CHAPTER 543

COMMENCEMENT OF CIVIL ACTIONS

543.01 ACTIONS, HOW COMMENCED.

HISTORY. R.S. 1851 c. 70 s. 44; 1853 Mar. 5; P.S. 1858 c. 60 s. 48; P.S. 1858 c. 57 s. 19; G.S. 1866 c. 66 s. 43; G.S. 1878 c. 66 s. 52; G.S. 1894 s. 5193; R.L. 1905 s. 4102; G.S. 1913 s. 7728; G.S. 1923 s. 9224; M.S. 1927 s. 9224.

(Laws 1853, March 5,) Public Statutes 1858, Chapter 57, Section 19, was intended to make both the form of process and manner of service in equity actions conform to that which obtained in other civil actions. Crombie v Little, 47 M 581, 50 NW 823.

Where a summons is regular on its face, and is duly served, the court acquires jurisdiction of the cause. The fact that the complaint is not filed, as a copy thereof is not served with the summons, does not render the judgment void. Kimball v Brown, 73 M 167, 75 NW 1043.

Service of a summons on a non-resident defendant in accordance with the provisions of Laws 1901, Chapter 63, Section 1, is simply a substitute for service by publication and must be predicated upon a strict compliance with provisions of General Statutes 1894, Section 5204 (section 543.11). Spencer v Koell, 91 M 226, 97 NW 974.

The court takes judicial notice of the proceedings by which it acquires jurisdiction. An action is deemed as commenced when the summons is delivered to the proper officer for service, if such service be completed within the prescribed time. Bond v Pennsylvania, 124 M 197, 144 NW 942.

Complete review of all Minnesota laws relating to time when an action is deemed begun. McCormick v Robinson, 139 M 483, 167 NW 271.

Although the statute provides that "the summons shall state that the complaint has been filed with the clerk and shall be of no effect unless such complaint be fact so filed," where the complaint in this mechanic's lien suit is filed before the summons is served, the summons, if in statutory form, is valid. Carney v Bastian, 155 M 317, 193 NW 697.

Where a summons names the proper court wherein the action is brought and is in all respects in proper form and properly served, jurisdiction over the person of the defendant is acquired, and a default judgment thereafter entered in the action is not void for want of jurisdiction by reason of the fact that in the caption of the complaint attached to and served with the summons, the wrong court was named. Sievert v Selvig, 175 M 597, 222 NW 281.

A summons is not a process within the meaning of the constitution. It is a mere notice. Jurisdiction is acquired by service of the summons, because the legislature and the powers granted it under Minnesota Constitution, Article 6, Section 14, has so provided. The legislature, under its powers, could in its discretion, provide other means by which the court could acquire jurisdiction. Schultz v Oldenburg, 202 M 237, 277 NW 918.

Process of state courts is effective only within the state. Garber v Bancamerica, 205 M 279, 285 NW 723.

The defendant named in the proceeding had a sufficient adverse interest so that it should have been served with a summons under section 543.01, instead of a notice. A special appearance is not waived by answering and defending on the merits after the special appearance has been overruled. Uram v St. Mary's, 207 M 569, 292 NW 200.

Where an old age recipient died, leaving no spouse, minor child, or child in possession, the director shall direct foreclosure within the statutory period; and the court, without motion, may offer such stay, and such method of service as will

prevent the state's lien from becoming outlawed and also protect the interests of a son in the armed forces. OAG Oct. 16, 1944 (521p-4).

543.02 REQUISITES OF SUMMONS; NOTICE.

HISTORY. R.S. 1851 c. 70 ss. 45, 46; P.S. 1858 c. 60 ss. 49, 50; G.S. 1866 c. 66 ss. 44, 45; 1867 c. 62 s. 1; G.S. 1878 c. 66 ss. 53, 54; G.S. 1894 ss. 5194, 5195; 1901 c. 27; R.L. 1905 s. 4103; G.S. 1913 s. 7729; G.S. 1923 s. 9225; M.S. 1927 s. 9225.

1. Not a process
2. Directed to defendant
3. Contents of notice
4. Signature
5. Irregularities

1. Not a process

A summons, in an attachment proceeding, which after the address of the defendant proceeds, "You are hereby summoned and required, in the name of the State of Minnesota, to answer", is a substantial compliance with Minnesota Constitution, Article 6, Section 14. Cleland v Tavernier, 11 M 194 (126).

A summons is not a process required under the constitution to run in the name of the state. It is a mere notice. Surplusage or inaccuracy which cannot mislead or prejudice the adverse party, does not make the summons void. Hanna v Russell, 12 M 80 (43); Lowry v Harris, 12 M 255 (166); Thompson v Bickford, 19 M 17 (1); Wolf v McKinley, 65 M 156, 68 NW 2; Griffin v Faribault, 203 M 97, 280 NW 7.

The summons by which Sp. Laws 1883, Chapter 48, Section 6, requires civil actions for the recovery of money only to be commenced in the municipal court of Minneapolis, must be served in Hennepin county. Shatto v Latham, 33 M 36, 21 NW 838.

"By whom" a service may be made, and the "mode and manner" of service are distinct subjects, and the latter does not include the former. "Party to the action" does not apply to a mortgagee selling under power when the proceedings are entirely in pais. Kirkpatrick v Lewis, 46 M 164, 47 NW 970, 48 NW 783.

"Legal process issued against him for collection of money" includes the statutory process of supplementary proceedings. "Process" does not necessarily mean "writ" or "summons" but is often used in the sense of "proceedings." The lien acquired through supplementary proceedings is dissolved, the defendant making a general assignment. Wolf v McKinley, 65 M 156, 68 NW 2.

The plaintiff's attorney may serve the summons. Bank v Estenson, 68 M 28, 70 NW 775.

Intending to sue the father, the attorney for the plaintiff, by error, used the initials of the son in the summons, but service was held on the father. Before trial, and on proper notice, the court had power to amend the summons. Morrison v Duclos, 131 M 173, 154 NW 952.

A summons is not a process, but merely a notice to the defendant that an action against him has been commenced. It is sufficient if it clearly informs him that it is intended for him and requires him to answer the complaint. The statute prescribing its requisites are to be liberally construed, there being no general rule as to what defects are jurisdictional. Flanery v Kusha, 143 M 308, 173 NW 652.

2. Directed to defendant

A summons is not void if it clearly informs the defendant that it is intended for him and requires him to answer the complaint of the plaintiff, although it be not formally directed to him. Plano v Kaufert, 86 M 13, 89 NW 1124.

Where the name of a defendant is omitted from the title of the action in the summons, but appears in the title of the action in the complaint attached to and personally served upon such defendant with the summons, said complaint stating a cause of action against him by name, the court properly amended the summons so as to conform to the complaint on plaintiff's motion made and heard simultan-

eously with defendant's special appearance to vacate the service of summons on the ground that he was not named as a defendant therein. Griffin v Faribault, 203 M 97, 280 NW 7.

3. Contents of notice

A summons requiring the defendant to serve a copy of his answer upon "the subscriber at his office in the city of Rochester, Minnesota" is sufficient; as is that on failure to answer "application will be made to the court for the relief demanded in the complaint." Hotchkiss v Cutting, 14 M 537 (408).

Where the summons contains the proper notice prescribed in the case of "an action arising on contract for the payment of money only," but the complaint on file indicates an "action for the recovery of money only" other than one arising on contract, an order denying a motion made to set aside the complaint on the ground of non-conformity is not an appealable order. Board v Young, 21 M 335.

A summons giving notice that the plaintiff will apply to the court to have the amount he is entitled to recover "ascertained by the court or under its decision" sufficiently complies with the statutory provision "ascertained by the court or under its direction." White v Iltis, 24 M 43.

Where the complaint states a cause of action arising on a contract for the payment of money only, and demands judgment for a certain sum, but the summons followed the form of notice prescribed by General Statutes 1878, Chapter 66, Section 54, Subdivision 2, and the summons and complaint are served together on the defendant, a judgment by default is valid. Heinrich v Englund, 34 M 395, 26 NW 122.

Under facts disclosed by the record, to deny defendant the right to answer will result in a fraud on her and the administration of justice. Cahaley v Cahaley, 216 M 175, 12 NW(2d) 182.

4. Signature

A written signature purporting to be that of the plaintiff, but made by his agent in his presence and by his express direction, is sufficient. Hotchkiss v Cutting, 14 M 537 (408).

It may be subscribed by the printed signature of the plaintiff or his attorney; overruling Ames v Schurmeier, 9 M 206 (221). Herrick v Morrill, 37 M 250, 33 NW 849; West v St. Paul & Northern, 40 M 192, 41 NW 1031.

5. Irregularities

No general rule can be laid down as to what defects in a summons are jurisdictional. If the summons is regular on its face and is duly served, the court acquires jurisdiction. Mere irregularities cannot be taken advantage of collaterally, but are deemed waived, unless the defendant moves to set aside the service. Hanna v Russell, 12 M 80 (43); Hotchkiss v Cutting, 14 M 537 (408); White v Iltis, 24 M 43; Millette v Mehmke, 26 M 306, 3 NW 700; Seurer v Horst, 31 M 479, 18 NW 283; Heinrich v Englund, 34 M 395, 26 NW 122; Lane v Innes, 43 M 137, 45 NW 4; Crombie v Little, 47 M 581, 50 NW 823; Lee v Clark, 53 M 315, 55 NW 127; Houlton v Gallow, 55 M 443, 57 NW 141; Sandwich v Earl, 56 M 390, 57 NW 938; Kimball v Brown, 73 M 167, 75 NW 1043; Plano v Kaufert, 86 M 13, 89 NW 1124.

A summons in a civil action may be amended upon proper application to make the time, as stated therein, for answering the complaint conform to the statute. Lockway v Modern Woodmen, 116 M 115, 133 NW 398.

A judgment entered in district court upon a summons issuing out of municipal court is a nullity. Evangelical Lutheran v Schultz, 136 M 459, 161 NW 1054.

To acquire jurisdiction over a defendant by the service of a summons, the summons must, in substance, comply with the requirements of the statute. Francis v Knerr, 149 M 122, 182 NW 988.

The attempted service of a summons in a mechanic's lien action is fatally defective when the copy delivered to the defendant places the venue of the action in the wrong county, recites that the complaint is on file with the clerk of the district court of that county, requires the answer to be filed there, and also mis-

describes the real estate as being situated there. Thompson Yards v Standard Home, 161 M 143, 201 NW 300.

A summons properly served which requires the defendant "to answer the complaint" instead of strictly complying with the statute, providing that it shall require defendant "to serve his answer to the complaint on the subscriber, by copy" gives jurisdiction. Schmidt v Schmidt, 170 M 463, 212 NW 812.

Under the provisions of Laws 1931, Chapter 160, there are three places in St. Louis county in addition to the county-seat at Duluth, where filing of papers in actions or proceedings may be had before the district court. Strict compliance is required that the above statute be followed. Contestant in the instant case filed notice of contest in office of deputy clerk at Hibbing within the ten-day limitation, but failed to comply with last mentioned statute in that he failed to state in his notice of contest, "to be tried at the village of Hibbing." The court did not acquire jurisdiction, and the contest was rightly dismissed. Strom v Lindstrom, 201 M 226, 275 NW 833.

Statute requiring service of summons upon natural person who is incompetent and also upon his guardian is directory, and not mandatory. The court obtained jurisdiction by personal service on the incompetent, although guardian not served. As to the judgment, it is voidable, not void. Schultz v Oldenburg, 202 M 237, 277 NW 918.

The omission of the names of certain defendants from the summons was a mere irregularity which was subsequently cured, and an amendment was unnecessary to validate the judgment. Peterson v Davis, 216 M 60, 11 NW(2d) 800.

While the fundamental requisite of due process of law is the opportunity to be heard, a defendant served with a process in which his name is misspelled cannot safely ignore it. The general rule relating to service by publication tends to strictness, but even in names, due process of law does not require ideal accuracy. The test is as to whether the summons as published and mailed complies with the law so as to give sufficient constructive notice to the party misnamed. Service upon Geilfuss was good, although in the summons it was spelled Guilfuss. Grannis v Ordean, 234 US 397, 34 SC 784.

The provision of the federal judicial code, requiring petition for removal to be filed at or before the time "defendant is required by the laws of the state or rule of the state court to answer or plead," is imperative, and where a state statute fixes the time to answer the petition must be filed at or before that time, and cannot be filed after that time, though the time for answering may have been extended by stipulation or order of court. American Fountain v California Crusted Fruit, 21 F(2d) 93.

So-called "summons" which was directed not to defendant, as required by court rule, but to marshal, requiring him to summon defendant to appear and answer; and which failed to notify defendant as to what consequence would follow her failure to answer, as required by statute, is properly quashed on motion as defective in form and substance. United States v Van Dusen, 78 F(2d) 121.

Whether defects of summons are matters of form or of substance under the federal statute, prohibiting abatement of summons for defect in form must be determined by state law under conformity act, unless there be a valid governing rule of court. The form of "original notice" prescribed by state statute is applicable where service is made by the sheriff, and hence where service is made by a deputy marshal in an action in federal court. United States v French, 95 F(2d) 922.

543.03 SUMMONS, BY WHOM SERVED; FEES; MILEAGE.

HISTORY. R.S. 1851 c. 70 s. 48; P.S. 1858 c. 60 s. 52; G.S. 1866 c. 66 s. 47; 1874 c. 80 s. 1; G.S. 1878 c. 66 ss. 56, 57; G.S. 1894 ss. 5197, 5198; R.L. 1905 s. 4104; G.S. 1913 s. 7730; G.S. 1923 s. 9226; M.S. 1927 s. 9226.

The summons may be served by plaintiff's attorney. Bank v Estenson, 68 M 28, 70 NW 775.

Service of summons or subpoena by a private person are not taxable disbursements. Sale v Duluth & Iron Range, 124 M 361, 145 NW 114.

The contract called for payment at the bank in Northfield, the notice of default demanded payment at the office of the attorney for the bank in Minneapolis.

Defendants were not misled. They have an option to pay in Northfield or Minneapolis, and on payment remove the default. Bank v Coon, 143 M 265, 173 NW 431.

A municipal court officer is not an officer authorized by law to serve a district court summons, and cannot make proof of service by certificate. Leland v Heiberg, 156 M 30, 194 NW 93.

543.04 SERVICE OF COMPLAINT; APPEARANCE.

HISTORY. R.S. 1851 c. 70 s. 47; P.S. 1858 c. 60 s. 51; G.S. 1866 c. 66 s. 46; 1867 c. 62 s. 2; G.S. 1878 c. 66 s. 55; G.S. 1894 s. 5196; R.L. 1905 s. 4105; G.S. 1913 s. 7731; G.S. 1923 s. 9227; M.S. 1927 s. 9227.

Where a summons is regular on its face and is duly served, the court acquires jurisdiction. The fact that the complaint is not filed, or a copy thereof is not served with the summons, does not render the judgment void. It is a mere irregularity and is waived, unless the defendant moves to set aside the service, overruling Tuller v Caldwell, 3 M 117 (67); Millette v Mehmke, 26 M 307, 3 NW 700; Houlton v Gallow, 55 M 443, 57 NW 141; Kimball v Brown, 73 M 167, 75 NW 1043.

An action is commenced, except for the purpose of preventing the statute of limitations from running, by the service of the summons, and not as in some states by filing a complaint and issuing a summons. Crombie v Little, 47 M 581, 50 NW 823.

"We do not suppose there was ever an affidavit made in this state for a replevin, garnishment, attachment, or publication of a summons that was not entitled as if in a pending action, when strictly speaking, the action had not been commenced when the affidavit was sworn to." In replevin action, where neither party is in possession of the chattel at time of trial, verdict in the alternative is not violation of statutory requirements. Crombie v Little, 47 M 581, 50 NW 823; Breitman v Buffalo, 196 M 369, 265 NW 36.

543.05 MANNER OF SERVICE OF SUMMONS; ON NATURAL PERSONS.

HISTORY. R.S. 1851 c. 70 s. 49; P.S. 1858 c. 60 s. 53; G.S. 1866 c. 66 s. 48; 1878 c. 14 s. 1; G.S. 1878 c. 66 s. 59; G.S. 1894 s. 5199; 1897 c. 222; R.L. 1905 s. 4106; G.S. 1913 s. 7732; G.S. 1923 s. 9228; M.S. 1927 s. 9228.

1. Generally
2. Personal service
3. House of usual abode
4. Persons with whom summons may be left
5. On minors

1. Generally

The exemption from service of civil process extended by law to a witness or a party to an action pending in this state who comes voluntarily into the state to give testimony on the trial of the action, does not apply to an attorney for a non-resident party who comes into the state for the purpose of taking a deposition of a witness residing therein for use in the trial of an action pending in the state of the attorney's residence. Nelson v McNulty, 135 M 317, 160 NW 795.

Receivers are natural persons, and the method of service upon them is that prescribed by General Statutes 1913, Section 7732 (section 543.05). Kading v Waters, 137 M 328, 163 NW 521.

It is the fact of service that gives jurisdiction. If service is made and jurisdiction acquired, a return showing defective service does not divest it. Murray v Murray, 159 M 113, 198 NW 307.

The attempted service of the summons in a mechanic's lien action is fatally defective when the copy delivered to the defendant places the venue of the action in the wrong county, recites that the complaint is on file with the clerk of the district court of that county, requires the answer to be filed there, and also misdescribes the real estate as being situated there. Thompson v Standard Home, 161 M 143, 201 NW 300.

Where a summons is served upon a non-resident who comes into the state to testify, the service is not void, but voidable only; and the privilege to claim exemption from such service is waived, unless promptly asserted. Nelson v Brigham, 173 M 552, 218 NW 101.

A summons and complaint, which were enclosed and sealed in an envelope addressed to the defendant, were served upon the defendant by leaving with a person at his home. Proof of service was made in the usual form. The papers having reached the defendant, who was not prejudiced, the service is held valid. MacLean v Lasley, 181 M 379, 232 NW 632.

Jurisdiction over persons by substituted or constructive service. 20 MLR 649.

2. Personal service

Service must be direct. It must be on the defendant personally and not through the mediation of a third person. Heffner v Gunz, 29 M 108, 12 NW 342; Savings Bank v Authier, 52 M 98, 53 NW 812.

The use of a wrong initial in the name of a defendant is not fatal to the jurisdiction of the court, where the summons is in fact served upon the right party. The rule is different where the service is by publication. Willard v Marr, 121 M 23, 139 NW 1066.

Notice of an application to extend the period of redemption under the moratorium act may be served upon the attorney who conducted the mortgage foreclosure. Such notice is not original process and may be served as other notices are served in a pending action or proceeding. Rivkin v Niles, 195 M 635, 263 NW 920.

3. House of usual abode

Defendant having a permanent residence in Minneapolis, but no abode except a boarding house, was temporarily absent in Europe when papers were served upon him at the boarding house. Articles of his clothing were left in the boarding house, and he intended on his return from Europe to continue to make his home there. The trial court was warranted in refusing to reopen a default judgment founded on the service. Lee v Macfee, 45 M 33, 47 NW 309.

In the case of a married man, the house of his usual abode is prima facie the house where his wife and family reside. The term "the house of his usual abode" means a person's customary dwelling place or residence. It is not the equivalent of domicile. Missouri v Norris, 61 M 256, 63 NW 634; Vaule v Miller, 64 M 485, 67 NW 540.

In case where husband and wife were living apart, service at the home of the wife upon a daughter there residing was not good service, the husband residing elsewhere. Berryhill v Sepp, 106 M 458, 119 NW 404.

Laws allow substituted service merely as a means of obtaining jurisdiction of the defendant; such service does not affect the places where by law the cases may be tried. Thomas v Hector, 216 M 207, 12 NW(2d) 769.

If proper legal service was made, it is immaterial that the wife on whom substituted service was made did not understand it, or that the matter of the service never came to the attention of the husband, defendant. Peterson v Davis, 216 M 60, 11 NW(2d) 800.

4. Persons with whom summons may be left

The person with whom the service is left must be an actual resident in the house. If he is not, the judgment is void. Hefner v Gunz, 29 M 108, 12 NW 342.

It is the validity of the service made which controls, and not what may be thought or supposed concerning the same by the person who made it. It is not necessary to inform the person with whom it is left for whom it is intended. Groff v National Bank, 50 M 348, 52 NW 934.

A person 14 years old is prima facie "a person of suitable age and discretion." It is not necessary that he understand the nature of judicial proceedings. Temple v Norris, 53 M 286, 55 NW 133.

Service of notice of mortgage foreclosure upon a person of suitable age and discretion, then resident in a suite of rooms of an apartment house, by handing

to and leaving with such person a copy of such notice in the absence of the person to be served, is a complete service, although such person is not a memeber of the family or household on whom service is made. Brigham v Connecticut, 79 M 350, 83 NW 668.

Upon foreign corporations. Pomeroy v National City, 209 M 155, 296 NW 513; Donaldson v Chase, 216 M 269, 13 NW(2d) 1; Pomeroy v National City, 216 M 278, 13 NW(2d) 6.

Where licensed Minnesota brokers accepted securities from investment manager and credited manager's account with proceeds of securities which manager had secured from customers pursuant to contracts which constituted unregistered securities, the brokers in the instant case were purchasers in good faith and customers may not recover from the brokers on theory of conversion. Thomes v Atkins, 52 F. Supp. 405.

In an old age pension case, the action having been instituted within the statutory limit, it may be stayed pending service upon or appearance by interested person in the armed forces. OAG Oct. 10, 1944 (521p-4).

5. On minors

A judgment rendered upon default against an infant over 14 years of age, after service of summons upon him, but without the appointment of a guardian ad litem, is erroneous and voidable but not void. Unless, on coming of age, he takes early steps to avoid it, he will be held guilty of laches, and the application may be too late. Eisenmenger v Murphy, 42 M 84, 43 NW 784.

An infant defendant is incompetent to waive or admit service of the summons upon him, or to confer jurisdiction upon the court by a voluntary appearance. Phelps v Heaton, 79 M 476, 82 NW 990.

543.06 MANNER OF SERVICE ON PUBLIC CORPORATIONS.

HISTORY. 1866 Feb. 28; 1870 c. 31 subc. 2 s. 3; G.S. 1878 c. 10 s. 128; 1885 c. 153; G.S. 1878 Vol. 2 (1888 Supp.) c. 10 s. 313; G.S. 1894 ss. 1049, 1498; R.L. 1905 s. 4107; G.S. 1913 s. 7733; G.S. 1923 s. 9229; M.S. 1927 s. 9229.

As to service in an action against a village. Whittier v Village of Farmington, 115 M 182, 131 NW 1079; Getty v Village of Alpha, 115 M 500, 133 NW 159.

The service of a summons on a county as provided in section 543.06 is sufficient to confer jurisdiction, although such service was made during or within ten days before a session of the county board. Mahoney v Kelley, 156 M 327, 194 NW 775.

543.07 MANNER OF SERVICE ON THE STATE.

HISTORY. R.S. 1851 c. 75 s. 53; P.S. 1858 c. 74 s. 53; G.S. 1866 c. 74 s. 45; G.S. 1878 c. 74 s. 45; G.S. 1894 s. 5814; R.L. 1905 s. 4108; G.S. 1913 s. 7734; G.S. 1923 s. 9230; M.S. 1927 s. 9230.

543.08 MANNER OF SERVICE ON PRIVATE CORPORATIONS.

HISTORY. R.S. 1851 c. 70 s. 49; P.S. 1858 c. 60 s. 53; 1866 Feb. 28 s. 1; G.S. 1866 c. 66 s. 48; G.S. 1866 p. 494 s. 1; 1874 c. 80 s. 1; 1875 c. 43 s. 1; 1878 c. 14 s. 1; G.S. 1878 c. 66 ss. 59, 60, 63; 1885 c. 62; 1891 c. 79 s. 1; G.S. 1894 ss. 5199, 5200, 5203; 1899 c. 69; R.L. 1905 s. 4109; 1913 c. 218 s. 1; G.S. 1913 s. 7735; G.S. 1923 s. 9231; M.S. 1927 s. 9231.

1. Domestic corporation; officer within state
2. Domestic corporation; no officer available
3. Foreign corporation, generally
4. Foreign corporation; resident appointed agent

1. Domestic corporation; officer within state

A managing agent of a private domestic corporation upon whom a summons may be served is an agent having charge and control of some part of the business

of the corporation and vested with powers requiring the exercise of judgment and discretion. Hatinen v Payne, 150 M 344, 185 NW 386.

Service of a garnishee summons on a person described only as an auditor and agent of the garnishee, where the garnishee is named as Harris, Upham & Company, without any showing whether said garnishee is a corporation or a co-partnership, as if a corporation, whether foreign or domestic, is defective. Maras v Butchart, 192 M 18, 255 NW 83.

Jurisdiction over persons by substituted or constructive service. 20 MLR 651.

2. Domestic corporation; no officer available

General Statutes 1894, Section 5203 (section 543.08), providing for the service of process on domestic corporations which have no officers in the state upon whom legal service can be made, is held to be "due process of law" and valid. Hinckley v Kettle River Co. 70 M 105, 72 NW 835; 80 M 32, 82 NW 1088.

Upon the showing made, the court properly set aside the pretended service of the summons on a domestic corporation on the ground that the person upon whom service was attempted to be made was not a person designated by law as one on whom it could be made. Schlesinger v Modern Samaritans, 121 M 145, 140 NW 1027.

A domestic corporation may appoint a resident agent or attorney with power to accept service of process in this state, and service of a summons on the person so appointed will confer jurisdiction on the court. State ex rel v Sargent, 145 M 448, 177 NW 633.

Where its officers had left the state and no office was maintained in the state, the court did not err in appointing a temporary receiver ex parte for the defendant, Twin City Securities Company. Schmid v Ballard, 175 M 138, 220 NW 423.

Section 543.08 authorizing substituted service upon private domestic corporations by serving the secretary of state, is applicable to service of summons issued by a justice of the peace in virtue of section 530.04, giving a justice of the peace, in absence of special provision to the contrary, all powers possessed by courts of record, and making applicable all laws of a general nature not inconsistent with special provisions except that it cannot be construed as enlarging jurisdiction of justices beyond the counties, wherein they reside as provided in section 530.01. Thomas v Hector, 216 M 207, 12 NW(2d) 773.

Where a corporation is a tenant under a lease, service of notice to quit upon its treasurer is a good service on the corporation, both at common law, and under General Statutes 1894, Section 5199 (543.08). Lindeke v Associates Realty, 146 F 630.

A state statute which provides that in actions by residents of the state against non-residents for personal injuries resulting from the operation by the latter of their motor vehicles on the state highway, service of the summons may be made on the secretary of state, as their agent, and which contains no further provision making it reasonably probable that notice of such service will be communicated to the defendants, is lacking in due proces of law. Wuckler v Pizzutti, 276 US 13, 48 SC 262.

3. Foreign corporation, generally

Prior to the enactment of the law passed Feb. 28, 1866, General Statutes 1866, Page 494, a summons against a foreign corporation could not be served within this state on an officer of the corporation, but must be served by publication. Sullivan v LaCrosse, 10 M 386 (308).

The act relating to mesne process upon foreign corporations found upon page 494, General Statutes 1866, controls General Statutes 1866, Chapter 66, Sections 48, 49, and the delivery of a copy of a summons to the general or managing agent of a foreign corporation, as therein provided, is a sufficient service upon the corporation, and subjects it to the jurisdiction of the court in which the summons is issued. Guernsey v American Insurance, 13 M 278 (256).

If a foreign corporation has no property within this state or the cause of action did not arise here, jurisdiction cannot be acquired over it by personal service of the summons on its officers or agents temporarily within this state. State ex rel v Eau Claire, 26 M 233, 2 NW 698; Strom v Montana Central, 81 M 346, 84 NW 46.

Upon the evidence, the trial court was justified in refusing defendant's motion to set aside the service of the summons on the ground that the person on whom it was served was neither an agent nor officer of the company. Hess v Adamant, 66 M 79, 68 NW 774.

The provision in General Statutes 1894, Section 399, which provides that the courts may direct service to be made upon the agents or servants of the carrier, is not open to the objection that by such service an attempt is made to obtain jurisdiction over the carrier without due process of law. State ex rel v Adams Express, 66 M 271, 68 NW 1085.

To constitute a person an agent of a foreign corporation, upon whom service of the summons may be made, he must be one actually appointed by and representing the corporation, and not one created by mere construction or implication, contrary to the intention of the parties. Mikolas v Walker, 73 M 305, 76 NW 36; Wold v Colt, 102 M 386, 114 NW 243; North Wisconsin v Oregon Short Line, 105 M 198, 117 NW 391.

A service of a summons and complaint against a foreign insurance company in sufficient to confer jurisdiction, if made upon a local agent of such company. Baldinger v Rockford Insurance, 80 M 147, 82 NW 1083.

The stipulation which a foreign insurance company is required by statute to make and file with the insurance commissioner before doing business in this state, authorizing the service of process in any action against it on such officer, is irrevocable for any cause as to all its outstanding liabilities growing out of any policies made in this state while the stipulation, or any renewal thereof, was in force. Magoffin v Mutual Reserve, 87 M 260, 91 NW 1115.

The question whether a foreign corporation is doing business in the state so that service of summons may be made upon its agent within the state, is one of due process of law under the federal constitution. Wold v Colt, 102 M 386, 114 NW 243.

Service will be set aside unless the corporation served is "doing business" within the state. North Wisconsin v Oregon Short Line, 105 M 198, 117 NW 391; Kendall v Orange Judd, 118 M 1, 136 NW 291.

Plaintiff is a non-resident, and defendant a foreign carrier, and the subject matter of the action is the breach of a contract for the carriage of goods to be performed in Pennsylvania, where defendant is domiciled. Defendant appeared without objection and answered to the merits. Plaintiff had judgment. It was held the court had jurisdiction of the person and of the subject matter of the action. Banks v Pennsylvania, 111 M 49, 126 NW 410.

In determining whether a corporation is "doing business" in the state, each case must depend upon its own facts and circumstances; but it must at least appear that the transactions of the foreign corporation are such that, through the representative character of its agents, it may be said that the corporation itself is in the state. Kendall v Orange Judd, 118 M 1, 136 NW 291.

Defendant, a Maine corporation with its principal place of business in Illinois, had agents in Minnesota, selling its own corporate stock. Its principal executive officer came to Minnesota several times and adjusted some claims. The president of the corportion resided in Minnesota, and performed some official acts here. It is held that the corporation had brought itself within the state and service on the president was good service. Atkinson v United States, 129 M 232, 152 NW 410.

Service of summons on the soliciting freight agent of a foreign corporation doing business in Minnesota is due process of law within the meaning of the federal constitution. Lagergren v Pennsylvania, 130 M 35, 152 NW 1102.

The assumption of liability, in the form of reinsurance contracts and the collection of premiums due thereon from members residing in the state, and to thus keep and maintain the contracts in force, constituted the transaction of business in this state. Kulberg v Fraternal Union, 131 M 131, 154 NW 748.

Evidence is sufficient to warrant the assumption that defendant has subjected itself to the laws of this state. Lattu v Ontario & Minnesota, 131 M 162, 154 NW 950; Jenks v Royal Baking, 131 M 335, 155 NW 103; Prigge v Selz, Schwab, 134 M 245, 158 NW 975.

Service of summons on a legal holiday does not confer jurisdiction. Farmers v Sandberg, 132 M 390, 157 NW 642.

Under the proviso added to paragraph three of this section, jurisdiction may be acquired by service on any agent soliciting freight or passenger business in a transitory action, although the cause of action did not arise in Minnesota. Rishmiller v Denver, 134 M 261, 159 NW 272; Hagerty v National, 137 M 119, 162 NW 1068.

Receivers of a foreign railroad corporation are not subject to the jurisdiction of the courts of this state by the service of a summons in the manner provided in this section. Where the cause of action arose out of a transaction had with the receivers in another state, and the railroad line in their control does not extend into this state and is not operated therein. Kading v Waters, 137 M 328, 163 NW 521.

The authority of the agent on whom service is made, and the business in which he is engaged, must be of such character that it may be said that, in his person, the corporation is present in the state. An agent authorized to take orders, make collections, make adjustments, and dispose of property of the corporation within the state is such an agent. Nienhauser v Robertson, 146 M 244, 178 NW 504; Merchants v Chesapeake & Ohio, 147 M 189, 179 NW 734; Callaghan v Union Pacific, 148 M 483, 182 NW 1004; Robinson v Oregon Short Line, 151 M 451, 187 NW 415; McGann v Missouri Pacific, 152 M 539, 187 NW 614; Itasca v Pere Marquette, 152 M 539, 187 NW 976.

Jurisdiction cannot be obtained of a foreign corporation by service of summons upon its president, a resident of Minnesota, unless the corporation at the time of the service, is doing busines within Minnesota. Dow v Bank, 153 M 19, 189 NW 653; Paterson v Shattuck Arizona, 169 M 48, 210 NW 620.

Service on an agent engaged in solicitation of passenger traffic was good service. Thompson v Louisville & Nashvile, 153 M 440, 190 NW 797.

The courts of this state cannot acquire jurisdiction of the receiver of a Canadian railroad appointed by Canadian authorities by service of process in the manner provided in the third paragraph of section 543.08. McNeill v Reid, 156 M 120, 194 NW 614.

State and federal courts have concurrent jurisdiction in actions under the employers liability act. State ex rel v District Court, 156 M 380, 194 NW 780.

Following Davis v Farmers' Co-operative Equity Company, it is held that Laws 1913, Chapter 218, Section 1, being the proviso in paragraph three, section 543.08, has no validity for any purpose. Gamble v Pennsylvania, 157 M 306, 196 NW 266; Rosenblet v Pere Marquette, 162 M 55, 202 NW 56.

The property of a foreign railroad company operating no line of railroad in this state is not immune to attachment of its property used in interstate commerce, where the plaintiff is a resident of this state and the cause of action against such company is for damages on account of delay in the transportation into this state of a carload of apples received for shipment by said railroad company as the initial carrier. Rosenblet v Pere Marquette, 162 M 55, 202 NW 56.

Construing Laws 1917, Chapter 429, and the appointment thereunder by nonresident dealers in securities of the public examiner as their agent to receive service of process, it is held that the district court did not acquire jurisdiction over the defendants by delivery of the summons to the public examiner where the cause of action arose in a foreign country and bore no relation to the subject matter of chapter 429. Dragon v Storrow, 165 M 95, 205 NW 694.

A foreign corporation which ships goods on orders received by mail from purchasers in this state, and which pays a commission to a resident of this state for procuring orders if they are accepted but which gives him no authority to accept orders or make contracts, is not doing business in this state in the sense required to give the courts of this state jurisdiction over it. Abramovich v Continental Can, 166 M 151, 207 NW 201.

The established policy of this state permits the suing of transitory actions against foreign corporations, regardless of where the cause of action arose, if they may be reached by process. A corporation is "doing business" in the state when the character and extent of its business warrant the inference that the corporation has subjected itself to the jurisdiction and laws of the state. Erving v Chicago & Northwestern, 171 M 97, 214 NW 12.

Jurisdiction of a foreign corporation by the courts of this state is obtained when it appears that at the time of the service of process the foreign corporation

was doing business within this state in such manner and to such extent as to warrant the inference that it was present here, and when service of process was made upon a proper officer of the corporation who was then present in the state and representing and acting for the corporation in its business here, and the court had jurisdiction of the subject matter of the action. Ruff v Manhattan Oil, 172 M 585, 216 NW 331.

Foreign beneficiary association having no office and employing no local agents or solicitors, and collecting dues and paying benefits entirely by mail, is not "doing business" in the state. Kasel v Milwaukee, 175 M 284, 221 NW 21.

Where a foreign insurance company doing business in this state has designated the insurance commissioner as his agent or attorney in fact upon whom process against it may be served, service of summons upon the insurance commissioner is not limited to actions which arise out of business transacted in this state or with residents thereof. Enger v Midland, 176 M 143, 222 NW 901.

The court did not obtain jurisdiction in this case because the person upon whom the attempted service of summons was made was not one enumerated in the statute for that purpose. Bernier v Illinois, 176 M 415, 223 NW 674.

The court has jurisdiction of an action for personal injuries under the federal employers liability act, though the plaintiff is a citizen and resident of another state, and the defendant is a non-resident railway corporation doing business and operating its railway in Minnesota, when service is made as provided by statute upon one of its ticket agents in a county through which its railway line runs and in which the action is brought. Boright v Chicago, Rock Island, 180 M 52, 230 NW 457.

Under the showing made, the defendant, a foreign corporation, was doing an intrastate business. The summons was served upon its agent in this state; the burden is upon the defendant to show it was not present in the state; the motion to set aside the service was properly denied. Massee v Consumers Hay, 184 M 196, 238 NW 327.

To obtain jurisdiction over a foreign corporation operating railways or steamship lines outside of this state, but none in this state, where no property of the corporation is attached or seized or present in this state, the corporation must be doing business here of such a nature and character as to warrant the inference that it has subjected itself to the local jurisdiction and is by its duly authorized officer or agent here present. Gloeser v Dollar, 192 M 376, 256 NW 666.

Where service was made upon defendant, a foreign railroad corporation, by handing a copy of the summons to defendant's freight agent in a county other than the county in which the action was brought, the service was null and of no effect, and no jurisdiction was acquired thereby. Aaltio v Chicago, Burlington, 197 M 461, 267 NW 384.

An agent of a foreign corporation, who is authorized to solicit orders and to compromise claims, is a proper agent for service upon the corporation. Dahl v Collette, 202 M 544, 279 NW 561.

A telephone listing does not constitute doing business. A foreign parent corporation of a subsidiary foreign corporation is not doing business in the state by reason of the fact that the subsidiary is doing business in the state where the subsidiary maintains corporate separation from and does not stand in the relation of agent to the parent. Generally, the service of a summons after the defendant has ceased doing busines in the state is ineffective. Garber v Bancamerica, 205 M 275, 285 NW 723.

A mode of service prescribed by state laws for obtaining jurisdiction over foreign corporations, which is recognized by the local courts as valid, will receive the same recognition by the federal courts, subject to the limitation that such courts will determine for themselves whether the mode prescribed violates the fundamental rights of the defendant not to be condemned unheard or compelled to answer a complaint in a foreign jurisdiction without a fair and reasonable notice. McCord v Doyle, 97 F 22.

A steamship company with an agent in the District of Columbia selling prepaid orders for tickets, and whose only compensation was five per cent of the amount collected, was not "doing business" within the Code, Section 1537, authorizing actions against foreign corporations doing business in the district. Chase Bag v Munson Steamship, 295 F 993.

Service on a soliciting agent of a Canadian railway corporation at his office in this state is not sufficient to confer jurisdiction. Maxfield v Canadian Pacific, 70 F(2d) 982; 293 US 610, 55 SC 140.

"The constitutional question is not free from doubt." See cases cited. Canadian Pacific v Sullivan, 126 F(2d) 439.

The district court had jurisdiction of non-resident trustees of debtor railroad in reorganization proceedings, in suit for infringement of patents within district when service was had on railroad's local freight agent. Anderson v Scandret, 19 F. Supp. 683.

A foreign corporation may be sued only when it is "present in the state" in a comprehensive sense contemplating the doing of business in such a manner as to make the corporation subject to service of process. Truck Parts v Briggs, 25 F. Supp. 602.

The proviso based upon Laws 1913, Chapter 218, Section 1, providing that any foreign corporation's agent, soliciting freight and passenger traffic, may be served with summons for the corporation, construed by the highest court in Minnesota as not being limited to suits arising out of business transacted within Minnesota and as including suits where plaintiff is not and never has been a citizen of Minnesota, is unconstitutional as unreasonably burdening interstate commerce. Davis v Farmers Co-operative, 262 US 313, 43 SC 556; Pratt v Denver & Rio Grande, 284 F 1007.

A state statute that provides that any foreign corporation having an agent in the state for the solicitation of freight and passenger lines outside the state may be served with summons by delivering a copy to such agent, imposes an unreasonable burden on interstate commerce, and is void under the commerce clause, as applied to an action brought against a railway company which neither owns nor operates a railroad within the state, by a plaintiff who cannot claim residence there upon a cause of action which arose elsewhere out of a transaction entered into elsewhere. Overruling Farmers'-Co-operative v Payne, 150 M 534, 186 NW 130. Davis v Farmers' Co-operative, 262 US 313, 43 SC 556.

Service of summons upon a Minnesota corporation in which defendant owned no stock and over which it had no authority or control, except as to certain obligations imposed upon it by virtue of a sales agreement covering the sale of defendant's products in Minnesota; and which had not been designated as defendant's agent for the service of process or otherwise in Minnesota, did not give Minnesota courts jurisdiction over defendant. Nurmi v Case, 218 M 584, 17 NW(2d) 79.

A ship owned by a foreign corporation whose business was transportation, and main office in Ohio, with an agent in Duluth, was attached by a foreign corporation with headquqarters in Minnesota on a cause of action based on negligence. The maintenance of the action was not an unreasonable burden on interstate commerce. International Milling Co. v Columbia, 292 US 511, 54 SC 797; 189 M 508, 250 NW 186; Canadian Pacific v Sullivan, 126 F(2d) 439.

Railroads; process; service; foreign corporations. 1 MLR 192.

Service of process on soliciting agent is constituting due process of law. 6 MLR 309; 6 MLR 325.

Action under federal employers liability act arising in foreign states held properly brought in state court. 8 MLR 253.

Action against foreign carrier for cause arising outside of state as burden upon interstate commerce. 13 MLR 487.

Suit against foreign corporations as a burden on interstate commerce. 17 MLR 382.

Jurisdiction over persons by substituted or constructive service. 20 MLR 651.

Jurisdiction over foreign corporation not licensed to do business within the state after it has ceased to do business and has withdrawn therefrom. 24 MLR 416.

4. Foreign corporation; resident appointed agent

The legislature has the power to impose limitations and restrictions, not repugnant to the federal constitution, as conditions precedent to the right of foreign corporations to do business within this state; such as the appointment

of a resident agent upon whom service may be made. Tolerton v Barck, 84 M 497, 88 NW 10.

Service of summons on defendant, a foreign corporation, on the commissioner of securities is valid under the provisions of section 80.14. Streissguth v Chase Securities, 198 M 17, 268 NW 638.

When a foreign social and charitable corporation pursues within our limits the purposes for which it is organized, it is doing business in Minnesota and amenable to process here. High v Supreme Lodge, 206 M 599, 289 NW 519.

Where employee of foreign corporation manufacturing and selling motor trucks secured dealers therefor in state, contacted such dealers and tneir customers, and helped them to secure free work on trucks, corporation was "doing business in state" when summons was served on such employee in actions against corporation. Loken v Diamond, 216 M 223, 12 NW(2d) 345.

The repeal of the Minnesota statute requiring a foreign corporation withdrawing from doing business in the state to file a power of attorney appointing the secretary of state its agent for the service of legal process, in actions arising out of anything done or omitted in the state, did not vitiate a power of attorney theretofore filed thereunder. Flour City v General Bronze, 21 F. Supp. 112.

Designation by a foreign corporation, in conformity with a valid state statute and as a condition of doing business within the state, of an agent upon whom service of process may be made, is an effective consent to be sued in federal courts of that state. Bowles v Schreiber, 56 F. Supp. 814.

Service of process necessary to obtain jurisdiction over non-residents. 9 MLR 364.

Constitutional problems arising from service of process on foreign corporations. 19 MLR 379.

543.09 MANNER OF SERVICE ON EXPRESS COMPANIES.

HISTORY. 1921 c. 160 s. 1; G.S. 1923 s. 9232; M.S. 1927 s. 9232.

Service of process necessary to obtain jurisdiction over non-residents. 9 MLR 364.

543.10 MANNER OF SERVICE ON RAILWAY COMPANIES.

HISTORY. 1871 c. 64 s. 1; G.S. 1878 c. 66 s. 62; G.S. 1894 s. 5202; R.L. 1905 s. 4110; G.S. 1913 s. 7736; G.S. 1923 s. 9233; M.S. 1927 s. 9233.

In proceedings to take private property for public uses, in the case of domestic corporations the mode of service is "upon the president, secretary, or any director or trustee of such corporation" and is exclusive and service as provided in Laws 1871, Chapter 64, would be ineffective. Proceedings by St. Paul & Northern, 36 M 85, 30 NW 432.

In an action against a railroad company in this state, any county in which it has an office, agent, or place of business is to be deemed the residence of such company. Schoch v Winona & St. Peter, 55 M 479, 57 NW 208.

The ticket agent at the union depot in Minneapolis was an "acting ticket agent" of the defendant, within the meaning of this section. Hillary v Great Northern, 64 M 361, 67 NW 80.

Foreign company, whose cars are brought into the state by another company under joint traffic arrangement, held not transacting business within state. An agent of local company who sells through tickets is not a "ticket agent" of foreign company. Slaughter v Canadian Pacific Co. 106 M 263, 119 NW 398.

Several foreign railway corporations, having no lines in this state, entered into an arrangement by which they adopted the name "Blue Ridge Despatch," established an agency in Minneapolis, appointed an agent, with authority to solicit business for shipment over its lines. The agent received money, issued bills of lading and designated the point of delivery. In an action brought by a shipper whose goods were received by the Blue Ridge Despatch at Minneapolis for through shipment, service of process upon the agent at Minneapolis was service on the constituent railroad corporations. Archer-Daniels v Blue Ridge Despatch, 113 M 367, 129 NW 765.

Where the receivers of a foreign railway corporation under order of court retained all local agents in their usual positions and with their usual duties, the service of a summons on ticket or freight agent so retained was valid. Ihlan v Chicago, Rock Island, 137 M 204, 163 NW 283.

A managing agent of a private corporation upon whom a summons may be served under section 543.08 is an agent having charge and control of some part of the business of the corporation and vested with powers requiring the exercise of judgment and discretion. The agent upon whom service was made in this case was not a managing agent. Hatinen v Payne, 150 M 345, 185 NW 386.

Service of summons may be made upon a foreign railroad corporation doing business in the state by delivering a copy to its soliciting freight agent pursuant to section 543.08. Robinson v Oregon Short Line, 151 M 451, 187 NW 415.

Following Davis v Farmers Coperative Equity, 262 US 313, 43 SC 556, the proviso in General Statutes 1913, Section 7735, added by Laws 1913, Chapter 218, has no validity for any purpose. Gamble v Pennsylvania, 157 M 306, 196 NW 266.

The property of a foreign railroad company operating no line of railroad in this state is not immune to attachment of its property used in interstate commerce. Where the plaintiff is a resident of this state and the cause of action against such company is for damages on account of delay in the transportation into this state of a carload of apples, received for shipment by said railroad company as the initial carrier. Rosenblet v Pere Marquette, 162 M 55, 202 NW 56.

A foreign corporation is "doing business" in the state when the character and extent of its business warrant the inference that the corporation has subjected itself to the jurisdiction and laws of the state; and this state permits the suing of transitory actions against foreign corporations, regardless of where the cause of action arose, if they may be reached by process. Erving v Chicago & Northwestern, 171 M 87, 214 NW 12; Gegere v Chicago & Northwestern, 175 M 96, 220 NW 429.

The court did not obtain jurisdiction because the person served was not one enumerated by the statute. Bernier v Illinois Central, 176 M 415, 223 NW 674.

Service of summons upon a ticket and freight agent at a station of a foregin railroad company, engaged in interstate and intrastate commerce within the county where an action is brought to recover under the federal employers liability act for injuries sustained by an employee of the company while at work upon the movement of interstate commerce over a line of the company's railroad in another state, is a valid service conferring jurisdiction. Winders v Illinois Central, 177 M 1, 223 NW 291, 226 NW 213; Boright v Chicago & Rock Island, 180 M 52, 230 NW 457.

The court did not err in refusing to set aside the summons in an action brought by a non-resident of Minnesota against a railway company incorporated in other states, but having an extensive line in Minnesota. Witort v Chicago & Northwestern, 178 M 261, 226 NW 934.

Where service was made upon defendant foreign railroad corporation by handing a copy of the summons to defendant's freight agent in a county other than the county in which the action was brought, such service was null and of no effect. Aaltio v Chicago & Burlington, 197 M 461, 267 NW 384.

As respects suits for personal injuries ocurring in another state to employee of foreign railroad who is not a citizen of Minnesota, General Statutes 1913, Section 7736, (section 543.10) as to manner of service is an unreasonable burden on interstate commerce, regardless of the fact that the railroad has trackage in Minnesota. Weinard v Chicago, Milwaukee, 298 F 977.

543.11 SERVICE BY PUBLICATION; PERSONAL SERVICE OUT OF STATE.

HISTORY. R.S. 1851 c. 70 s. 50; P.S. 1858 c. 60 s. 54; G.S. 1866 c. 66 s. 49; 1869 c. 73 s. 1; 1878 c. 9 s. 1; G.S. 1878 c. 66 s. 64; 1881 c. 28 s. 1; G.S. 1894 s. 5204; 1901 c. 63; R.L. 1905 s. 4111; 1913 c. 241 s. 1; G.S. 1913 s. 7737; G.S. 1923 s. 9234; M.S. 1927 s. 9234.

1. Generally
2. Affidavit
3. Summons

4. Complaint
5. Return
6. Publication
7. Statute followed strictly
8. Personal service out of state
9. Divorce

1. Generally

The fact that the named defendant, who appeared of record to have some interest in the land, was dead when the action was commenced, did not prevent the court from acquiring jurisdiction, nor did the fact that one of the unknown parties was at the time a resident of the state affect the jurisdiction of the court to adjudicate the state of the title to the land. McClymond v Noble, 84 M 329, 87 NW 838.

In publishing the summons provided for in Laws 1901, Chapter 237, known as the "Torrens Law," it is not necessary to follow the provisions of General Statutes 1894, Section 5204 (sections 543.11, 543.12). A compliance with the provisions of Laws 1901, Chapter 237, Section 20 (section 508.16) is all that is required. Dewey v Kimball, 89 M 454, 95 NW 317, 895; 96 NW 704.

A non-resident defendant, by giving a bond to procure a release of certain articles attached, does not thereby appear generally, so as to give the court jurisdiction to enter a personal judgment against him, except to the extent that satisfaction thereof may be had from the bond standing as a substitute for the articles released. Wagner v Farmers Co-operative, 147 M 376, 180 NW 231.

A summons and complaint, which were enclosed and sealed in an envelope addressed to the defendant, were served upon the defendant by leaving with a person at his home. Proof of service was made in the usual form. The paper having reached the defendant, who was not prejudiced, the service was valid. MacLean v Lasley, 181 M 379, 232 NW 632.

In an action against a foreign railway company, in which an attempt was made to garnish funds of the company within the state, service on a soliciting agent of the defendant company in another state in which it did not do business and which did not recognize such service, was not in compliance with Minnesota General Statutes 1913, Section 7737 (section 543.11), authorizing personal service outside the state in foreign garnishment proceedings. Pratt v Denver & Rio Grande, 284 F 1007.

There is a distinction between actions in personam and actions in rem; in the former, judgments without personal service within the state are devoid of validity either within or without the state, but in the latter, the judgment, although based on service by publication, may be valid so far as it affects property within the state. Pennager v Neff, 95 US 744; Grannis v Ordean, 234 US 389, 34 SC 781.

District court rules. Minnesota Statutes 1941, Page 3982.

Collateral attack upon the judgment. 24 MLR 819.

2. Affidavit

The filing of the affidavit is a jurisdictional prerequisite. It cannot be filed after publication or after the commencement of the publication. Barber v Morris, 37 M 194, 33 NW 559; Brown v St. Paul & Northern, 38 M 506, 38 NW 698; Cousins v Alworth, 44 M 505, 47 NW 169; Bogart v Kiene, 85 M 261, 88 NW 748.

The affidavit must state facts positively and not on information and belief except where the latter form is expressly authorized. Feikert v Wilson, 38 M 341, 37 NW 585.

In actions in personam of a strictly judicial character, and proceeding according to the course of the common law, service of the summons, by publication in a newspaper, upon resident defendants who are personally within the state and can be found therein, is not "due process of law." Bardwell v Collins, 44 M 87, 46 NW 315.

It need not be sworn to on the day on which the action is commenced. It is not void because entitled in an action not actually commenced at the time. If it

is filed with the clerk, the fact that he fails to keep his office at the county-seat will not invalidate the publication. Crombie v Little, 47 M 581, 50 NW 823.

Under Ex. Laws 1881, Chapter 81, the fact that the named defendant was dead when the action was commenced will not prevent the court from acquiring jurisdiction to determine the rights of "other persons, or parties unknown," claiming an interest in the real estate described in the complaint. Inglee v Welles, 53 M 197, 55 NW 117.

Under the statute, the office of a return of the sheriff that the defendant cannot be found, is not to authorize the publication, but to support it after it is made being prima facie evidence that the case was one where service by publication was authorized, to-wit, where the defendant could not be found in the state. Easton v Childs, 67 M 212, 69 NW 903.

Depositing a paper for filing with the proper officer at his office constitutes a filing thereof, and the endorsement thereon by the officer of such filing is but evidence of the fact. Bogart v Kiene, 85 M 261, 88 NW 748.

The affidavit is jurisdictional and must state all the statutory requirements. It cannot be aided by reference to the complaint, modifying Broome v Galena, 9 M 239 (225). Gilmore v Lampman, 86 M 493, 90 NW 1113.

The affidavit was held sufficient, although it referred to the property as "in this state." It was necessary to state "in the state of Minnesota." Smith v Ince, 138 M 224, 164 NW 903.

3. Summons

Where the summons, as published, contains the requisites of process to bring the party into court, formal defects therein will not prevent jurisdiction attaching, any more than in cases of personal service, if publication thereof is shown by the record to have been authorized, and to have been made and completed in conformity with the statute. Lane v Innes, 43 M 137, 45 NW 4.

The mailing of a copy to a non-resident does not constitute personal service, although it is duly received. It is the publication of the summons that gives the court jurisdiction and not the service through the mails. Bausman v Tilley, 46 M 66, 48 NW 459.

Plaintiff brought an action against John O'Shea to determine adverse claims to land, the record owner being John O'Shea. It cannot be presumed that O'Shea and Shea are the same person. The misnomer is fatal. Clary v O'Shea, 72 M 105, 75 NW 115.

The publication of a summons to "George H. Leslie" confers no jurisdiction over "George W. Leslie." D'Autremont v Anderson, 104 M 165, 116 NW 357.

The use of a wrong initial in the name of a defendant is not fatal to the jurisdiction of the court, where the summons is in fact served upon the right party. The rule is different where the service is by publication. Willard v Marr, 121 M 23, 139 NW 1066.

4. Complaint

Proper practice requires that the complaint should be filed before the commencement of the publication, but it is not jurisdictional. Lane v Innes, 43 M 137, 45 NW 4; Crombie v Little, 47 M 581, 50 NW 823.

5. Return

To a summons addressed to two defendants, a sheriff returned that the defendants, naming them conjunctively, could not be found. This official return was construed as meaning that neither of the defendants could be found. Blinn v Chessman, 49 M 140, 51 NW 666.

The filing of the return of the sheriff is not a jurisdictional prerequisite. It may be filed at any time before the entry of judgment. Corson v Shoemaker, 55 M 386, 57 NW 134, overruled. Easton v Childs, 67 M 242, 69 NW 903; Gilmore v Lampman, 86 M 493, 90 NW 1113.

Under General Statutes 1894, Section 5204 (section 543.11) neither making nor filing of the return is jurisdictional. Perkins v Gibbs, 108 M 151, 121 NW 605.

6. Publication

The service of a summons by publication is valid, although one of the publications is made on May 30th (Memorial Day). Malmgren v Phinney, 50 M 457, 52 NW 915.

The summons was published in a daily newspaper on Tuesdays, February 7 and 14, on Thursdays, February 23, March 2 and 9, and on Wednesday, March 15. Each of the six consecutive weeks commenced upon Tuesday, and it was not necessary that the publications should be made at regular intervals of seven days. Raunn v Leach, 53 M 84, 54 NW 1058.

In order to authorize the vacation of a judgment for want of jurisdiction, where the summons has been served by publication after the sheriff had duly returned that the defendant could not be found in the county, and the plaintiff's attorney had filed the proper affidavit that defendant could not be found in the state, the showing must be that defendant not only was a resident of the state, but that plaintiff, in the location and situation he was, could by due diligence have found defendant in the state. Van Rhee v Dysert, 154 M 32, 191 NW 53.

A debt has a situs wherever the debtor can be found. Jurisdiction may be obtained by an action in rem even though all the parties are non-resident. Process in the municipal court of Minneapolis may be served by publication. Templeton v Van Dyke, 169 M 188, 210 NW 874.

In title registration proceedings publication of the summons is controlled by the provisions of Section 508.16. OAG Nov. 8, 1944 (374h).

7. Statute followed strictly

Statutes which authorize, in lieu of a personal service of process upon a party, a constructive service by publication must be strictly followed in order to subject the party to the jurisdiction of the court issuing such process. Constructive service of process is purely of statutory creation. Morey v Morey, 27 M 265, 6 NW 783; Barber v Morris, 37 M 194, 33 NW 559; Cousins v Alworth, 44 M 505, 47 NW 169; Shepherd v Ware, 46 M 174, 48 NW 773; Ware v Easton, 46 M 180, 48 NW 775; Gilmore v Lampman, 86 M 493, 90 NW 1113.

8. Personal service out of state

Service of a summons on a non-resident defendant in accordance with the provisions of Laws 1901, Chapter 63, Section 1 (section 543.02), is simply a substitute for service by publication, and must be predicated upon a strict compliance with the provisions of General Statutes 1894, Section 5204 (sections 543.11, 543.12). Spencer v Koell, 91 M 226, 97 NW 974.

Personal service of a summons and complaint in divorce proceedings outside of the state is sufficiently authorized by General Statutes 1894, Sections 4796, 4797 (sections 518.11, 518.12). Sodini v Sodini, 94 M 301, 102 NW 861.

In divorce actions, where the summons is served personally out of the state, it is not a prerequisite that there be either the return of the sheriff or the affidavit of plaintiff or his attorney required under Revised Laws 1905, Section 4111 (543.11). Bundermann v Bundermann, 117 M 366, 135 NW 998.

The filing of the affidavit prescribed by General Statutes 1913, Section 7737 (section 543.11), is a jurisdictional prerequisite to the publication of a summons. The service of a summons upon a non-resident by delivering a copy thereof to him without the state, as authorized by section 543.11, is a substitute for the publication of the summons and cannot be made without taking the steps required when the summons is to be published. Pugsley v Magerfleisch, 161 M 246, 201 NW 323.

As a foundation for substituted personal service without the state under section 543.11, every step must be made to permit the service to be made by publication. A delay of nine months in making personal service of a summons without the state, after the making of the sheriff's return that defendant cannot be found, is as a matter of law unreasonable, and the return will not support and sustain the service. Haney v Haney, 163 M 114, 203 NW 614.

Section 316.17 construed as providing for the service by publication in such manner as the court shall direct on non-resident stockholders of notice of hearing

on a petition for the assessment of stockholders in a Minnesota corporation. Merchants v Dyste, 173 M 436, 217 NW 483.

An action to cancel an assignment of a note and mortgage is an action in personam, and jurisdiction to render judgment against a non-resident assignee cannot be acquired by service of summons outside the state. Williamson v Falkenhagen, 178 M 379, 227 NW 429.

Jurisdiction in rem and quasi in rem upon constructive service of non-residents. 18 MLR 709.

Jurisdiction over persons by substituted or constructive service. 20 MLR 649.

9. Divorce

The revision, Revised Laws 1905, Sections 3579, 4111, 4112 (sections 518.11, 543.11, 543.12), made no substantial change in the law as to the service by publication of the summons in an action for a divorce. Becklin v Becklin, 99 M 307, 109 NW 243.

An affidavit showing that personal service cannot well be made and containing the statements required by Revised Laws 1905, Section 4111 (section 543.11), with the return of the sheriff that the defendant cannot be found, is sufficient to justify the making of an order by the court directing service by publication and to authorize the publication of the summons without any other or further affidavit after the order has been made. Becklin v Becklin, 99 M 307, 109 NW 243.

In divorce actions where the summons is served personally out of the state, it is not a prerequisite that there be either the return of the sheriff or the affidavit of plaintiff or his attorney, required by Revised Laws 1905, Section 4111 (section 543.11). Bundermann v Bundermann, 117 M 366, 135 NW 998.

In the instant case the service of the summons on the defendants personally outside of this state was of the same effect as service by publication. It was "constructive service." Smith v Smith, 123 M 433, 144 NW 138.

A personal judgment or decree for alimony rendered in a divorce case against a non-resident of the state where the only service is by publication of the summons, is void, as is such a judgment rendered where the defendant is a resident of this state and can be found therein, and the only service is by publication, but where the defendant is a resident of this state, but cannot be found, because he secretes himself within the state so service cannot well be made, the court acquires jurisdiction, on service by publication only, to render a personal judgment for alimony. Roberts v Roberts, 135 M 397, 161 NW 148.

The instant action is not in rem. It is a transitory action in equity and is in personam. Following Pennoyer v Neff, 95 US 714, it has been settled law that in such action constructive service by publication or personal service outside the state is not due process and does not confer jurisdiction. National Council v Scheiber, 137 M 425, 163 NW 781.

543.12 WHERE SERVICE BY PUBLICATION CONFERS JURISDICTION.

HISTORY. R.S. 1851 c. 70 s. 50; P.S. 1858 c. 60 s. 54; G.S. 1866 c. 66 s. 49; 1869 c. 73 s. 1; 1878 c. 9 s. 1; G. S. 1878 c. 66 s. 64; 1881 c. 28 s. 1; G.S. 1894 s. 5204; 1903 c. 341; R.L. 1905 s. 4112; G.S. 1913 s. 7738; G.S. 1923 s. 9235; M.S. 1927 s. 9235.

Clause (1)
Clause (2)
Clause (3)
Clause (4)
Clause (6)

Extent of jurisdiction

(1) Where a cause of action arises in another state, a court of this state cannot acquire jurisdiction of a foreign corporation, unless it has property within this state of some substantial value and of a character to justify a reasonable probability that the creditor can secure something from a sale thereof that can be applied as a payment on his demand. Strom v Montana Central, 81 M 347, 84 NW 46.

A railroad car of a foreign company sent into this state with freight to be delivered here and then, within a reasonable time necessary for its return, reloaded, and in the customary and usual course of business forwarded to the state from which it came, is not liable to attachment issued in an action in our courts. Connery v Quincy, 92 M 20, 99 NW 365.

Service of summons upon a Minnesota corporation whose only connection with the defendant was the sale of defendant's goods, and who had not been designated as agent for the defendant did not give Minnesota courts jurisdiction. Nurmi v Case, 218 M 584, 17 NW(2d) 79.

(2) Where the defendant in an action to determine adverse claims is a resident of the state, and has a record title in which his surname appears somewhat different from his true name, but such that from it he could be found and served within the state, jurisdiction cannot be acquired by publication. Arnold v Visenaux, 129 M 270, 152 NW 640.

The finding of the trial court that plaintiff by due diligence could have found defendant when the service was served by publication is in the instant case not sustained. Van Rhee v Dysert, 154 M 34, 191 NW 53.

(3) In an action against a non-resident to recover a debt, the jurisdiction of the court is limited to the property of the debtor seized under proper process issued therein. Spokane v Coffey, 123 M 364, 143 NW 915.

The power of a state over property within its limits is supreme. Under proper legislative authority, almost any kind of an action may be instituted and maintained against non-residents to the extent of any interest in property they may have within the state, and the court may make any form of decree known to the law which can be enforced through the control of property within the state, if the property is brought within its grasp, either by seizure or by specifically making it the subject of the action, and jurisdiction in this kind of case may be obtained by publication. Smith v Smith, 123 M 431, 144 NW 138.

The defendant, in an action brought by the plaintiff insurance company against the insured as sole defendant to cancel a policy of insurance, died after service of process and issue joined. The cause of action survived, and a non-resident beneficiary was substituted as defendant upon a notice personally served upon him in California. The service was not due process, and jurisdiction was not acquired. National Council v Scheiber, 137 M 423, 163 NW 781.

Service by publication in suit to enforce a land contract. 6 MLR 603.

"Full faith and credit" in a federal system. 20 MLR 152.

(4) A personal judgment or decree of alimony rendered in a divorce case against a non-resident of the state where the only service is by publication of the summons is void, as is such a judgment rendered when the defendant is a resident of this state and can be found therein, and the only service is by publication, but where the defendant is a resident of this state but cannot be found therein because he secretes himself within the state so service cannot well be made, the court acquires jurisdiction on a service of publication only to render a personal judgment for alimony. Roberts v Roberts, 135 M 397, 161 NW 148.

(5) In an action to set aside a fraudulent conveyance, an immaterial error in the published summons did not affect the jurisdiction. Lane v Innes, 43 M 137, 45 NW 4.

An action to reform the description of the real property in a deed is one, the subject of which is the real property, the title of which is sought to be affected; and the relief sought consists in excluding the defendant from any interest therein within the meaning of General Statutes 1878, Chapter 66, Section 64 (section 543.12), providing for the service of summons by publication. Corson v Shoemaker, 55 M 386, 57 NW 134.

Where the non-resident defendants surrendered certain shares of stock to a corporation of which plaintiff became trustee in bankruptcy, the certificates to be exchanged for other shares in an action to have the trustee declared the owner of the shares, jurisdiction could be obtained by publication. Fowler v Jenks, 90 M 76, 95 NW 887, 95 NW 914, 97 NW 127.

Service may be obtained in an action to quiet title. Smith v Ince, 138 M 223, 164 NW 903.

Service may be obtained in an action to determine adverse claims to real estate. Van Rhee v Dysert, 154 M 34, 191 NW 53.

The jurisdiction of the district court to remove a cloud on the title to property embraces personal, as well as real property. Mere verbal assertions of ownership do not cast a cloud upon the title to property which the courts will dispel, nor can a suit be maintained to remove a cloud created by an instrument invalid upon its face. Lovell v Marshall, 162 M 25, 202 NW 64.

The state has the same jurisdiction over chattels as over real property. So as to chattels within the state, the courts have power to proceed in rem or quasi in rem. A state has jurisdiction over a document within its territory. First Trust v Matheson, 187 M 468, 246 NW 1.

Jurisdiction in rem or quasi in rem upon constructive service on non-residents. 18 MLR 708.

(6) The act of March 5, 1853, was intended to make both the form of process and the manner of service of actions conform to that which obtained in other civil actions.

The action to foreclose a mortgage upon real estate was one within the meaning of the statute providing for publication of summons. Crombie v Little, 47 M 581, 50 NW 823.

An affidavit for publication of a summons in an action to foreclose a mortgage or enforce a lien on real estate, must state that the real estate affected is within this state or contain a description thereof showing that it is located within the state. A mere reference to the description in the complaint is not sufficient. The affidavit must state either that a copy of the summons has been mailed to the defendant at his place of residence, or that such residence is not known to the affiant. Wiik v Russell, 173 M 580, 218 NW 110.

Extent of jurisdiction acquired over non-residents

An attachment is a provisional remedy in the action and does not confer jurisdiction to enter judgment without the service of a summons in the manner prescribed by statute. Heffner v Gunz, 29 M 108, 12 NW 342.

Upon a simple issue of ownership between a plaintiff claiming title to personal property under a transfer from an insolvent debtor and a defendant in possession as sheriff under a valid process, it is competent for the defendant to prove that the transfer was fraudulent and void as to the creditor at whose instance the sheriff was in possession. Kenney v Goergen, 36 M 190, 31 NW 210.

In an action for the recovery of money only, brought against a non-resident on whom personal service of the summons cannot be made, the plaintiff is entitled to have his judgment entered and docketed in form, upon complying with the statutory requirements. Cousins v Alworth, 44 M 505, 47 NW 169.

Substituted service of process by publication authorized by the statute of 1863, in actions brought against non-residents, was effectual only where, in connection with the process against the person for commencing the action, property in the state had been brought under control of the court and subjected to its disposition, by process adapted to that purpose, or when the judgment was sought as a means of reaching such property, or of affecting an interest therein; in other words, when the action was in nature a proceeding in rem. Lydiard v Chute, 45 M 277, 47 NW 967.

A lien by attachment in a suit against non-resident partners may be acquired on the individual property of one of the partners situated within the jurisdiction, and the judgment rendered upon substituted service of the summons, though entered in form against all, may be enforced against the property so attached. Daly v Bradbury, 46 M 396, 49 NW 190.

In an action to enforce a pecuniary liability against a non-resident where the process is served by publication, and he does not voluntarily appear, and no property is attached, the court acquires no jurisdiction. Plummer v Hatton, 51 M 181, 53 NW 460.

So much of Laws 1901, Chapter 278, as provides for the service of the summons in a personal action against a natural person who is a citizen of another state, but carries on business in this state, on his agent in charge of the business

without a seizure of his property by the process of the court, is unconstitutional. Cabanne v Graf, 87 M 510, 92 NW 461.

A judgment obtained in and by a citizen of this state against a corporation organized in another state, but doing business and having an agent and an office in this state as required by Laws 1899, Chapter 69, cannot be impounded or condemned in either attachment or garnishment proceedings in the state where the judgment debtor was incorporated, in an action brought by a corporation of that state against the judgment creditor, upon whom substituted service, only, can be made of the process of the court or of notice of the proceedings. Boyle v Musser, 88 M 456, 93 NW 520.

Jurisdiction over persons by substituted or constructive service. 20 MLR 651.

Collateral attack upon the judgment. 24 MLR 819.

543.13 SUMMONS NOT PERSONALLY SERVED, DEFENDANT MAY DEFEND; RESTITUTION.

HISTORY. R.S. 1851 c. 70 s. 52; 1852 amend. p. 8; P.S. 1858 c. 60 s. 56; G.S. 1866 c. 66 s. 51; G.S. 1878 c. 66 s. 66; G.S. 1894 s. 5206; R.L. 1905 s. 4113; G.S. 1913 s. 7739; G.S. 1923 s. 9236; M.S. 1927 s. 9236.

1. A matter of right

A defendant upon whom the summons was served by publication and not personally and against whom judgment by default is entered, may apply to be relieved from it, and for leave to answer within one year after notice of the entry of judgment. Lord v Hawkins, 39 M 73, 38 NW 689; Boeing v McKinley, 44 M 392, 46 NW 766; Bausman v Tilley, 46 M 66, 48 NW 459; Lane v Holmes, 55 M 386, 57 NW 132; Corson v Shoemaker, 55 M 386, 57 NW 134; Fifield v Norton, 79 M 264, 82 NW 581.

Prior to the enactment of Laws 1887, Chapter 61, a bona fide purchaser from the successful party in a judgment, in an action under the statute to determine adverse claims to real estate, takes his title subject to be defeated by the subsequent reversal or vacation of the judgment. He does not stand in the position of a purchaser at a judicial sale. Lord v Hawkins, 39 M 73, 38 NW 689.

Where judgment is entered by default upon substituted service of summons, a defendant is entitled as a matter of right to have the judgment opened and be allowed to defend upon application, if made within one year, unless by his laches he has lost such right. Nye v Swan, 42 M 243, 44 NW 9; Long v Long, 112 M 400, 128 NW 464; De Laittre v Chase, 112 M 508, 128 NW 670.

Non-resident defendants, upon whom summons was served by publication, and who, having employed an attorney to defend, suffered default by reason of sickness of attorney is not chargeable with laches, and entitled, as a matter of right, to be allowed to interpose their defense. Nye v Swan, 42 M 243, 44 NW 9.

Defendant lost his right to be permitted to come in and defend as a matter of right by his failure with full knowledge of the pending of the action to interpose an answer in proper time. Bogart v Kiene, 85 M 261, 88 NW 748.

The grantee of a defendant in an action to determine adverse claims to real property, wherein judgment has been entered by default, may move the court to vacate and set aside the judgment and for leave to defend therein, but his right to that relief depends upon whether the defendant to whose rights he succeeded would on the facts disclosed be entitled to it. Kipp v Clinger, 97 M 135, 106 NW 108.

In opening an interlocutory judgment in an action for partition and granting leave to answer upon the application of a non-resident served with summons by

publication, the court under this section may impose terms, although the applicant has not been guilty of laches. Doherty v Ryan, 123 M 471, 144 NW 140.

The order granting the motion provided "that the defendant be granted leave to appear and defend upon the merits" and "that the judgment heretofore entered be allowed to stand as security for the claim of plaintiff until the final determination thereof or until the further order of the court." The purchaser of the timber on the land paid $500.00 into court. The trial court rightfully held the money as a deposit until the outcome of the litigation. Dickson v Florman, 178 M 162, 226 NW 410.

In an action in equity for the cancelation of a contract for sale of land, service was by publication, the defendant not being found, and judgment was by default after hearing plaintiff's evidence. The motion to vacate and reopen was denied on the ground that no "sufficient cause" was shown for opening the default, and the proposed answer did not state a valid defense. Madsen v Powers, 194 M 418, 260 NW 510.

The statutory remedy which permits a defendant not personally served to set aside a default judgment, and defend on the merits within one year from judgment, should be allowed as a matter of right which, though qualified in certain respects, is not discretionary with the trial court. Kane v Stallman, 209 M 138, 296 NW 1.

2. Relief granted liberally

Where a non-resident defendant, upon whom there was no personal service of the summons, applies under this section within a year after judgment for leave to file and serve an answer, there is no presumption against him of want of proper diligence, and hence he is not required affirmatively to show that he did not have actual notice of the action in time to interpose his defense before judgment. Frankoviz v Smith, 35 M. 278, 28 NW 508; Lord v Hawkins, 39 M 73, 38 NW 689.

A mortgagee, upon whom service has been made by publication and who has not appeared, applying within one year after judgment, not being guilty of laches and tendering an answer constituting "sufficient cause" because it states a good defense, is entitled to have judgment vacated and be given permission to serve and file her answer. Suhring v Stafford, 166 M 430, 208 NW 136.

When after due diligence in making search and inquiry, defendant cannot be found in the state, and no residence can be found at which he may be served, and all other requirements of the statute complied with, there may be a legal service by publication, though the defendant may actually be in the state. Wiik v Russell, 173 M 580, 218 NW 110.

The fact that a notice of motion, duly served, was not filed with the clerk of court until after the hearing of the motion, both parties by their counsel being present and taking part in the hearing without objection, did not affect the jurisdiction of the court to hear the motion. Wenell v Shapiro, 194 M 368, 260 NW 503.

In principle there can be no distinction between a case in which a defense is actually made, but proves unsuccessful, and one in which there is a total failure to defend. Equity aids the vigilant and not those who sleep on their rights. The relief granted by the trial court goes beyond the power possessed by the court and as such has no force. Jordan's Estate, 199 M 53, 271 NW 104.

The strict rule of res judicata does not apply to motions in a pending action. The district court has jurisdiction and may, in its discretion, allow the renewal of a motion to vacate a judgment and relieve from default. Wilhelm v Wilhelm, 201 M 462, 276 NW 804.

3. A good defense sufficient cause

A good defense is a sufficient cause within the meaning of the statute. Lord v Hawkins, 39 M 73, 38 NW 689; Nye v Swan, 42 M 243, 44 NW 9; Bausman v Tilley, 46 M 66, 48 NW 459.

In applications for relief under this section, an affidavit of merits is essential, and it must be made by the party himself, or someone having personal knowledge of the facts. It may take the place of a "proposed answer." People's Ice v Schlenker, 50 M 1, 52 NW 219.

In the instant case, a verified general denial was held to be sufficient. An affirmative defense need not be pleaded. Fitzpatrick v Campbell, 58 M 20, 59 NW 629.

The applicant should show a good defense in his moving papers. Holcomb v Stretch, 74 M 234, 76 NW 1132.

To propose an answer setting up a good defense is sufficient. Fifield v Norton, 79 M 264, 82 NW 581.

4. Diligence in making application

The applicant need not show in his moving papers that he has been diligent. He need not show that he did not have actual notice in time to interpose his defense before judgment. Frankoviz v Smith, 35 M 278, 28 NW 508.

There is no general rule as to the diligence required in making application after actual notice. Each case must be determined on its own facts. Nye v Swan, 42 M 243, 44 NW 9; Bausman v Tilley, 46 M 66, 48 NW 459; Cutler v Button, 51 M 550, 53 NW 872; Carlson v Phinney, 56 M 476, 58 NW 38; Mueller v McCulloch, 59 M 409, 61 NW 455.

The applicant is bound to meet any charge of laches made by the plaintiff on proper affidavits. Mueller v McCulloch, 59 M 409; 61 NW 455; Bogart v Kiene, 85 M 261, 88 NW 748; Foster v Coughran, 113 M 433, 129 NW 853; Pedersen v Newton, 139 M 24, 165 NW 378.

If a party receives the summons through the mail he is bound to act with great promptness thereafter. Bogart v Kiene, 85 M 261, 88 NW 748.

When service is made under this section, diligence in learning of the entry of the judgment is not required; but after he has actual notice of the judgment, his diligence in seeking relief therefrom begins. De Laittre v Chase, 112 M 508, 128 NW 670.

Delivery of summons to defendant outside the state is only the equivalent or substitute for a service of summons by publication. Wheaton v Welch, 122 M 396, 142 NW 714.

Summons was served upon the defendant personally outside the state. His delay in taking no action in the matter for five months justified the court in denying the application. Beelman v Beck, 164 M 504, 205 NW 636.

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, in view of statutes limiting time for action attacking such decree and limiting time to defend where summons is not personally served. Nitkey v McKnight, 87 F(2d) 916.

Right of relator as affected by the equitable maxim of laches. 24 MLR 877.

5. When year begins

The year within which to move begins with the entry of judgment. It is sufficient if the application be made within the year, though the courts do not act on it till after the year. Washburn v Sharpe, 15 M 63 (43).

Computation of time. Minnesota Statutes 1941, Sections 645.07, 645.14, 645.15.

6. Divorce

Independent of statutory provisions in General Statutes 1894, Sections 5204, 5267 (sections 543.11, 543.12, 544.32), the court herein has inherent power to entertain a motion made in apt time to vacate a judgment and afford relief where its jurisdiction is invoked or based upon some fraud or deceit practiced upon the court by plaintiff. Such an application is addressed largely to the sound discretion of the trial court. Scribner v Scribner, 93 M 195, 101 NW 163.

To justify vacating and setting aside a default judgment of divorce on the ground of alleged fraud of the prevailing party in invoking the jurisdiction of the court, subsequent to the entry of which there has been a good faith marriage to an innocent third person, the evidence of the fraud must be clear and convincing. Mere preponderance in insufficient. Walters v Walters, 151 M 300, 186 NW 693.

A final judgment in an action for divorce cannot be vacated on the ground that the defendant failed to answer through mistake or excusable neglect. Wilhelm v Wilhelm, 201 M 462, 276 NW 804.

The specific exclusion of divorce actions from provisions of statute permitting interposition of defense on specified grounds in action wherein default judgment has been entered, does not affect the court's inherent power to grant relief from such judgment to party who has been denied opportunity to defend in divorce action under circumstances amounting to fraud on court and administration of justice. Cahaley v Cahaley, 216 M 175, 12 NW(2d) 182.

7. Appeal

An order setting aside a judgment and granting leave to answer is appealable and in the instant case affirmed. Whitcomb v Shafer, 11 M 232 (153); Washburn v Sharpe, 15 M 63 (43); Frankoviz v Smith, 35 M 278, 28 NW 508; Bausman v Tilley, 46 M 66, 48 NW 459.

The trial court denied the application on the ground of laches. On appeal there was an affirmation. Cutler v Button, 51 M 550, 53 NW 872.

General Statutes 1878, Chapter 66, Section 66, provides that upon application and good cause shown, before judgment debtor shall be allowed to defend and may in like manner be allowed to defend after judgment; while General Statutes 1878, Chapter 66, Section 125, provides that the court may in its discretion grant relief. Lord v Hawkins, 39 M 73, 38 NW 689.

543.14 PROOF OF SERVICE.

HISTORY. R.S. 1851 c. 70 s. 54; P.S. 1858 c. 60 s. 58; G.S. 1866 c. 53; G.S. 1878 c. 66 s. 68; G.S. 1894 s. 5208; R.L. 1905 s. 4114; G.S. 1913 s. 7740; G.S. 1923 s. 9237; M.S. 1927 s. 9237.

1. Affidavit of personal service
2. Affidavit of substituted service
3. Return of officer
4. Admission of service
5. Affidavit of publication

1. Affidavit of personal service

It is not necessary that it should state that the person on whom the service was made to affiant known to be the person upon whom service was required to be made. Young v Young, 18 M 90 (72); Cunningham v Water-Power, 74 M 282, 77 NW 137.

The absence of venue is not fatal. Young v Young, 18 M 90 (72).

In an action against partners by firm name, the affidavit of the person who served the summons that the persons upon whom he served it, (naming them), are members of the firm named in the summons is sufficient to confer jurisdiction over such persons. Gale v Townsend, 45 M 357, 47 NW 1064.

A municipal court officer is not an officer authorized by law to serve a district court summons. Leland v Heiberg, 156 M 30, 194 NW 93.

A summons and complaint, enclosed and sealed in an envelope addressed to the defendant, were served upon the defendant by leaving with a person at his home. Proof of service was made in the usual form. Held, valid. MacLean v Lasley, 181 M 379, 232 NW 632.

An instruction that an affidavit of service, part of a judgment roll, is entitled to the same weight as if the party making it had testified personally to the fact of service, is not objectionable. Siewert v O'Brien, 202 M 314, 278 NW 162.

When the signatures are proved, it is presumed that an affidavit was actually sworn to by the person who signed as affiant, and if the proof does not embrace the fact necessary to negative the taking of the affidavit, the presumption will save it. Siewert v O'Brien, 202 M 314, 278 NW 162.

2. Affidavit of substituted service

It is not necessary to state that the defendant could not be found. Goener v Woll, 26 M 154, 2 NW 163; Vaule v Miller, 64 M 485, 67 NW 540.

When service is made by leaving a copy at the defendant's usual place of abode, the affidavit should state the name of the person with whom it is left, but it is not indispensable. Vaule v Miller, 64 M 485, 67 NW 540.

Under the provisions of Laws 1943, Chapter 620, only personal property abandoned by its owner is involved. Procedure under the cited act, so far as it affects depositors, is in its nature a proceeding in rem, the res having been seized by attachment prior to service of process. Since the res is here, as is the depository, substituted service of process upon unknown and non-resident claimants may be made to enforce provisions of the act, not against the person of the depositor, but solely on or in respect to the property interests of such a person who has or claims to have some right therein. State v Aldons, 219 M 471, 18 NW(2d) 570.

3. Return of officer

A return will not be set aside except upon strong evidence. Jensen v Crevier, 33 M 372, 23 NW 541; Gray v Hays, 41 M 12, 42 NW 594; Allen v McIntyre, 56 M 351, 57 NW 1060; Osman v Wisted, 78 M 295, 80 NW 1127.

The return of the officer is conclusive in collateral proceedings, but the defendant may impeach it on motion or other direct proceedings in the action to set aside the judgment on default, if the rights of third parties have not intervened. Crosby v Farmer, 39 M 305, 40 NW 71; Burton v Schenck, 40 M 52, 41 NW 244; Knutson v Davies, 51 M 363, 53 NW 646; Allen v McIntyre, 56 M 351, 57 NW 1060.

In serving a summons addressed to two defendants, a sheriff returned that the defendants, naming them conjunctively, could not be found. The court construed the return disjunctively. Blinn v Chessman, 49 M 140, 51 NW 666.

Ordinarily a return is not complete until it is filed. Corson v Shoemaker, 55 M 386, 57 NW 134.

Where the true name of the defendant was "Jasper W. Earl," and he was so named in the summons, the officer's return that he served upon "Joseph W. Earl" will not invalidate the judgment record. Sandwich v Earl, 56 M 390, 57 NW 938.

The filing of the return of the sheriff is not a jurisdictional prerequisite to the publication of the summons, overruling Corson v Shoemaker, 55 M 386, 57 NW 134. Easton v Childs, 67 M 242, 69 NW 903.

The provisions of General Statutes 1894, Section 5203 (section 543.08), is "due process of law" and valid; but conceding, without deciding, that the provision making the return of the sheriff conclusive is invalid, yet this would not render invalid the remainder of the statute, or service made in accordance with its provisions. Hinckley v Kettle River, 70 M 105, 72 NW 835.

It is the fact of service that gives jurisdiction. If service is made, and jurisdiction acquired, a return showing defective service does not divest it. Murray v Murray, 159 M 111, 198 NW 307.

No presumption of jurisdiction attaches to a domestic judgment when the record contains a certifiate by the sheriff of service of the complaint and none of service of the summons. Under such circumstances, the plaintiff has the burden of proving actual service of the summons. In the instant case, the evidence was not sufficient to warrant a finding of such service. Brown v Reinke, 159 M 458, 199 NW 235.

A notice of the expiration from redemption from a tax sale must be directed to the person in whose name the lands are assessed and to all owners and persons interested in the land, and the return of the notice by the sheriff must show the time, place, and maner of service upon the persons to whom the notice is directed; and the presumption that public officers perform their official duties does not dispense with the necessity of a strict compliance with the requirements of the statute in a sheriff's return. Gordon v Palmer, 160 M 136, 199 NW 895.

In the matter of notice of expiration in re tax forfeited lands, the sheriff's return must show the place of service, and the date of filing the certificate of posting. OAG July 26, 1944 (419f-2).

4. Admission of service

It is no part of the duty of an attorney, nor is it within his power as an attorney, to admit service for his client of an original process by which the court obtains jurisdiction of his person. Masterson v Le Claire, 4 M 163 (108).

When the service was made, the defendants in writing admitted service in the following words: "Due service admitted of a true copy of the within summons and complaint, this 30th Nov. 1859." The clerk docketed a default judgment. If the process was in fact served upon the defendants, the jurisdiction was complete. The fact of service may be made to appear in a manner satisfactory to the court. Kipp v Fullerton, 4 M 473 (366).

A written admission of service is presumed to have been made on the day of its date. Rahilly v Lane, 15 M 447 (360).

An infant defendant is incompetent to waive or admit service of the summons upon him, or to confer jurisdiction upon the court by a voluntary appearance. Phelps v Heaton, 79 M 476, 82 NW 990.

5. Affidavit of publication

Where the notice required was to be given by publication in two newspapers, once in each week for ten successive weeks, an affidavit of publication for ten weeks without stating that it was once in each week is insufficient. Ullman v Lion, 8 M 381 (338).

The fact of proper publication appearing, the publication was sufficient, notwithstanding the defects of the affidavit. Golcher v Brisbin, 20 M 453 (407).

Demand for payment excused; endorser held liable. Salisbury v Bartleson, 39 M 366, 40 NW 163.

An affidavit stating that the summons was published seven weeks, once a week, the date of the first and the last publication being shown, from which it clearly appeared that six weeks was intended, is held sufficient. Lane v Innes, 43 M 137, 45 NW 4.

The affidavit need not show that the publication was on the same day each week. Raunn v Leach, 53 M 84, 54 NW 1058.

543.15 JURISDICTION, WHEN ACQUIRED; APPEARANCE.

HISTORY. R.S. 1851 c. 70 s. 55; R.S. 1851 c. 82 ss. 36, 37; 1852 amend. p. 8; 1856 c. 5 s. 10; P.S. 1858 c. 60 s. 59; P.S. 1858 c. 72 ss. 36, 37; 1864 s. 42; G.S. 1866 c. 66 ss. 50, 54, 55, 56; 1867 c. 68 s. 1; G.S. 1878 c. 66 ss. 65, 69 to 71; G.S. 1894 ss. 5205, 5209 to 5211; R.L. 1905 s. 4115; G.S. 1913 s. 7741; G.S. 1923 s. 9238; M.S. 1927 s. 9238.

1. When acquired
2. Definition and effect of a general appearance
3. Void judgment not validated
4. Exceptional cases
5. General appearance
6. Special appearance
7. Withdrawal of appearance

1. When acquired

The summons was delivered to the sheriff for service on October 28, whereupon he seized property under an attachment. The sheriff returned that defendant could not be found, and publication was ordered and begun on November 7th to be continued for six weeks. Defendant died Nov. 18. The trial court rightfully denied plaintiff's motion to revive the action and continue it against defendant's executrix. Auerbach v Maynard, 26 M 421, 4 NW 816.

Statutory requirements for substituted service demand a strict compliance. The statute authorizing a substituted service of process upon non-residents using our highways (section 168.25) to recover damages growing out of such use is constitutional. Schilling v Odlebak, 177 M 90, 224 NW 694.

2. Definition and effect of a general appearance

By appearing generally, a party waives all defects in the summons, in its service, and in the proof of service. Chouteau v Rice, 1 M 192 (166); Johnson v Knoblauch, 14 M 16 (4); Tyrell v Jones, 18 M 312 (281); Steinhart v Pitcher, 20 M 102 (86); Anderson v Southern Minnesota, 21 M 30; Allen v Coates, 29 M 46; Howland v Jeuel, 55 M 102, 56 NW 581.

A general appearance gives the court jursidiction over the person. Chouteau v Rice, 1 M 192 (166); Hinkley v St. Anthony, 9 M 55 (44); Reynolds v LaCrosse, 10 M 178 (144); Williams v McGrade, 13 M 174 (165); Johnson v Knoblauch, 14 M 16 (4); Tyrrell v Jones, 18 M 312 (281); Steinhart v Pitcher, 20 M 102 (86); Anderson v Southern Minnesota, 21 M 30; Burt v Bailey, 21 M 403; Board v Jessup, 22 M 552; Curtis v Jackson, 23 M 268; Craighead v Martin, 25 M 41; Lee v Parrett, 25 M 128; Anderson v Hanson, 28 M 400, 10 NW 429; Allen v Coates, 29 M 46, 11 NW 132; Rheiner v Union Depot, 31 M 289, 17 NW 623; McKee v Metraw, 31 M 429, 18 NW 148; Seurer v Horst, 31 M 479, 18 NW 283; Frear v Heichert, 34 M 96, 24 NW 319; Whitely v Mississippi, 38 M 523, 38 NW 753; Johnson v Hagberg, 48 M 221, 50 NW 1037; State ex rel v District Court, 51 M 401, 53 NW 714; Bank v Backus, 64 M 43, 66 NW 5; Kieckenapp v Supervisors, 64 M 547, 67 NW 662; Bank v Backus, 74 M 264, 77 NW 142; McCubrey v Lankis, 74 M 302, 77 NW 144; Anderson v Town, 74 M 339, 77 NW 222; Hurst v Town, 80 M 40, 82 NW 1099.

The fact of a demand by the landlord upon the tenant for payment of rent and taxes, is not jurisdictional in proceedings under the statute relating to forcible entries and unlawful detainers. Chandler v Kent, 8 M 536 (479).

Jurisdiction over the subject matter cannot be conferred by a general appearance. Chandler v Kent, 8 M 536 (479); McGinty v Warner, 17 M 41 (23); Chauncey v Wass, 35 M 15, 25 NW 457.

A non-resident may give the court jurisdiction by a voluntary appearance. Reynolds v La Crosse, 10 M 178 (144).

A general appearance in an action of claim and delivery does not waive irregularity in the seizure. Castle v Thomas, 16 M 490 (443).

That the defendant employed an attorney who appeared for the defendant of record, and appeared as a witness for defendant, is, in the instant case, not sufficient. To "appear" means to come into court as a party to the action. Schroeder v Lahrman, 26 M 87, 1 NW 801.

An action pending before a justice of the peace at the time of his retirement from the office is not transferred by operation of law to his successor, so as to invest the latter with jurisdiction therein; but, in the instant case, the defendant appeared before the successor justice, and among other things, moved for an adjournment; and overruling Rahilly v Lane, 15 M 447, it was held that he had entered a general appearance and had thus consented to the jurisdiction. Anderson v Hanson, 28 M 400, 10 NW 429.

Although jurisdiction over the subject matter cannot be conferred by a general appearance, in the instant case the proceedings being in rem, a voluntary appearance gives the court jurisdiction so far as the party's interest in the property is concerned. Chauncey v Wass, 35 M 15, 25 NW 457; State ex rel v District Court, 51 M 401, 53 NW 714.

By appearing and moving to set aside the service of a summons on the ground that the complaint was not filed, and no copy served with the summons, a party does not waive the irregularity of the service, although he did not expressly state that his appearance is special. Houlton v Gallow, 55 M 443, 57 NW 141.

The defendant corporation by their demand for a change of venue made a general appearance in the instant case. Zell v Friend-Crosby, 160 M 183, 199 NW 928.

The action of defendant's attorney in challenging the jurisdiction of the court to entertain the proceeding cannot be construed as a general appearance. Bank v Casey, 164 M 363, 205 NW 264.

By personally signing an answer, interposed to a complaint for the recovery of a stated sum upon an official bond, defendants appeared in the action. City v Skyberg, 169 M 234, 211 NW 5.

Where a summons is served upon a non-resident who comes into this state to testify in judicial proceedings, the service is not void but voidable only; and the privilege to claim exemption from such service is waived, unless promptly asserted. Nelson v Brigham, 173 M 552, 218 NW 101.

Where a receiver was appointed ex parte for the defendant corporation and it appears and is heard on the merits, it is too late after such appearance to object to the original seizure without notice. Schmid v Ballard, 175 M 138, 220 NW 423; Schlitz v Good Will League, 180 M 492, 231 NW 209.

The general appearance of defendant on the motion to set aside the writ and levy could not cure the improper issuance of the writ, for attachment is merely a provisional remedy and without a summons confers no jurisdiction upon the court. Borgen v Corty, 181 M 349, 232 NW 512.

The appellants by serving their answer to the complaint and thereafter moving the court to strike or amend the complaint made a general appearance. Kaiser v Butchart, 197 M 29, 265 NW 826.

When, on motion to substitute the personal representative of a deceased defendant in a pending suit, such representative appears and raises no objection on the ground that the jurisdiction had not been obtained of the deceased, but answers and tries the case on the merits, it is too late to move to vacate the judgment rendered after trial. O'Keefe v Scott, 201 M 51, 275 NW 370.

Due service of process and appearance and answer by the defendants gives to the state court jurisdiction of action on note. In re Anton, 11 F. Supp. 345.

Juvenile court practice. 4 MLR 230.

3. Void judgment not validated

The decision of a motion or summary application, at least where it is not appealable, is not res judicata, so as to prevent the parties from drawing the same matters in question again in another action. Kanne v Minneapolis & St. Louis, 33 M 419, 23 NW 854.

Curtis v Jackson, 23 M 268, overruled upon the point that an appearance in court after the rendition of a judgment which is void for want of jurisdiction is effectual to render that judgment valid. Godfrey v Valentine, 39 M 336, 40 NW 163; Roberts v Chicago, St. Paul, 48 M 521, 51 NW 478.

4. Exceptional cases

Where, in an action in the court of another state for divorce, both parties voluntarily appear and submit to its jurisdiction, they are bound by the judgment and cannot avoid it in a collateral proceeding in this state by proof that where the action was brought and judgment rendered, neither of them was a resident in that state, and that both were residents in this state. Ellis' Estate, 55 M 401, 56 NW 1056.

An infant defendant is incompetent to waive or admit service of the summons upon him, or to confer jurisdiction upon the court by a voluntary appearance. Phelps v Heaton, 79 M 476, 82 NW 990.

5. General appearance

By demurring to the complaint for want of jurisdiction over the person, the defendant appears and becomes subject to the jurisdiction of the court. Reynolds v La Crosse, 10 M 178 (144).

An application for an extension of time to answer, though a motion be pending to set aside the summons, is a recognition of the jurisdiction of the court over the person. Yale v Edgerton, 11 M 271 (184).

A party appears generally when he takes or consents to any step in the cause which assumes that the jurisdiction exists or continues. Burt v Bailey, 21 M 403; Johnson v Hagberg, 48 M 221, 50 NW 1037.

If a party so far appears as to call into action the powers of the court for any purpose, except to decide upon its own jurisdiction, it is a full appearance. A motion to set aside a judgment on grounds not expressly limited to the jurisdiction of the court would be a general appearance. Curtis v Jackson, 23 M 268.

An appeal from a judgment of a justice of the peace upon questions of law or law and fact brings before the appellate court for review all errors of law, jurisdictional or otherwise. Craighead v Martin, 25 M 41; Lee v Parrett, 25 M 128; Seurer v Horst, 31 M 479, 18 NW 283; Wrolson v Anderson, 53 M 508, 55 NW 597; McCubrey v Lankis, 74 M 302, 77 NW 144; Minneapolis Savings v King, 198 M 420, 270 NW 148.

Interpleading and consenting to an adjournment is an appearance. Anderson v Hanson, 28 M 400, 10 NW 429.

A party cannot at the same time object to and ask the court to exercise its jurisdiction. A motion objecting to jurisdiction, but at the same time asking a decision on the merits, is an appearance. Papke v Papke, 30 M 260, 15 NW 117.

The defendant obtained an order to show cause why a judgment should not be vacated, and for leave to answer, and served the same, together with a copy of his proposed answer upon the plaintiff. This was a general appearance. Frear v Heichert, 34 M 96, 24 NW 319.

Where a landowner appears before commissioners in condemnation proceedings, and is heard, and therefore appeals, he will be deemed to have submitted to the jurisdiction of the court, and waived prior irregularities. Whitely v Mississippi, 38 M 523, 38 NW 753; Peterson v Board, 199 M 455, 272 NW 391.

Stipulating for an adjournment is a general appearance. Johnson v Hagberg, 48 M 221, 50 NW 1037.

An appearance for any other purpose than to question the jurisdiction of the court is a general appearance, and gives the court jurisdiction of the person. An objection to jurisdiction coupled with an objection to the appointment of a receiver is an appearance. St. Louis Car v Stillwater Street Railway, 53 M 129, 54 NW 1064; State ex rel v District Court, 192 M 602, 258 NW 7.

In determining whether an appearance is general or special, the purpose for which it was made should be considered rather than what the party has labeled it. Houlton v Gallow, 55 M 443, 57 NW 141; Van Sloun v DuToit, 199 M 434, 272 NW 261.

Opposing a motion on the merits and offering to submit to an order of court is a general appearance. Bank v Backus, 64 M 43, 66 NW 5.

The court takes judicial notice of the proceedings by which it acquires jurisdiction. Bond v Pennsylvania, 124 M 195, 144 NW 942.

Voluntary appearance is equivalent to personal service. Carr-Cullen v Cooper, 144 M 384, 175 NW 696.

As the district court has original as well as appellate jurisdiction of such causes, the motion of plaintiffs for judgment against the garnishee voluntarily made in the district court gave it jurisdiction over them. Brennan v Cavanough, 178 M 366, 227 NW 200.

The appellants by serving their answer to the complaint and thereafter moving the court to strike or amend the complaint, made a general appearance which was not withdrawn or annulled by the stipulation subsequently entered. Kaiser v Butchart, 197 M 28, 265 NW 826.

6. Special appearance

By demurring to the complaint for want of jurisdiction over the person, the defendant appears and the court acquires jurisdiction. Reynolds v La Crosse, 10 M 278 (144).

Special appearances are not favored. Yale v Edgerton, 11 M 271 (184).

The exemption from the service of a process is a personal privilege which should be taken advantage of by a motion to set aside the service. Williams v McGrade, 13 M 174 (165); Board v Jessup, 22 M 552; Covert v Clark, 23 M 539; Board v Smith, 25 M 131; Hooper v Chicago, St. Paul, 37 M 52, 33 NW 314; Houlton v Gallow, 55 M 443, 57 NW 141.

A motion to vacate a judgment on grounds taken solely with reference to their supposed hearing upon the jurisdiction of the court to render the judgment and solely for the purpose of attacking said jurisdiction, the attorney appearing "for the purposes of the motion only", is a special appearance. Covert v Clark, 23 M 539.

When a party appears specially and objects to the jurisdiction of the court over his person and his objection is overruled, he does not waive the objection by answering to the merits and proceeding with the trial. Board v Smith, 25 M 131; State ex rel v District Court, 26 M 233, 2 NW 698; Hess v Adamant, 66 M 79, 68 NW 774; Perkins v Meilicke, 66 M 409, 69 NW 220; May v Grawert, 86 M 210, 90 NW 383; Sellars v Sellars, 196 M 143, 264 NW 425.

After stating his objection to the jurisdiction, the defendant, in the same document proceeded as follows: "If such objection to the jurisdiction be overruled, the undersigned, further, as a separate defense in said matter, objects, etc., setting up a defense upon the merits". This was not a full appearance or a waiver of the objection to the jurisdiction. Board v Smith, 25 M 131; Perkins v Meilicke, 66 M 409, 69 NW 220.

A party cannot be deemed to submit to the jurisdiction of a court by the mere act of denying its jurisdiction, nor by an answer setting forth objections to the jurisdiction. Higgins v Beveridge, 35 M 285, 28 NW 506; Chubbuck v Cleveland, 37 M 466, 35 NW 362.

By appearing and moving to set aside the service of a summons on the ground that the complaint was not filed, and no copy of it served with the summons, a party does not waive the irregularities in the service, although he does not expressly state that his appearance is special, and limited to the purposes of the motion. Houlton v Gallow, 55 M 443, 57 NW 141.

Where a party appears specially, he has no standing on appeal to attack the validity of the judgment in any other respect than the jurisdiction of the court. Fowler v Jenks, 90 M 74, 95 NW 887, 96 NW 914, 97 NW 127.

An order, entered upon a special appearance to show cause why the service of the summons and complaint should not be set aside as insufficient to confer jurisdiction, did not convert the special into a general appearance by reason of the fact the court enlarged the time for answering. Longcor v Atlantic, 122 M 245, 142 NW 310.

Presence in court at a general term call of the calender when the case is set for trial without either participation or objection does not constitute a general appearance. Spitzhak v Regenik, 122 M 352, 142 NW 709.

A special appearance for defendant at the garnishee's disclosure under the circumstances of the case, held not to have been too late. Bank v Riebe, 160 M 443, 200 NW 468.

A special appearance is not made general by a consent to an adjournment. Pearson v Zacher, 177 M 182, 225 NW 9.

A defendant appear generally in an action when he answers, demurs, or gives plaintiff notice of his appearance, and such appearance is equivalent to personal service upon him. The appearance by defendant in the instant case under the declaratory judgments act was a general appearance. Montgomery v Minneapolis Fire Department Relief Association, 218 M 27, 15 NW(2d) 122.

7. Withdrawal of appearance

Overruling Rahilly v Lane, 15 M 447, defendant having conferred jurisdiction by consent, cannot withdraw. His objection to the jurisdiction came too late. Anderson v Hanson, 28 M 400, 10 NW 429.

A general appearance cannot be set aside unless induced by fraud or mistake. Allen v Coates, 29 M 46, 11 NW 132.

543.16 APPEARANCE AND ITS EFFECT.

HISTORY. R.S. 1851 c. 82 s. 26; P.S. 1858 c. 72 s. 26; G.S. 1866 c. 66 s. 57; GS. 1878 c. 66 s. 72; G.S. 1894 s. 5212; R.L. 1905 s. 4116; G.S. 1913 s. 7742; G.S. 1923 s. 9239; M.S. 1927 s. 9239.

The entry of a judgment is not a proceeding that always requires notice to the opposite party. When a defendant fails to appear, service of notice and papers in the ordinary proceedings in an action need not be made upon him. Bank v Rogers, 12 M 529 (437); Grant v Schmidt, 22 M 1; Lambert v Bank, 66 M 185, 68 NW 834.

A written admission of service endorsed on a summons is not an appearance entitling a defendant to notice. To require the service of notice, the appearance must be by answer, demurrer, or notice. Bank v Rogers, 12 M 529 (437).

A stipulation signed by the plaintiffs and some of the defendants in a settlement and dismissal of an action is not an appearance requiring notice. Grant v Schmidt, 22 M 1.

After appearance, a defendant is entitled to notice of all subsequent proceedings. Davis v Red River, 61 M 534, 63 NW 1111; Lambert v Bank, 66 M 185, 68 NW 834.

Defects may be waived by a general appearance. Spitzbak v Regenik, 122 M 352, 142 NW 709.

In justice court, an answer, even if unverified, is an appearance. Quaker v Carlson, 124 M 147, 144 NW 449.

A party litigant is not entitled to proceed to trial in the absence of proof of service of notice of trial upon parties who have appeared. Zell v Friend-Crosby, 160 M 181, 199 NW 928.

A party challenging the jurisdiction of the court on a special appearance, of which due notice is given, is not entitled to notice of subsequent proceedings under this section. Haney v Haney, 163 M 114, 203 NW 614.

It was reversible error to amend the order for judgment and judgment by an ex parte order. Counsel having appeared in the case, was entitled to notice of all subsequent proceedings. Wilson v City of Fergus Falls, 181 M 329, 232 NW 322.

A defendant against whom a default judgment is entered is out of court, and he is not entitled to notice of further proceedings. Anderson v Grane, 183 M 336, 236 NW 483.

The complaint laid the venue in the district court while the summons put it in municipal court. The defendant was entitled to a notice the papers failed to furnish. The defect was fatal to jurisdiction. Brady v Burch, 185 M 440, 241 NW 393.

Service of a complaint in intervention upon the attorney for the plaintiff in a pending action, confers jurisdiction upon the district court. Scott v Van Sant, 193 M 465, 258 NW 817.

An order and writ of habeas corpus having been issued by the court commissioner, it was error to vacate the one and quash the other upon order to show cause directed to and served upon the commissioner alone. Notice should have been given to the petitioner for the writ, he being the real party in interest. State v Hemenway, 194 M 124, 259 NW 687.

The appellants by serving their answer to the complaint and thereafter moving the court to strike or amend the complaint made a general appearance which was not withdrawn or annulled by the stipulation subsequently entered. Kaiser v Butchart, 197 M 28, 265 NW 826.

Upon an ex parte application for a declaratory judgment for unpaid alimony and for an execution thereon, the trial court may, in its discretion, require notice of the application to be given to the other party in the divorce proceedings, even if the giving of such notice is not required under section 543.16. Kumlin v Kumlin, 200 M 26, 273 NW 253.

Where jurisdiction is obtained of the person of the defendant in the main action, the steps taken to bring in the garnishee are not jurisdictional as to him. Melin v Aronson, 205 M 353, 285 NW 830.

Under the provisions of section 543.16, a party who interposes a demurrer is entitled to notice of all subsequent proceedings even though the demurrer is overruled and no leave to plead is obtained. Section 546.29 does not dispense with the duty to give notice after demurrer is overruled. Kemerer v State Farm Mutual, 206 M 325, 288 NW 719; Williams v Jayne, 210 M 598, 299 NW 853.

Where a motion is made for a change of venue under section 542.11, notice thereof must be given the defendants who have appeared, answered, or demurred. Singer v Mandt, 211 M 50, 299 NW 897.

Due service of process and appearance and answer by the defendants gives to the state court jurisdiction of action on note. In re Anton, 11 F. Supp. 345.

543.17 SERVICE OF NOTICES AND OTHER PAPERS.

HISTORY. R.S. 1851 c. 82 ss. 22, 23, 27, 28; P.S. 1858 c. 72 ss. 22, 23, 27, 28; G.S. 1866 c. 66 ss. 58, 59, 62, 63; 1872 c. 72 s. 1; G.S. 1878 c. 66 ss. 73, 74, 77, 78; G.S. 1894 ss. 5213, 5214, 5217, 5218; R.L. 1905 ss. 4117, 4118; G.S. 1913 ss. 7743, 7744; G.S. 1923 ss. 9240, 9141; M.S. 1927 ss. 9240, 9241.

The provisions of this section are not applicable to the service of a summons or other process or of any paper to bring a party into contempt. Martinson v Le Claire, 4 M 163 (108); State ex rel v District Court, 42 M 40, 43 NW 686; Savings Bank v Authier, 52 M 98, 53 NW 812.

Until the entry of judgment, the attorney of record is the proper person upon whom to serve notices of all kinds. As a general rule, the authority of an attorney ceases upon the entry of judgment and notices must thereafter be served on the party. Berthold v Fox, 21 M 51.

Where the county is a party, the county attorney is the proper person on whom to serve. Board v Sutton, 23 M 299.

On appeal to the district court from an order of the probate court admitting a will to probate a notice of appeal may be served on the attorney of the proponent. Brown's Will, 32 M 443, 21 NW 474.

Service upon an attorney at his office, he being absent, can be made by leaving the paper in a conspicuous place in his office only when there is in the office no clerk of his, or person having charge thereof. Mies v Thompson, 53 M 273, 55 NW 44.

When after the commencement of an action, the defendants and their attorney removed from the state, it was held proper to serve a notice of trial by mail on the attorney out of the state. Olmstead v Firth, 64 M 243, 66 NW 988.

Notice of a motion to vacate a judgment in favor of a non-resident plaintiff may be served on his attorney of record, although more than two years have elapsed since the entry thereof. Phelps v Heaton, 79 M 476, 82 NW 990.

This section is not applicable to the service of notice to terminate a lease. Alworth v Gordon, 81 M 445, 84 NW 454.

Whatever form the adjudications of matters in inheritance tax cases may take in the district court, they must be treated as final orders for the purpose of appeals to the supreme court, and an appeal taken more than 30 days after receipt of written notice of the decision is not effective. The written notice received through the mail by the aggrieved party set the time for appeal running. Bridgham's Estate, 158 M 467, 197 NW 847.

Service on adverse party of writ of certiorari may be made on counsel who appeared for adverse party. Perkovich v Oliver, 171 M 519, 214 NW 795.

Service of motion for extension of time to redeem from a mortgage foreclosure sale may be made upon the attorneys who made such foreclosure by advertisement. Service on the mortgagee by mail is not authorized. Swanson v Cross Lake, 192 M 81, 255 NW 812; Rivkin v Niles, 195 M 635, 263 NW 920.

Service of a complaint in intervention upon the attorney for the plaintiff in a pending action confers jurisdiction upon the district court. Scott v Van Sant, 193 M 467, 258 NW 817.

Where an order of a court commissioner for a writ of habeas corpus had been issued to authorize the court to vacate the order and quash the writ, notice of a hearing should be served on the petitioner for the writ. State v Hemenway, 194 M 126, 259 NW 687.

A notice of appeal from the probate court to the district court is not "process", and service of the notice on election day is not prohibited by section 645.44, subdivision 4, which prohibits service of process on that day. Dahmen's Estate, 200 M 55, 273 NW 364.

543.18 SERVICE BY MAIL; WHEN AND HOW MADE; EFFECT.

HISTORY. R.S. 1851 c. 82 ss. 24, 25; P.S. 1858 c. 72 ss. 24, 25; G.S. 1866 c. 66 ss. 60, 61; G.S. 1878 c. 66 ss. 75, 76; G.S. 1894 ss. 5215, 5216; R.L. 1905 s. 4119; G.S. 1913 s. 7745; G.S. 1923 s. 9242; M.S. 1927 s. 9242.

This section does not apply to service of papers on the clerk of court, so that a service on him by mail is not good unless the paper actually reaches him within the proper time. Thorson v St. Paul Fire, 32 M 434, 21 NW 471.

A paper must be mailed at the place of residence of the attorney or party serving it. When the paper actually comes into the hands of the person to be served within the time required for personal service, it is immaterial where it is mailed; for then it is equivalent to personal service, but if it be mailed at any other than the proper place, the person adopting that mode of service must take the risk of its reaching the person to whom sent within the proper time. Service being in derogation of common law must be made in strict compliance with the statute. When a paper is properly mailed, the service is deemed complete. The risk of failure of the mail is on the person addressed. A paper is properly served under this section if mailed on the last day of the time allowed for service, although not received until after the expiration of such time. Van Aerman v Winslow, 37 M 514, 35 NW 381.

When a complaint is served by mail after a seasonable demand of a copy by an appearing defendant, the latter has double the time in which to answer. Gillette v Ashton, 55 M 75, 56 NW 576.

Whether a party can secure double time in which to amend of course by serving his pleading by mail is an open question. Griggs v Edelbrock, 59 M 485, 61 NW 555.

This section has no application to private contracts. Hoban v Hudson, 129 M 335, 152 NW 723.

If deposited in the post-office on the last day for answering, there was proper service. The post mark on the envelope have date two days late, and it was held there was no service. Kay v Elsholtz, 138 M 153, 164 NW 665.

Where a letter is deposited in the United States mails, properly addressed and postage prepaid, there is a presumption that it reached its destination in due course of mail, but such fact of mailing is not conclusive proof that the letter reached its proper address. Outcault v Bank, 151 M 500, 187 NW 514.

The written notice of the district court's order in a tax inheritance case received through the mail by the aggrieved party set the time for appeal running. Bridgham's Estate, 158 M 467, 197 NW 847.

Service of notice by mail as provided by statute is complete when the notice is properly mailed "Place of residence" means the municipality where the addressee resides, not the house he occupies as a home. MacLean v Reynolds, 175 M 112, 220 NW 435.

The statute authorizing a substituted service of process upon non-residents using our highways to recover damages growing out of such use is constitutional. Schilling v Odlebak, 177 M 90, 224 NW 694.

This statute is limited to actions and proceedings in the district court. It does not apply in probate court. Nelson's Estate, 180 M 570, 231 NW 218.

Service of a motion for extension of time to redeem from a mortgage foreclosure sale may be made on the attorney who made the foreclosure by advertisement. Swanson v Cross Lake, 192 M 81, 255 NW 812.

On the question of whether appeal from probate to district court was perfected, the service of notice of appeal is sufficient. Notice actually received through the mail is the equivalent of personal service. In the absence to the contrary, presumption that letter properly addressed and posted with proper postage affixed is received in due course controls. Devenney's Estate, 192 M 265, 256 NW 104.