for claim and delivery of personal property wrongfully taken from the plaintiff by a sheriff, under process against a third party, may be brought in the county where the plaintiff resides. *Hinds v Backus*, 45 M 170, 47 NW 655.

The clerk of the district court of the county in which an action in claim and delivery is brought for the recovery of personal property therein is not authorized by Laws 1895, Chapter 28, to transfer the files to the county in which defendant resides, based on affidavits tending to show that the action was intended to be in trover and therefore transitory. The district court of the former county has sole jurisdiction to determine this question. *State ex rel v District Court*, 92 M 205, 99 NW 806.

Replevin cannot be maintained in a state court against an officer of a federal court to recover property in his possession as such officer. The property in such case is in custodia legis, and the remedy of the person claiming it to be wrongfully detained from him is in the federal court whose officer withholds it. *Druhe v Fischbein*, 101 M 81, 111 NW 950.

A municipal corporation defendant is entitled to trial in the county where the corporation is located though other defendants unite in demanding a change of venue. *State ex rel v District Court*, 120 M 458, 139 NW 947.

Before it can be held that the action was brought in replevin solely to avoid a change of venue, it must appear conclusively that damages for conversion of the property is the only remedy available. It does not so appear in the instant case. *Hubbard v Grover*, 130 M 103, 153 NW 266.

By answering in an action in replevin without objecting to the venue and asking for affirmative relief, and by stipulation to a transfer of the property involved, during the pendency of the suit, to the custody of a party in the county where the action was instituted, a defendant is precluded from raising the question whether the suit can be maintained in any other county than the one wherein

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the property was located when the action was begun. *Wade v Bank*, 144 M 187, 174 NW 889.

542.07 ACTIONS BY OR FOR THE STATE.

HISTORY. R.S. 1851 c. 70 s. 41; P.S. 1858 c. 60 s. 41; G.S. 1866 c. 66 s. 40; 1877 c. 68 s. 1; 1878 c. 38 s. 1; G.S. 1878 c. 66 s. 49; Ex. 1881 c. 25 s. 1; G.S. 1894 s. 5185; R.L. 1905 s. 4093; G.S. 1913 s. 7719; G.S. 1923 s. 9212; M.S. 1927 s. 9212.

Actions on the bonds of public contractors are not made local under the provisions of sections 574.26 to 574.31. *State ex rel v Tryholm*, 139 M 389, 166 NW 533.

General Statutes 1913, Section 7721 (section 542.09), does not apply to the special statutory proceeding provided by General Statutes 1913, Section 7765 (Section 544.14), wherein normally there can be no defendants. *Midland Bank v Hendrickson*, 159 M 355, 200 NW 17.

542.08 ACTIONS FOR WAGES.

HISTORY. 1893 c. 67 s. 1; G.S. 1894 s. 5189; R.L. 1905 s. 4094; G.S. 1913 s. 7720; G.S. 1923 s. 9213; M.S. 1927 s. 9213.

To entitle plaintiff under this section to try an action for wages in county where labor was performed, he must not join a cause of action which defendant has right to have removed for trial to county of his residence. *Krumpatich v Butler*, 162 M 522, 203 NW 435.

The provisions of this section include actions for the recovery of wages for labor regardless of whether the labor performed was manual or was of a less toilsome nature. *Sexton v Baehr*, 212 M 205, 3 NW (2d) 1.

542.09 VENUE IN OTHER CASES; RESIDENCE OF DEFENDANT; OF CORPORATION.

HISTORY. R.S. 1851 c. 70 s. 41; P.S. 1858 c. 60 s. 41; G.S. 1866 c. 66 s. 40; 1877 c. 68 s. 1; 1878 c. 38 s. 1; G.S. 1878 c. 66 s. 49; Ex. 1881 c. 25 s. 1; G.S. 1894 s. 5185; R.L. 1905 s. 4095; 1913 c. 552 s. 1; G.S. 1913 s. 7721; G.S. 1923 s. 9214; M.S. 1927 s. 9214.

Law as applied to individuals residing in the state. *Collins v Bowen*, 45 M 186, 47 NW 719; *McNamara v Eustis*, 46 M 311, 48 NW 1123; *Hurning v Hurning*, 80 M 373, 83 NW 342; *State ex rel v District Court*, 85 M 283, 88 NW 755; *State ex rel v District Court*, 94 M 370, 102 NW 869.

A domestic corporation may be sued in any county where it has an office, agent or place of business. *Schoch v Winona and St. Peter*, 55 M 479, 57 NW 208; *State ex rel v District Court*, 77 M 302, 79 NW 960; *Taylor v Grand Lodge*, 98 M 36, 107 NW 545.

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 issue therein directed to the sheriff of any other county for service. *Clements v Utley*, 91 M 352, 98 NW 188.

An action wherein a municipality is a defendant is local. *State ex rel v District Court*, 120 M 458, 139 NW 947.

In an action in municipal court against a railroad company defendant cannot obtain a change of venue to another municipal court in the same county. *State ex rel v Municipal Court*, 128 M 225, 150 NW 924.

In a case entitled in municipal court of Mankato, and service had in Waseca county and judgment by default docketed in district court of Blue Earth county, the judgment was a nullity and was properly set aside. *Evangelical Lutheran v Schultz*, 136 M 459, 161 NW 1054.

An action for specific performance of contract for sale of land is controlled as to the place of trial by section 542.09. Section 542.02 applies only to such actions as are wholly local, as distinguished from those partly local and partly transitory. *State ex rel v District Court*, 138 M 336, 164 NW 1014; *State ex rel Tryholm*, 139 M 391, 166 NW 533.

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Service upon defendant's soliciting freight agent under section 543.08 in Hennepin county is valid though the venue of the action is laid in Douglas county. The limitation in section 543.10 not applying. *Robinson v Oregon Short Line*, 151 M 451, 187 NW 415.

The subject matter of this action is the establishment of the existence of a copartnership, an accounting of its affairs, and the transfer of an interest in certain mining leases. The action is partly local and partly transitory and was properly transferred to Ramsey county. *State ex rel v District Court*, 154 M 397, 191 NW 814.

On a question of venue, a decision on an issue of fact by trial court based on conflicting affidavits, will not be reversed by the supreme court. *State ex rel v District Court*, 155 M 505, 193 NW 169.

Laws 1913, Chapter 552, construed to permit suits against domestic service corporations in any county wherein a cause of action arises and wherein any part of defendant's lines are situated; but does not change the rule that a domestic corporation in a transitory action may be sued in any county where it "has an office, resident agent or business place". *State ex rel v District Court*, 156 M 394, 194 NW 876.

Although mandamus was not intended as a reviewing writ, the practice of using it to settle disputes as to the proper place of trial has become firmly established. In a case for collection of occupation mining taxes, a writ may issue requiring the district court for Ramsey county to hear and determine the case (Laws 1921, Chapter 223) although the clerk may have transmitted the records and files to St. Louis county. *State ex rel v District Court*, 159 M 282, 198 NW 667.

Cases arising under the federal employers liability act against a foreign corporation may be commenced "in any county which plaintiff shall designate". The venue is governed by state law. If the suit is commenced in a county remote the venue may be changed in such manner as will best serve convenience of witnesses and promote the ends of justice. *Dall v Chicago Great Western*, 159 M 323, 198 NW 1006.

General Statutes 1913, Section 7721 (section 542.09), does not apply to the special statutory proceeding provided by General Statutes 1913, Section 7765 (section 544.14), wherein normally there can be no defendants. *Midland Bank v Hendrickson*, 159 M 355, 200 NW 17.

It is a general rule that actions must be tried where the defendant resides, and the requirement that certain actions shall be tried where the subject matter is situated is an exception to the rule, and to bring a case within the exception the subject matter must be wholly local. *State ex rel v District Court*, 164 M 433, 205 NW 284.

Where an action is brought to cancel a contract on the ground of fraud, the subject matter is the contract and the primary relief sought is cancellation, and the action where the defendant resides, although it may incidentally involve the determination of rights in real estate. *State ex rel v District Court*, 164 M 433, 205 NW 284.

The respondent being a domestic corporation in Ramsey county, and having resident agent or place of business in St. Louis county the case is triable in Ramsey county. *State ex rel v Guthrie*, 164 M 525, 205 NW 448.

Where the relief sought by a suit by a minority stockholder to compel the assignment of a mining lease to his corporation, and is obtainable by a judgment in personam, the fact that the court has power to transfer the lease by judgment under section 557.04 does not transform the suit into one in rem or necessitate trial where the res is situated. *Quinn v Butler Bros*. 167 M 463, 209 NW 270.

Venue statute as to foreign corporations, section 542.09, must be construed so as to place such corporations within the equal protection clause of the fourteenth amendment of the federal constitution as held in *Power v Saunders*, 274 US 490, 47 SC 678. *Olson v Osborne*, 30 M 444, 15 NW 876, and *Eickoff v Fidelity*, 74 M 139, 76 NW 1030, are overruled. *State ex rel v District Court*, 178 M 72, 225 NW 915.

No discrimination is made in sections 542.09 and 542.10 between domestic and foreign corporations because there is given to all corporations a right to move

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the place of trial to the proper county, and there is effective jurisdiction if there is no motion to remove. *Witort v Chicago & Northwestern*, 178 M 261, 226 NW 934.

The denial by the district court of a motion of the defendant to change the place of trial of an action for divorce brought in the proper county, largely in the discretion of the trial court, may be challenged upon the ground that the convenience of witnesses and ends of justice will be promoted by a change of venue, and may be reviewed on mandamus from the supreme to the district court. *State ex rel v District Court*, 186 M 513, 243 NW 692.

A national bank may be sued in any county where the venue would properly lie if such bank were a state institution. *DeCock v O'Donnell*, 188 M 231, 246 NW 885, 248 NW 829.

A garnishee disclosure can only be had in the county where the action is pending. Disclosure cannot be had before a referee residing in an outside county. *Maras v Butchart*, 192 M 20, 255 NW 83.

In an action brought in St. Louis county the venue was changed to Ramsey county upon the joint demand of the three defendants. Motion to remand the case to St. Louis county was properly denied. *State ex rel v District Court*, 192 M 541, 257 NW 277.

Where there is a statutory proceeding in the nature of interpleader, the court in which the cause is properly pending, and it alone may exercise jurisdiction. Section 542.09 does not apply to proceedings under the provisions of section 544.12. *State ex rel v District Court*, 192 M 602, 258 NW 7.

When a proper affidavit and demand for change of venue are seasonably served and filed, the case may not be held in the county where brought for the purpose of traversing the facts stated in the affidavit. In matters relating to change of venue domestic and foreign corporations must be accorded the same treatment. *State ex rel v Janesville Bank*, 195 M 504, 263 NW 460; *State ex rel v District Court*, 199 M 608, 273 NW 88.

An action for personal injuries should be tried in the county in which the defendant resided when the action was begun. Mandamus should be granted to remand action to such county after change of venue to another county. *Newborg v Martin*, 200 M 596, 274 NW 875.

The mere residence of a director who has power to solicit insurance and collect premiums does not make him the resident agent of a township mutual fire insurance company so as to fix the residence of the company in the county where he resides. *State ex rel v Gislasi*, 203 M 450, 281 NW 769.

When defendant is a domestic corporation, and the action transitory, venue may be had in any county. *Ceska v Pavek*, 203 M 597, 279 NW 747.

Plaintiff claims to be owner, and in this suit to establish an oral gift to plaintiff, the case is transitory and triable in the county where the administrator of the doner's estate resides. *State ex rel v District Court*, 203 M 599, 281 NW 256.

The place of trial is governed by statute. In a transitory action, defendant being a non-resident, the cause is triable in any county designated by plaintiff. Since our district courts constitute one court of general jurisdiction coextensive with the boundaries of the state, the fact that a civil action is brought or tried in the wrong county is not jurisdictional. *Claseman v Feeny*, 211 M 266, 300 NW 818.

The venue of a proceeding for the dissolution of a corporation under the Minnesota business corporation act is in the county of its principal place of business. *Radabaugh v Hudson*, 212 M 180, 2 NW(2d) 828.

Section 542.02, relating to land, is applicable only to such actions as are wholly local, as distinguished from those as are partly local and partly transitory, and does not apply in this case. *Yess v Ferch*, 213 M 593, 5 NW(2d) 641.

A corporation which has its principal and only place of business in a given county and no office or resident agent elsewhere is a resident of the county within the meaning of section 542.09. *Thomas v Hector*, 216 M 208, 12 NW(2d) 771.

Minnesota venue statute providing that if none of the parties shall reside or be found in the state, action may be begun and tried in any county which the plaintiff shall designate, does not impose unreasonable burden on "interstate commerce". *Panzram v O'Donnell*, 48 F. Supp. 74.

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A state law restricting venue in transitory actions, if against a domestic corporation, to a county where it has a place of business or in which its chief officer resides, or, if against a national person, to a county where he resides, but which permits that such actions, when against a foreign corporation, be brought in any county in the state, is unreasonable and arbitrary and in violation of the equal protection clause of the Fourteenth Amendment. *Power Co. v Saunders*, 274 US 490, 47 SC 678.

Local and transitory actions. Venue of an action to cancel a contract to convey land. 10 MLR 608.

Action against foreign carrier for cause arising outside of state as a burden upon interstate commerce. 13 MLR 485.

Foreign corporations. Residence in county containing established place of business. 13 MLR 523.

Constitutionality of statute authorizing action against foreign corporation in any county designated by the plaintiff. 14 MLR 83.

Jurisdiction or venue. 20 MLR 617, 641.

542.095 VENUE IN AUTO VEHICLE CASES.

HISTORY. 1939 c. 148 s. 1; M. Supp. 9213-1.

Laws 1939, Chapter 148, relates to procedure, fixing venue in actions arising out of negligent driving, operation, management, and control of any motor vehicle by its owner, driver, or operator, and applies to actions brought subsequent to the enactment even though the cause of action accrued prior thereto. *State ex rel v District Court*, 206 M. 357, 287 NW 875.

Since our district courts constitute one court of general jurisdiction coextensive with the boundaries of the state, the fact that a civil action is brought or tried in the wrong county is not jurisdictional. *Claseman v Feeney*, 211 M 266, 300 NW 818.

542.10 CHANGE OF VENUE AS OF RIGHT; DEMAND.

HISTORY. R.S. 1851 c. 70 s. 43; P.S. 1858 c. 60 s. 43; G.S. 1866 c. 66 s. 42; G.S. 1878 c. 66 s. 51; G.S. 1894 s. 5188; 1895 c. 28; R.L. 1905 s. 4096; G.S. 1913 s. 7722; G.S. 1923 s. 9215; M.S. 1927 s. 9215.

1. Generally
2. Plural defendants
3. Demand, when
4. Affidavit
5. No court order required
6. Waiver

1. Generally

It is the policy of the law that transitory actions be brought and tried in the county where the defendant resides, or, in case of several defendants residing in different counties, in the county to which they unite in demanding the venue to be changed. *Grimes v Ericson*, 92 M 164, 99 NW 621.

Section 542.10 has no application where the action is properly brought in the county designated in the complaint. *State ex rel v District Court*, 92 M 205, 99 NW 806; *State ex rel v District Court*, 92 M 402, 100 NW 2.

Where the venue is properly laid, a third person substituted as defendant is not entitled, as a matter of right, to change. *Healy v Matthews*, 108 M 125, 121 NW 428.

This section does not apply to actions in divorce. *State ex rel v District Court*, 110 M 501, 126 NW 133.

This section does not authorize a change of venue in an action to which a municipal corporation is defendant from the county in which such municipality is located, though the majority of individual defendants unite in demanding a change. *State ex rel v District Court*, 120 M 458, 139 NW 947; *State ex rel v District Court*, 148 M 488, 182 NW 165.

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An action to set aside deeds executed and delivered by plaintiff to defendant, on the ground that they were procured by fraud, and that by decree the title be reinvested in plaintiff, and in which the defendant sets up an answer and counter-claim, alleging ownership, is local, not transitory, and should be tried in the county where the land is located. *State ex rel v District Court*, 120 M 526, 139 NW 613.

The municipal court of the city of Minneapolis has jurisdiction of an action to recover possession of leased premises for non-payment of rent brought under the unlawful detainer statute, and is not ousted of such jurisdiction by the fact that the unpaid rent amounts to a larger sum than can be recovered in such court. The evidence must show that the title to the property is in controversy before such action can be certified to the district court, and the evidence in this case fails to show such controversy. *Andrus v Dyckman*, 126 M 406, 148 NW 565.

If venue in an action is changed improperly, the plaintiff waives the right to have it remanded by noticing the case for trial in county to which it was removed. *International Falls v American Traction*, 157 M 207, 195 NW 891.

Laws 1921, Chapter 223, imposing an occupation tax on the business of mining ore, requires actions for the collection of that tax to be brought in Ramsey county or in the county where the ore was mined, and intends that such actions shall be tried in the county in which they are brought. *State ex rel v District Court*, 159 M 282, 198 NW 667.

No error is found in denial by the trial court of a motion for a change of venue for the purpose of procuring an impartial trial, the same having been denied on conflicting affidavits. *Guyer v Smullen*, 160 M 114, 199 NW 465.

A change of venue as a matter of right cannot be had by persons who voluntarily come into an action brought in the proper county and become defendants in that action but, if the venue is changed on their application, the right to question the change is waived by the plaintiff by retaining an answer in which the new county is named as the county to which the place of trial has been changed, by replying to the answer laying the venue in that county, and by retaining the notice of trial similarly entitled. *Webster v Beckman*, 162 M 132, 202 NW 482.

A change of venue can be effected only in accordance with requirements of section 542.10, or by express agreement, and failure to file demand and affidavit in the right county is fatal. *Hindal v Kahler*, 162 M 516, 202 NW 820.

After serving the affidavit and demand for a change of venue pursuant to section 542.10, the defendant may make a second service at any time within 20 days after the summons was served and if he does the time within which the papers must be filed with the clerk of court begins to run from the date of the second service. *State ex rel v Ryberg*, 169 M 260, 211 NW 11.

For the purpose of fixing the place of trial of a transitory action as provided in section 542.10, a foreign corporation defendant, having an established place of business in the state, must be considered as residing in the county where that place of business is and so entitled to the same voice as any other resident defendant in fixing the place of trial. *State ex rel v District Court*, 176 M 78, 222 NW 524.

The venue statute as to foreign corporations, section 542.09, must be construed so as to place such corporations within the equal protection clause of the 14th amendment of the federal constitution, as held in *Power v Saunders*, 274 US 490, 47 SC 678; *Olson v Osborne*, 30 M 444, 15 NW 826; and *Eickhoff v Fidelity*, 74 M 139, 76 NW 1030, are overruled. *State ex rel v District Court*, 178 M 72, 225 NW 915; *State ex rel v District Court*, 179 M 583, 229 NW 318.

An action to enforce an agreement by the decedent to leave, at his death, certain property to plaintiff is based on a contract and is transitory. *Devenney's Estate*, 178 M 373, 227 NW 202.

Change of venue is conditioned on the payment of the deposit required by section 357.07. *State ex rel v District Court*, 178 M 617, 225 NW 926.

Actions against sureties on public contractor's bonds commenced in the county wherein the construction work is located, are a statutory exception to the general rule, and section 542.10 does not apply as to change of venue. *Freeman v Morris*, 179 M 94, 228 NW 442.

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Where on motion for change of venue a fact issue is raised as to the residence of a defendant, determination of that issue by the district court is final. *Coates v Holden*, 181 M 517, 233 NW 9.

An action wherein plaintiff's only purpose, and the only relief wanted, is to annul a deed and certain mortgages of a tract of land, and to have the title declared to be in herself notwithstanding the deed and free from the lien of the mortgages, is local and not transitory. *State ex rel v District Court*, 184 M 504, 239 NW 143.

An action against the state industrial commission to compel reinstatement of a dismissed employee is triable in Ramsey county, where the commission maintains its office. *State ex rel v District Court*, 206 M 55, 287 NW 601.

Since our district courts virtually constitute one court of general jurisdiction coextensive with the boundaries of the state, the fact that a civil action is brought in the wrong county is not jurisdictional. *Claseman v Feeney*, 211 M 267, 300 NW 818.

The provisions of section 542.08 include actions for the recovery of wages for labor regardless of whether the labor performed was manual or of a less toilsome nature. *Saxton v Baehr*, 212 M 205, 3 NW(2d) 1.

The right of removal from the state court to the federal depends upon the case as disclosed by the pleadings; and in the instant case the pleadings do not show grounds for removal and the case is remanded to the district court of Ramsey county. *Maruska v Equitable Life*, 21 Fed. Supp. 841.

Minnesota statute providing that action against owner or driver of motor vehicle may be brought in county of residence of defendant and when so brought the venue cannot be changed without written consent of the plaintiff or unless changed by order of court, supersedes and amends the statute that gave a resident defendant in a transitory action the right to have the matter tried in the county of his residence. *Panzram v O'Donnell*, 48 Fed. Supp. 75.

Right to appeal from an order granting a change of venue. 5 MLR 566.

Foreign corporations; residence in county containing established place of business. 13 MLR 522.

Unconstitutionality of statute authorizing action against foreign corporation in any county designated by plaintiff. 14 MLR 84.

Jurisdiction or venue. 20 MLR 645.

2. Plural defendants

Parties who are in default may be disregarded. *Suter v Page*, 64 M 444, 67 NW 67.

Where there are several defendants residing in different counties the place of trial must be changed to the county which a majority of them unite in demanding although the action is brought in a county where one or more of them reside. *Chadbourne v Reed*, 83 M 447, 86 NW 415.

Where one of the several defendants is the only one concerned, the others being only nominal parties, he may have the venue changed to his county without reference to the others. *State ex rel v District Court*, 85 M 283, 88 NW 755.

Where there are several defendants residing in different counties a majority of them may secure a change by making the proper affidavit and serving a joint demand therefor before the time for answering has expired as to any of them, or by each of them making such affidavit and serving a demand for the same at any time before his time for answering expires. *Grimes v Ericson*, 92 M 164, 99 NW 621.

The provision in this section that, if there are several defendants residing in different counties, the trial shall be had in the county upon which a majority of them shall unite in demanding, or if the numbers be equal in that whose county-seat is nearest, has no application where less than a majority of the defendants demand a change of venue. *Scott v Miller*, 122 M 378, 142 NW 817.

In an action brought against two defendants residing in different counties, one defendant being an individual, and the other a municipal corporation, the individual defendant has no right, the other defendant not joining in the demand, to a change of the place of trial to the county of his residence, unless the other

party was made a defendant for the purpose of preventing a change of venue. State ex rel v Quinn, 132 M 219, 156 NW 284.

In actions not made local by the provisions of sections 542.02 to 542.08 a resident defendant is not deprived of the right to have the place of trial changed to the county of his residence by joining a foreign corporation as a party defendant. State ex rel v Tryholm, 139 M 389, 166 NW 533.

Where there are several defendants residing in different counties, it is necessary for a majority of such defendants to join in a demand for change of venue to the residence county of one of them. This may be done before the time of answering expires as to any one of them by joining codefendants before or after the service of the summons, but within the statutory time. State ex rel v District Court, 187 M 270, 245 NW 379.

Where there are more than two defendants, none of whom live in the county wherein the action is commenced, a change of venue can be had only by majority of the defendants uniting in the demand. Mills v Johnson, 187 M 287, 245 NW 431.

Where a resident of Ramsey county sued a railroad company and an individual residing in Todd county, where the railway had no line or place of business, the venue being laid in Ramsey county, and the individual defendant obtained a change of venue to Todd county, and answered, and the plaintiff served his reply, and the railroad claimed no interest in the case, except that it held in its possession certain moneys, the res of the case, which it offered to deposit in court to await the outcome of the case, the trial court rightfully refused to remand. Fauler v Feckler, 191 M 637, 253 NW 884.

In an action brought in Ramsey county, a resident of Ramsey county may join with its codefendant residing in St. Louis county, in asking that the venue be changed to St. Louis county. State ex rel v District Court, 192 M 541, 251 NW 277.

Mandamus by supreme court to district court of St. Louis county relating to venue. In determining who the parties to an action are the complaint must be taken in its entirety. Allegations in the body of the complaint control the caption. As it does not appear in the complaint that the individuals sued are a partnership each will be considered an individual defendant. State ex rel v District Court, 200 M 207, 273 NW 701.

The venue of a transitory action against several defendants is not changed by a demand under section 542.10 unless joined in by a majority of such defendants. Singer v Mandt, 211 M 50, 299 NW 897.

Where an action is brought in a proper county against a sole defendant and another defendant is later made a party and demands a change of venue to the county of his residence, he is not entitled thereto as a matter of right even though the original defendant joins in the demand and consents thereto. Hanson v Western Surety, 213 M 183, 6 NW(2d) 43.

3. Demand, when

Under no circumstances does the amendment of the complaint revive or extend the time for demanding a change of venue. Potter v Holmes, 72 M 153, 75 NW 591.

In an action brought in Ramsey county two defendants resided in Ramsey and one in Washington counties. The defendant in Washington, first served, did not demand a change of venue within the statutory time, but later, and before the time had expired as to one of the defendants in Ramsey county, all three united in a demand. The question whether a change of venue was effected by such demand must be determined upon the basis of the rights of the Washington county defendant to obtain the same at the time the demand was made. State ex rel v District Court, 90 M 427, 97 NW 112.

A demand for change of venue is a nullity if not made in time. Demand for a change of venue under this section must be made within 20 days after the summons is served. If made after that time, it is too late, even though the time for answering has been extended, and has not yet expired. Peterson v Carlson, 127 M 324, 149 NW 536.

Where the last day after the action is commenced falls on Sunday or a legal holiday, the demand may be made on the following day. State ex rel v District Court, 187 M 287, 245 NW 431.

Appeal from an order of the district court making appellant a third party defendant. The question of venue is raised. Venue is a matter which in the first instance is for consideration by the trial court. It is enough that appellant's rights in respect to venue will have due consideration before trial court. *Lambertson v Westerman*, 200 M 204, 273 NW 634.

A defendant in a bastardy proceedings who fails to move for a change of venue before trial cannot at the trial in the district court challenge its jurisdiction by objecting to the introduction of any evidence on the ground that the proceeding is not in the proper county. *State v Rudolph*, 203 M 101, 280 NW 1.

The remedy of the appellant was by mandamus from the supreme to the trial court before the trial. He cannot now appeal. *Weiland v Northwestern*, 203 M 600, 281 NW 364.

4. Affidavit

The affidavit must state the actual place of residence of the defendant at the time of the commencement of the action; but in the instant case the defect was waived by the action of the plaintiff. *Calahan v Calahan*, 88 M 94, 92 NW 1130.

It is not necessary that the affidavit state that the time for answering has not expired. *Grimes v Ericson*, 92 M 164, 99 NW 621.

To effect a change of venue, the defendant must make a record showing full compliance with statutory requirements. It is not enough that the affidavit and demand be properly served, but together with proof of service it must be filed with the clerk within the statutory time. *Knudson v Horner*, 141 M 59, 169 NW 251.

5. No court order required

If a defendant complies or duly tenders compliance with the provisions of this section he has an absolute right to have the venue changed to the county of his alleged residence. The action cannot be retained in the county in which the venue is laid for the purpose of traversing the allegations of the affidavit as to defendant's residence, or for the hearing of a motion to retain the case for the convenience of witnesses. If the plaintiff wishes to challenge the truth of the affidavit, his remedy is to move the court in the county to which the venue is changed to remand the case. Upon a compliance with the provisions of this section the place of trial is ipso facto changed and the defendant has an absolute right to have the papers and files transferred to the district court of the proper county. No order of court is necessary. *Flowers v Bartlett*, 66 M 213, 68 NW 976; *Potter v Holmes*, 72 M 153, 75 NW 591; *State ex rel v District Court*, 77 M 302, 79 NW 960; *Hurning v Hurning*, 80 M 373, 83 NW 342; *Chadbourn v Reed*, 83 M 447, 86 NW 415; *State ex rel v District Court*, 85 M 283, 88 NW 755; *State ex rel v District Court*, 88 M 95, 92 NW 518; *State ex rel v District Court*, 90 M 118, 95 NW 591.

Where a demand is made for a change of venue of an action in replevin, upon the ground that the action is in fact an action in trover which has been put in the form of an action in replevin solely to avoid a change in venue, the clerk is governed by the form of the action and cannot transfer it to another county without an order of court; but the court may look beyond the form of the pleadings and, if it finds the claim true, should grant the change. *Hubbard v Grover*, 130 M 103, 153 NW 266.

Appeal from an order changing the venue of an action, dismissed because the well-established practice to review such an order is by mandamus, or by appeal from an order denying a new trial or from the final judgment. The place of trial should be settled by mandamus. *Winegar v Martin*, 148 M 489, 182 NW 513.

In a garnishment proceeding the place of trial may be changed on the application of the intervenor for the convenience of witnesses. The writ of mandamus has become a writ of review of orders made by the trial court granting or denying a motion for a change of the place of trial. *State ex rel v District Court*, 150 M 498, 185 NW 1019.

In an action for divorce brought in the proper county, neither the place of trial should be changed upon the ground of convenience of witnesses and that the ends of justice may be promoted is largely in the discretion of the trial court. The order may be reviewed on mandamus from the supreme to the district court. *State ex rel v District Court*, 186 M 516, 243 NW 692.

The cause is removed ipso facto to the county demanded, upon filing proof of proper demand by a majority of the defendants. *State ex rel v District Court*, 192 M 541, 257 NW 277.

Where a defendant corporation in a transitory action has within time served and filed a demand for change of venue supported by affidavit of residence the transfer is ipso facto accomplished, and plaintiff's motion to remand can be sustained only upon a traverse of defendant's affidavit of residence, or on a showing that on the record the demand of defendant was a nullity. *State ex rel v District Court*, 199 M 607, 273 NW 88; *Pavek v Ceska*, 202 M 304, 278 NW 367.

Where an application was seasonably made for change of venue from the municipal court of St. Paul to the district court of Norman county, on the ground that defendant resided in Norman county, the case must be transferred to that county as a matter of defendant's right. *State ex rel v Municipal Court*, 204 M 413, 283 NW 560.

6. Waiver

The place of trial is not jurisdictional. *Tullis v Brawley*, 3 M 277 (191); *Merrill v Shaw*, 5 M 148 (113); *Nininger v Board*, 10 M 133 (106); *Gill v Bradley*, 21 M 15; *In re Barnard*, 30 M 512, 16 NW 403; *Kipp v Cook*, 46 M 535, 49 NW 257; *Ellis' Estate*, 55 M 401, 56 NW 1056; *Smith v Barr*, 76 M 513, 79 NW 507.

The place of trial not being jurisdictional a party may waive his right to a trial in a particular court. *Tullis v Brawley*, 3 M 277 (191); *Merrill v Shaw*, 5 M 148 (113); *Chesterson v Munson*, 27 M 498, 8 NW 593; *Wilson v Richards*, 28 M 337, 9 NW 872; *Allen v Coates*, 29 M 46, 11 NW 132; *Keith v Briggs*, 32 M 185, 20 NW 91; *Collins v Bowen*, 45 M 186, 47 NW 719; *Altman v Yost*, 62 M 261, 64 NW 564; *Nystrom v Quinby*, 68 M 4, 70 NW 777.

The defendant waives his right to a change of venue under this section by not making a demand within the statutory time, that is, before the time for answering expires. *State ex rel v District Court*, 90 M 427, 97 NW 112.

When the venue does not go to the jurisdiction of the court over the subject matter of the action, a party may waive his right to a trial in a particular county, and such waiver may be implied. If the subject matter of an action is land, and the principal relief sought relates to land, the action must be brought and tried in the county where the land is situated. *Delasca v Grimes*, 144 M 67, 174 NW 523.

A foreign railroad corporation sued by a non-resident moved to set aside the service of the summons, the court holding the service valid; but the defendant failed to move for a change of venue, and was held to have submitted to the jurisdiction of the court in which the action was brought. *Witort v Chicago & Northwestern*, 178 M 261, 226 NW 934.

542.11 CHANGE OF VENUE BY ORDER OF COURT; GROUNDS.

HISTORY. R.S. 1851 c. 70 s. 43; P.S. 1858 c. 60 s. 43; G.S. 1866 c. 66 s. 42; G.S. 1878 c. 66 s. 51; 1881 c. 132 s. 1; G.S. 1878 Vol. 2 (1888 Supp.) c. 66 s. 51a; G.S. 1894 ss. 5188, 5190; 1895 c. 28; 1903 c. 345; R.L. 1905 s. 4097; G.S. 1913 s. 7723; G.S. 1923 s. 9216; M.S. 1927 s. 9216.

1. Generally; written consent of parties
2. Party made defendant to prevent change
3. Impartial trial cannot be had
4. Convenience of witnesses; and to promote the ends of justice

1. Generally; written consent of parties

When the venue is properly laid, and later a third party is substituted for the original defendant, a demand by such substituted party does not operate ipso facto to change the venue as would a like demand by the original defendant. *Healy v Matthews*, 108 M 125, 121 NW 428.

Laws 1913, Chapter 552, construed to permit suits against domestic public service corporations in any county wherein a cause of action arises, and wherein

any part of defendant's lines are situated. *State ex rel v District Court*, 156 M 394, 194 NW 876.

The venue statute as to foreign corporations must be construed so as to place such corporations on a par with domestic corporations; this is because of the equal protection clause of the federal constitution. *State ex rel v District Court*, 178 M 74, 225 NW 915.

In actions against sureties upon public contractor's bonds commenced in the county wherein the work is located the venue cannot be changed under provisions of section 542.10. *Freeman v Morris*, 179 M 94, 228 NW 442.

Where on motion for a change of venue a fact issue is raised as to the residence of the defendant, determination of that issue by the district court is final. *Coates v Holden*, 181 M 517, 233 NW 9.

Right to appeal from an order granting a change of venue. 5 MLR 566.

District court rule No. 29 relating to venue. *Minnesota Statutes 1941*, page 3985.

2. Party made defendant to prevent change

Laws 1881, Chapter 132, was passed to prevent fraud in joining parties defendant for the purpose of preventing a change of venue to the county where the real defendant resides. The act provides for a hearing. The trial judge shall, if he "deems proper" make an order changing the place of trial. The aggrieved party must follow the proper procedure to obtain relief. No appeal lies from the judge's decision. The remedy is by mandamus. *Keith v Briggs*, 32 M 185, 20 NW 91; *Collins v Bowen*, 45 M 186, 47 NW 719; *Walker v Nettleton*, 50 M 305, 52 NW 864; *State ex rel v District Court*, 150 M 498, 185 NW 1019; *Roesler v Union Hay Co.* 131 M 489, 154 NW 789.

It was claimed that certain persons were made parties defendant for the purpose of preventing a change of venue. The showing made in support of the motion fell short of establishing the contention that the defendants who opposed it were merely nominal parties having no substantial interests at stake. *Foshay v Mercantile Trust*, 166 M 442, 208 NW 203.

3. Impartial trial cannot be had

The motion does not put upon the trial court the duty of ascertaining for itself which such nearest impartial county is, and unless evidence of such is furnished, error of the trial court does not lie. *Simmons v St. Paul & Chicago*, 18 M 184 (168).

An appeal does not lie from an order changing the venue. The remedy is by mandamus. *Winegar v Martin*, 148 M 489, 182 NW 513.

The court's denial of change of venue was within its discretion and there is no abuse of such. *American Building v Herrman*, 162 M 507, 201 NW 949.

4. Convenience of witnesses, and to promote the ends of justice

The granting or refusing of an application for an order to change the place of trial from the county in which the action is brought to another county, on the ground of convenience of witnesses, is largely in the discretion of the court to which the application is made, and will not be reversed by this court unless there appears to have been an abuse of discretion. *Wilson v Richards*, 28 M 337, 9 NW 872; *Olivier v Cunningham*, 51 M 232, 53 NW 462; *Sims v American Steel*, 56 M 68, 57 NW 322.

An affidavit of merits, and as to the materiality of witnesses, based merely on the unsworn statement of an attorney and based on information allegedly received from his client is insufficient. *Olivier v Cunningham*, 51 M 232, 53 NW 872.

A motion for a change of the place of trial for convenience of witnesses is directed to the discretion of the trial court. *Sims v American Steel Co.* 56 M 68, 57 NW 322; *Murray v Ward*, 108 M 527, 121 NW 878; *State ex rel v District Court*, 186 M 514, 243 NW 692; *Fauler v Chicago*, 191 M 637, 253 NW 884; *State v District Court*, 195 M 169, 264 NW 128.

It is not necessary that convenience of witnesses and ends of justice require the change. It is sufficient that they be promoted. *State ex rel v District Court*, 156 M 400, 194 NW 876; *Dall v Chicago & Great Western*, 159 M 323, 198 NW 1006.

The court did not err in denying a motion not seasonably made. *State ex rel v District Court*, 161 M 176, 201 NW 298.

Denial of former motion not res judicata. *State ex rel v District Court*, 161 M 520, 201 NW 302.

On motion for change of venue on the grounds of convenience of witnesses, the district court's determination of the fact issue is final. *State ex rel v District Court*, 183 M 100, 235 NW 629.

Record examined and found to sustain the court's order remanding the case to a county other than the defendant's residence for the convenience of witnesses, and to promote the ends of justice. *State ex rel v District Court*, 185 M 501, 241 NW 681.

Section 484.50 (4) relating to changes of place of trial between cities in St. Louis county is construed similarly to section 542.11. *Desjardins v Emeralite*, 189 M 356, 249 NW 576.

Change of place of trial is very largely in the discretion of the trial court and its action will not be reversed except for clear abuse of discretion. In mandamus relating to venue only matters before the trial court will be considered by the supreme court. *Zemple v Austin Mutual*, 194 M 595, 261 NW 701.

The trial court erred in refusing to remand the case to Jackson county for convenience of many witnesses residing in that county to be called by relator and also by an intervenor in the case. *State ex rel v District Court*, 200 M 632, 274 NW 623; *Badger v Kishkunas*, 203 M 602, 281 NW 878; *State ex rel v District Court*, 205 M 407, 286 NW 355.

Plaintiff's motion was properly denied where he delayed from January 20, when the answer was served, until February 25 in preparing his motion and until March 5 to serve. *State ex rel v District Court*, 202 M 519, 279 NW 269.

Where relator's motion for change of venue from plaintiff's home county to the district where it had its principal place of business was not made until 44 days after service of summons, and there is showing that because of plaintiff's age, travel "might result in serious injury to her health", it cannot be said that there was abuse of discretion in denying the motion. *O'Brien v Brogan*, 211 M 193, 300 NW 794.

There being nothing in the language chosen by the legislature in enacting Laws 1939, Chapter 148, to indicate that it was intended to impede or limit a plaintiff's right to designate the place of trial against a non-resident defendant the defendant may in conformity with section 542.09, lay the venue "in any county" he chooses. *Claseman v Feeney*, 211 M 267, 300 NW 818.

542.12 ACTION ON CONTRACTOR'S BOND.

HISTORY. 1923 c. 128 s. 1; G.S. 1923 s. 9217; M.S. 1927 s. 9217.

Previous to the enactment of Laws 1923, Chapter 128, Section 1, an action involving a drainage bond was a local action under section 542.03. The moving reason for the enactment of this section was because of the decision in *State ex rel v Tryholm*, 139 M 389, 166 NW 533. *County v Bisballe*, 166 M 499, 207 NW 648.

Actions against sureties upon public contractor's bonds are a statutory exception to the general rule under the provisions of section 542.10. *Freeman v Morris*, 179 M 94, 228 NW 442.

542.13 INTEREST OR BIAS OF JUDGE.

HISTORY. G.S. 1866 c. 64 s. 4; 1874 c. 72 s. 1; G.S. 1878 c. 64 s. 4; G.S. 1894 s. 4838; 1901 c. 16; R.L. 1905 s. 4098; G.S. 1913 s. 7724; G.S. 1923 s. 9218; M.S. 1927 s. 9218.

The reading to the court, on a motion to change the venue, on the ground of prejudice in the judge, of an affidavit couched in the language of the statute is not per se contempt of court. *Ex parte Curtis*, 3 M 274 (188).

The guardian ad litem is not a party to the action and the relationship of the chief justice to said guardian does not disqualify him from sitting on the case. *Bryant v Livermore*, 20 M 313 (271).

A justice of the peace cannot issue a search warrant for his own property. *Jordan v Henry*, 22 M 245.

The chairman of the county board may legally act in laying out a county road, although he with others is financially benefited. *Webster v County*, 26 M 220, 2 NW 697.

Being a taxpayer in one of the counties through which a road is to run does not disqualify a judge from acting on the petition. *State ex rel v Macdonald*, 26 M 445, 4 NW 1107.

The interest which disqualifies under this section is a pecuniary interest, not an interest of feeling or sympathy, or bias that would disqualify a juror. *Sjoberg v Nordin*, 26 M 501, 5 NW 677; *State v Gardner*, 88 M 134, 92 NW 529; *State v Ledbetter*, 111 M 110, 126 NW 477.

As a general rule a party is not entitled to have a report set aside from the mere fact that he did not know of the disqualification of the commissioner until after the hearing. *State ex rel v District Court*, 50 M 14, 52 NW 222.

If the judges of the district court in the district where an injunction of the court has been disobeyed are disqualified from acting, proceedings to punish for such contempt may be had in an adjoining judicial district court. *State ex rel v District Court*, 52 M 283, 53 NW 1157.

Where a court having jurisdiction of the subject matter and of the defendant erroneously denies an application for change of judge, the remedy is by appeal. The defendant is not entitled to be discharged on a writ of habeas corpus. *State ex rel v McNaughton*, 159 M 403, 199 NW 103.

Trial judge was unprejudiced. *Friedman v Goffstein*, 182 M 397, 234 NW 596.

The affidavit of prejudice against the trial judge was not filed in time, nor was the affidavit of interest and bias held sufficient. *Duluth v LaFleur*, 199 M 470, 272 NW 389.

Insofar as sections 484.05 and 542.13 assume to empower the governor to designate a judge of another district to discharge the duties of a district judge it is in contravention of Minnesota Constitution, Article 3, Section 1, and beyond the authority of Minnesota Constitution, Article 6, Section 5. *State ex rel v Day*, 200 M 77, 273 NW 684.

Jury triers. 9 MLR 360.

542.14 ACTIONS IN MUNICIPAL COURT.

HISTORY. 1889 c. 161 s. 1; G.S. 1894 s. 5191; R.L. 1905 s. 4099; G.S. 1913 s. 7725; G.S. 1923 s. 9219; M.S. 1927 s. 9219.

The holding in this case relating to change of venue from the municipal court has been overruled by the enactment of Laws 1889, Chapter 161, Section 1 (section 542.14). *Janney v Sleeper*, 30 M 473, 16 NW 365.

When application was seasonably made under sections 542.10 and 542.14 for change of venue from the municipal court of St. Paul to the district court of Norman county, on the ground that defendant's residence was in that county, the case must be transferred to that county as a matter of defendant's right, and any ground for change of venue on the grounds stated in section 542.11 must be presented to the district court of Norman county. *State ex rel v Municipal Court*, 204 M 413, 283 NW 560.

542.15 ON APPEAL FROM JUSTICE COURT.

HISTORY. 1889 c. 161 s. 2; G.S. 1894 s. 5192; 1899 c. 341; R.L. 1905 s. 4100; G.S. 1913 s. 7726; G.S. 1923 s. 9220; M.S. 1927 s. 9220.

An appeal on questions of law alone, from a justice's judgment to the district court, may, with the consent of the parties, be heard and determined by the court in any county within its judicial district; and appearing and arguing such appeal before the court in another county than the one wherein the appeal is pending,

without objecting to the jurisdiction, is a waiver. *Chesterson v Munson*, 27 M 498, 8 NW 593.

Prior to the enactment of Laws 1889, Chapter 161, Section 1, the place of trial could not be transferred to the district court of another county where defendant resided. *Janney v Sleeper*, 30 M 473, 16 M 365.

The same rule applies, as respects the place of residence of railway corporations, on applications to change the place of trial in cases appealed from justice court to the district court as in actions brought in the last-named court. *Schoch v Winona & St. Peter*, 55 M 479, 57 NW 208.

The setting aside of a judgment entered upon motion of appellee, for failure to place a justice appeal on the calendar at the ensuing term of the district court, is wholly discretionary; and the order of the district court in such case will not be disturbed unless in a clear case of abuse of discretion. *Locke v Osborne*, 80 M 22, 82 NW 1084.

An order transferring a cause from a municipal court to the district court of defendant's residence, is not appealable. *Antonsky v City Dye House*, 109 M 96, 123 NW 56.

Right to appeal from an order granting a change of venue. 5 MLR 566.

542.16 AFFIDAVIT OF PREJUDICE.

HISTORY. 1895 c. 306; R.L. 1905 s. 4101; G.S. 1913 s. 7727; 1919 c. 92 s. 1; G.S. 1923 s. 9221; 1927 c. 283; M.S. 1927 s. 9221; 1931 c. 200; 1937 c. 237 s. 1.

Under Laws 1895, Chapter 306, Section 542.16, the right of a defendant in a criminal case to incapacitate, by an affidavit of prejudice, a judge to try his case, is limited to the judge against whom the affidavit is first filed. He is entitled as a matter of legal right, to but one change of judges. *State v Gardner*, 88 M 130, 92 NW 529.

The last proviso of Laws 1895, Chapter 306, (section 542.16) relates to the whole statute, and excludes from its operation all judicial districts having less than three judges. *State ex rel v Webber*, 96 M 348, 105 NW 68; *In re Ditch No. 10*, 156 M 392, 194 NW 875.

Upon filing of the affidavit of prejudice, the presiding judge is thereby incapacitated for trial of the accused. *State v Hoist*, 111 M 325, 126 NW 1090.

This section does not permit the defendant in a divorce suit to have the application of the plaintiff for temporary alimony and custody of the minor children pending suit transferred to another judge by filing an affidavit of prejudice against the judge before whom the application is made. *Ratcliffe v Ratcliffe*, 135 M 307, 160 NW 778.

The affidavit must state facts which will justify a reasonable mind in believing that the judge will not be impartial. *State ex rel v McNaughton*, 159 M 403, 199 NW 103.

This statutory provision applies in civil actions where the state is a party. *State v Horr*, 163 M 141, 203 NW 979.

The fact that the son of the judge appeared for the respondent furnished no legal ground for submitting the issue to a jury, nor for the requested change of venue or the calling for another judge to try the case, first made when it was reached for trial. *Estate of Wunsch*, 177 M 169, 225 NW 109.

If seasonably filed the language of the statute followed in the affidavit is sufficient; but is ineffectual if not filed within the time expressed in the statute. *State v Irish*, 183 M 52, 235 NW 625; *State v Olson*, 195 M 493, 263 NW 437; *State v Emerson*, 197 M 391, 267 NW 218.

Unless out of office or disabled, a motion for a new trial must be heard before the judge who tried the case. *State v Qvale*, 187 M 546, 246 NW 30; *State v District Court*, 195 M 169, 263 NW 908; *State ex rel v District Court*, 196 M 57, 263 NW 908.

It is doubtful if this section applies to municipal courts, but in the instant case the affidavit of prejudice was not filed in time. *Duluth v La Fleaur*, 199 M 470, 272 NW 389.

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542.17 VENUE OF ACTIONS

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Insofar as sections 484.05 or 542.13 assumes to empower the governor to designate a judge of another district to discharge the duties of a district judge it is unconstitutional. *State ex rel v Day*, 200 M 77, 273 NW 684.

Where one party to an action has disqualified a judge of the district court by an affidavit of prejudice, this section authorizes the other party to file an affidavit of prejudice against the substituted judge. *State ex rel v Schultz*, 200 M 363, 274 NW 401.

Where a defendant is accused of contempt of court for publication of an inaccurate report of proceedings in municipal court of Minneapolis, a writ of prohibition will not be granted upon the contention that the criminal complaint does not charge a public offense. Since the municipal court had jurisdiction of defendant's person and of the offense, it also has jurisdiction of the determination of the cause. *State v Laughlin*, 204 M 291, 283 NW 395.

An affidavit of prejudice, which by its terms is limited to matters to be heard on motion before trial, does not disqualify a district judge from presiding at the trial of the action. *Locksted v Locksted*, 206 M 525, 289 NW 55.

This section is not applicable to an action of proceeding pending in the municipal court of Minneapolis. *State ex rel v Anderson*, 207 M 78, 289 NW 883.

Where a motion is brought on for hearing by an order to show cause before a district court in chambers in a district having but one judge, an affidavit of prejudice filed at the time of the hearing is too late to meet the requirements of section 542.16 as amended by Laws 1937, Chapter 237. *State ex rel v Moriarty*, 208 M 469, 294 NW 473.

Jury triers. 9 MLR 360.

Right to have motion for new trial heard by the judge who tried the case. 17 MLR 673.

Delegation of a judicial function to an executive. 22 MLR 729.

542.17 EXPENSES PAID IN FIRST INSTANCE BY COUNTY WHERE ACTION TRIED; REIMBURSEMENT BY COUNTY WHERE COMMENCED.

HISTORY. 1917 c. 421 ss. 1, 2; G.S. 1923 ss. 9222, 9223; M.S. 1927 s. 9222, 9223.