CHAPTER 548

JUDGMENTS

548.01 JUDGMENT; MEASURE OF RELIEF GRANTED.

HISTORY. R.S. 1851 c. 70 s. 161; P.S. 1858 c. 60 s. 169; G.S. 1866 c. 66 s. 246; G.S. 1878 c. 66 s. 267; G.S. 1894 s. 5413; R.L. 1905 s. 4264; G.S. 1913 s. 7896; G.S. 1923 s. 9392; M.S. 1927 s. 9392.

1. Default
2. After answer
3. Res judicata
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6. Generally

1. Default

On default the relief which may be awarded the plaintiff is strictly limited in nature and degree to the relief specifically demanded in the complaint and it matters not that the allegations and proof would justify different or greater relief. Minnesota Linseed v Maginnis, 32 M 193, 20 NW 85; Prince v Farrell, 32 M 293, 20 NW 234; Heinrich v Englund, 34 M 395, 26 NW 122; Exley v Berryhill, 37 M 182, 33 NW 567; Spooner v Bay St. Louis, 47 M 464, 50 NW 601; Doud v Duluth Milling Co. 55 M 53, 56 NW 463; Northern Trust v Albert Lea, 68 M 112, 71 NW 9; Halvorsen v Orinoco, 89 M 470, 95 NW 320.

In an action to determine adverse claims, plaintiff is entitled, on default, to such relief only as he demands in his complaint, or as comes within its allegations, where demand is imperfectly drawn. Judgment awarding excessive relief, so appearing from the face of the record, is void for want of jurisdiction, and is open to attack before or after time of appeal, even by one not a party but affected thereby in his property rights. Sache v Wallace, 101 M 169, 112 NW 386; Union Central v Page, 190 M 364, 251 NW 911.

The relief granted to plaintiff against a defendant who does not answer has, by decision law, been so construed as to hold that on default the relief which may be awarded is limited in nature and degree to the relief demanded in the complaint whether the proof justifies this or greater relief. Pilney v Funk, 212 M 398, 3 NW(2d) 792.

In the instant case, the omission of the names of certain defendants in 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.

2. After answer

A plaintiff cannot recover more than is claimed in the declaration. Elfelt v Smith, 1 M 125 (101); Eaton v Caldwell, 3 M 134 (80); Amort v Christofferson, 57 M 234, 59 NW 304; Nichols v Wiedeman, 72 M 344, 75 NW 208, 76 NW 41.

When a court once takes jurisdiction of a cause, it is its duty to determine all rights and obligations pertaining to the subject matter and to grant full measure of relief. Nichols v Randall, 5 M 304 (240); Belote v Morrison, 8 M 87 (62); Sewall v City of St. Paul, 20 M 511 (459); Thompson v Myrick, 24 M 4; Winona & St. Peter v St. Paul & Sioux City, 26 M 179, 2 NW 489; Coolbaugh v Roemer, 32 M 445, 21 NW 472; Thwing v Hall, 40 M 184, 41 NW 815; Crump v Ingersoll, 47 M 179, 49 NW 739; Erickson v Fisher, 51 M 300, 53 NW 638; Sprague v Sprague, 73 M 474, 76 NW 268; Redner v New York Life, 92 M 306, 99 NW 886.

In case there is an answer, the court may grant any relief consistent with the case made by the complaint and embraced within the issue. Thompson v Bickford, 19 M 17 (1); Washburn v Mendenhall, 21 M 332; Griffin v Jorgenson, 22 M 92; Howard v Barton, 28 M 116, 9 NW 584; Hardin v Palmerlee, 28 M 450, 10 NW 773; Minneapolis Harvester Works v Smith, 30 M 399, 16 NW 462; Hatch v Caddington, 32 M 92, 19 NW 393; Abbott v Nash, 35 M 451, 29 NW 65; Smith v Gill, 37 M 455, 35 NW 178; Mykleby v Chicago, St. Paul, 39 M 54, 38 NW 763; Alworth v Seymour, 42 M 526, 44 NW 1030; Farmer v Crosby, 43 M 459, 45 NW 866; Wilson v Fairchild, 45 M 203, 47 NW 642; Triggs v Jones, 46 M 277, 48 NW 1113; Henry v Meighen, 46 M 548, 49 NW 223, 646; Spooner v Bay St. Louis, 47 M 464, 50 NW 601; Seibert v Minneapolis, St. Louis, 58 M 39, 59 NW 822; Wilson v Fuller, 58 M 149, 59 NW 988; Brown v Doyle, 69 M 543, 72 NW 814; Aultman v O'Dawd, 73 M 58, 75 NW 756; Norton v Metropolitan Life, 74 M 484, 77 NW 298; Piper v Sawyer, 78 M 221, 80 NW 970; Germania v Osborne, 81 M 272, 83 NW 1084.

Relief of an equitable nature may be awarded in an action of a legal nature and vice versa. Sanborn v Nockin, 20 M 178 (163); Little v Willford, 31 M 173, 17 NW 282; Marshall v Gilman, 47 M 131, 49 NW 688; Crump v Ingersoll, 47 M 179, 49 NW 739; Erickson v Fisher, 51 M 300, 53 NW 638.

The prevailing party must be given such relief, either legal or equitable, as he proves himself entitled to without regard to the prayer for relief. A plaintiff cannot be thrown out of court because he has mistaken the character of his cause of action and remedial right, but only when he has failed to show himself entitled to any relief on the facts proved within the allegations of his complaint. The court, disregarding plaintiff's theory of the case and prayer for relief, should consider the facts proved within the allegations of the complaint in connection with the whole body of the substantive and remedial law of the state and grant relief accordingly; either legal or equitable. Greenleaf v Egan, 30 M 316, 15 NW 254; Canty v Latterner, 31 M 239, 17 NW 385; Merrill v Dearing, 47 M 137, 49 NW 693; Or a blending of both; Little v Willford, 31 M 173, 17 NW 282; Slingerland v Sherer, 46 M 422, 49 NW 237; Erickson v Fisher, 51 M 300, 53 NW 638; Bell v Mendenhall, 71 M 331, 73 NW 1086; Whiting v Clugston, 73 M 6, 75 NW 759; Gilbert v Boak Fish Co. 86 M 365, 90 NW 767.

Interest being a legal incident of damages may be awarded, though not asked for in the complaint. Jones v Burgess, 124 M 265, 144 NW 954.

Such relief, legal or equitable, will be granted as is proven by the facts, and may be broader than the prayer. Hoffman v Erickson, 124 M 279, 144 NW 952.

In a suit for divorce where personal service is made upon the defendant, the court has power to allow alimony, although the complaint contains no specific demand therefor, and the defendant does not answer. Ecker v Ecker, 130 M 472, 153 NW 864; Reinkey v Findley, 147 M 165, 180 NW 236.

A judgment is not void so long as the subject matter adjudicated is embraced within the pleadings or litigated by consent. Jackson v Straabe, 150 M 330, 185 NW 290.

It is error to vacate a judgment rendered after trial, on the ground that the relief granted varies from the demand of the complaint. Morehart v Furley, 152 M 388, 188 NW 1001.

Any relief consistent with the complaint and within the issues tried may be granted. Burns v Essling, 156 M 171, 194 NW 404.

Courts should not deprive a party litigant of his legal rights in a civil action in order to deter others from seeking that relief which, under the law of the state, they may be entitled to. Webber v Webber, 157 M 426, 196 NW 646.

In this action for specific performance, the court by the decree properly retained jurisdiction of the parties for the purposes of enforcement; and hence a notice, served upon the attorney for a non-resident party at the trial, was legal service. Turner v Even, 160 M 238, 199 NW 751.

The fee title of the owner does not pass to the purchaser at foreclosure sale until the statutory year for redemption has expired. Fredin v Cascade Realty, 205 M 256, 285 NW 615.

There being no motion for a directed verdict at the close of the testimony, defendant was not entitled to a judgment notwithstanding the verdict. Raspler v Seng, 215 M 596, 11 NW(2d) 440.

Vacation of judgment. 24 MLR 819.

3. Res judicata

When the complaint in the first action states facts sufficient to prove everything necessary to the establishment of the cause of action pleaded in the second action, a final judgment on the merits in the first action is a bar to the maintenance of the second action. Hoofnagle v Alden, 170 M 414, 213 NW 53; Olson v Shephard, 172 M 290, 215 NW 211; Clark v Peyton, 187 M 155, 244 NW 550.

Where issue is joined and there is a trial resulting in judgment, the rule in default cases that the judgment must be within the issues tendered by the complaint and award relief cannot go beyond its scope, does not apply. LaRue v Village of Nashwauk, 176 M 117, 222 NW 527.

Plaintiff brought an action for the value of oats alleging a contract, but failed to prove the contract. This did not deprive him of the right to bring a new action for conversion of the oats. Ross v Amiret Elevator, 178 M 93, 226 NW 417; Turner v Vally National, 182 M 115, 233 NW 856.

The allegations of the complaint, aided by the prayer, were sufficient to include all necessary to validate the judgment. Child v Washed Sand Co. 181 M 562, 233 NW 586.

Plaintiff prevailed in an action to cancel a deed and had judgment for costs. A later action against defendant for expenses and damages growing out of fraud in the same matter was dismissed, it raising no justifiable issue not covered by the first case. Bereton v Bowler, 183 M 584, 237 NW 424.

A judgment against the receiver is res judicata as against creditors. Lamson v Towle, 187 M 368, 245 NW 627.

Where a court has no jurisdiction to determine a particular issue in an action, its final order therein does not operate as res judicata. Muellenberg v Joblinski, 188 M 398, 247 NW 570.

The trial court by reason of the condition contained in its conclusions of law, left the right open, permitting plaintiff to bring the instant action. Johnson v Independent District, 189 M 293, 249 NW 177.

No litigated issue becomes res judicata until final judgment. Pagel v MacLean, 189 M 383, 249 NW 417.

An action for personal injuries against two alleged tort feasors resulted in a verdict for the plaintiff against one of them, and in favor of the other. Judgment on that verdict was not res judicata in an action for contribution by the unsuccessful defendant against the successful one in the first action. Hardware Mutual v Anderson, 191 M 158, 253 NW 374.

It must be assumed that issues litigated under stipulated facts are litigated by consent. Engel v Swenson, 191 M 324, 254 NW 2.

A dismissal of an action on defendant's motion at the close of plaintiff's evidence where defendant has not rested, and does not move for a directed verdict or a dismissal on the merits is not a bar to a second suit on the same cause of action. Mardorf v Duluth-Superior, 192 M 230, 255 NW 809.

The proceeding to have defendant adjudged feeble-minded is not an action at law, and there is no statute on which a plea of res judicata could attach. State Board v Fechner, 192 M 412, 256 NW 662.

The findings of the referee of the industrial commission being on matters not in issue were properly excluded. Gilbert v Megeans, 192 M 495, 257 NW 73.

The various sales and transfers of stock under the power of appointment and under court orders, is as to appellant res judicata. Ferguson's Will, 193 M 235, 258 NW 295.

A judgment in an action against the principal for the acts of his servant, rendered upon a trial of the merits, is a bar to a suit against the servant for the same act. Myhra v Park, 193 M 290, 258 NW 515.

The foundation principle upon which the doctrine of res judicata rests is that parties ought not to be permitted to litigate the same issue more than once. Herreid v Deaver, 193 M 618, 259 NW 189.

A denial of a prior application to reduce alimony is not a bar to a subsequent application of a change of financial ability as shown to have occurred after the denial of the first. Erickson v Erickson, 194 M 634, 261 NW 397.

In the instant case, the proof was sufficient to sustain the judgment, even if all the allegations were not proven. Cashman v Bremer, 195 M 203, 262 NW 216.

A judgment entered pursuant to an order sustaining a demurrer to a complaint on the ground that it failed to state a cause of action because of defective pleading, is not a bar to a subsequent action in which the defect in pleading is corrected. Rost v Kroke, 195 M 219, 262 NW 450.

Where in an action against a drug store proprietor and his clerk, judgment was found against the proprietor only, the burden of proof is on the one who asserts that under the facts a judgment in favor of the servant is a bar to recovery against the master. Berry v Daniels, 195 M 366, 263 NW 115.

The trial court erred in requiring the return of the property on repayment of the purchase price since this was not a suit for rescission. Satanta Bank v McClintock, 196 M 430, 265 NW 303.

Lump sum settlement and dismissal with prejudice held to be conclusive. Rusch v Prudential, 197 M 81, 266 NW 86.

Defendant in this action sued the present plaintiff in conversion but failed of recovery. Present plaintiff now sues for wages. Present defendant, notwithstanding the former action, may set up a counter-claim of conversion. Lloyd v Farmer's Cooperative, 197 M 387, 267 NW 204.

The dismissal of an action by a father for cancelation of a conveyance of property, the consideration being support for life, does not bar a second action on the same ground. Priebe v Sette, 197 M 453, 267 NW 376.

The fact that in an action for the same injuries pending in the federal court, upon similar pleadings, and order, not appealed from, removed the cause from the law to the equity side of the court to first determine the existence and validity of the contract, is not res judicata of the legal proposition raised by this appeal. Detwiler v Lawden, 198 M 185, 269 NW 367, 838.

Findings of fact filed in another action between the same parties in relation to a controversy respecting ownership of the same premises upon which a judgment has been rendered, are conclusive in a subsequent action between them. Hermann v Kahner, 198 M 331, 269 NW 836.

The first motion to strike was not authorized by statute. A second motion, authorized by statute, is not barred by the first motion. Berger v First National, 198 M 513, 270 NW 589.

Issues were determined in a former action and the matter is res judicata. Whitney v Clow, 199 M 312, 271 NW 589.

A judgment is conclusive, as between the parties, of the facts upon which it is based and all the legal consequences resulting, and it may be enforced by the parties, though the judgment may also be for the benefit of a third party. Ingelson v Olson, 199 M 422, 272 NW 270.

Where the rights of parties to a contract are settled by a judgment, the legislature cannot, by subsequent enactment, change such rights. Twenty Associates v First National, 200 M 211, 273 NW 696.

The strict rule of res judicata does not apply to motions in a pending action. Wilhelm v Wilhelm, 201 M 462, 276 NW 804.

Recovery cannot be had in an action for malpractice for technical assault or lack of consent, where it appears on the trial that negligence was the only ground asserted, and the matter of the assault was raised for the first time on motion for new trial. Nelson v Nicollet Clinic, 201 M 505, 276 NW 801.

The commissioner of patents is the officer with whom lies the power to decide upon the merits of an application for a patent; his decision is presumed to be correct; and appeal lies to the federal courts for appropriate review. Grob v Continental, 204 M 459, 283 NW 774.

The effect of a final decree of distribution made by a probate court having jurisdiction is to transfer the title to personalty and the right of possession of the realty from the representative to the legatees, devisees, or heirs. Marquette v Mullin, 205 M 562, 287 NW 233.

The decisions of the supreme court of the United States will be followed in the interpretation of the meaning of due process under the federal constitution. Interpretation of the federal constitution by the federal supreme court is binding on the state courts until modified or reversed by the federal court. Northwest Airlines v State, 213 M 395, 7 NW(2d) 691, 322 US 292; Donaldson v Chase, 216 M 269, 13 NW(2d) 1; Bain v National City, 216 M 278, 13 NW(2d) 278; State v Continental Oil, 218 M 123, 15 NW(2d) 542; State v Schabert, 218 M 1, 15 NW(2d) 588.

Even if no precedents in the instant case, a court of equity to accomplish justice has power to adopt its decree to exigencies of any particular case. Beliveau v Beliveau, 217 M 235, 14 NW(2d) 360.

Courts should overrule a line of decision law of many years standing only when convinced of former error, especially when a constitutional question is involved. Trustees v Peacock, 217 M 399, 14 NW(2d) 773.

The denial of a writ of certiorari by the supreme court of the United States imports no expression of opinion by it upon the merits of the decision of the circuit court of appeals. State v Kelly, 218 M 247, 15 NW(2d) 554.

On appeal from a judgment and a supersedeas bond furnished, the matters remain res judicata until reversed. Manemann v West, 218 M 602, 17 NW(2d) 74.

Successive suits for instalments under contract. 23 MLR 99.

4. Collateral attack

Oral evidence to impeach the recitals in the judgment were properly excluded. Miller v Ahneman, 183 M 18, 235 NW 622.

In a mismanagement suit, the plaintiff is barred from relief for matters covered by a previous suit dismissed upon the merits and for matters within the scope of a covenant not to sue. Butler v Butler, 186 M 144, 242 NW 701.

In an action by a special administrator to recover damages for the death of decedent, the validity of the plaintiff's qualification cannot be raised. Peterson v Chicago, Burlington, 187 M 233, 244 NW 823.

A judgment in an action between the owner in possession of real property and one claiming under a void foreclosure, when such judgment is registered, becomes a link in the owner's chain of title, and is admissible as evidence against a stranger. Fuller v Mohawk, 187 M 447, 245 NW 617.

The record evidence of the insured's plea of guilty of arson, is not admissible in an action to which the guilty insured is not a party, and who has no present interest in the cause. True v Citizens Fund, 187 M 639, 246 NW 474.

The causes of action in the two cases are not the same, though they involve the same parties and the same property. In the first, plaintiff relied on a remainder attempted to be created by parol; in the second, reliance was on proper conveyance from the person to whom the property had reverted. The two actions could not be established by the same evidence. The judgment in the first action is not an estoppel against the second. Mowry v Thompson, 189 M 485, 250 NW 52.

Suit was brought by the administrator in Wisconsin, and by the assignee of the policy in Minnesota. Payment by defendant to the administrator in Wisconsin is no defense to the Minnesota action. Redden v Prudential, 193 M 228, 258 NW 300.

In a proceeding to examine and allow the accounts of trustees, a decree of final distribution of the probate court entered two years earlier cannot be collaterally attacked. Fogg's Will, 193 M 397, 259 NW 6.

In an action to enjoin a sheriff from selling on execution certain real estate of which plaintiff claims ownership, the execution creditor is a necessary party, otherwise the suit determines nothing as to the title. Cheney v Bengtson, 193 M 586, 259 NW 59.

This action does not involve the marshaling of partnership assets. It determines only the right of the defendant to offset the note which McClure is severally liable, in this action against a money demand assigned by McClure to plaintiff. Campbell v State Bank, 194 M 502, 261 NW 1.

By stipulation, the record, with objections and rulings, in the election contest is made a part of the case herein and the errors assigned therein are again

assigned on this appeal. The affirmance of the order denying a new trial in the election contest precludes reexamination of the questions settled therein or the questions that could have been therein adjudicated. Alquist v Commonwealth, 194 M 598, 261 NW 452.

The jurisdiction of the district court over the parties and the subject matter will be presumed unless want of jurisdiction affirmatively appears on the face of the record or is shown by extrinsic evidence in a direct attack. Fulton v Okes, 195 M 247, 262 NW 570.

In his action praying a moratorium, plaintiff failed to appear, and the court authorized completion of the foreclosure. Held, that the above proceedings are a bar to this subsequent action to set aside the foreclosure for irregularity. Tankel v Union Central, 196 M 165, 264 NW 693.

A judgment or order in proceedings for the appointment of an incompetent person is admissible, but not conclusive, to prove that person's mental condition at the time the order or judgment is made or during the time the judgment finds the person incompetent. Champ v Brown, 197 M 49, 266 NW 94.

The recitals in the findings of fact in a partial decree of the probate court are mere recitals of facts leading up to and justifying the decree, but are not controlling of the trust created. Wyman v Trustees, 197 M 62, 266 NW 165.

A decree registering a title is ordinarily conclusive. Lamprey v Am. Hoist, 197 M 112, 266 NW 434.

Tankel v Union Central, 196 M 165, 264 NW 693, is not in point, because in the instant case the attack on the moratorium extension is direct, and not collateral. Orfield v Morstain, 199 M 466, 272 NW 260.

While in order that the attack thereon may be considered direct, vacation of the questioned judgment need not be the sole purpose of the litigant objecting thereto, such vacation must be his initial and primary objective. Melgaard's Will, 200 M 493, 274 NW 641.

In certiorari to review relator's conviction for contempt in violating a temporary injunction, the latter is under collateral attack which must fail, unless the injunction is shown to be a nullity. Reid v Independent Union, 200 M 620, 275 NW 300.

While a judgment is res judicata as to issues between judgment creditors and judgment debtors, it is not so as to those between the latter which were not litigated and so not settled by the judgment. Kemerer v State Farm Mutual, 201 M 239, 276 NW 228.

A prior dismissal is not a bar to the instant action. Martineau v Czajkowski, 201 M 342, 276 NW 232.

An order of probate court allowing an outlawed claim against the estate is subject to direct attack. Borlaug's Estate, 201 M 407, 276 NW 732.

A judgment or order in proceedings for the appointment of a guardian of an incompetent person is admissible in evidence, but not conclusive in any litigation to prove the mental condition of the person at the time the order or judgment is rendered. Schultz v Oldenburg, 202 M 237, 277 NW 918.

An instruction that an affidavit of service, which is part of the 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.

A settlement by a father of a minor child's cause of action for injuries, made with approval of the district court, cannot be attacked collaterally. Ernst v Daily, 202 M 358, 278 NW 516.

A judgment recovered against a principal in a bond for a breach of its conditions in an action in which the surety is not a party is not evidence against the surety of any fact except its rendition. Gilloley v Sampson, 203 M 233, 281 NW 3.

The same rule applies to probate as to district courts as to collateral attack on orders or judgments, but in the instant case, the attack is direct. In re Carpenter, 203 M 477, 281 NW 867.

A judgment in an action to quiet title is binding only on those who are parties to the action. Kohrt v Mucer, 203 M 495, 282 NW 129; Dart v McGraw, 204 M 363, 283 NW 538.

A final decree of distribution of the probate court is not subject to collateral attack where it assigns all the property of the deceased to the heir entitled thereto, even though the property is not described in the inventory. Baumann v Katzenmeyer, 204 M 240, 283 NW 242.

An action to set aside a deed on ground of incompetency of grantor should be brought in the name of the incompetent by his legal guardian rather than in the name of the guardian as such for the incompetent. Rebne v Rebne, 216 M 379, 13 NW(2d) 18.

A second motion for a new trial may be made when it is based on grounds not included in the first one, and satisfactory reasons appear for the omission; and where a party takes a second appeal, an appeal pending from the denial of the first motion, must be dismissed. A finding must be reduced to judgment to act as a bar or estoppel. Mitchell v Bazille, 216 M 368, 13 NW(2d) 20.

A judgment in a divorce action wherein the issue of the right to certain real property was fully litigated and plaintiff was adjudged to be the owner thereof is conclusive, unless reversed or modified upon appeal, and defendant cannot, under guise of a modification, procure a new trial after the time for appeal has expired. Anich v Anich, 217 M 259, 14 NW(2d) 289.

An alleged pauper is not bound by a judgment determining the place of his legal settlement entered in statutory proceedings between two municipalities to which he is not a party. Thiede v Town of Scandia, 217 M 218, 14 NW(2d) 400.

Evidence in the form of affidavits and a letter executed by appellant's secretary was sufficient to establish that trial court did not abuse its discretion in denying appellant's motion to vacate a stipulation for judgment and the judgment entered pursuant thereto. Albert v Edgewater, 218 M 20, 15 NW(2d) 460.

It is a rule that unless one is a party to an action the decree or judgment therein is not binding on him; but there is an exception when the party sought to be charged was privy to the party to the action. But in the instant case a party who had succeeded to the property previous to the institution of the suit, the rule of privity does not apply. Roberts v Friedell, 218 M 88, 15 NW(2d) 496.

The rule or order to govern future conduct, made by an administrative tribunal pursuant to legislative mandate, is not subject to collateral attack except upon jurisdictional or constitutional grounds. Martin v Wolfson, 218 M 557, 16 NW(2d) 884.

Res judicata and its applicability to judgment. 28 MLR 77.

A plea of "nolo contendere" is an admission of guilt only for the purposes of the case and cannot be used as an admission in a civil case of the same act. Twin Ports v Pure Oil, 26 F. Supp. 366.

Intervention by attorneys after dismissal of a case for the purpose of enforcing attorney's lien is not a collateral attack. Bynam v Miner, 47 F(2d) 112.

5. Foreign judgments

Full faith and credit which the federal constitution requires is not denied in the instant case by requiring the defendant to dismiss a suit pending in Iowa. Peterson v Chicago, Burlington, 187 M 228, 244 NW 823.

By decree of divorce in an Iowa court, the custody of a child was awarded to each for a six-month's period. When the child's mother takes up her residence in Minnesota, both child and mother come under the jurisdiction of Minnesota courts. Larson v Larson, 190 M 489, 252 NW 329.

The obligation imposed upon a divorced husband by a South Dakota decree to pay alimony to the divorced wife will be considered in Minnesota, as remaining one for alimony and not an ordinary debt. Ostrander v Ostrander, 190 M 547, 252 NW 449.

Attorney was admitted to practice in North Dakota, Minnesota, and Wisconsin. Proof of disbarment in Wisconsin is all that is required in Minnesota for his disbarment here. In re Leverson, 195 M 42, 261 NW 480.

Plaintiff's right to alimony was litigated in a divorce action brought against her in Arkansas, and she cannot thereafter maintain a similar action in Minnesota. Norris v Norris, 200 M 246, 273 NW 708.

A minor child's domicile follows that of the divorced parent to whom his custody was awarded by the decree of divorce, and a judgment of a court of this state decreeing the adoption of such child by his stepfather does not impair the full faith and credit of the divorce decree entered in Illinois. Buckman v Houghton, 202 M 460, 278 NW 908.

A judgment of a sister state entered in pursuance of its illegitimacy statutes and intended for the support of the mother and child, will be enforced by the courts of this state. Ladd v Martineau, 205 M 129, 285 NW 281.

Absent consent, state courts may exercise jurisdiction over a foreign corporation, if it is doing business in the state at the time of the service of the summons, but not after it has ceased doing business and withdrawn from the state. Garber v Bancamerica, 205 M 275, 285 NW 723.

To each state belongs the exclusive right and power to determine the status of its resident and domiciled citizens in respect to the question of marriage and divorce regardless of the place of the marriage or the commission of the offense for which the divorce is granted. A divorce so obtained is valid everywhere. Warner v Warner, 219 M 59, 17 NW(2d) 58.

The federal rule providing for motion for summary judgment with or without supporting affidavits justified a motion for summary judgment on the ground of res judicata and on the ground that the complaint did not state a cause of action. Billings v Advisory Committee, 135 F(2d) 108.

The "full faith and credit" provision of the constitution does not insure unlimited extra territorial recognition of all statutes or of any statute under all circumstances. Yellow Cab v Overcash, 133 F(2d) 229.

Merger by judgment. 28 MLR 419.

The judgment of the highest court of a state as to the meaning and effect of the state constitution is decisive and controlling everywhere. Western Union v Industrial Commission, 24 F. Supp. 370.

Judicial notice of public acts under the full faith and credit clause. 12 MLR 439.

Full faith and credit in a federal system. 20 MLR 140.

Extra state enforcement of a tax judgment. 20 MLR 431.

6. Generally

The supreme court of the United States is the final arbiter of the construction of the federal bankruptcy act, and its construction prevails over that of any state court. Landy v Martin, 193 M 254, 258 NW 573.

Judicial construction of a statute, unreversed, becomes an integral part of the statute. Roos v City of Mankato, 199 M 284, 271 NW 582.

The rule of stare decisis is never properly invoked, unless in the decision put forward as precedent, the judicial mind has been applied to and passed upon the precise question. Fletcher v Scott, 201 M 609, 277 NW 270.

No vested rights depending on it, courts have the power and the right to change a judge-made law or rule, just as a legislature has to change a substantive law. Rye v Phillips, 203 M 567, 282 NW 459.

The doctrine of stare decisis, wise or unwise in its origin, has worked itself by common acquiescence into the tissues of our law, and is too deeply rooted to be ignored. Melin v Aronson, 205 M 353, 285 NW 830.

548.02 JUDGMENT BETWEEN PARTIES AND AGAINST SEVERAL DEFENDANTS.

HISTORY. R.S. 1851 c. 70 ss. 159, 160; P.S. 1858 c. 60 ss. 167, 168; G.S. 1866 c. 66 ss. 244, 245; 1873 c. 67 s. 1; G.S. 1878 c. 66 ss. 264 to 266; G.S. 1894 ss. 5410 to 5412; R.L. 1905 s. 4265; G.S. 1913 s. 7897; G.S. 1923 s. 9393; M.S. 1927 s. 9393.

1. Between several parties
2. Determining ultimate rights of parties
3. On joint obligation
4. Against one or more of several defendants

1. Between several parties

This section did not abolish the common law rule that judgment must follow the complaint and that in an action against several defendants on a joint contract, the plaintiff must recover against all or none. (The rule was abolished by Laws 1897, Chapter 303). Carlton v Chateau, 1 M 102 (81); Fetz v Clark, 7 M 217 (159); Whitney v Heylin, 11 M 138 (87).

The object of the statute was to abolish common law rules and to make equity rules applicable to all actions. Fetz v Clark, 7 M 217 (159).

Under Laws 1887, Chapter 38, the plaintiff may be allowed judgment in a suit for partition allotting him the share he is entitled to, without waiting for a determination of the conflicting claims of owners of other undivided interests. The court by its judgment may cause the shares in dispute to be allotted to the defendants claiming such undivided shares, without determining their respective rights thereto. Howe v Spalding, 50 M 157, 52 NW 527.

Where the plaintiff in an action brought upon a joint obligation against joint debtors elects, on default of one of them to answer, to enter judgment against such defendant, the judgment is a bar to a subsequent action against the others, the debt being merged in the judgment. Davison v Harmon, 65 M 402, 67 NW 1015.

The stockholders' liability is several, not joint; and a judgment against only a part of the stockholders, within the jurisdiction, does not have the effect of releasing the others. While such liability is several, it produces only a limited fund which belongs to all the creditors as tenants in common, and must be enforced in equity. Harper v Carroll, 66 M 487, 69 NW 610, 1069; Hansen v Davison, 73 M 454, 76 NW 254.

2. Determining ultimate rights of parties

All persons whose property is affected by a nuisance, though they own property in severalty and not jointly, may join in an action to abate the nuisance; but in such action they cannot have judgment for the damage done to the property of each. Grant v Schmidt, 22 M 1.

The statute provides that the court may "determine the ultimate rights of the parties on each side." Goldschmidt v County of Nobles, 37 M 49, 33 NW 544; Ermentrout v American Fire, 60 M 418, 62 NW 543;

But this determination must be confined to the issues presented by the complaints. The relief which the defendants may have, as against each other, must be framed on the facts involved in the litigation of the plaintiff's claim, and as a part of the adjustment of that claim, and not on claims with which the plaintiff has nothing to do, and are properly the subject of an independent action. Howe v Spalding, 50 M 157, 52 NW 527; Richardson v McLaughlin, 55 M 489, 57 NW 210; Jewett v Iowa Land Co. 64 M 531, 67 NW 639.

If new issues are to be formed, it must be by means of a cross-complaint, and even then the new issues must be in relation to the subject of the original action. American Bank v Davidson, 69 M 319, 72 NW 129.

3. On joint obligation

This provision was enacted for the purpose of abrogating the common law rule that in an action on a joint obligation against several defendants, the plaintiff must recover against all or none. It overruled a line of early cases. Carlton v Chateau, 1 M 102 (81); Fetz v Clark, 7 M 217 (159); Whitney v Heylin, 11 M 138 (87); Beatty v Ambs, 11 M 331 (234); Johnson v Lough, 22 M 203; Ermentrout v American Fire, 60 M 418, 62 NW 543.

Plaintiff may now allege a joint contract and recover on proof of a joint and several contract on a joint contract as to part of the defendants; see Laws 1873, Chapter 67. Reed v Pixley, 22 M 540; Miles v Warm, 27 M 56, 6 NW 417; Keigher v Dowlan, 47 M 574, 50 NW 823; Bunce v Pratt, 56 M 8, 57 NW 160; Bardwell v Brown, 57 M 140, 58 NW 872; Sexton v Steele, 60 M 336, 62 NW 392; Ermantrout v American Fire, 60 M 418, 62 NW 543; Ames v Aetna Insurance, 83 M 346, 86 NW 344.

The fact that two of defendants were sued as copartners did not make recovery necessarily depend upon the establishment of that relation. Jewison v Dieudonne, 127 M 167, 149 NW 20.

4. Against one or more of several defendants

The matter rests in the discretion of the court and judgment cannot regularly be entered without an order. Wilford v Bowen, 57 M 267, 59 NW 195.

In an action against maker and guarantors of payment of a promissory note, plaintiff may enter several judgments on verdict against the maker without waiting until trial of issues with other defendants. Bank of Commerce v Smith, 57 M 374, 59 NW 311; First National v Burkhardt, 71 M 185, 73 NW 858.

This provision is inapplicable to action on joint obligations. Davison v Harmon, 65 M 402, 67 NW 1015.

Sued jointly, plaintiff may prevail against one defendant, though failing against the other. Virtue v Creamery Package, 123 M 43, 142 NW 932.

In an action between two partners for the dissolution of the firm business, a third party, who held an executory contract of sale of the interest in the firm business and property of one of the parties, was impleaded as defendant. He cross-complained against his vendor for a rescission. He was a proper party, and there was no error in litigating his claim of fraud and awarding him relief. Kewitsch v Beer, 168 M 165, 209 NW 871.

Where the proof is of a several contract with one of two defendants, there may be a recovery against the one liable, although the complaint alleges a joint contract. Schmidt v Agricultural Insurance, 190 M 585, 252 NW 671.

The driver of plaintiff's car, damaged in a collision, was not a joint tortfeasor with the driver of defendant Anderson's truck, with which the car collided. Lavelle v Anderson, 197 M 169, 266 NW 445.

Where plaintiff could sue anyone or all of several companies for insurance commissions the fact that the jury, possibly under a mistaken theory, released all of the defendants but one, did not aid the defendant against whom the judgment was obtained. Hamilton v Thurber, 56 F. Supp. 826.

548.03 HOW SIGNED AND ENTERED; CONTENTS.

HISTORY. R.S. 1851 c. 71 ss. 67, 76; P.S. 1858 c. 61 ss. 67, 76; G.S. 1866 c. 66 ss. 247, 250; G.S. 1878 c. 66 ss. 268, 273; G.S. 1894 ss. 5414, 5421; R.L. 1905 s. 4266; G.S. 1913 s. 7898; G.S. 1923 s. 9394; M.S. 1927 s. 9394.

1. Entry

The act of the clerk is the act of the court, and the judgment entered is the judgment of the court. Hawke v Banning, 3 M 67 (30); Kipp v Fullerton, 4 M 473 (366); Reynolds v LaCrosse, 10 M 178 (144); Skillman v Greenwood, 15 M 102 (77); Dillon v Porter, 36 M 341, 31 NW 56.

In all actions whether of legal or equitable nature, and whether the trial is by jury, court, or referee, the judgment is entered by the clerk. Piper v Johnston, 12 M 60 (27); Skillman v Greenwood, 15 M 102 (77).

The acts of the clerk in entering judgment are ministerial, not judicial. Williams v McGrade, 13 M 46 (39); Ramaley v Ramaley, 69 M 491, 72 NW 694.

The pending of a motion for a new trial does not, of itself, operate as a stay nor prevent the entry of judgment; and the prevailing party may cause judgment to be entered without notice. Wilcox v Hedwall, 186 M 504, 243 NW 709.

No judgment was entered, but after trial, a motion for a new trial was denied on properly enumerated grounds. The order is appealable. Salo v State, 188 M 614, 248 NW 39.

2. Signing

It is provided by rule of court that "Judgment and copies to annex to the judgment roll shall, in all cases, be signed by the clerk and no other signature

thereto shall be required." Hawke v Banning, 3 M 67 (30); Cathcart v Peck, 11 M 45 (24).

Rules of district court, Minnesota Statutes 1941, Page 3982.

The omission of the clerk to sign the judgment entered in the judgment book is at most an irregularity, and does not invalidate the judgment. Jorgenson v Griffin, 14 M 464 (346); Hotchkiss v Cutting, 14 M 537 (408).

Judgment signed by the judge and not by the clerk is merely irregular in form and is valid. Alger v Minnesota Loan, 135 M 235, 159 NW 565, 160 NW 765.

3. Judgment book, what constitutes

The statute provides that the clerk shall keep a judgment book in which shall be entered the judgment in each action. Brown v Hathaway, 10 M 303 (238); Jorgenson v Griffith, 14 M 464 (346); Thompson v Bickford, 19 M 17 (1).

The writing out of the judgment in full by the clerk in the judgment book constitutes the entry of judgment. Brown v Hathaway, 10 M 303 (238); Williams v McGrade, 13 M 46 (39); Washburn v Sharpe, 15 M 63 (43); Smith v Valentine, 19 M 452 (393); Rockwood v Davenport, 37 M 533, 35 NW 377.

The judgment entered shall specify clearly the relief granted or other determination of the case. Williams v McGrade, 13 M 46 (39); Rockwood v Davenport, 37 M 533, 35 NW 377; Ramaley v Ramaley, 69 M 491, 72 NW 694.

Regularly the judgment in the judgment roll is a copy of the judgment in the judgment book. Rockwood v Davenport, 37 M 533, 35 NW 377.

If the clerk irregularly enters the original judgment in the judgment roll instead of in the judgment book, the judgment is not void, (Overruling Rockwood v Davenport, 37 M 533, 35 NW 377). Clark v Butts, 73 M 361, 76 NW 199; Scheibel v Anderson, 77 M 54, 79 NW 594.

4. Conformity to decision

The judgment entered by the clerk must be in accordance with the conclusions of law, and the order for judgment. Ramaley v Ramaley, 69 M 491, 72 NW 694; Moore v Minneapolis & St. Louis, 123 M 191, 142 NW 152.

A judgment or decree, if ambiguous, will be given that construction which makes it such as ought to have been rendered in the light of the whole record. Parten v First National, 204 M 200, 283 NW 408.

548.04 JUDGMENT IN REPLEVIN.

HISTORY. R.S. 1851 c. 71 s. 70; P.S. 1858 c. 61 s. 70; G.S. 1866 c. 66 s. 249; G.S. 1878 c. 66 s. 272; G.S. 1894 s. 5420; R.L. 1905 s. 4267; G.S. 1913 s. 7899; G.S. 1923 s. 9395; M.S. 1927 s. 9395; 1931 c. 202 s. 1.

Prevailing party has right to judgment for possession, although he is in possession. The judgment determines the title. Oleson v Newell, 12 M 186 (114); Leonard v Maginnis, 34 M 506, 26 NW 733; Katz v American Bonding Co. 86 M 168, 90 NW 376.

Where the prevailing party is not in possession at the time of the trial, the judgment must always be in the alternative, that is, for the possession of the property, or the value thereof in case possession cannot be obtained. Kates v Thomas, 14 M 460 (343); Robertson v Davidson, 14 M 554 (422); Berthhold v Fox, 21 M 51; Sherman v Clark, 24 M 37; Bennett v Schuster, 24 M 383; French v Ginsburg, 57 M 264, 59 NW 189; New England v Bryant, 64 M 256, 66 NW 974; Pabst Brewing v Jensen, 68 M 293, 71 NW 384; Pabst v Butchart, 68 M 303, 71 NW 273; Larson v Johnson, 83 M 351, 86 NW 350; Katz v Hlavac, 88 M 56, 92 NW 506.

When the prevailing party is in possession, it is error to insert in the judgment the value of the property. Leonard v Maginnis, 34 M 506, 26 NW 733; Hoey v Ellis, 78 M 1, 80 NW 693.

In an action in the nature of replevin, the plaintiff may waive the right to have included in the judgment for the recovery of the property the usual alternative provision for the recovery of its value. Stevens v McMillin, 37 M 509, 35 NW 372; Thompson v Scheid, 39 M 102, 38 NW 801; Adamson v Sundby, 51 M 460, 53 NW 761; Shearer v Gunderson, 60 M 525, 63 NW 103.

Where plaintiff's title is divested after suit brought or before the trial he can, as against the owner or person entitled to the possession, recover only damages from unlawful detention up to the time his title or right of possession was divested. He is not entitled to judgment for the return of the property or for its value. Deal v Osborne, 42 M 102, 43 NW 835.

Neither party has a right to take a mere money judgment. French v Ginsburg, 57 M 264, 59 NW 189; New England v Bryant, 64 M 256, 66 NW 974.

Judgment as to value in the first action is a bar to valuation in a second action. Johnson v Vaule, 61 M 401, 63 NW 1039.

When property has been delivered to plaintiff and on the trial the action is dismissed for failure of proof, defendant is entitled to judgment for a return of the property or for its value, if in his answer he has demanded such return. Pabst v Butchart, 68 M 303, 71 NW 273.

Alternate judgment for value of property is a money judgment which authorizes interest on amount from date of order for judgment. Martin County Bank v Bird, 90 M 336, 96 NW 915.

The party entitled to possession of property in an action of replevin may waive the right to an alternate judgment for its value. Cohen v Seashore, 159 M 345, 198 NW 1009.

Where a plaintiff obtains possession of property in replevin, he is estopped from denying it was of the value which he alleged in the proceedings by which he obtained such possession. Somers v Kane, 162 M 40, 202 NW 27.

The value is of the time when the action was brought. Johnson v Peterson, 172 M 16, 214 NW 479.

Judgment for present defendant in a former action in replevin based wholly upon another issue, is not a bar to the instant action by plaintiffs, also parties in the replevin case, for damages arising from fraud in contract to purchase the property. Luebke v Case, 178 M 40, 226 NW 415.

Retail price is not controlling in fixing value. Engeln v Kalling, 180 M 264, 230 NW 778.

In replevin by mortgagee to obtain possession of mortgaged property from the mortgagor, the mortgagor had been declared bankrupt, and the property was in custody of the trustee. The case was dismissed for want of jurisdiction. Security Bank v Anderson, 183 M 322, 236 NW 617.

Where possession of property cannot be had, and the mortgaged property being worth more than the amount of the lien, it is proper to direct judgment for the full amount of the lien. Miller v Jaax, 193 M 85, 257 NW 653.

Plaintiff was deprived of the use of her washing machine for more than three years. A verdict of $116.13 damages for lack of use was sustained. Bergquist v Stenson, 194 M 480, 260 NW 871.

Losing party in a replevin action may be discharged from liability when he cannot return the property, by paying into court the amount found to be the value, plus interest and costs. Breitman v Buffalo, 196 M 369, 265 NW 36.

548.05 TREBLE DAMAGES FOR TRESPASS.

HISTORY. 1868 c. 75 ss. 1, 2; G.S. 1878 c. 66 ss. 269, 270; G.S. 1894 ss. 5415, 5416; R.L. 1905 s. 4268; G.S. 1913 s. 7900; G.S. 1923 s. 9396; M.S. 1927 s. 9396.

The term "or other personal property" is to be confined to things ejusdem generis with those previously enumerated. Berg v Baldwin, 31 M 541, 18 NW 821.

The law imposing treble damages for trespass does not apply against one who is in law deemed guilty only by reason of his relation to the actual trespasser. Potulni v Saunders, 37 M 517, 35 NW 379.

The "good faith" of the defendant is not a defense against recovery of treble damages, unless the sums charged were absolutely paid on items which if not excessive in amount, should, as between the mortgagor and the mortgagee be deducted from the proceeds of the sale. Hobe v Swift, 58 M 84, 59 NW 831.

The evidence convinced the jury the timber was cut with full knowledge of the trespass and treble damages were properly awarded. LaJambe v Chicago Box Co. 165 M 65, 205 NW 701; Huovila v Frederick, 165 M 358, 206 NW 443.

The trespass was not wilful or of such nature as to render the intervenor liable for treble damages, and he is chargeable with actual damages as of the date thereof. Walker v Patterson, 166 M 219, 208 NW 7.

Trees growing upon the boundary line are the common property of adjoining landowners, and one party must have the consent of the other to cut or destroy such trees. Such consent may be implied. Meixner v Buecksler, 216 M 586, 13 NW(2d) 754.

548.06 DAMAGES FOR LIBEL.

HISTORY. 1887 c. 191 ss. 1, 2; 1889 c. 131 s. 1; G.S. 1878 Vol. 2 (1888 Supp.) c. 66 ss. 270a, 270b; G.S. 1894 ss. 5417, 5418; R.L. 1905 s. 4269; G.S. 1913 s. 7901; G.S. 1923 s. 9397; M.S. 1927 s. 9397; 1937 c. 299 s. 1.

Mere belief in the truth does not necessarily constitute "good faith." There must be an absence of improper motives, and of negligence. There must have been exercised such means as an ordinarily prudent man would use to find the truth. Good faith is for the jury. Allen v Pioneer Press, 40 M 117, 41 NW 936; Gray v Times, 74 M 452, 77 NW 204.

In order to recover "actual" damages, it is not necessary to allege service of the notice required in Laws 1889, Chapter 131. Clementson v Minnesota Tribune, 45 M 303, 47 NW 781.

Publications calculated to expose one to public contempt or ridicule are libelous, although they involve no imputation of crime, and are actionable without a special allegation of damages. Holston v Boyle, 46 M 432, 49 NW 203.

No special damage being alleged it is error to receive proof that the libel prevented plaintiff's appointment to office. Holston v Boyle, 46 M 432, 49 NW 203.

While a retraction need not be in any particular form, it must clearly refer to and admit the publication, and directly, fully, and fairly, without uncertainty, evasion or subterfuge, retract the alleged defamatory statements. Gray v Times, 74 M 452, 77 NW 204; 81 M 333, 84 NW 113; Uhlman v Farm Stock & Home, 126 M 239, 148 NW 102.

A statutory notice is sufficient if it declares the entire publication to be false and defamatory, without specifying those particular parts which constitute libelous matter per se. Craig v Warren, 99 M 246, 109 NW 231.

Words charging misconduct in office, want of official integrity or fidelity to public trust, words inconsistent with the due fulfilment of official duty, words which tend to deprive an official of his office, and words which are likely to produce public contempt and the reprobation of right-minded men, are libelous per se. Tawney v Simonson, 109 M 341, 124 NW 229.

A libel charging in effect that the plaintiff, a woman, is keeping a house of prostitution, imputes unchastity to her within the meaning of the proviso. Lysacker v Bemidji Pioneer, 114 M 179, 130 NW 850.

Defendants caused a circular letter to be published in certain newspapers of which they were neither owners nor publishers. The provision requiring a demand for retraction before suit will lie. Lydiard v Wingate, 131 M 355, 155 NW 212.

Words disparaging his calling as a farmer and farm renter were actionable per se. Lloyd v Harris, 156 M 85, 194 NW 101.

The letter was libelous per se, and indicated sufficient malice to warrant an award of punitive damages. James v Warter, 156 M 247, 194 NW 754.

A communication made in good faith upon any subject matter in which the party communicating has an interest, or in reference to which he has a duty, public or private, legal, moral, or social, if made to a person having a corresponding interest or duty is privileged. Friedell v Blakely, 163 M 235, 203 NW 974.

A newspaper article which is not self-evidently defamatory is not libelous per se. Ten Broeck v Journal Printing, 166 M 173, 207 NW 497.

The article falsely accused a traveling salesman of being a bankrupt. Taken in connection with the remainder of the article and the innuendoes set forth in the complaint, the accusation was libelous. Rudawsky v Northwestern Jobbers, 183 M 21, 235 NW 523.

The publication was made without malice and was simply a mistake of facts. The newspaper being found negligent is properly found liable. Thorson v Albert Lea Publishing, 190 M 203, 251 NW 177.

Where a demand is made on a newspaper to retract certain portions of a claimed libelous article and no retraction is made, plaintiff's cause of action for general damages is limited to such statements as are specified in the demand. Echternacht v King, 194 M 95, 259 NW 684.

Defendant's ignorance of facts not a defense. 14 MLR 187.

Publication of inadvertent defamatory matter. 25 MLR 511.

548.07 JUDGMENT AFTER DEATH OF PARTY.

HISTORY. R.S. 1851 c. 71 s. 74; P.S. 1858 c. 61 s. 74; G.S. 1866 c. 66 s. 251; G.S. 1878 c. 66 s. 274; G.S. 1894 s. 5422; R.L. 1905 s. 4270; G.S. 1913 s. 7902; G.S. 1923 s. 9398; M.S. 1927 s. 9398.

Where, after verdict or decision upon an issue of fact, and before judgment, the unsuccessful party dies, and judgment is thereafter entered, upon a certified copy of such judgment being filed in the probate court, it is entitled to be paid with other debts allowed against the estate. Berkley v Judd, 27 M 475, 8 NW 383.

The forefeiture proceeding against the automobile is a proceeding in rem and did not abate on the death of the owner. State v Cadillac Car, 157 M 138, 195 NW 778.

Under the facts an order should not have been made directing the filing of findings of fact and conclusions of law and entry of judgment nunc pro tunc after the death of one of the parties. Anders v Anders, 170 M 470, 213 NW 35.

548.08 JUDGMENT ROLL, HOW MADE UP.

HISTORY. R.S. 1851 c. 71 s. 75; R.S. 1851 c. 82 s. 31; P.S. 1858 c. 61 s. 75; P.S. 1858 c. 72 s. 31; G.S. 1866 c. 66 ss. 252, 253; G.S. 1878 c. 66 ss. 275, 276; G.S. 1894 ss. 5423, 5424; R.L. 1905 s. 4271; G.S. 1913 s. 7903; G.S. 1923 s. 9399; M.S. 1927 s. 9399.

Where judgment is entered without personal service of the summons, the roll need not show that security was filed. Shabhut v Hilton, 7 M 506 (412).

Regularly the making and filing of the judgment roll immediately follows the entry of judgment in the judgment book and the judgment in the roll is a copy of the judgment in the judgment book. Williams v McGrade, 13 M 46 (39); Rockwood v Davenport, 37 M 533, 35 NW 377.

Proof of service of the summons is included in the judgment roll. Godfrey v Valentine, 39 M 336, 40 M 163.

Entry of the original judgment in the roll prior to its entry in the judgment book does not render the subsequent proceedings void (Rockwood v Davenport, 37 M 533, 35 NW 377, overruled). Clark v Butts, 73 M 361, 76 NW 199; Scheibel v Anderson, 77 M 54, 79 NW 594.

Although a verdict may be informal, yet it is sufficient if by a reference to the pleadings and record it can be made certain; but, if it cannot, the defect is not cured by the entry of a judgment which is definite and certain on its face. Cohnes v Finholt, 101 M 180, 112 NW 12.

Before an action for malicious prosecution of a civil suit may be maintained, the plaintiff must allege and prove a termination of the original proceeding in his favor. Martin v Cedar Lake Co. 145 M 452, 177 NW 631.

The district court has inherent power to replace its records when lost or destroyed by accident, negligence, or wantonness; and the substituted papers become of equal validity to those which have disappeared. Haney v Haney, 163 M 119, 203 NW 614.

An affidavit of service which is part of the judgment roll is admissible as part of the judgment roll in an action to renew a judgment. Siewert v O'Brien, 202 M 314, 278 NW 162.

548.09 LIEN OF JUDGMENT.

HISTORY. R.S. 1851 c. 71 s. 76; P.S. 1858 c. 61 s. 76; G.S. 1866 c. 66 s. 254; 1870 c. 67 s. 1; G.S. 1878 c. 66 s. 277; G.S. 1894 s. 5425; 1901 c. 274; 1903 c. 122; R.L. 1905 s. 4272; 1913 c. 112 s. 1; G.S. 1913 s. 7905; G.S. 1923 s. 9400; M.S. 1927 s. 9400.

I. DOCKETING JUDGMENT

1. Sequence of docketing
2. Object of
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II. JUDGMENT LIEN

1. Nature of
2. Duration
3. Lien upon what
4. Conflicting liens
5. Limitation
6. Death of debtor
7. Effect of recording act on priority

I. DOCKETING JUDGMENT

1. Sequence of docketing

There may be a valid docting without a judgment roll if there is a prior entry of the judgment in the judgment book. Williams v McGrade, 13 M 46 (39).

Until there is a judgment there can be no valid docketing. Hunter v Cleveland, 31 M 505, 18 NW 645; Rockwood v Davenport, 37 M 533, 35 NW 377; Clark v Butts, 73 M 361, 76 NW 199.

A judgment may be docketed before taxation of costs. Richardson v Rogers, 37 M 461, 35 NW 270.

Regularly the docketing of a judgment follows immediately the filing of the judgment roll. Three acts follow in regular sequence: (1) entry of judgment in the judgment book; (2) making up and filing the judgment roll; (3) docketing the judgment. Rockwood v Davenport, 37 M 533, 35 NW 377; Todd v Johnson, 50 M 310, 52 NW 864.

Formerly it was held that there could be no valid docketing until after the entry of the judgment in the judgment book. Rockwood v Davenport, 37 M 533, 35 NW 377.

It is now held that a prior entry of the judgment in the judgment roll alone will sustain the docketing, overruling Rockwood v Davenport, 37 M 533, 35 NW 377. Clark v Butts, 73 M 361, 76 NW 199; Scheibel v Anderson, 77 M 54, 79 NW 594.

2. Object of

Judgment was entered in Swift County, and a transcript and an execution to the sheriff of Chippewa County were delivered to the attorney for the plaintiff with instructions to file the transcript in Chippewa County and deliver the execution to the sheriff of Chippewa. This was done and was regular in every way. Gowan v Fountain, 50 M 264, 52 NW 863.

Possibility of acts in pais to waive objection to the validity of the lien. Todd v Johnson, 50 M 310, 52 NW 864.

In foreclosure of a mortgage by action, a judgment cannot be docketed before sale. Thompson v Dale, 58 M 365, 59 NW 1086.

3. Unimpeachable collaterally

The entry of judgment in the judgment book, including the date of the judgment together with the date of the docketing in the judgment docket, are parts

of the records of the district court of the counties to which such judgment book and docket belong, and, so long as they stand as such records, they import uncontrovertible verity, and cannot be collaterally impeached. Ferguson v Kumler, 25 M 183; Hunter v Cleveland, 31 M 505, 18 NW 645.

4. As evidence of judgment

In a book kept by the clerk of the district court, which on the outside was endorsed "Judgment Book," "Records," and "Register of Actions and Judgment Book," there were entries of the various proceedings in a cause from time to time, commencing with the filing of the summons and complaint, and the last entry undated was: "Judgment entered against defendants, and in favor of plaintiff, for $328.50."

This was not an entry of judgment, and the entry was not admissible to prove a judgment. Brown v Hathaway, 10 M 303 (238).

A transcript of the docket of a judgment is prima facie evidence of the docketing. Williams v McGrade, 13 M 46 (39); Thompson v Bickford, 19 M 17 (1).

Docket entries which are merely minutes of proceedings are not admissible as evidence of a judgment. Todd v Johnson, 50 M 310, 52 NW 864.

5. Generally

When the judgment was originally entered and docketed, it became a lien upon lands of the judgment debtor in Ramsey County. The writ of error brought the case, judgment, and all into the supreme court, accompanied by its incidents including the lien. Upon the affirmance of the judgment, the original amount with interest remained a lien by virtue of the original docketing, but if the successful party desires to make that portion of his judgment covering supreme court costs a lien, he must docket his judgment in the district court. Daniels v Winslow, 4 M 318 (235); Messerschmidt v Baker, 22 M 81.

The addition "junior" is no part of a man's name, and need not be used in legal proceedings. Bidwell v Coleman, 11 M 78 (45).

The entry of the judgment in the judgment book, making up and filing the judgment roll, and docketing the judgment are ministerial acts, and a mere clerical function imposed on the clerk by law. Williams v McGrade, 13 M 46 (39).

Judgment was docketed in Hennepin County in favor of Sumner W. Farnham. A certified copy of transcript was filed in Carver County corresponding in every respect with the judgment in Hennepin, except that plaintiff's name was given as "Samuel," instead of "Sumner," is competent evidence to prove the docketing of the judgment in Carver County. Thompson v Bickford, 19 M 17 (1).

A land mortgage made by "A" as surety for "B" to "C", is discharged by an extension granted to "B" by "C", without "A's" consent. The discharge is available, not only in favor of "A", but also in favor of "A's" judgment creditor, whose judgment is a lien on the mortgaged premises. After the lien has attached, it is not affected by "A's" waiver of the discharge. Campion v Whitney, 30 M 177, 14 NW 806.

A judgment duly rendered against Andrew Nelson, but docketed against Andrew Neilson, is a lien on the real estate of Andrew Nelson, unless as against those who can claim that by reason of the misspelling the docket is no notice to them. Fuller v Nelson, 35 M 213, 28 NW 511.

A record of a judgment against one whose christian name is indicated only by initial letters is effectual to put upon inquiry a subsequent purchaser of lands, the title to which appears of record in a person of the same family name as the judgment debtor and whose christian name has the same initial letters. Pinney v Russell, 52 M 443, 54 NW 484; Nystrom v Quinby, 68 M 4, 70 NW 777.

II. JUDGMENT LIEN

1. Nature of

When pending an action against the owner of real estate to compel specific performance of a contract to convey it, judgments are rendered against the owner,

and the real estate sold. The purchasers at the sale are bound by the judgment in the action pending. Steele v Taylor, 1 M 274 (210).

Under Laws 1862, Chapter 27, the lien of the judgment had expired by limitation, no execution having been issued. Burwell v Tullis, 12 M 572 (486).

A purchaser at delinquent tax sale acquires until the time to redeem expires only a lien, but no estate or interest in land. Brackett v Gilmore, 15 M 245 (190).

The judgment creditor, after the expiration of the time within which an execution could be issued, is not entitled to relief from a court of equity. Ashton v Slater, 19 M 347 (300).

In an action to reform and foreclose a mortgage, a notice of lis pendens, duly filed prior to the record of a deed from the mortgagor to a grantee, will save to the plaintiffs their prior lien. Lebanon v Hollenbeck, 29 M 322, 13 NW 145.

In mortgage foreclosure, the personal judgment against the mortgagor cannot be docketed until after the sale. Thompson v Dale, 58 M 365, 59 NW 1086.

The general lien of a judgment on land is not an estate or interest in land, and confers only a right to levy on the land to the exclusion of other adverse interests subsequent to the docketing of the judgment. State ex rel v District Court, 85 M 283, 88 NW 755.

Where the purchaser of land has paid the entire purchase price, and nothing remains to be done but execute and deliver the deed, and the vendor is able and willing to perform, a creditor of the vendor, with notice and knowledge of the sale, cannot obtain a lien on the land. Scott v Marquette Bank, 173 M 225, 217 NW 136.

The lien of a judgment upon real estate is not affected by a discharge in bankruptcy. Rusch v Lagerman, 194 M 469, 261 NW 186.

A judgment of the municipal court of St. Paul for the recovery of money becomes a lien upon the debtor's real estate by filing a transcript with the clerk of the district court of Ramsey County; and if the judgment is for labor on a homestead, it becomes a lien thereon; and such lien is enforceable, notwithstanding debtor's discharge in bankruptcy. Keys v Schultz, 212 M 112, 2 NW(2d) 549.

In an action for fraud in inducing plaintiffs to enter into a lease of an apartment hotel, an order striking, as indefinite, allegations that defendants' representations involved "latent and hidden defects" not noticeable or discoverable until plaintiffs took possession was held proper; and allegations as to the insolvency of the defendants, together with a prayer that a specific lien be impressed upon the property, was held redundant. Henvit v Keller, 218 M 299, 15 NW(2d) 780.

Equitable estates of judgment debtor. 7 MLR 420.

Defects in the title of the judgment debtor. 24 MLR 807.

Defects in title of chattels. 24 MLR 830.

Effects of homestead on creditor's rights. 25 MLR 76.

2. Duration

In calculating the ten years, the first day should be excluded, and the last day included. Davidson v Gaston, 16 M 230 (202); Spencer v Haug, 45 M 231, 47 NW 794.

The ten-year limitation is absolute and cannot be extended by means of a levy, action, or equitable relief. Ashton v Slater, 19 M 347 (300); Newell v Dart, 28 M 248, 9 NW 732; Dale v Wilson, 39 M 330, 40 NW 161; Spencer v Haug, 45 M 231, 47 NW 794; Dayton v Corser, 51 M 406, 53 NW 717; Sandwich v Earl, 56 M 391, 57 NW 938; Reed v Siddall, 94 M 216, 102 NW 453.

The death of a judgment debtor does not extend the life of the lien. Erickson v Johnson, 22 M 380.

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

A judgment creditor, when the recording act does not apply, and in the absence of an estoppel or a controlling equity, is not in the position of a bona fide purchaser or lienor but takes a lien on such interest as his judgment debtor has; and

in the instant case, the cancelation of the defendant's contract of purchase, by notice under the statute, diverted his equitable title, and the intervenor then had no lien. Farmers v Stageberg, 161 M 413, 201 NW 612.

Under the federal bankruptcy act, the lien of a judgment procured less than four months preceding the filing of the petition in bankruptcy is annulled thereby, even as to property of the bankrupt, his homestead, set aside to him as exempt. Landy v Martin, 193 M 252, 258 NW 573.

Decrees of divorce are not subject to the limitations prescribed for the enforcement of ordinary judgments. Akerson v Anderson, 202 M 356, 278 NW 577.

Personal property tax judgment outlaws in ten years. 1938 OAG 438, Dec. 31, 1937 (421a-8).

3. Lien upon what

A judgment lien attaches to: The interest of the obligor under bond to convey real estate. Minneapolis & St. Louis v Wilson, 25 M 382; Welles v Baldwin, 28 M 408, 10 NW 427; Coolbaugh v Roemer, 30 M 424, 15 NW 869; Baker v Thompson, 36 M 314, 21 NW 51; Berryhill v Potter, 42 M 279, 44 NW 251; Fleming v Wilson, 92 M 303, 100 NW 4;

The interest of a trustee who, without the knowledge of his cestui que trust, purchases real estate with trust funds. Martin v Baldwin, 30 M 537, 16 NW 449;

The interest of a debtor in real estate fraudulently conveyed. Wadsworth v Schisselbauer, 32 M 84, 19 NW 390; Jackson v Holbrook, 36 M 494, 32 NW 852; Lane v Innes, 43 M 137, 45 NW 4; Fryberger v Berven, 88 M 311, 92 NW 1125;

The interest of a mortgagee when the mortgage is in the form of an absolute deed. Butman v James, 34 M 547, 27 NW 66;

The interest of a vendee under a subsisting contract for the sale of land under which he has entered and paid part of the purchase price. Reynolds v Fleming, 43 M 513, 45 NW 1099; Hook v Northwest Thresher, 91 M 482, 98 NW 463; First State Bank v Hayden, 121 M 45, 140 NW 132;

A mortgagor's equity of redemption. Marston v Williams, 45 M 116, 47 NW 644;

Statutory interest of one spouse in the property of the other. Aretz v Kloos, 89 M 432, 95 NW 216, 769;

But when a divorce is granted, the wife's contingent interest in land conveyed by husband without the wife joining, becomes her absolute property on which the husband's creditors have no lien. Keith v Mellenthin, 92 M 527, 100 NW 366.

A judgment lien attaches to: A bare legal title unaccompanied by any beneficial interest. Fleming v Wilson, 92 M 303, 100 NW 4.

A creditor of one selected as medium of conveyance by husband to wife acquires no interest in land by a judgment against such person, though conveyance was made in fraud of creditors. Sakalowski v Ward, 98 M 177, 107 NW 961.

Reversionary interest of assignor for benefit of creditors is subject to lien of judgment entered and docketed against him pending insolvency proceedings, subject to be defeated by sale of the land by assignee before proceedings terminated. Northwestern Mutual v Murphy, 103 M 104, 114 NW 360.

On sale by order of probate court to pay debts or expenses, surplus belonging to heir must be applied to payment of judgment against him, docketed after death of ancestor and before sale. Kolars v Brown, 108 M 60, 121 NW 229.

The entry and docketing of a judgment against a bankrupt, pending the proceedings and before the discharge, becomes a valid lien on the real property of the bankrupt that as a homestead did not pass to the bankrupt estate, but which was liable to the payment of the debt. Gregory v Cole, 115 M 508, 133 NW 75.

See as to tax lien. First State Bank v Hayden, 121 M 48, 140 NW 132.

Although the deed to Mrs. Tenvoorde was declared an equitable mortgage, there are no findings indicating her husband has legal title and consequently the judgment of Graves against the husband was not a lien. Tenvoorde v Tenvoorde, 128 M 126, 150 NW 396.

The creditor of a party selected as a conduit through whom a conveyance of land is made from one to another, does not acquire any interest or estate by

virtue of a judgment against the medium. Wheeler v Nelson, 130 M 365, 153 NW 861.

Plaintiff was owner of the legal title, and defendant of the equitable title under a contract for a deed; and a judgment docketed by intervenor against defendant was a lien on defendant's interest. To enable defendant to obtain a loan, plaintiff made and recorded a deed to defendant. The loan failing, defendant had no greater title than before, nor had intervenor any greater lien. Farmers v Stageberg, 161 M 413, 201 NW 612.

A judgment is a lien upon the title of the judgment debtor holding an unrecorded deed, though by the recording act, a judgment does not take precedence of an unrecorded deed when the title to the land is not of record in the name of the judgment debtor. Emerson v Cook, 165 M 198, 206 NW 170.

While return by the vendee to the vendor of a delivered but unrecorded deed does not revest title, and a judgment is a lien upon the title of the judgment debtor holding under an unrecorded deed by the recording act, a judgment does not take precedence of an unrecorded deed when the title to the land is not of record in the name of the judgment debtor. Emerson v Cook, 165 M 198, 206 NW 170.

A judgment lien on real property is not defeated by a homestead right acquired by judgment debtor after docketing judgment. Rusch v Lagerman, 194 M 469, 261 NW 186.

A judgment lien against property not in the name of the judgment debtor is subordinate to the rights of a purchaser under a contract for a deed entered into by such purchaser in good faith and for a valuable and adequate consideration. Roberts v Friedell, 218 M 88, 15 NW(2d) 496.

Personal property tax judgment is not a lien on the judgment debtor's homestead. 1934 OAG 826, September 14, 1934 (421a-9).

4. Conflicting liens

When one conveys land and at the same time takes a mortgage back for a part of the purchase money, the lien of the mortgage takes precedence of a lien for the prior judgment against the mortgagor. Banning v Edes, 6 M 402 (270); Stewart v Smith, 36 M 82, 30 NW 430; Peaslee v Hart, 71 M 319, 73 NW 976.

Purchase money chattel mortgage valid though lacking wife's signature. Barker v Kelderhouse. 8 M 207 (178).

Successive judgment liens take effect in the order of the docketing and a junior judgment creditor cannot secure a preference merely by virtue of superior diligence in taking steps to enforce his lien. Jackson v Holbrook, 36 M 494, 32 NW 852; Lowe v Reierson, 201 M 280, 276 NW 224.

Marshaling of priorities where transcripts of two judgments were filed at the same time. Bagley v McCarthy, 95 M 286, 104 NW 7.

Where the owner of a city lot conveyed the same as security by deed which was duly recorded, a judgment docketed thereafter against the grantor is not constructive notice of the lien thereof to a subsequent purchaser from the vendee. Goswitz v Jefferson, 123 M 293, 143 NW 720.

Where the owner gives a mortgage upon an entire tract and thereafter conveys away a part, the owner cannot insist that a judgment lienor first sell the part conveyed away. The creditor may sell all as one parcel. Bowers v Norton, 175 M 541, 222 NW 71.

Upon cancelation of a land contract by the vendor, a judgment creditor of the vendee no longer has a lien. Peterson v Siebrecht, 188 M 272, 247 NW 6.

Judgment creditors against one who is not an owner of land in the county but who later acquires land, all judgment creditors stand in the same relative position as if the property had been owned by him when the judgments were docketed. Lowe v Reierson, 201 M 280, 276 NW 224.

"Full faith and credit" in a federal system. 20 MLR 149.

Diligence of junior judgment creditors. 23 MLR 97.

5. Limitation

Purchasers under judgment and execution pendente lite are bound by lis pendens. Steele v Taylor, 1 M 274 (210).

In all cases the lien of the judgment is limited to the actual interest of the judgment debtor in the land. Banning v Edes, 6 M 402 (270); Martin v Baldwin, 30 M 537, 16 NW 449.

A judgment does not come within the rule made the foundation of Revised Laws 1905, Section 4086 (section 541.17), by which a new promise or part payment suspends the operation of the statutes of limitation and revives and continues the cause of action. Olson v Dahl, 99 M 433, 109 NW 1001.

State assignment certificates issued under Laws 1902, Chapter 2, were not included within the limitation of Laws 1905, Chapter 271. Northern Counties v Excelsior, 146 M 207, 178 NW 497.

Where there is a severance of a joint estate prior to sale on execution under judgment, even though severance took place after judgment lien attached as to judgment debtor's joint tenant interest, purchaser at such sale took only the interest of judgment debtor as it was at time of severance. Greiger v Pye, 210 M 71, 297 NW 173.

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

6. Death of debtor

The death of a judgment debtor does not extend the life of lien. Erickson v Johnson, 22 M 380.

A judgment lien cannot be acquired on the land of the judgment debtor after his death. Byrnes v Sexton, 62 M 135, 64 NW 155; New Hampshire v Barrows, 77 M 138, 79 NW 660.

7. Effect of recording act on priority

Aside from the recording act, judgment creditors are not regarded as bona fide purchasers. Greenleaf v Edes, 2 M 264 (226); Martin v Baldwin, 30 M 537, 16 NW 449; School District v Peterson, 74 M 122, 76 NW 1126.

A judgment takes precedence of unrecorded conveyances only as to such titles as appear of record. Dickinson v Kinney, 5 M 409 (332); Golcher v Brisben, 20 M 453 (407); Lebanon Bank v Hollenbeck, 29 M 322, 13 NW 145; Coles v Berryhill, 37 M 56, 33 NW 213; Berryhill v Smith, 59 M 285, 61 NW 144; Hall v Sauntry, 72 M 420, 75 NW 720; School District v Peterson, 74 M 122, 76 NW 1126; Lyman v Gaar, Scott, 75 M 207, 77 NW 828.

The recording act gives a judgment lien priority over unrecorded conveyances of which the judgment creditor had no notice at the time of the docketing. Ferguson v Kumler, 11 M 104 (62); Welles v Baldwin, 28 M 408, 10 NW 427; Dutton v McReynolds, 31 M 66, 16 NW 468; Wilkins v Bevier, 43 M 213, 45 NW 157; Wilcox v Leominster, 43 M 541, 45 NW 1136; Bank of Ada v Gullickson, 64 M 91, 66 NW 131; Clark v Greene, 73 M 467, 76 NW 263; School District v Peterson, 74 M 122, 76 NW 1126; Funk v Lamb, 87 M 348, 92 NW 8;

But otherwise when he had notice either actual or constructive. Lamberton v Merchants Bank, 24 M 281; Lebanon Savings Bank v Hollenbeck, 29 M 322, 13 NW 145; Dyer v Thorstad, 35 M 534, 29 NW 345; Baker v Thompson, 36 M 314, 31 NW 51; Wilkins v Bevier, 43 M 213, 45 NW 157; Graff v State Bank, 50 M 234, 52 NW 651; Northwestern Land v Dewey, 58 M 359, 59 NW 1085.

The recording act does not give judgment liens precedence over resulting trusts. School District v Peterson, 74 M 122, 76 NW 1126.

548.10 NEW COUNTY; DOCKETING OLD JUDGMENTS; REAL ESTATE TAX JUDGMENTS.

HISTORY. 1901 c. 274; R.L. 1905 s. 4273; 1907 c. 159 s. 1; G.S. 1913 s. 7906; G.S. 1923 s. 9401; M.S. 1927 s. 9401.

Collection of taxes where new county is formed out of part of existing county. Culligan v Cosmopolitan Co. 126 M 218, 148 NW 273; 1922 OAG 505, Dec. 21, 1922.

548.11 FEDERAL COURT JUDGMENT; DOCKETING.

HISTORY. 1877 c. 141 ss. 1, 2; G.S. 1878 c. 66 ss. 279, 280; G.S. 1894 ss. 5427, 5428; 25 U. S. St. L. c. 729; R.L. 1905 s. 4274; G.S. 1913 s. 7907; G.S. 1923 s. 9402; M.S. 1927 s. 9402.

If a decree was entered, it would at once become a lien on Graham's lands in St. Louis County, and would become a lien on the lands in Itasca County with the filing of a transcript with the clerk of the district court of that county. Graham v National Surety Co. 244 F 922.

548.12 LIEN DISCHARGED BY DEPOSIT OF MONEY, WHEN.

HISTORY. 1876 c. 75 s. 1; G.S. 1878 c. 66 s. 278; G.S. 1894 s. 5426; R.L. 1905 s. 4275; G.S. 1913 s. 7908; G.S. 1923 s. 9403; M.S. 1927 s. 9403.

The only one possessed of a right to redeem as of Sept. 27, 1911, was the judgment debtor. His right was absolute. It is immaterial who furnished the money, or what his motives were. Orr v Sutton, 127 M 37, 148 NW 1066.

548.13 ASSIGNMENT OF JUDGMENT; MODE AND EFFECT.

HISTORY. 1877 c. 99 ss. 1, 2, 3; G.S. 1878 c. 66 ss. 282, 283, 284; G.S. 1894, 5430 to 5432; R.L. 1905 s. 4276; G.S. 1913 s. 7909; G.S. 1923 s. 9404; M.S. 1927 s. 9404.

When attorneys have a lien, the sheriff, if the attorneys require him to do so, may retain of the amount collected the amount of the lien when the money is demanded by an assignee of the judgment. Gill v Truelsen, 39 M 373, 40 NW 254.

An assignment of a judgment in part is not valid as against creditors levying thereon, unless the assignment is placed on record, as provided by statute. Wheaton v Spooner, 52 M 417, 54 NW 372.

As between the parties an assignment is valid, though not filed and entered. Swanson v Realization Corporation, 70 M 380, 73 NW 165.

The statute providing for filing of assignments of judgments affects the validity of the assignments only as to subsequent purchasers and attaching creditors; as between the parties, an assignment is valid without compliance with statutory formalities. Carlson v Smith, 127 M 203, 149 NW 199.

A judgment creditor may purchase a judgment to use as a setoff. If he wishes to avail himself of the right to have it treated as a payment pro tanto, he should apply to the court to have one judgment set off against the other. He should not levy on the judgment against himself. Barnes v Verry, 154 M 252, 191 NW 589.

A judgment recovered by Fitger Brewing Company was assigned by The Fitger Company. The assignment alleged a change of corporate name. Assignment valid. Leland v Heiberg, 156 M 30, 194 NW 93.

The mode of assigning judgments prescribed by section 548.13 is not exclusive. Judgments have the assignable quality of choses in action. An assignment in any form passes an equity which the courts will protect. Brown v Reinke, 159 M 458, 199 NW 235.

A past due sum or instalment of alimony payable to a divorced wife is assignable. Cederberg v Gunstrom, 193 M 421, 258 NW 574.

Defects in the title of the judgment debtor. 24 MLR 806.

548.14 JUDGMENTS, PROCURED BY FRAUD, SET ASIDE BY ACTION.

HISTORY. 1877 c. 131 s. 1; G.S. 1878 c. 66 s. 285; G.S. 1894 s. 5434; R.L. 1905 s. 4277; G.S. 1913 s. 7910; G.S. 1923 s. 9405; M.S. 1927 s. 9405.

1. Nature of action
2. Concurrent with remedy by motion
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5. For perjury
6. For fraudulent practices on adverse party
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8. In action for divorce
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11. Generally

1. Nature of action

In the absence of fraud, the action will not lie. The action is not designed to take the place of a motion for a new trial. Hulett v Hamilton, 60 M 21, 61 NW 672.

The action is in the nature of a bill in equity to set aside judgment and the relief asked is of an extraordinary character. Schweinfurter v Schmahl, 69 M 418, 72 NW 702; Geisberg v O'Laughlin, 88 M 431, 93 NW 310; Jordan's Estate, 199 M 59, 271 NW 104.

The right to bring an action to set aside a judgment obtained by perjury and fraud, was not intended to give a retrial of the same issues tried and determined in the original action. Betcher v Midland, 167 M 484, 209 NW 325; Enger v Midland, 176 M 149, 222 NW 901.

To permit attack on final incontestable judgments by collateral suits between the same parties would lead to endless litigation and contravene public policy. Hawley v Knott, 178 M 225, 226 NW 697.

What plaintiff intends to attack is that the judgment was entered prematurely under the wording of the findings. The answer to that is that plaintiff's remedy was in that action by motion or appeal, and not by an independent action to vacate the decree. Calhoun v Minneapolis, 190 M 579, 252 NW 442.

This section is a statute of creation, so that commencement of the action within a period fixed is a condition precedent to the right of action. Murray v Calkins, 191 M 460, 254 NW 605.

Section 548.14 is not a part of the title registration statute, and the limitation does not apply. Lamphrey v American Hoist, 197 M 121, 266 NW 434.

This section does not apply to an action on the bond of executor who embezzled trust funds, where the executor misled the beneficiary by leading to believe he was holding the funds, not as executor but as trustee. Shave v U. S. F. & G. 199 M 543, 272 NW 597.

Fraud as ground for setting aside or enjoining proceedings under judgment. 11 MLR 568.

2. Concurrent with remedy by motion

The action authorized by this section is one of an equitable nature, and the court has the power and it is his duty to award such relief as the facts in each particular case, and the ends of justice may require. The complainant's right is not an absolute one, and the relief depends on the circumstances. The court may direct the satisfaction of the judgment, compel restitution, vacate conditionally, or make such order as to the court may appear just and equitable. Geisberg v O'Laughlin, 88 M 431, 93 NW 310; Melgaard's Estate, 200 M 508, 274 NW 641.

The remedy by motion in the action and the remedy by action under this section are concurrent, and either may be resorted to by the defrauded party. Clark v Marvin, 140 M 285, 167 NW 1029; Mason v McNeil, 186 M 278, 243 NW 129.

This section was enacted simply to make the equitable remedy of action concurrent with the legal remedy by motion. Prior to the enactment of the statute, the equitable action was apt to encounter the objection that there was an adequate remedy at law. Section 548.14 has no application when the attack is made by motion. Lenhart v Lenhart, 211 M 572, 2 NW(2d) 421.

3. Strictly construed

This statute is in derogation of the established policy of the common law, forbidding the retrial of issues once determined by a final judgment; and consequently cannot be construed to extend its operation beyond its most obvious import. Stewart v Duncan, 40 M 410, 42 NW 89; Haas v Billings, 42 M 63, 43 NW 797; Watkins v Landon, 67 M 136, 69 NW 711.

Action cannot be maintained because no showing of due diligence to defend against the allowance of the claims in probate court. O'Brien v Larson, 71 M 371, 74 NW 148.

This section is not intended to provide for reopening a cause which has been fully determined upon its merits, where the pleadings apprised the parties of the

issues and the nature of the evidence which the defeated party was required to meet, in the action wherein such judgment was obtained. The case of Geisberg v O'Laughlin, 88 M 431, 93 NW 310, considered and distinguished. Moudry v Witzka, 89 M 300, 94 NW 885.

To vacate a decree for fraud, the representative must be of a substantial character, and must be unequivocal. The statute was not intended to excuse a party from exercising proper diligence in preparing for trial. He must show that he himself was guilty of no negligence. Wann v Northwestern Trust, 120 M 493, 139 NW 1061; Saari v Puustinen, 161 M 367, 201 NW 434.

4. Complaint

The complaint should show that the plaintiff has suffered damages. McNair v Toler, 21 M 175.

It must clearly point out the act of perjury or subornation thereof or the fraudulent acts or practices relied on and show on its face that it is brought within the statutory time. A general charge of fraud is insufficient. Bomsta v Johnson, 38 M 230, 36 NW 341; Hass v Billings, 42 M 63, 43 NW 797; Wilkins v Sherwood, 55 M 154, 56 NW 591; McCue v Weibeler, 135 M 432, 161 NW 143; Penniston v Miller, 156 M 403, 194 NW 944.

In the instant case, fraud, misrepresentation, perjury, conspiracy, and in fact all the statutory grounds were alleged, and the complaint was sufficient. Colby v Colby, 59 M 432, 61 NW 460.

Where it is claimed that the plaintiff was prevented from defending by the fraud of the prevailing party, the plaintiff in his compaint must state facts from which it affirmatively appears that he was entirely free from contributory negligence in suffering judgment to be taken against him. Schweinfurter v Schmahl, 69 M 418, 72 NW 702; O'Brien v Larson, 71 M 371, 74 NW 148.

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; a mere preponderance is sufficient. Walters v Walters, 151 M 300, 186 NW 693.

A complaint which charges that the adverse party obtained a judgment by giving false testimony and fraudulently suppressing evidence at the trial, but fails to show that there are facts substantiating such charges which were not known or available at the trial, fails to state a cause of action for setting aside the judgment. Hawley v Knott, 173 M 149, 216 NW 800.

The pleadings were such that the doctrine laid down in Hass v Billings, 42 M 63, 43 NW 797, was properly applied, and judgment for the plaintiff on the pleadings was properly granted. Murray v Calkins, 186 M 192, 242 NW 706.

No allegations appear that brings the case within the operation of this section. Nystrom v Nystrom, 186 M 493, 243 NW 704.

While a lower court has no power to alter, amend, or modify a mandate of the supreme court, it has jurisdiction under section 548.14, to set aside a judgment entered pursuant to the mandate of that court (Hershel v Tankar Gas, Inc. 211 M 403, 2 NW(2d) 43) where there has been extrinsic fraud in its procurement. The complaint sets forth a cause of action. Tankar Gas v Lumbermen's Mutual, 215 M 265, 9 NW(2d) 754.

5. For perjury

Where the pleadings disclose the fact to be proved so that the opposite party knows what the pleader will attempt to prove and is not under any necessity to depend on the other party to prove the fact as he himself claims it, an action will not lie under the statute to set aside a judgment procured by perjury committed in proving such fact. Hass v Billings, 42 M 63, 43 NW 797; Wilkins v Sherwood, 55 M 154, 56 NW 591; Colby v Colby, 59 M 432, 61 NW 460; Watkins v Landon, 67 M 136, 69 NW 711; Moudry v Witzka, 89 M 300, 94 NW 885; Major v Leonard, 115 M 439, 132 NW 915; Young v Lindquist, 126 M 414, 148 NW 455; Marcus v Knights of Security, 134 M 338, 159 NW 835; Penniston v Penniston, 156 M 403, 194

NW 944; Saari v Puustinen, 161 M 367, 201 NW 434; Nichols v Village of Morristown, 204 M 212, 283 NW 748.

When issues are defined by pleadings, and no deceit was practiced as to proofs to be offered, action will not lie under this section to vacate judgment on the ground that it was obtained by fraud and perjury. Bisseberg v Ree, 99 M 481, 109 NW 1115.

Action cannot be maintained on the bare allegation that an issue of fact so made that each party knows what the other will attempt to prove, and where neither has right, or is under necessity, to depend on the other to prove fact to be as he himself claims it, there was false or perjured testimony by successful party or his witnesses. Hayward v Larrabee, 106 M 210, 118 NW 795.

In an action to vacate a decree of divorce, the prevailing party being dead, and where the fraud and perjury charged against the prevailing party does not involve jurisdiction of the court or deception preventing claimant from making a defense, but relates solely to perjury and concealment in establishing the cause of action, it does not come within the purview of this section. McElrath v McElrath, 120 M 380, 139 NW 708.

The fact that plaintiff, in an action in a state court for personal injury, and others of his witnesses, conspire to commit and did commit, perjury as to the extent of his injury, does not afford basis for a suit in equity in a federal court to enjoin collection of the judgment recovered, where there undoubtedly was an injury, and its extent was one of the issues, and where they did nothing to suppress evidence available to defendant on that issue, but which defendant did not discover until after judgment and affirmance. International Indemnity v Peterson, 6 F(2d) 230.

6. For fraudulent practices on adverse party

The complaint alleging that the husband sent his wife to a foreign land; commenced a divorce action; caused to be delivered to her an agreement to pay alimony; mislead her as to the grounds of divorce; prevented her from getting money to return or defend the action; committed perjury at the trial; and omitted to provide alimony in the decree, stated a good cause of action on which to petition for vacation of the decree of divorce. Colby v Colby, 59 M 432, 61 NW 460.

Where defeated party has been prevented from exhibiting his case by his adversary, as by false promise of compromise, or where he had no knowledge of the action as being in ignorance of the acts of his adversary, or similar reasons, he may be entitled to a vacation of the judgment. Street v Town of Alden, 62 M 160, 64 NW 157.

There being no provable fraud in the substituted service on the corporation, the judgment cannot be set aside. Town of Hinckley v Kettle River Co. 80 M 32, 82 NW 1088.

Distinguishing Geisberg v O'Laughlin, 88 M 431, 93 NW 310, this section is not applicable to a case fully determined on its merits, and where the pleadings apprised the parties of the issues, and the nature of the evidence the defeated party was required to meet. Moudry v Witzka, 89 M 300, 94 NW 885.

An action may be maintained to set aside a judgment upon the ground that no process had been served or jurisdiction acquired in any manner. Cremer v Michelet, 114 M 454, 131 NW 627.

To set aside or vacate a judgment, the false representation must be substantial and unequivocal. The defeated party must have been diligent. The misrepresentation must have been of a material fact, susceptible of knowledge on the part of prevailing party and known by him to be false, and that the losing party relied on the misrepresentation. Wann v Northwestern Trust, 120 M 493, 139 NW 1061; Jordan's Estate, 199 M 53, 271 NW 104.

A finding that a copy of the summons was not mailed to the defendant in the action in which judgment was rendered, as stated in the affidavit of publication, and that she had no notice until after judgment was rendered, is ground for setting aside the judgment as to her. Clark v Marvin, 140 M 285, 167 NW 1029.

Self or double-dealing by a beneficiary renders the transaction voidable by the beneficiary; but, whereas here the facts were fully disclosed to the court, and the

court on the advice of independent counsel representing the ward approved the transaction, there can be no disaffirmance by the ward. Fiske's Estate, 207 M 44, 291 NW 289; Woodworth's Estate, 207 M 563, 292 NW 192; Henry's Estate, 207 M 613, 292 NW 249.

7. For fraud on court

The court has inherent power to entertain a motion for fraud or deceit practiced on the court; but in the instant case there is no finding of fraud. Scribner v Scribner, 93 M 195, 101 NW 163.

In the instant case, the facts do not bring the case within the purview of this section. McElrath v McElrath, 120 M 380, 139 NW 708.

8. In action for divorce

Notwithstanding the plaintiff in a divorce proceeding has again married, an aggrieved party may, under this section, maintain an action to set aside and annul a decree a vinculo procured by fraudulent practices; and such action may be commenced and prosecuted after the death of the party obtaining such fraudulent decree. Bomsta v Johnson, 38 M 230, 36 NW 341.

Judgments set aside. Colby v Colby, 64 M 549, 67 NW 663.

Where the court refused to set aside or vacate. Scribner v Scribner, 93 M 195, 101 NW 163; McElrath v McElrath, 120 M 380, 139 NW 708; Kriha v Kartak, 127 M 406, 149 NW 666; Brockman v Brockman, 133 M 148, 157 NW 1086; Osbon v Hartfiel, 201 M 348, 276 NW 270.

The trial court was justified in finding that decedent fraudulently induced respondent to believe that an action for the annulment of his marriage to her had been abandoned, and that by his conduct, she was prevented from appearing and presenting her defense; hence the judgment of annulment was properly set aside on grounds of extrinsic fraud under section 548.14. Upon remarriage, the death of the husband intervening, and property rights being involved, the rights of the parties under section 548.14 are governed by equitable principles. Bloomquist v Thomas, 215 M 35, 9 NW(2d) 337.

Collusive divorce; attack by colluding party. 5 MLR 317.

9. Effect of laches

In the instant case a delay of one year and seven months cannot, as a question of law, be held to be laches. Colby v Colby, 59 M 432, 61 NW 460.

A delay of 14 years after the service of the summons, and nine years after she learned of the practiced fraud, was not excused by her ill health, nor the ignorance of the fraud practiced by the prevailing party. McElrath v McElrath, 120 M 380, 139 NW 708.

Where a new marriage alliance has been formed in reliance on the decree of divorce, that fact must be taken into account in any action to set aside the decree. Brockman v Brockman, 133 M 148, 157 NW 1086.

A motion to dismiss an appeal, taken more than six months after judgment was entered, is granted. Churchill v Overued, 142 M 102, 170 NW 919.

There has been no "discovery" of the fraud by a corporation through any doctrine of imputed notice where the corporation is in the adverse control and management of conspiring stockholders. Discovery occurs only when the non-participating stockholders as a class have been informed. Lenhart v Lenhart, 210 M 164, 298 NW 37.

10. Relief which may be awarded

The court under this section has the powers which a court of equity possessed in similar proceedings. Spooner v Spooner, 26 M 137, 1 NW 838.

Under the broad power conferred by this section, the court is invested with authority, not only to set aside the judgment, but also to afford full relief from the consequences, as for instance, by making restitution of property received by

virtue of the judgment. Baker v Sheehan, 29 M 237, 12 NW 704; Henry v Meighen, 46 M 548, 49 NW 323; Geisberg v O'Laughlin, 88 M 431, 93 NW 310.

In the instant case the divorce decree should have been simply annulled, and it was error to go further and decree a new trial. Colby v Colby, 64 M 549, 67 NW 663.

This section giving the court the right to set aside a judgment was not intended to give a retrial of the same issues tried and determined in the original action. Betcher v Midland Bank, 167 M 484, 209 NW 325.

Where in a Minnesota case, judgment non obstante was properly denied, and a new trial properly granted, it does not appear from the record that plaintiff may not by suit or motion in the Iowa court have the judgment rendered there annulled. Schendel v Chicago, Milwaukee, 168 M 152, 210 NW 70.

A motion to amend and substitute a new pleading calculated to present, under section 548.14, a direct attack on the orders involved in the former appeal in this case (see Melgaard's Will, 200 M 493, 274 NW 641), but which new pleading shows on its face that it states no cause of action, was properly denied by the trial court. Melgaard's Will, 204 M 194, 283 NW 112.

11. Generally

Laws 1877, Chapter 131, is constitutional; is applicable to all judgments whenever recovered; but not operative as to judgments which had become absolute prior to the passage of the act. Willard v Shillock, 24 M 345; Spooner v Spooner, 26 M 137, 1 NW 838.

This statute does not authorize one not a party to the action in which the judgment was recovered to maintain this statutory proceeding, even though he be directly interested in the result. Stewart v Duncan, 40 M 410, 42 NW 89.

In an action to set aside a judgment for fraud and perjury, plaintiff (defendant in the other action) alleges she was not indebted to plaintiff in the action in which judgment was obtained; that the note sued upon was a forgery and known to be such by the prevailing party and his attorney. The judgment cannot be set aside, because while the evidence was admissible in the original action, it is not admissible in the present case. Miller v First National, 133 M 463, 157 NW 1069.

On conflicting affidavits, the trial court was justified in denying plaintiff's motion to reopen, vacate and set aside two orders of the court allowing and confirming annual accounts of the trustee. Fleischmann v Northwestern, 194 M 232, 260 NW 310.

Full faith and credit. 20 MLR 160.

Collateral attack upon judgment. 24 MLR 819.

548.15 HOW DISCHARGED OF RECORD.

HISTORY. R.S. 1851 c. 71 s. 79; P.S. 1858 c. 61 s. 79; G.S. 1866 c. 66 s. 255; G.S. 1878 c. 66 s. 286; Ex. 1881 c. 33 s. 1; 1889 c. 95 s. 1; 1893 c. 87 s. 1; G.S. 1894 s. 5435; R.L. 1905 s. 4278; G.S. 1913 s. 7911; G.S. 1923 s. 9406; M.S. 1927 s. 9406.

Whenever a judgment is satisfied in fact, otherwise than on execution, it is the duty of the party or attorney to give an acknowledgement of satisfaction, and, on motion, the court may compel it, or may order the entry of satisfaction to be made without it. If the facts are in dispute, the court may deny the motion and relegate the parties to an action. Ives v Phelps, 16 M 451 (407); Lough v Pitman, 26 M 345, 4 NW 229; Woodford v Reynolds, 36 M 155, 30 NW 757; Warren v Ward, 91 M 254, 97 NW 886.

This section does not apply to actions in ejectment. Voight v Woll, 110 M 6, 124 NW 447.

A district court has jurisdiction to try an action which seeks to restrain the enforcement of a debt, evidenced by a judgment in another district court of the state by execution when the debt has been satisfied or when the plaintiff has ceased to be liable upon the judgment. Baune v Maryland Casualty, 168 M 484, 210 NW 396.

A sale on execution and the resulting satisfaction of the judgment cannot be vacated on the ground of mistake simply because a mortgage, subject to which

the property was purchased, was thereafter foreclosed and, in the absence of redemption, the property lost to the purchaser at the execution sale. Ridgway v Mirkovich, 194 M 216, 260 NW 303.

Where losing party in replevin action no longer has the property, he has, in view of the facts in the instant case, the right to be discharged from liability upon payment into court of amount found by jury to be the value thereof, plus interests and costs. Breitman v Buffalo, 196 M 369, 265 NW 36.

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

548.16 SATISFACTION AND ASSIGNMENT BY STATE.

HISTORY. 1889 c. 44 s. 1; G.S. 1894 s. 5433; R.L. 1905 s. 4279; G.S. 1913 s. 7912; G.S. 1923 s. 9407; M.S 1927 s. 9407; 1929 c. 186.

548.17 PAYMENT AND SATISFACTION BY CLERK.

HISTORY. R.S. 1851 c. 71 s. 79; P.S. 1858 c. 61 s. 79; G.S. 1866 c. 66 s. 255; G.S. 1878 c. 66 s. 286; Ex. 1881 c. 33 s. 1; 1889 c. 95 s. 1; 1893 c. 87 s. 1; G.S. 1894 s. 5435; R.L. 1905 s. 4280; G.S. 1913 s. 7913; G.S. 1923 s. 9408; M.S. 1927 s. 9408.

Plaintiff obtained a judgment against the Canadian Northern Railway, and about the same time the Canadian National Railway obtained a judgment against plaintiff. The attorney for the Canadian Northern paid the amount of the judgment to the clerk, who satisfied the judgment, and at once the sheriff levied on the money in execution of the Canadian National judgment. The remainder of the money was paid to plaintiff's attorney. The money deposited was never in custodia leges, for no affidavit was filed. The money taken was the property of the Canadian Northern. The act of the clerk in taking the money and applying it on the execution affected plaintiff's right in no way, unless plaintiff saw fit to approve it. Brown v Canadian Northern, 154 M 38, 191 NW 259.

The defendant stood ready to pay the judgment at all times after it was entered, but the father did not furnish the required bond until later. The defendant was not chargeable with interest until the bond was filed. The statute relating to the deposit with the clerk does not apply. Jensen v Chicago, Milwaukee, 160 M 122, 199 NW 579.

Where losing party in replevin action no longer has the property, he may be discharged from liability upon payment into court of the amount found by the jury to be the value thereof, plus interest and costs. Breitman v Buffalo, 196 M 371, 265 NW 36.

548.18 DISCHARGE OF JUDGMENTS AGAINST BANKRUPTS.

HISTORY. 1909 c. 230 s. 1; G.S. 1913 s. 7914; G.S. 1923 s. 9409; M.S. 1927 s. 9409.

Whether the proceeding be classed as a motion or an action, in cancelation of a judgment discharged by bankruptcy, care must be taken to preserve the rights of the judgment creditor where the lien may affect interests not owned by the bankrupt. Olson v Nelson, 125 M 286, 146 NW 1097.

In the instant case, the evidence is clear that the debt arose from fraud of defendant and is excluded from discharge in bankruptcy. Arnold v Smith, 137 M 364, 163 NW 672.

The burden of proof is on the creditor who claims because of fraud, his duly scheduled debt is excepted from the operation of debtor's discharge in bankruptcy. Guindon v Brusky, 142 M 86, 170 NW 918.

Dischargeable debts. 25 MLR 791.

548.19 JOINT DEBTORS; CONTRIBUTION AND SUBROGATION.

HISTORY. R.S. 1851 c. 71 s. 120; P.S. 1858 c. 61 s. 121; G.S. 1866 c. 66 s. 298; G.S. 1878 c. 66 s. 330; G.S. 1894 s. 5479; R.L. 1905 s. 4281; G.S. 1913 s. 7915; G.S. 1923 s. 9410; M.S. 1927 s. 9410.

Where one of several debtors, against whom there is a joint judgment, pays more than his proportion, and files notice of his payment and claim to contribution, he is ipso facto subrogated to the right of the judgment creditor in the judgment and may issue execution thereon. Ankeny v Moffett, 37 M 109, 33 NW 320.

Plaintiff may recover damages from the clerk who had failed to make a statement on the docket that plaintiff who was a surety, and who paid the joint judgment, be subrogated to the rights of the creditor against the other judgment debtor. Whelan v Reynolds, 101 M 290, 112 NW 223.

In a personal injury case, the court outlines the rules relating to contributions between iron mining companies, codefendants. Akin v Lake Superior Mines, 103 M 204, 114 NW 654, 837.

Landowners obtained a judgment against plaintiff, lessor, who sued defendant lessee, who operated a dam owned by lessor. Held, that while as to plaintiff the operation of the dam was beyond his legal rights, the lessee under the terms of the lease had kept within his contract and is not liable. Munch v McGrath, 124 M 475, 145 NW 163.

The maker and guarantors of promissory notes may be sued in the same action, though the guaranty is by separate instrument to which the maker is not a party. Where the guaranty provides that "nothing shall affect," the liability of the guarantors but notice of withdrawal by a guarantor or cancelation of the guaranty by the guarantee, neither lapse of time, nor death of one guarantor will terminate the contract. Midland Bank v Security Elevator Co. 161 M 30, 200 NW 851.

Where the one seeking contribution has intentionally violated a statute or ordinance, thereby causing injury to another, he is guilty of an intentional wrong, and illegal act, and is not entitled to contribution from one whose mere negligence contributed to the injury. Fidelity and Casualty v Christenson, 183 M 182, 236 NW 618.

Establishment of the common liability and its liquidation by judgment in favor of the injured party are not conditions precedent to recovery by one wrongdoer who has made a fair and provident settlement of the claim and then seeks contribution from a joint tortfeasor. Duluth Missabe v McCarthy, 183 M 414, 236 NW 766.

This action by a surety against one for whom he was guarantor, is barred by a decision in a former action growing out of the same facts. Maryland Casualty v Baune, 184 M 552, 239 NW 598.

This section makes no change in the substantive law of contribution, but only to the method of obtaining it. Kemerer v State Farm Mutual, 201 M 239, 276 NW 228; 206 M 325, 288 NW 719; 211 M 249, 300 NW 793.

In an action for personal injuries against two defendants, where one was adjudged liable to plaintiff and the other was not, in an action by the defendant against whom the judgment was obtained, and who paid the judgment, there was no liability on the part of the successful defendant. American Motorists v Vigen, 213 M 120, 5 NW(2d) 397.

In a criminal proceeding the federal government obtained a judgment against the accused and his two sureties. One of the sureties paid the judgment and filed with the clerk a claim for contribution against the other. The matter came before the court on an order to show cause. The petition was dismissed. The surety could not be subrogated to the rights of the United States as judgment creditor. The Minnesota statute could not be invoked. United States v Soucy, 60 F. Supp. 501.

Contribution and indemnity between joint tortfeasors. 16 MLR 73, 81.

548.20 SEVERAL JUDGMENTS AGAINST JOINT DEBTORS.

HISTORY. R.S. 1851 c. 70 ss. 53, 164; P.S. 1858 c. 60 ss. 57, 172; G.S. 1866 c. 66 s. 52; G.S. 1878 c. 66 s. 67; G.S. 1894 s. 5207; 1897 c. 303; R.L. 1905 s. 4282; G.S. 1913 s. 7916; G.S. 1923 s. 9411; M.S. 1927 s. 9411.

Laws 1897, Chapter 303 (section 548.20) covers the liability on a bond given on the removal of a cause from the circuit court of the United States. Hollister v U.S.F. & G. Co. 84 M 251, 87 NW 776.

The common law rule is abrogated by the enactment of Laws 1897, Chapter 303, and the enactment does not have a retroactive effect. Sundberg v Goar, 92 M 143, 99 NW 638.

An independent action will lie against one of the parties to a joint obligation. Hoatson v McDonald, 97 M 201, 106 NW 311.

An action may be maintained either upon contract or for a tort, against one of several persons jointly liable. There is a joint and a several liability. Fryklund v Great Northern, 101 M 38, 111 NW 727; Morgan v Brach, 104 M 247, 116 NW 490.

The lex fori governs in all matters of procedure, including questions of pleading, evidence, and parties to and form of action. Fryklund v G. N. 101 M 39, 111 NW 727.

Where two towns were organized out of a part of the territory of the parent town, the liability of each town to the parent town is separate, independent and not contingent upon or measured by the liability of the other. Town of Kettle River v Town of Bruno, 106 M 58, 118 NW 63.

In an action by two makers of a promissory note, who paid it, to recover of a comaker his proportionate share, the evidence sustains the right of recovery by plaintiffs. Larson v Slette, 125 M 266, 126 NW 1094.

There may be a several judgment against one partner. Nordsell v Neilson, 150 M 227, 184 NW 1023.

The maker and guarantors of promissory notes may be sued in the same action, although the guaranty is by a separate contract to which the maker was not a party. In the instant case, the indebtedness sued for is a part of "credit given and to be given." Midland v Security, 161 M 31, 200 NW 851.

Sections 548.10 and 548.11 are in pari materia. To give full effect to section 548.20, the word "obligation" must be held to include parol as well as documentary contracts. Singer v Singer, 173 M 61, 216 NW 789.

The mother and sister acted jointly; they were joint tortfeasors. The acts of one were binding on the other. Rockwell v Rockwell, 181 M 13, 231 NW 718.

Where a single injury is suffered as a consequence of the wrongful acts of several persons, all who contribute directly to cause the injury are jointly or severally liable. There need be no conspiracy or joint concert of action between them. DeCock v O'Connell, 188 M 228, 246 NW 885, 248 NW 829; Thorstad v Doyle, 199 M 543, 273 NW 255.

The general rule is that acts of independent tortfeasors, (city of Fairmont and Fairmont Canning Co.), the consequences of each of which in poisoning a stream created a nuisance, may not be combined to create a joint liability at law for damages. Johnson v City of Fairmont, 188 M 451, 247 NW 572.

The common law rule is that when the complaint alleges a joint contract with two or more defendants, and the proof is of a several contract with one, there is a failure of proof, and there can be no recovery; but under our statutes there may be a recovery against the one liable. Schmidt v Agricultural Insurance Co. 190 M 586, 252 NW 671.

That the jury wrongfully returned a verdict in favor of appellant's codefendant cannot serve appellant as ground for reversal. Kruchowski v St. Paul City Ry. 191 M 454, 254 NW 587.

A claim on an unconditional guaranty of the payment of principal and interest on a bond at maturity, is a claim certain in amount and having a fixed maturity. It is a primary liability against decedent's estate. State ex rel v Fosseen, 192 M 111, 255 NW 816.

Failure of trustee for the bondholders to file a claim in the probate court against the estate of a deceased cosurety within the time specified by statute does not relieve the other surety from liability. First Minneapolis Trust v Nicollet Syndicate, 192 M 311, 256 NW 240.

A note reading "I promise to pay" is a several obligation, even though a partnership one, and a several judgment could be entered against McClure, or he could be sued alone. Campbell v State Bank, 194 M 506, 261 NW 1.

Merger of a cause of action in a judgment thereon in favor of the plaintiff has no effect upon the liabilities as between themselves of the codefendants where

such liabilities have not been made an issue and so not adjudicatd by the judgment. Kemerer v State Farm Mutual, 201 M 245, 276 NW 228.

Deceased became intoxicated in a tavern, was arrested by a policeman who turned prisoner over to others to take to jail, and they beat him so that he died. Held, in an action by a special administrator, an action does not lie against the tavernkeeper or policeman. Sworski v Colman, 204 M 474, 283 NW 778.

One who has obtained separate judgments against joint tortfeasors may pursue one as far as he likes, and, failing to procure satisfaction, have execution against one or more of the other judgment debtors. Penn v Clarkson, 205 M 525, 287 NW 15.

Release of one joint tortfeasor as a bar to right of action against others. 22 MLR 692.

Merger by judgment. 28 MLR 419, 450.

548.21 DISCHARGE OF JOINT DEBTOR.

HISTORY. 1867 c. 78 ss. 1 to 4; G.S. 1878 c. 66 ss. 37 to 40; G.S. 1894 ss. 5167 to 5170; R.L. 1905 s. 4283; G.S. 1913 s. 7917; G.S. 1923 s. 9412; M.S. 1927 s. 9412.

In an arbitration between insured and insurer, the insurer paid half of the referee's fees, and this is an action by the referee against the insured for the balance. The fact that the insurance company settled at a rate of $25.00 per day was immaterial. The jury found for the insured in a much less rate. Alden v Christianson, 83 M 21, 85 NW 824.

In order to avoid the operation and effect of the common law rule abrogated by this section, it is necessary to comply with the statute as to what allegations are contained in the proof, and to prove such allegations. Randahl v Lindholm, 86 M 17, 89 NW 1129.

The evidence sustained a finding that a child died as a result of use of mineral oil from defendant's drug store. The judgment against the proprietor is valid, even though the jury found in favor of the drug clerk who dispensed the oil. Berry v Daniels, 195 M 366, 263 NW 115.

Release of one trustee as affecting other's liability for breach of trust. 23 MLR 550.

548.22 BY CONFESSION; ON STATEMENT.

HISTORY. G.S. 1866 c. 82 ss. 1 to 3, 6; G.S. 1878 c. 82 ss. 1 to 3, 6; G.S. 1894 ss. 6077 to 6079, 6082; R.L. 1905 s. 4284; G.S. 1913 s. 7918; G.S. 1923 s. 9413; M.S. 1927 s. 9413.

Judgment by confession was entered in 1850. Execution by permission of court was issued in 1859. Debtor moved to set aside the execution which motion was denied. The successor in interest to the property of defendant levied upon has no rights not already rendered res judicata by his vendor. Marshall v Hart, 4 M 450 (352).

The statute providing for relief, within one year after notice, against judgments taken through mistake, inadvertence and similar, applies only to parties to the judgment. Kern v Chalfant, 7 M 487 (393).

The signing of the affidavit verifying a statement for judgment by confession is a sufficient signing of the statement. Kern v Chalfant, 7 M 487 (393).

The statement is sufficient if the facts stated in it show that the confession is for a debt justly due, as where it states the debt to be for. "$2,800 for money loaned by plaintiff to defendant, and now due plaintiff." Kern v Chalfant, 7 M 487 (393); Cleveland v Douglas, 27 M 177, 6 NW 628; Wells v Gieseke, 27 M 478, 8 NW 380; Atwater v Manchester, 45 M 341, 48 NW 187; Hackney v Wallaston, 73 M 114, 75 NW 1037; Whelan v. Reynolds, 101 M 290, 112 NW 223.

Where there is no fraud, a confession of a judgment for several liabilities may be canceled as to some, and allowed to stand as to others. Kern v Chalfant, 7 M 487 (393); Wells v Gieseke, 27 M 478, 8 NW 380.

No one but a cestui que trust can question a purchase by the trustee of trust property. Kern v Chalfant, 7 M 487 (393).

The statement being sufficient, the debtor's assignee for benefit of creditors cannot obtain its cancelation. Cleveland v Douglas, 27 M 177, 6 NW 628.

The judgment may be attacked by motion to set aside or by action to have it declared to be not a lien on certain property. Cleveland v Douglas, 27 M 177, 6 NW 628; Hackney v Wallaston, 73 M 114, 75 NW 1037.

The court cannot allow an amendment nunc pro tunc of an insufficient statement for judgment by confession, so as to affect the rights of creditors who have subsequently acquired liens, and who have begun proceedings to avoid the judgment. Wells v Gieseke, 27 M 478, 8 NW 380; Auerbach v Gieseke, 40 M 258, 41 NW 946.

Effect of insufficient statement. Wells v Gieseke, 27 M 478, 8 NW 380; Coolbaugh v Roemer, 30 M 424, 15 NW 869; Hackney v Wallaston, 73 M 114, 75 NW 1037.

A judgment by confession, entered upon a statement of facts insufficient to satisfy the requirements of the statute, is valid as between the parties. The judgment debtor cannot avoid it; nor can one do so who claims rights of property under him, but whose interests are not prejudiced thereby. Coolbaugh v Roemer, 30 M 424, 15 NW 869; Auerbach v Gieseke, 40 M 258, 41 NW 946; Atwater v Manchester, 45 M 341, 48 NW 187.

In the instant case, the judgment is voidable as to other creditors of the judgment debtor, and voidable also as to a purchaser for value who received his deed before, but did not record it until after, the judgment was confessed. Hackney v Wallaston, 73 M 114, 75 NW 1037.

When a statement of judgment is presented to the clerk of the district court, with a request to enter and docket a judgment thereon, it is his duty promptly to comply with the request; and if he fails so to do, he is liable to the judgment creditor for the damages sustained by such neglect. Whelan v Reynolds, 101 M 290, 112 NW 223.

In an action to set aside a judgment based on a confession alleged to have been obtained by fraud, the allegations in the complaint are deemed insufficient, and the demurrer is sustained. McCue v Weibeler, 135 M 432, 161 NW 143.

By personally signing an answer admitting the amount claimed in the complaint to be due, and authorizing the clerk to enter judgment without application to the court, the judgment entered was valid, and defendants were not entitled to have it vacated as a matter of right. City of Laverne v Skyberg, 169 M 234, 211 NW 5.

The requirement that the instrument authorizing judgment by confession must be "distinct" from the note or instrument evidencing the demand on which the judgment is confessed, must be strictly complied with; so that when the confession refers to the "note attached hereto" the judgment attempted to be entered by such confession is void. Keyes v Peterson, 194 M 361, 260 NW 518.

548.23 ON PLEA.

HISTORY. G.S. 1866 c. 82 ss. 4 to 6; G.S. 1878 c. 82 ss. 4 to 6; G.S. 1894 ss. 6080 to 6082; R.L. 1905 s. 4285; G.S. 1913 s. 7919; G.S. 1923 s. 9414; M.S. 1927 s. 9414.

Keyes v Peterson, 194 M 361, 260 NW 518, in no way conflicts with this section.

Validity of stipulation authorizing confession of judgment without process. 15 MLR 358.

548.24 SUBMISSION WITHOUT ACTION.

HISTORY. G.S. 1866 c. 82 ss. 7, 8; G.S. 1878 c. 82 ss. 7, 8; G.S. 1894 ss. 6083, 6084; R.L. 1905 s. 4286; G.S. 1913 s. 7920; G.S. 1923 s. 9415; M.S. 1927 s. 9415.

The controversy, relating to the extension of a ditch, was submitted to the court on an agreed statement of facts; and the trial court properly found the acts of the board wholly unauthorized and void. Lager v County of Sibley, 100 M 85, 110 NW 355.

In this case submitted to the court without action, it is held that the action of the outgoing board in appointing a morguekeeper for the following year was illegal. Manley v Scott, 108 M 142, 121 NW 628.

Plaintiff, with the approval of the city attorney, performed certain legal services. On submission to the court without action, it was properly held that the city of Minneapolis could not legally pay the bill. Jackson v Board, 112 M 167, 127 NW 569.

The district court, to whom the question was submitted without action, properly assumed jurisdiction and rendered judgment as to the location of the boundary line between the village and the town of Excelsior. Snow v Village of Excelsior, 115 M 102, 132 NW 8.

Submitted to the court on an agreed state of facts, the court properly held that under the terms of the lease, the lessee must pay the tax raised by reassessment levied to meet a deficiency in an original assessment for street improvement. Hamm v Northwestern Trust, 135 M 314, 160 NW 792.

In a controversy submitted, it was properly held that the two banks were liable to the state for the amount of the stolen drafts upon which the thief had forged the endorsement of their respective payees. State v Merchants National, 145 M 322, 177 NW 135.

On an agreed state of facts the court properly held a Minnesota citizen must pay a registration tax on his motor car, even if the vehicle is out of the state a great portion of the year. State v White, 176 M 183, 222 NW 918.

There is a distinction between a submission without action on an agreed state of facts as provided in section 548.24, and a trial on stipulated facts where findings of fact and conclusions of law are essential. County of Todd v County of Morrison, 182 M 375, 234 NW 593.

Declaratory judgment act. 5 MLR 181.

Constitutionality of statute authorizing declaratory judgments. 6 MLR 327.

548.25 VACATING REAL ESTATE JUDGMENT; WITHIN WHAT TIME.

HISTORY. 1909 c. 451 s. 1; G.S. 1913 s. 7787; G.S. 1923 s. 9284; M.S. 1927 s. 9284.

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 plaintiff's attorney had filed the proper affidavit that he could not be found in the state, the showing must be that defendant not only was a resident in the state, but that plaintiff, in the location and situation he was, could, by due diligence, have found the defendant in the state. VanRhee v Dysert, 154 M 32, 191 NW 53.