

CHAPTER 532

EXECUTIONS, APPEALS AND EXTRAORDINARY REMEDIES

ATTACHMENT

532.25 AFFIDAVIT; REQUISITES.

See *Thomas v Hector*, 216 M 207, 12 NW(2d) 769, noted in sections 532.21 and 532.29.

532.26 WRIT, WHEN RETURNABLE.

Defendant who appears and objects to the jurisdiction of the justice because of lack of proper service, and where the justice refuses to dismiss files an answer and goes to trial under protest, does not make a general appearance. *Perkins v Mellicke*, 66 M 409, 69 NW 220.

532.27 BOND.

See *Thomas v Hector*, 216 M 207, 12 NW(2d) 769.

532.29 WHERE DEFENDANT RESIDES IN ANOTHER COUNTY.

Sections 532.24 to 532.36 relate to attachments in justice courts. In order to obtain a writ, the plaintiff must file the affidavit required by section 532.25, and give bond as required by section 532.27. Where the property has been attached within the county and the defendant cannot be found therein, and resides in another county, section 532.29 provides for service of the summons upon him in the same manner as in district court. Plaintiff did not so proceed and the claimed jurisdiction cannot be sustained. *Thomas v Hector*, 216 M 218, 12 NW(2d) 769.

APPEALS

532.37 MAY BE TAKEN, WHEN.

Upon the relation of plaintiff the supreme court granted its writ of certiorari directed to Henry Kane, justice of the peace, and others, to review garnishment proceedings had before said justice. *State ex rel v Kane*, 144 M 225, 174 NW 884.

Where defendant appeals from a judgment rendered by a justice court to a superior court for trial de novo upon questions of law and fact, such appeal constitutes a general appearance, and a waiver of proven lack of jurisdiction. *Minneapolis Svgs. & Loan v King*, 198 M 420, 270 NW 148.

532.41 APPEALS, HOW TRIED; JUDGMENT.

1. Appeals on questions of law and fact
2. Appeals on questions of law alone
3. Presumptions
4. Status after appeal
5. Dismissal

2. Appeals on questions of law alone

On appeal from justice court on questions of law alone, the only question necessary to be determined, where no rulings are complained of, is whether the evidence

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presented to the justice was such that from it he might have found facts which would justify his judgment. *Croonquist v Flatner*, 41 M 291, 43 NW 9; *Larson v Johnson*, 83 M 351, 86 NW 350; *Trace v Voight*, 94 M 527, 103 NW 1134.

## 532.47 JUDGMENT, WHEN AFFIRMED; AGAINST SURETIES.

One who appeals from a judgment rendered in justice court has no right to substitute a new bond after his appeal had been dismissed because the original bond was insufficient. *Hershman v Razkin*, 168 M 31, 209 NW 488.

## 532.49 RIGHTS OF SURETY PAYING.

A creditor's right in securities held by his surety. 22 MLR 316.

## JUDICIAL PROCEDURE; DISTRICT COURT

**CODE OF CIVIL PROCEDURE.** By Section 12 of the Organic Act, approved by President Polk on March 3, 1849, the laws in force in the Territory of Wisconsin at the time of the admission of Wisconsin as a state continued to be valid and operative in Minnesota subject to alteration or repeal by the territorial legislative assembly. The Wisconsin laws in force are printed in L. 1849, cc. 45 to 73.

The territorial legislature of 1851, by an act approved March 31, 1851, and not printed as a session law, adopted and enacted the Revised Statutes of the Territory of Minnesota, 1851, and incorporated therein, beginning with Chapter 70, the Field Code of Civil Procedure.

At the legislative session of 1852 a law was enacted amending the Civil Code provisions of the Revised Statutes. The two chapters thus enacted were approved March 6, 1852, and are printed in the R.S. Ter., 1851, at the end of the volume following the index to the Revised Statutes.

L. 1853, c. 1, abolished the distinction between suits in equity and actions at law. This may be found in Collated Statutes 1853, c. 9.

The Field Code dealt with adjective law only and in no way dealt with the substantive rights of the litigant.

Minnesota in very early territorial days escaped the formalism, fictions, and artificial factors of the common law and the subtleties of equity practice.

The Constitution of the State, adopted October 13, 1857, in Article 6, Section 14, provides: "Legal pleadings and proceedings in the courts of this state shall be under the direction of the legislature."

Prior to the passage of L. 1947, c. 498, all changes in the Code of Civil Procedure were by statute. Chapter 498 directed the Supreme Court "to regulate the pleadings, practice, procedure, and the forms thereof in civil actions in all the courts of the state, other than probate courts, by rules promulgated by it from time to time." "Such rules shall not abridge, enlarge, or modify the substantive rights of any litigant." Present laws relating to pleading, practice, and procedure remain in effect until modified or superseded by court rule. The legislature retains the right to enact, codify, or repeal any statute, or modify or repeal any rule adopted by the supreme court.

For history of the adoption of Minnesota Constitution, article 6, see *Crowell v Lambert*, 9 M 292 (267).

For history of the adoption of the Minnesota Code of Civil Proceedings, see 11 MLR 93.