

## CHAPTER 543

## COMMENCEMENT OF CIVIL ACTIONS

**543.01 ACTIONS, HOW COMMENCED.**

In determining whether an appearance is general or special, we look to the purposes for which it was made rather than to what the moving party may label it. The test of whether or not an appearance is special or general is determined by whether or not the objection raised goes solely to the jurisdiction of the court. If made for any other purpose than to question the jurisdiction, it is a general and not a special appearance and subjects the party to the jurisdiction of the court by consent; but a party cannot be deemed to submit to the jurisdiction of the court by the mere act of denying its jurisdiction. In the case at bar the record does not support the contention that the individual defendants submitted themselves by consent to the jurisdiction of the court. *Guy v Dictating Machine Co.* 208 M 534, 294 NW 877.

A party who causes a levy to be made under an execution issued upon a void judgment acts without justification and is liable as a trespasser for having caused a wrongful levy. *Beede v Nides*, 209 M 354, 296 NW 413.

Under the national housing act, as amended, which provides that the administration shall, in carrying out certain provisions of the act, "be authorized, in his official capacity, to sue and be sued in any competent jurisdiction, state or federal," the administrator, as such, is subject to suit for the tort of his agent committed in the course and scope of the agent's employment. *Zins v Justus*, 211 M 1, 299 NW 685.

The first duty of all courts is to keep strictly within the limits of their jurisdiction both of the subject matter of the action and of the parties, and any affirmative act on the part of the court implies that it has ascertained and determined that it has authority to act; hence, the party asserting want of jurisdiction has the burden of showing such want. *Goodman v A.O.U.W.* 211 M 181, 300 NW 624.

Conflict of laws as to contracts; the restatement and Minnesota decisions compared. 13 MLR 538.

**543.03 SUMMONS, BY WHOM SERVED; FEES; MILEAGE.**

In the absence of statute, an attorney at law, although an officer of the court, stands in no better position in respect to authority to make service of a summons than any other private citizen. *Melin v Aronson*, 205 M 354, 285 NW 830.

**543.04 SERVICE OF COMPLAINT; APPEARANCE.**

Appellant asserts that since there was no affidavit of service upon the person of Wandok, therefore there was no service. The fact of service is the important thing in determining jurisdiction. It often happens that proof of service is defective or even lacking, but if the fact of service is established, jurisdiction cannot be questioned. *Leland v Heiberg*, 156 M 30, 194 NW 93; *Goodman v A.O.U.W.* 211 M 181, 300 NW 624.

Where neither defendant claims to have been misled by the improper arrangement of the papers, the fact that the summons did not appear as "the first paper seen upon opening and inspecting the papers served" as required by district court rule 13(d) does not require the opening of the judgment. *Whipple v Mahler*, 215 M 578, 10 NW(2d) 771.

Trial court erred in refusing to set aside service on the ground that summons was not left at defendant's place of usual abode where no material evidence was presented to such effect and where defendant's evidence established that place where

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such service was made was not his place of usual abode. *Murtha v Olson*, 221 M 240, 21 NW(2d) 607.

### 543.05 MANNER OF SERVICE OF SUMMONS; ON NATURAL PERSONS.

Under our law a summons is not a process as that term is used and defined in section 484.04, but is a mere notice given by plaintiff or his attorney to the defendant that proceedings have been instituted and judgment will be taken against him if he fails to defend. *Schultz v Oldenburg*, 202 M 237, 277 NW 918.

An order denying a motion by a defendant to vacate and set aside service of process upon him is res judicata on the question of jurisdiction and is not subject to collateral attack. *Ferch v Hiller*, 210 M 3, 297 NW 102.

Where summons and complaint was served on an incompetent, he delivered same to his guardian who caused the paper to be delivered to attorney, who appeared generally in the case, and subsequently the incompetent received and accepted beneficial results, the fact that a special administratrix of the estate of the incompetent after the death of the incompetent claimed there was no proof of service was insufficient to show want of jurisdiction. The fact of service is the important thing in determining jurisdiction. *Goodman v A.O.U.W.* 211 M 182, 300 NW 624.

The leaving of a summons and complaint at the home of a friend of the defendant under the mistaken belief that such was his home, the fact that defendant eventually received the papers from his friend, and the further fact that the sheriff's return states that service was made at defendant's usual place of abode, was not evidence of good service when the place where service was made was not in fact his home. Where a defendant has not been served as required by statute, there is no obligation on defendant's part to respond. *Murtha v Olson*, 221 M 240, 21 NW(2d) 607.

The law of the forum determines the proper method for service of process. *Bloom v American Express*, 222 M 249, 23 NW(2d) 570.

Service on agent of a non-resident; due process; full faith and credit. 3 MLR 277.

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

Service of civil process through trick or fraud. 20 MLR 686.

### 543.08 MANNER OF SERVICE ON PRIVATE CORPORATIONS.

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

A corporation which has its principal and only place of business in a given county, and no office or resident agent elsewhere, is a resident of the county within the meaning of section 542.09. *Thomas v Hector Construction Co.* 216 M 207, 12 NW(2d) 769.

Service of summons herein upon a Minnesota corporation in which defendant owned no stock and over which it had no authority or control, except as to certain obligations imposed upon it by virtue of an agreement covering the sale of defendant's products in Minnesota, and which had not been designated as defendant's agent for the service of process or otherwise in Minnesota, either directly or by implication, did not give Minnesota courts jurisdiction over defendant in these proceedings. *Nurmi v Case*, 218 M 579, 17 NW(2d) 79.

A corporation created by congress in exercise of its powers as local legislature for district of Minnesota is a domestic corporation of the District of Columbia, but a foreign corporation with respect to Minnesota. The inference of corporate presence constituting the "doing of business" so as to render a foreign corporation amenable to service within the state is to be drawn, not from transactions that are merely incidental, casual, sporadic, or isolated exertions of the corporation's ordinary activities, but from transactions that are of such a regular, systematic, and con-

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tinuous nature as to establish a course of business sufficient to justify a trial away from its corporate home. *Pierce v Grand Army*, 220 M 552, 20 NW(2d) 490.

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

Service of process on soliciting agent as constituting due process of law. 6 MLR 309, 325.

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

Service of process necessary to obtain jurisdiction over nonresidents. 9 MLR 364.

Foreign corporations; jurisdiction over causes of action arising out of business not done in the state. 10 MLR 520.

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

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

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

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

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

## 543.09 MANNER OF SERVICE ON EXPRESS COMPANIES.

Individuals conducting travel tours, selling travelers checks, and acting as agent for shippers and consignees, such as are generally called "foreign freight forwarders," are not an express company under section 543.09, and the trial court properly granted defendants' motion to set aside the service because no service had been made on any of the members of the association. *Bloom v American Express Co.* 222 M 249, 23 NW(2d) 570.

Service of process necessary to obtain jurisdiction over nonresidents. 9 MLR 362.

## 543.11 SERVICE BY PUBLICATION; PERSONAL SERVICE OUT OF STATE.

Under the provisions of L. 1943, c. 620 (ss. 48.521 to 48.528), only personal property abandoned by its owner is involved. The act does not purport to be other than a regulation of devolution of the bank accounts of missing or unknown persons. The act does not confiscate. A bank deposit contract gives no tontine rights to the bank. Since the res is here, as is the depository, substituted service of process upon unknown and non-resident claimants may be made to enforce provisions of the act, not on or against the person of the depositor, but solely on or in respect to the property interests of such person who has or claims to have some right therein. *State v Northwestern Bank*, 219 M 471, 18 NW(2d) 569.

Extraterritorial effect of decree rendered on constructive service. 17 MLR 513.

Jurisdiction in rem or quasi in rem upon constructive service on non-residents. 18 MLR 709.

Consent to jurisdiction. 19 MLR 798.

Jurisdiction over persons by substituted or constructive service. 20 MLR 649, 677.

Collateral attack upon the judgment. 24 MLR 819.

Code of rules for the district courts of Minnesota. M.S.A. 1945 Ed. p. 4195.

## 543.12 WHERE SERVICE BY PUBLICATION CONFERS JURISDICTION.

Where a personal judgment has been rendered in the courts of a state against a non-resident merely upon constructive service and without acquiring jurisdiction

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over the person of the defendant, such judgment may not be enforced in another state by virtue of the full faith and credit clause of the federal constitution. *Sheridan v Sheridan*, 213 M 24, 4 NW(2d) 785.

Since the res is here, as is the depository, substituted service of process upon unknown and non-resident claimants may be made to enforce provisions of the act, not on or against the person of the depositor, but solely on or in respect to the property interests of such person who has or claims to have some right therein. *State v Northwestern Bank*, 219 M 483, 18 NW(2d) 569.

Service by publication on resident as warranting a judgment for alimony. 1 MLR 380.

Service on residents by publications. 3 MLR 49.

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

Service of process necessary to obtain jurisdiction over non-residents. 9 MLR 362.

Situs of judgment debt for purposes of attachment. 11 MLR 654.

Extraterritorial effect of divorce decree rendered on constructive service. 17 MLR 513.

Jurisdiction in rem and quasi in rem upon constructive service of non-residents. 18 MLR 708.

Constitutional problems arising from service of process on foreign corporations. 19 MLR 375.

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

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

Collateral attack upon the judgment. 24 MLR 819.

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

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

Presumption as to validity of default judgment where the judgment roll discloses insufficient proof of service. 9 MLR 685.

Right of relation in mandamus as affected by the equitable maxim of laches. 24 MLR 877.

## 543.15 JURISDICTION, WHEN ACQUIRED; APPEARANCE.

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

Juvenile court jurisdiction. 4 MLR 227.

Effect of general appearance after judgment. 5 MLR 140.

## 543.16 APPEARANCE AND ITS EFFECT.

When, on motion to substitute the personal representative of a deceased defendant in a pending suit, such representative appears and raises no objection on the ground that jurisdiction had not been obtained of the deceased, but answers and tries the case on the merits, it is too late to move to vacate the judgment rendered after trial, especially when, as here, it is disclosed that such representative knew all the facts which might defeat substitution at the time of the hearing of the motion therefor. *O'Keefe v Scott*, 201 M 51, 275 NW 370.

Inasmuch as a district court has jurisdiction of the trust in the instant case, it is immaterial that the probate court had none, the parties having, without timely

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objection, litigated the cause on its merits in that court. *Vavricka v Schmitt*, 207 M 263, 290 NW 577.

A special appearance is not waived by answering and defending on the merits after the special appearance has been overruled. *Uram v St. Mary's Church*, 207 M 569, 292 NW 200.

In determining whether an appearance is general or special, we look to the purposes for which it was made rather than to what the moving party may label it. The test of whether or not an appearance is special or general is determined by whether or not the objection raised goes solely to the jurisdiction of the court. If made for any other purpose than to question the jurisdiction, it is a general and not a special appearance and subjects the party to the jurisdiction of the court by consent; but a party cannot be deemed to submit to the jurisdiction of the court by the mere act of denying its jurisdiction. In the case at bar the record does not support the contention that the individual defendants submitted themselves by consent to the jurisdiction of the court. *Guy v Dictating Machine Co.* 208 M 534, 294 NW 877.

Reinstatement of garnishment proceedings was proper where the court had obtained jurisdiction over defendant by his general appearance in the action and over the garnishee by its voluntary appearance and disclosure in the garnishment proceeding. *Weikert v Blomster*, 213 M 373, 6 NW(2d) 798.

A defendant against whom a default judgment has been entered cannot raise for the first time on appeal the question whether he was entitled under section 543.16 to notice of the proceedings in which the judgment was granted. *Duenow v Lindeman*, 223 M 505, 27 NW(2d) 423.

## **543.17 SERVICE OF NOTICES AND OTHER PAPERS.**

Where the court already has jurisdiction of the parties and subject matter, service of notice of motion which actually comes to the hands of the party to be served within the time required for personal service is equivalent to such service. *Dow v Dow*, 212 M 507, 4 NW(2d) 313.

Non-resident attorney's privilege from service of process. 9 MLR 65.

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

See, *Dow v Dow*, 212 M 507, 4 NW(2d) 313, noted under section 543.17.