

CHAPTER 542

VENUE OF ACTIONS

542.01 VENUE; GENERAL RULE; EXCEPTION.

Laws 1939, c. 148, s. 542.095, relates to procedure, fixing venue in action arising out of negligent driving, operation, management and control of any motor vehicle by its owner, driver, or operator, and applies to actions brought subsequent to the enactment even though the cause of action accrued prior thereto. Venue, procedurally, does not arise until an action is instituted. *State ex rel v District Court*, 206 M 357, 287 NW 875.

Actions in the district court are transitory unless by statute they are local. In the instant case the right of the defendant to have the case tried in the county of his residence is compelling. *Yess v Ferch*, 213 M 593, 5 NW(2d) 641.

Where the federal district court has no original jurisdiction over a controversy at law or in equity, as distinguished from bankruptcy, between trustee and adverse party because of lack of diversity of citizenship between the bankrupt and adverse party, the case cannot be removed to federal court; and a contract entered into by the receiver of a railroad and signed by its officers was part of the assets of the railroad which became bankrupt, the citizenship of the bankrupt was controlling as respects jurisdiction in an action by the trustees against another for breach of contract. *Whitman v Chicago & North Western Ry.* 70 F. Supp. 9.

The shifting basis of jurisdiction. 17 MLR 146.

Venue under federal corporate reorganization act. 20 MLR 506.

Jurisdiction or venue. 20 MLR 617, 641.

Domicile as basis of personal jurisdiction. *Res judicata* as to uncontested jurisdictional issues. 25 MLR 798.

Suits under fair labor standards act of 1938. 26 MLR 134.

542.02 ACTIONS RELATING TO LAND, SITUS TO GOVERN.

While the action was in part for the cancelation of a deed, the case involved so many matters of personal demand that it was not wholly local, and the reasons for transferring the trial of the case to the county of the defendant's residence are compelling. *Yess v Ferch*, 213 M 593, 5 NW(2d) 641.

Whether an action to recover money damages for trespass to real estate, such as cutting and removing timber, is local or transitory, is a matter of local law; and in this state, where the trespass took place to plaintiff's property in another state the action is viewed as not relating to real estate, but as affording a personal remedy and is therefore transitory. *Peyton v Desmond*, 129 F. 1.

Venue of an action for specific performance of a land contract. 2 MLR 473.

Right to sue in a foreign jurisdiction for an injury to real estate. 5 MLR 63.

Venue of an action to cancel a contract to convey land. 10 MLR 608.

Jurisdiction or venue. 20 MLR 617, 641.

542.03 OFFICIAL MISCONDUCT, WHERE CAUSE AROSE.

Law of public officers. 13 MLR 439.

Jurisdiction or venue. 20 MLR 617, 641.

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542.05 COST BOND; RECOGNIZANCES; NON-RESIDENTS.

Discretion to dismiss actions between non-residents on causes of action arising out of the state. 15 MLR 83.

542.08 ACTIONS FOR WAGES.

Under section 542.08 the term "wages" relates to agreed compensation for services performed by the hour, week, day, month, or for the piece of work accomplished, and not to fees for legal services, which are not measured alone by time served or piece-work performed, but by numerous other factors as well, including importance of work involved, difficulties to be surmounted, opposition encountered, results attained, and like factors. *Bowen v Johnson*, 221 M 99, 21 NW(2d) 227.

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

See *State ex rel v District Court*, 206 M 357, 287 NW 875, noted under section 542.01.

When action for divorce was instituted in one county and dismissed there before trial, and subsequently counsel for plaintiff instituted action against his client for legal services furnished therein, latter action may be removed to county of client's residence under sections 542.09 and 542.10 since it is not ancillary to the former action. *Bowen v Johnson*, 221 M 99, 21 NW(2d) 226.

A foreign corporation sued upon a transitory cause of action may have the action removed to a county in the state where it has an office, resident agent, or place of business. OAG Nov. 28, 1945 (92-c).

Right of non-residents to sue in state courts. 8 MLR 47.

Venue of an action to cancel a contract to convey land. 10 MLR 608.

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

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

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

Jurisdiction or venue. 20 MLR 617, 641.

542.095 VENUE IN AUTO VEHICLE CASES.

An affidavit offered in opposition to a motion for a change of venue, although not made by the opposing party personally but by his attorney of record, is adequate if the statements therein made are based on affiant's personal knowledge. The granting of a change of venue on the grounds that the convenience of witnesses and ends of justice will be promoted thereby rests within the sound discretion of the trial court, and its action will not be disturbed except for a clear abuse of discretion. *Vornbrock v Bollig*, 219 M 577, 18 NW(2d) 441.

Statute specifically authorizing an action against the owner, operator, or driver of a motor vehicle arising out of the negligent operation of such motor vehicle to be brought in a county where action arises authorizes the bringing of such action against the personal representative of the owner, operator, or driver in the county where such action arises. *Blankholm v Fearing*, 222 M 51, 22 NW(2d) 853.

Section 170.05 of the Minnesota statutes does not deny "equal protection of law" within the meaning of the fourteenth amendment. *Panzram v O'Donnell*, 48 F. Supp. 74.

542.10 CHANGE OF VENUE AS OF RIGHT; DEMAND.

An action against members of the state industrial commission to compel reinstatement of a dismissed employee is, under the provisions of section 542.03, tria-

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ble in Ramsey county, where the commission maintains its office. State ex rel v District Court, 206 M 54, 287 NW 601.

Where change of venue will result in continuing a case over a regular term of the district court and there is no explanation of a delay of two months in making the motion, it is not an abuse of discretion to deny it. Sworski v Coleman, 208 M 580, 295 NW 62.

The venue of a proceeding for the dissolution of a corporation under sections 301.49, 301.50, is the county of its principal place of business. Radabaugh v Hudson, 212 M 180, 2 NW(2d) 828.

Six months delay in asking for a change of venue was not "due diligence" as required under the statute and under the rules of the district court. Roper v Interstate Power Co. 213 M 597, 6 NW(2d) 625.

The granting of a change of venue on the grounds that the convenience of witnesses and the ends of justice will be promoted thereby rests within the sound discretion of the trial court, and its action will not be disturbed except for a clear abuse of discretion. Vornbrock v Bollig, 219 M 577, 18 NW(2d) 441.

Denying plaintiff's motion to return venue of action for legal services rendered in a divorce action from county of defendant's residence back to county where it was originally instituted, and where divorce action was instituted on ground of convenience, was not an abuse of discretion where only 18 miles separated the two county seats, and equal, if not greater, number of witnesses lived in county of venue, and material files, could be made available. Bowen v Johnson, 221 M 99, 21 NW(2d) 225.

Where an action by administrator is removed to the federal court by the defendant on the ground of diversity of citizenship, the substantive law of Minnesota governs. Roth v Swanson, 145 F(2d) 263.

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

The residence of a foreign corporation for purposes of venue is in the county containing its established place of business. 13 MLR 522.

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

Jurisdiction or venue. 20 MLR 645.

Removal of causes; remand on amendment filed in state court after filing petition for removal; federal practice. 31 MLR 624.

542.11 CHANGE OF VENUE BY ORDER OF COURT; GROUNDS.

Under district court rule number 29, the trial court did not abuse its discretion in denying plaintiff's motion for change of venue for convenience of witnesses, where plaintiff delayed from January 20, when defendant's answer was served, until February 25, in preparing his motion, and until March 5 in serving it. State ex rel v District Court, 202 M 519, 279 NW 269.

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

Where a motion is made for change of venue under section 542.11, notice thereof must be given the defendants who have appeared, answered or demurred; and the venue of a transitory action against several defendants is not changed by a demand under section 542.10 unless joined in by a majority of such defendants. Singer v Mandt, 211 M 50, 299 NW 897.

Where relator's motion for change of venue from plaintiff's home county to the district where defendant had its principal place of business was not made until 44 days after service of the summons and complaint, and there is a showing that,

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because of plaintiff's age and the effect of the accident upon her, travel to and attendance at the trial elsewhere "might result in serious injury to her health," it cannot be said that there was abuse of discretion in denying the motion. O'Brien v Brogan, 211 M 192, 300 NW 794.

See, Vornbrock v Bollig, 219 M 577, 18 NW(2d) 441, under section 542.095.

The necessity for testimony of expert medical witnesses obtainable only in Minneapolis and St. Paul to establish that plaintiff's disability resulted from injuries sustained in automobile collision and was not congenital and expense of having such witnesses in attendance at the trial in Redwood county where the collision occurred and defendants resided as compared with expense of attendance of other witnesses at trial in Minneapolis required change of venue to Hennepin county. Eichten v Central Minn. Ass'n, 221 M 349, 22 NW(2d) 218.

Where non-resident defendant by removing to federal district court actions for damages sustained in automobile accident obtained the same venue as he would have had if actions had been commenced in county in which the accident occurred, and then removed to federal court, motion to dismiss actions on the ground that Minnesota statute providing that if none of the parties shall reside or be found in the state action may be begun and tried in any county which plaintiff shall designate denied equal protection, was properly denied. Panzram v O'Donnell, 48 F. Supp. 75.

United States district courts have no power to order transfer of a case from one district to a district in another state. When so illegally transferred the case should be remanded, not dismissed. Brown v Heinen, 61 F. Supp. 563.

District court rule No. 29, relating to venue. M.S.A. p. 4199.

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

Conclusiveness of state court; adjudication of removability; res judicata. 25 MLR 531.

Remand on amendment eliminating federal question. 25 MLR 532.

542.15 ON APPEAL FROM JUSTICE COURT.

If defendant, a non-resident of the county, is served with process in the county in an action brought before a justice of the peace at the county seat, jurisdiction is acquired; but if an appeal is taken to a municipal or district court, then a change of venue may be taken to the county of defendant's residence upon compliance with the provisions of section 542.15. 1944 OAG 72, Oct. 10, 1943 (266-B-11).

Appeal from an order granting a change of venue. 5 MLR 566.

542.16 AFFIDAVIT OF PREJUDICE.

In action against corporation, disqualification against judge owning stock. 4 MLR 301.

Jury triers. 9 MLR 353, 360.

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

Delegation of a judicial function to the executive; removal of a case from a judge for bias or prejudice. 22 MLR 729.