

CHAPTER 541

LIMITATION OF TIME FOR COMMENCING ACTIONS

541.01 LIMITATION; BAR APPLIES TO STATE; EXCEPTIONS.

1. Generally
2. When action accrues
3. Laches
4. Political divisions

1. Generally

Notwithstanding the provisions of section 541.17, a defendant may be estopped to set up the statute as a defense by his oral promise before the statute has run that, if plaintiff would wait until after the statute has run, he would make a new arrangement or settlement of plaintiff's claim and that plaintiff would not lose anything by waiting, upon which plaintiff relied and as a consequence waited until after the statute had run before again asserting his claim and bringing suit. *Albachten v Bradley*, 212 M 359, 3 NW(2d) 783.

Where the face of the complaint discloses that the cause of action is barred by the statute of limitations, a general demurrer will lie. Plaintiff's right of action against the special representative, either in his individual or representative capacity, expired six years from November 7, 1920. *Schueller v Palm*, 218 M 469, 16 NW(2d) 773.

The presumption of payment arising under the statute of limitations from expiration of the statutory period relates only to the remedy by action, and does not prevent entry of judgment upon a decision or verdict after expiration of the statutory time. *Industrial Loan v Benson*, 221 M 70, 21 NW(2d) 99.

Federal courts of equity bound by state statutes. 4 MLR 297.

Does state legislation, discriminating against non-residents, violate the "privileges and immunities" clause of the federal constitution? 8 MLR 47.

Statute reviving cause of action. 9 MLR 153.

Claim barred by limitation as a defense. 13 MLR 395.

Indefinite waiver of statute of limitations at inception of obligation. 13 MLR 518.

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

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

Indefinite time of performance. 19 MLR 710.

Mistake and statute of limitations. 20 MLR 481.

Running of limitation statute against maker and endorser of demand note. 22 MLR 724.

Presumption of lost grant as applied to the state. 25 MLR 100.

Shareholders' derivative suits; limitations of actions; laches. 26 MLR 269, 750.

Interference with family relations; suit by children against one who enticed away the father. 30 MLR 310.

MINNESOTA STATUTES 1947 ANNOTATIONS

541.02 LIMITATION OF TIME FOR COMMENCING ACTIONS

1260

2. When action accrues

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

Distributees are not barred by statute of limitations from asserting their right to recover from codistributee their share of an estate asset. *Lewis v Lewis*, 211 M 587, 2 NW(2d) 134.

3. Laches

Laches in equity is unreasonable delay in seeking relief or asserting one's right. It is a strictly equitable defense as distinguished from the absolute defense afforded by the statute of limitations. *Sinell v Town of Sharon*, 206 M 437, 289 NW 44.

Plaintiff was not guilty of laches or estoppel in moving to vacate approval of settlement, and judgment of dismissal of a minor's suit for personal injuries is sustained. *Elsen v State Mutual*, 219 M 316, 17 NW(2d) 652.

Where defendant answered and admitted service of reply in an action brought in the municipal court of Minneapolis, but did not appear at the trial, and findings, conclusions and an order for judgment for plaintiff were filed, the trial court did not abuse its discretion in refusing to hold as ground for setting aside the judgment that plaintiff was guilty of laches in not having the judgment entered until more than nine years after trial. *Industrial Corporation v Benson*, 221 M 70, 21 NW(2d) 99.

The defense of laches is not valid against a claim when the government is acting in its sovereign capacity. *United States v Michaelson*, 58 F. Supp. 797.

4. Political divisions

A public easement cannot be acquired by adverse possession. *Ollgaard v City of Marshall*, 208 M 384, 294 NW 228.

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

Since poor relief is a continuous obligation of a city, the statute of limitations or laches does not bar a suit under L. 1925, c. 378, coded as section 261.08 et seq. *City of Mpls. v Town of Independence*, 216 M 485, 13 NW(2d) 375.

Where right to permanent injunction enjoining enforcement of a zoning ordinance was based solely on alleged violation of federal constitution, the federal district court could not determine the controversy between plaintiffs and defendant village regarding boundary line and adverse possession. *Dennis v Village of Tonka Bay*, 64 F. Supp. 215.

If any person had had possession adversely of any street or alley in a municipality for 15 years prior to the enactment of L. 1899, c. 65, then the rights obtained thereby could not be abrogated or destroyed by the passage of said chapter 65. 1944 OAG 212, Aug. 12, 1944 (50).

Prior to L. 1899, c. 65, public easement in and to streets and highways might be lost by adverse possession. Title by adverse possession cannot be acquired to lands granted to the state of Minnesota by the United States for school purposes. Subject to these and other limitations, the question whether the users of that part of Grenvale Avenue claimed by alleged occupants were occupants in an adverse sense is a factual question. OAG July 25, 1946 (50).

541.02 RECOVERY OF REAL ESTATE, 15 YEARS.

To constitute title by adverse possession, one must not only be in actual, open, continuous, hostile, and exclusive possession for the necessary length of time, 15 years, but such possession must be accompanied by some claim or assertion of title and an intention on the part of the possessor to claim adversely to the true

MINNESOTA STATUTES 1947 ANNOTATIONS

1261

LIMITATION OF TIME FOR COMMENCING ACTIONS 541.02

owner. *Sullivan v Huber*, 209 M 592, 297 NW 33; *Aldrich v Dunn*, 217 M 255, 14 NW(2d) 489.

Where one of two adjoining owners takes and holds actual possession of land beyond the boundary of his own lot or tract, under a chain of title thereto as being part of his land, though under a mistake as to the location of the boundary line, such possession, for the purposes of the statute, is to be deemed adverse to the true owner and a disseizin. *Mellenthin v Brantman*, 211 M 336, 1 NW(2d) 141.

Title to relicted land may be acquired by adverse possession. *Schmidt v Marschel*, 211 M 539, 2 NW(2d) 121.

To transform a permissive use into an adverse one, there must be a distinct and positive assertion of a right hostile to the rights of the owner, and such assertion must be brought to his attention and the use continued for the full prescriptive period under the assertion of right; and the rule is not affected by the fact that the privilege is claimed by successors in interest of the party to whom the permissive use was originally given. *State ex rel v Riley*, 213 M 448, 7 NW(2d) 770.

Whether defendant has acquired a prescriptive right or implied grant to drain the waste from his creamery upon plaintiff's land is unimportant where the amount of the damage and the extent of the injuries are substantially greater than they were where such right or grant was acquired. *Herrmann v Larson*, 214 M 46, 7 NW(2d) 330.

Where, during unity of ownership, the owner installs plumbing in a dwelling house and connects it with a sewer drain extending across adjoining property owned by him, upon severance of title by a conveyance or by a mortgage and the foreclosure thereof, although the conveyance or mortgage is silent with respect to use of the adjoining property for the purpose of maintaining the sewer, an implied easement to maintain the sewer across the part retained passes as an appurtenance to the property on which the dwelling house is situated. *Romanchuk v Plotkin*, 215 M 156, 9 NW(2d) 421.

A farm operated by two brothers as a copartnership, 640 acres stood in their joint names, while the 160 farm on which both resided stood in the name of one. The evidence sustains a finding that the brother in whose name the home farm stood held it for the copartnership, and upon his death said property was not a part of his separate estate. All he had was a partnership interest. *Shanahan v Olmsted County Bank*, 217 M 454, 14 NW(2d) 433.

The plat showed 212.6 feet frontage of lots 3, 4, and 5. The actual measurement was 202.6 feet frontage. The owner of lot five had entered into possession under a metes and bounds description, had mowed the lawn, shoveled the snow, built a sidewalk adjacent to the disputed frontage. Discovering a shortage in the frontage, the owners of lot five from 1886 to 1919 had used a metes and bounds description, and such occupancy is sufficient to constitute adverse possession of the entire tract. *Phillips v Selnes*, 223 M 518, 27 NW(2d) 553.

A school district may acquire title to land by adverse possession. OAG June 27, 1947 (622-B).

Adverse possession of minerals. 1 MLR 175, 188.

Interruption of adverse user. 1 MLR 279.

Adverse possession as against remainderman. 2 MLR 137, 145, 149.

Adverse possession of navigable waters by state. 2 MLR 470.

Adverse possession requires that evidence be clear and convincing. 4 MLR 363.

Mortgagee in possession; acquisition of title by adverse possession. 6 MLR 510, 526.

Easements; railway right of way; title by adverse possession. 7 MLR 65, 418.

Actual adverse possession under deed as constructive possession of all land included in deed. 9 MLR 670.

Character of possession as affected by the intent of the person holding under a mistake as to boundary line. 11 MLR 457.

MINNESOTA STATUTES 1947 ANNOTATIONS

541.023 LIMITATION OF TIME FOR COMMENCING ACTIONS

1262

Mistake and statute of limitations. 20 MLR 482.

Easement by custom. 21 MLR 107.

Limitations of actions affecting title to real estate. 30 MLR 23, 26.

Character of estate acquired; effect of claims for lesser estates than estate held against. 31 MLR 90.

541.023 LIMITATION OF ACTIONS AFFECTING TITLE TO REAL ESTATE.

Amended by L. 1947 c. 118 s. 1.

The statute of limitations commences to run against the right to obtain a decree establishing a constructive trust from the date when the wrongful and adverse holding begins and is, or should be, known to the plaintiff. *Knox v Knox*, 222 M 477, 25 NW(2d) 227.

Mistake and statutes of limitation. 20 MLR 481.

Limitations of actions affecting title to real estate. 30 MLR 23, 32.

Limitations of actions. 30 MLR 23, 35.

Undiscovered fraud and statutes of limitation. 31 Mich. LR 591, 875.

541.03 FORECLOSURE OF REAL ESTATE MORTGAGE.

Statute of limitations as barring a debt as affecting mortgage security. 2 MLR 218, 233.

Payments made on first mortgage by mortgagor after giving a second mortgage as tolling the statute of limitations between the first and second mortgages. 9 MLR 166.

Payment of interest by the grantee as tolling the statute on the mortgage debt. 17 MLR 97.

Conveyances under the probate code. 20 MLR 106.

Taxation of real estate subject to mortgage and other incumbrances. 20 MLR 347.

Deduction of incumbrances on land. 20 MLR 356.

Presumption of payment from lapse of time. 23 MLR 686.

Liability of senior mortgagee to account to a junior mortgagee for rents released to the mortgagor. 26 MLR 880, 889.

Limitations of actions. 30 MLR 33.

541.04 JUDGMENTS, TEN YEARS.

Limitation upon actions, executions and liens. 24 MLR 660; 30 MLR 23, 35.

Homesteads; application of Minnesota statutes; effect on creditor's rights. 25 MLR 75.

541.05 VARIOUS CASES, SIX YEARS.

1. Generally
2. Six-year limitations

1. Generally

General law of contracts applies to contracts of insurance except as provided by statute. A person insured is charged with notice of his policy when he accepts it, and unless misled by the insurer is bound by its conditions. It is the general rule that contracts may be made stipulating a limited time within which an action may be brought thereon provided such stipulated time is not unreasonable. *Hayfield Elevator v New Amsterdam Casualty Co.* 203 M 522, 282 NW 265.

MINNESOTA STATUTES 1947 ANNOTATIONS

1263

LIMITATION OF TIME FOR COMMENCING ACTIONS 541.05

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

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

Where a fire was started due to defendant's carelessness, and plaintiff was thereby injured, an action for negligence is governed by section 541.05 and not by section 541.07. *Villaume v Wilkinson*, 209 M 330, 296 NW 176.

After administration had been closed for nine years, district court had jurisdiction to determine liability of distributee and compel him to account to codistributees. *Lewis v Lewis*, 211 M 587, 2 NW(2d) 134.

Evidence supports the finding that three defendants did not conspire, but each defendant will be held separately for his individual acts. *Melin v Baker*, 223 M 319, 27 NW(2d) 647; *Fewell v Tappan*, 223 M 483, 27 NW(2d) 649.

The statute of limitations by its own terms refers to actions. The statute will not prevent the county from reimbursing its general revenue fund by assessing lands for benefits and repairs made more than six years ago. 1944 OAG 44, Oct. 18, 1943 (602-J).

The statute does not begin to run on county warrants until the treasurer has issued to the original holder the notice provided by L. 1943, c. 298, and the order or warrant remains valid for six years from the date of the notice. 1944 OAG 183, March 6, 1944 (107-A-9).

L. 1945, c. 513, applies to wages, overtime, damages, fees or penalties accruing under federal or state laws, and the limitation does not apply to contracts and similar. OAG June 18, 1945 (270-m-3).

Limitation of actions, title to personal property by adverse possession. 3 MLR 208.

Right of employer, who has paid claim for employee's death, to sue third person causing such death for reimbursement under doctrine of subrogation over two years after the accident occurred. 6 MLR 593.

Limitation of actions, acceleration clause, time of breach. 7 MLR 62.

Breach of covenant of warranty, when statute becomes applicable. 10 MLR 345.

Validity of contract limiting time to sue sureties on building contractor's bond. 11 MLR 282.

When statute of limitations begins to run as to constitutional double liability of bank stockholders. 12 MLR 419.

Effect of statute of limitations when proof of death under a life insurance policy is by presumption arising from seven years' unexplained absence of insured. 12 MLR 662.

Limitation of actions on warrants of municipality. 12 MLR 762.

Application of statute of limitations governing simple contracts to detached bond coupons. 13 MLR 385.

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

Constructive notice as discovery of fraud. 17 MLR 99.

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

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

Mistake and statutes of limitation. 20 MLR 481.

MINNESOTA STATUTES 1947 ANNOTATIONS

541.05 LIMITATION OF TIME FOR COMMENCING ACTIONS

1264

Limitation of actions, accrual of cause of action, injuries to land. 21 MLR 334.

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

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

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

Causes of action blended. 22 MLR 498, 506.

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

Duty of owner or occupier of land to a third person accompanying invitee. 23 MLR 502.

Fraudulent conveyances, limitations of actions. 23 MLR 623.

Effect of withdrawal of foreign corporation from state on right to assert statute of limitations as a defense where such corporation has remained amenable to service. 23 MLR 828.

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

Running of the statute of limitations against the holder of a check. 25 MLR 371.

Effect of part payment on statutory stock assessment. 25 MLR 650.

Within the doctrine of *Erie R. R. v Tompkins*, do state statutes of limitation affect not substantive rights but merely equitable rights? 30 MLR 643.

Suspension of state statute of limitations upon filing of petition in bankruptcy. 31 MLR 91.

Undiscovered fraud and statute of limitation. 31 Mich. LR 591, 875.

2. Six-year limitations

Plaintiff did not discover the fraud and, on account of the confidential relations existing between himself and the president of the corporation, who assumed all charge of the corporation affairs, the plaintiff was excusable in not discovering the frauds perpetrated upon him until less than six years prior to the commencement of the action. *Keough v St. Paul Milk Co.* 205 M 96, 285 NW 809.

Where the embezzlement or alienation of the deceased's stock was fraudulent, the statute of limitation did not begin to run until discovery of the cause of action against the son's estate. *Owens v Owens*, 207 M 489, 292 NW 89.

Under the California law, here applicable, where it reasonably appeared that payment for services was to be made at the termination thereof, and the jury so found, the statute of limitations did not begin to run until that time. *Sattinger v First Trust Co.* 211 M 108, 300 NW 393.

Since the stock was not registered, the plaintiff is entitled to recover the purchase price unless barred by the statute of limitations. *Donaldson v Chase*, 216 M 273, 13 NW(2d) 1.

A change in the constitution of a mutual benefit society, after the issuance of a benefit certificate, changing the time within which to sue from six years allowed by the statute of limitations, to six months, is unreasonable and void as to the member holding such certificate. *Dawes v Brotherhood of Engineers*, 216 M 410, 13 NW(2d) 28.

An illegitimacy proceeding is not barred under section 541.05, as an action upon a liability created by statute, where it is commenced during the minority of the child. *State v Johnson*, 216 M 427, 13 NW(2d) 26.

Plaintiff's right of action against the special representative, either in his individual or representative capacity, expired six years from Nov. 7, 1920. *Schueler v Palm*, 218 M 469, 16 NW(2d) 773.

Evidence established that defendant's oral lease of plaintiff's popcorn canteen from month to month had been terminated by operation of law by plaintiff's re-renting of machine to a third party, in which defendant acquiesced, more than six

MINNESOTA STATUTES 1947 ANNOTATIONS

1265

LIMITATION OF TIME FOR COMMENCING ACTIONS 541.13

years prior to commencement of action to recover rent allegedly due. *Bowman v Plumb*, 220 M 547, 20 NW(2d) 493.

A suit in equity for restitution is barred by the lapse of time only if it would be unjust to allow the complainant to maintain it, and the existence of such injustice depends on (a) whether the complainant has been unreasonable in his delay after learning the facts, or (b) whether the delay has made it unfair to permit the suit either because of hardship to the defendant or to third persons by reason of a change in circumstances, or (c) whether the lapse of time has made it difficult to ascertain the facts so that a substantial chance of arriving at an erroneous decision exists. The statute of limitations commences to run against the right to obtain a decree establishing a constructive trust from the date when the wrongful and adverse holding begins and is, or should be, known to the plaintiff. *Knox v Knox*, 222 M 477, 25 NW(2d) 225.

Upon the record, the defendant's immunity from suit cannot be said to have been finally adjudicated by the state courts prior to the legislature's enactment of an act which operated to abolish any defense defendant may have had under the statute of limitations, and the act did not deprive the defendant of property without due process. *Chase v Donaldson*, 325 US 304; 65 SC 1137.

Statute of limitations applicable to action for breach of contract. 25 MLR 390.

Beneficiary contracts. 29 MLR 456.

Doctrine of *Erie R. R. v Tompkins* applied to equity. 30 MLR 643.

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

1. Against officials
2. Upon a penalty or forfeiture

1. Against officials

Liability of sheriffs and constables to third parties for wrongful levy. 23 MLR 800.

541.07 TWO YEAR LIMITATIONS.

The filing with the industrial commission, eight years after an accident, of a medical report by the physician to whom the employer had sent the employee, said report not being a "proceeding," did not constitute a waiver as against the defense of the statute of limitation as set forth in section 176.18. *Mohrland v Lampland*, 222 M 58, 23 NW(2d) 172.

L. 1945, c. 513, does not apply to contracts, but only to wages, overtime, damages, fees or penalties accruing under various federal emergency acts. OAG June 18, 1945 (270-m-3).

Malpractice, when action accrues. 15 MLR 245.

Courts and doctors. 17 MLR 234.

Subsequent treatment as postponing the accrual of a cause of action for malpractice. 20 MLR 97.

Mistake and statutes of limitation. 20 MLR 482.

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

Tort liability of insane persons. 22 MLR 853.

Statute of limitations applicable to action for breach of warranty as to goods sold. 25 MLR 390.

Time of "publication" of newspaper and periodicals. 26 MLR 853.

541.13 EFFECT OF ABSENCE FROM STATE.

Mistake and statutes of limitation. 20 MLR 481.

MINNESOTA STATUTES 1947 ANNOTATIONS

541.14 LIMITATION OF TIME FOR COMMENCING ACTIONS

1266

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

541.14 WHEN CAUSE OF ACTION ACCRUES OUT OF STATE.

Section 541.14 has the effect of recognizing the limitation laws of any other state wherever a cause of action has come under their operation and been barred by them. *Luce v Clarke*, 49 M 356, 51 NW 1162; *Patridge v Palmer*, 201 M 387, 277 NW 18.

Ordinarily, in the absence of legislation by congress, federal courts apply the statute of limitations of the state in law actions; but where the Iowa statute requiring actions on claims arising pursuant to any federal statute wherein no period of limitation is commenced within six months, as applied to one seeking to recover under the fair standards act, is invalid as discriminating against rights arising under federal laws and as denying equal protection. *Republic Pictures v Kappler*, 151 F(2d) 543.

541.15 PERIODS OF DISABILITY NOT COUNTED.

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

Concurrent powers of federal and state relating to alien registration acts. 25 MLR 638.

Right of enemy aliens to sue. 27 MLR 409.

541.16 PERIOD BETWEEN DEATH OF PARTY AND GRANTING OF LETTERS.

Cause of action accruing after death. 16 MLR 320.

541.17 NEW PROMISE MUST BE IN WRITING.

Evidence was insufficient to convince the trial court that the alleged payment had been made on the note. *Campbell v Lenzen*, 206 M 387, 288 NW 833.

Where one obligor made a payment on a co-indebtedness with funds derived from the sale of personalty mortgaged by his co-obligor to secure the indebtedness, the issue whether, under the circumstances of the case, the payment was voluntarily made as his own so as to toll the statute of limitations or was made as a mere agent or conduit of the obligor is a jury question. *Greve v State Bank*, 211 M 175, 300 NW 594.

Moral obligation as consideration for express promise where no pre-existing legal obligation existed. 16 MLR 808.

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