

## CHAPTER 548

## JUDGMENTS

## 548.01 JUDGMENT; MEASURE OF RELIEF GRANTED.

1. Default
2. After answer
3. Res judicata
4. Collateral attack
5. Foreign judgments
6. Generally

## 1. Default

In a judgment by default plaintiff's relief is strictly limited in nature and degree to that specifically demanded in the complaint, and it makes no difference that other and greater relief might be justified by the allegations and proofs. *Sache v Wallace*, 101 M 169, 112 NW 386; *Keys v Schultz*, 212 M 109, 2 NW(2d) 549; *Briggs v Kennedy*, 209 M 312, 297 NW 342.

A default judgment is void for want of jurisdiction where it is based on a complaint alleging in plaintiff a cause of action for wrongfully interfering with the natural drainage and flowage of surface waters from plaintiff's lands across defendant's lands into a drain thereon for which defendant's predecessor in title had substituted part of the way an open and tile ditch of depth and width not described and where the judgment determines not that plaintiffs were entitled to such right of natural drainage of surface waters, but were entitled to an easement by prescription to drain the surface waters from their lands into the tile and open ditch on defendant's lands to maintain the ditch at a depth of five feet and at the width of its original construction, and to repair and clean the same. *Duenow v Lindeman*, 223 M 505, 27 NW(2d) 423.

## 2. After answer

A finding of fact in a prior action is not admissible in a subsequent action between the parties as evidence of the fact. *Stevens v Mpls. Fire Dept.* 219 M 276, 17 NW(2d) 642.

## 3. Res judicata

A dismissal authorized by statute, as by motion by defendant at the close of plaintiff's testimony and which "concludes the action, only" is not one on the merits and is not a bar to a second action; while a "dismissal on the merits" not only "ends the action," but concludes the cause of action, determining finally the whole controversy, and is a final adjudication. *Pioneer Land v Bernard*, 156 M 423, 195 NW 140; *McElroy v Board*, 184 M 357, 238 NW 681; *Melody v Drovers Bank*, 213 M 310, 6 NW(2d) 454; *U.S. Farm Land Co. v Jameson*, 246 F. 592.

Findings of fact and conclusions of law which have not ripened into judgment are generally not a bar to subsequent action. A finding is not an adjudication and does not operate as estoppel or res judicata. *Hutton v Boucher*, 157 M 40, 195 NW 495; *Mitchell v Bazille*, 216 M 368, 13 NW(2d) 20; *Stevens v Mpls. Fire Assn.* 219 M 276, 17 NW(2d) 642.

A judgment recovered against an indemnitee upon an obligation covered by a contract of indemnity is conclusive against the indemnitor in an action by the indemnitee to recover indemnity, if the indemnitee gave the indemnitor notice of the pendency of the action in which the judgment was recovered and requested him to assume the defense. *State Bank v American Surety Co.* 206 M 137, 288 NW 7.

Probate court's denial of a petition to reopen estate does not constitute *res judicata* on issue of fraud between the parties because the probate court did not have jurisdiction to determine such issue. To be an adjudication binding upon parties in a subsequent action it must appear that a previous order determining a motion must involve the same issues and that there was a full hearing on the merits. *Bulau v Bulau*, 208 M 529, 294 NW 845.

The overruling of a demurrer to the complaint does not bar defendant from questioning the sufficiency of the complaint to state a cause of action by motion for judgment on the pleadings after answer and reply are filed. *Parsons v Town of New Canada*, 209 M 132, 295 NW 909.

Unless one is a party to the cause and as such possessed of the right to have a voice in the proceedings, to examine and cross-examine witnesses, and to appeal from a final order or judgment, he is not bound by the result of such litigation, being a mere stranger thereto. *Midland Loan Co. v Lorentz*, 209 M 280, 296 NW 911.

In an action to determine adverse claims to real estate, a judgment therein is *res judicata* as between the parties as to the question at issue. *Ferch v Hiller*, 210 M 3, 297 NW 102.

The appellate court's decision in *Hiller v Smith* is *res judicata*, as the doctrine applies to appellate as well as trial courts. The report of an examiner of titles is not controlling. *Ferch v Hiller*, 210 M 4, 297 NW 102.

Previous adjudication of the location of a boundary line, made in an action to recover property unlawfully possessed, operated as an estoppel against the relitigation of that issue in a later action brought to determine the location of the same boundary line, and the trial court properly granted the motion to dismiss. This is under the doctrine of estoppel by verdict as distinguished from estoppel by judgment. A previous adjudication of an issue of fact is conclusive between the parties as to the existence of that fact when it arises in a subsequent action premised upon a different claim or demand. *Holtz v Beighley*, 211 M 155, 300 NW 445.

A judgment for plaintiffs against owner and tenants is not *res judicata* of the liability between the defendants. *Judd v Landin*, 211 M 465, 1 NW(2d) 861.

In an action by a receiver of a bank for the benefit of its only creditor against its only stockholder to recover assets of the bank alleged to have been fraudulently transferred to the stockholder, the issue whether creditor's claim was satisfied was conclusively decided against the creditor in a proceeding brought by him under sections 316.17 et seq. *Bolsta v Bremer*, 212 M 269, 3 NW(2d) 430.

Ordinarily, parties to a judgment are not bound by it in a subsequent controversy unless they were adversary parties in the original action, but where some issue was determined in the original suit which is an essential element in a cause of action subsequently arising between such coparties, the original adjudication of such issue is conclusive between them. Therefore, in an action for personal injuries against two defendants, where one was adjudged not liable to the plaintiff and the other one was, and the latter, having paid the judgment against him, sought contribution from the successful defendant, it is held that the judgment in the original action was conclusive that there was no liability of the successful defendant to the original plaintiff and hence no common liability as to him upon which a suit for contribution could be based. *Amer. Motorists Ins. Co. v Vigen*, 213 M 120, 5 NW(2d) 397.

That the former tax commission has heretofore allowed similar deductions is not controlling. A decision of an administrative body is not binding upon the courts in a later action involving similar points of law. *State v Dancer*, 213 M 289, 6 NW(2d) 466.

In an action by an insurer for subrogation to the rights of its named assured, and for recovery against the defendant, the complaint did not state a cause of action, as the fact that an injured guest recovered damages because of the accident from the insured was not conclusive of existence of legal liability of assured for such negligence in subsequent subrogation action by the insurer against a negligent guest who was not a party to the former action. *American Farmers Mutual v Riise*, 214 M 6, 8 NW(2d) 18.

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The district court, by virtue of sections 261.08, 261.09, has jurisdiction of the matter of the removability of a pauper freeholder in proceedings to determine disputes between political subdivisions of different counties; and by making the pauper a party to the proceedings, his rights are protected and the adjudication is res judicata as to him. *Robinette v Price*, 214 M 521, 8 NW(2d) 800.

Refusal of trial court to grant injunction restraining violation of, or interference with, contract did not determine or deny the legality or obligation of the contract so as to render issues relative thereto res judicata upon dismissal of appeal from judgment denying such injunctive relief. *McDonald v Brewery Union*, 215 M 274, 9 NW(2d) 770.

Recovery in an action for wrongful death under section 573.02, being for the payment of decedent's funeral expenses as well as for the benefit of the surviving spouse and next of kin, a judgment in a former action by plaintiff in her individual capacity to recover for personal injuries based upon the same facts and issues as those in a later action brought by her in her representative capacity against the defendants for wrongful death is not res judicata as to those facts and issues in the later action, where the recovery would be not only for the benefit of plaintiff but also for the payment of decedent's funeral expenses. *Schmitt v Emery*, 215 M 288, 9 NW(2d) 777.

While a judgment on the merits constitutes an absolute bar to a second suit for the same cause of action, and conclusion between the parties and their privies, a former judgment is not a bar to the bringing of another action when the matter involved in the prior litigation was distinctly withdrawn, abandoned, ruled out, or withheld from the consideration of the jury so that it constituted no part of the verdict or judgment. *O'Neil v Rueb*, 215 M 296, 10 NW(2d) 363; *American Nat'l v Higgins*, 208 M 295, 293 NW 585.

This case is a sequel to *Gandrud v Hanson*, 210 M 125, 297 NW 730, and the only question at issue is who is entitled to rents under renewal of a certain lease. A determination in the earlier case that plaintiffs, as holders of the third mortgage, were entitled to have the rents due under the renewal of a lease applied in reduction of the amount due under the first mortgage is res judicata in this action between the same parties. *Gandrud v Hanson*, 215 M 474, 10 NW(2d) 372.

Under section 169.94, an oral plea of guilty to a violation of the state highway traffic regulation act is not admissible as evidence in a civil action. *Warren v Marsh*, 215 M 615, 11 NW(2d) 528.

The appellate court's decision in the case of *Midland Loan Co. v Lorentz* determined that the conditional sales contract involved in the instant case was usurious and that plaintiff, assignee thereof, to the same subject to such defect; but responsibility for the usury as between plaintiff and the present defendant was not finally determined therein. *Midland Loan Co. v Madsen*, 217 M 267, 14 NW(2d) 475.

The federal courts do not receive evidence illegally obtained if timely motion is made for its suppression, but in reviewing the decisions of the state courts where confessions are challenged as involuntary, the Supreme Court of the United States applies the due process clause of the fourteenth amendment. *State v Schobert*, 218 M 5, 15 NW(2d) 585.

This case arising under the Constitution of the United States the rules laid down by the Supreme Court of the United States must be applied. *State v Continental Oil Co. et al*, 218 M 123, 15 NW(2d) 542; *Pakvinen v Butler Bros.* 218 M 501, 16 NW(2d) 769.

It is the judgment, and not the finding of fact, that constitutes an adjudication. It is the judgment on which the doctrine of res judicata is based. *Stevens v Mpls. Fire Dept.* 219 M 276, 17 NW(2d) 642.

Following *Armour v Wantock*, 323 US 126, the words of each opinion submitted "are to be read in the light of the facts of the case under discussion. To keep opinions within reasonable bounds precludes writing into them every limitation or variation which might be suggested by the circumstances of cases not before the court. General expressions transposed to other facts are often misleading." *Ranum v Swenson*, 220 M 170, 19 NW(2d) 331.

In view of the fact that a special appeal statute covering habeas corpus has been enacted in this state, which statute also provides for a trial de novo in supreme court, basis of common-law doctrine permitting a renewal of the petition on the same set of facts no longer exists, and doctrine of res judicata applies. *State ex rel v Utecht*, 220 M 431, 19 NW(2d) 706.

Order denying motion for modification of a judgment must be appealed from within statutory 30-day period after service of a written notice thereof by adverse party; and where there has been a full trial upon a motion affecting substantial rights or involving the merits, the order made upon such motion, is as conclusive upon the issues necessarily decided as is a final judgment, and as to such issues the entire matter is res judicata. *Nelson v Auman*, 221 M 46, 20 NW(2d) 703.

The defense of res judicata through estoppel by verdict, always allowed with caution, has no application to issues of fact raised in a prior action if the jury therein could have reached its verdict without deciding such issues. *Wolfson v Northern States*, 221 M 474, 22 NW(2d) 545.

A judgment rendered in a class or representative suit is not res judicata where it appears that the parties purporting to represent all parties to the action were hostile to the position of other parties on a vital issue. *State ex rel v District Court*, 222 M 546, 25 NW(2d) 692.

A judgment of a Minnesota court of superior general jurisdiction which determines adverse claims to real estate under section 559.01, authorizing an action to determine adverse claims or interests in real estate rendered on adjudging that the complaint in the action states a cause of action to determine adverse claims under the statute, and affirmed by the state supreme court, treating the action as one to determine adverse claims, is a finality on the question of adverse claims as against the objection that the relief granted is broader than authorized by the complaint, since the construction placed on the complaint is at most erroneous, and the judgment bars a subsequent action to determine rights to the property. *Gibbs v Alger, Smith & Co.* 201 F. 47.

In an administrator's action in federal court for death of a child resulting from a crossing collision in Minnesota, the substantive law of Minnesota governs. *Roth v. Swanson*, 145 F(2d) 263.

Affirming 213 M 395, 7 NW(2d) 691. A corporation incorporated and having its principal place of business in Minnesota, owned and operated in interstate commerce a fleet of airplanes. A Minnesota city was registered as home port and overhaul base for all planes. None of the planes were continuously absent from the state during the taxable year. A Minnesota personal property tax applying to all personal property and applied to the corporation's entire fleet did not violate the commerce or the due process clauses of the federal constitution. *Northwest Airlines v Minnesota*, 322 US 292.

#### 4. Collateral attack

A default judgment of a domestic court of superior jurisdiction being immune to collateral attack by a party for fraud, the judgment debtor cannot show fraud, and that he did not owe the debt on which the judgment was rendered. A purchaser of property sold on execution under the judgment acquires a good title as against the claim of fraud and non-indebtedness. *Benz v Hassie*, 208 M 118, 293 NW 133.

Estoppel by verdict, as distinguished from estoppel by judgment, is limited in its application to the issues of fact actually adjudicated in the prior action, and such adjudication of questions of fact, so placed in issue and determined by the jury or other trier of fact, is res judicata and is final and conclusive on the parties and their privies in all subsequent litigation although different causes and forms of action are involved. *Wolfson v Northern States*, 221 M 474, 22 NW(2d) 545.

#### 5. Foreign judgments

Plaintiff brought suit in Minnesota for divorce, alimony and support money of a child of the parties. Defendant answered pleading and proving a judgment of divorce in the state of Iowa where he was the plaintiff and the plaintiff in the

instant case was the defendant. Inasmuch as that was a judgment in rem only such judgment did not constitute complete defense to the present suit since the Iowa court was without jurisdiction to determine, and in fact did not determine, the question of alimony. Each state may determine for itself what effect is to be given to divorce decrees rendered against one of its own residents by the courts of a foreign state where personal service of process upon the defendant is wholly lacking and there is no property belonging to the defendant that can be reached within the jurisdiction of such foreign court. *Sheridan v Sheridan*, 213 M 24, 4 NW(2d) 785.

The Jefferson County Alabama court being a court of record with a seal and with jurisdiction over the subject matter, had jurisdiction to render the judgment herein questioned in the absence of evidence demonstrating otherwise. The Minnesota court recognized the validity of the transcript. *Patterson v Consumers Roofing*, 209 M 50, 295 NW 401.

A decree of adoption rendered by a court of another state is void for lack of jurisdiction where the child was not physically present in that state and was domiciled in this state. *In re Pratt*, 219 M 414, 18 NW(2d) 147.

Determination of the equitable conversion by will of real estate into personalty is a matter wholly within the province of the courts of the state in which the land lies, even though the will was made and is being probated at testator's domicile in another state, where the will was construed to work such conversion. *Hencke's Estate*, 220 M 414, 19 NW(2d) 718.

#### 6. Generally

Order of trial court denying a motion to modify a judgment could not be reviewed on appeal from a judgment where it was made after judgment was entered; therefore order was appealable as a final order affecting a substantial right in a summary application in the action after judgment, and also as a final order involving the merits. *Nelson v Auman*, 221 M 46, 20 NW(2d) 703.

Estoppel by verdict, as distinguished from estoppel by judgment, is limited in its application to the issues of fact actually adjudicated in the prior action, and such adjudication of questions of fact, so placed in issue, and determined by the jury or other triers of fact, is *res judicata* and is final and conclusive on the parties and their privies in all subsequent litigation, although different causes and forms of action are involved. *Bernstein v Levitz*, 223 M 46, 25 NW(2d) 289.

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.

Extrastate enforcement of a tax judgment. 20 MLR 431.

*Res judicata* in suits involving instalment payments. 23 MLR 99.

Election of remedies. 24 MLR 422.

*Res judicata*, failure to plead mistake in an action at law as a bar to a subsequent suit in equity. 24 MLR 576.

Execution sales, rights of bona fide purchasers. 24 MLR 805.

Vacation of judgment. 24 MLR 819.

Recognition of foreign divorce decree rendered without jurisdiction over defendant. 27 MLR 403.

*Res judicata* and its applicability to judgments. 28 MLR 77.

Merger by judgment. 28 MLR 420.

#### 548.02 JUDGMENT BETWEEN PARTIES AND AGAINST SEVERAL DEFENDANTS.

Section 548.19 was intended to make no change in the substantive law of contribution but only to provide a summary method of obtaining it; and where the issue of contribution arises between judgment debtors the nature of the original cause of action may be examined in order to adjust their rights between them-

selves. The 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 have not been adjudicated by the judgment. *Kemerer v State Farm Mutual*, 201 M 239, 276 NW 228.

Ordinarily, parties to a judgment are not bound by it in a subsequent controversy unless they were adversary parties in the original action, but where some issue was determined in the original suit which is an essential element in a cause of action subsequently arising between such coparties, the original adjudication of such issue is conclusive between them. Therefore, in an action for personal injuries against two defendants, where one was adjudged not liable to the plaintiff and the other one was, and the latter, having paid the judgment against him, sought contribution from the successful defendant, the judgment in the original action was conclusive that there was no liability of the successful defendant to the original plaintiff and hence no common liability as to him upon which a suit for contribution could be based. *American Motorists Insurance Co. v Vigen*, 213 M 120, 5 NW(2d) 397.

Where in a suit for indemnity some fact essential to the plaintiff's cause of action has been determined in the previous action in which plaintiff's insured and these defendants were parties defendant and upon which the right of indemnity depends, the judgment is *res judicata* in the indemnity suit. *Fidelity & Casualty Co. v Mpls. Brewing Co.* 214 M 436, 8 NW(2d) 471.

An agent in the sale of real estate may not sell to himself without the knowledge of the owner whom he represents. The inflexible rule, founded on public policy, is that such transaction shall not be permitted to stand against the principal unless it appears that with full knowledge of all the facts he either previously or subsequently ratified it. *Magee v Odden*, 220 M 498, 20 NW(2d) 87.

Joinder of parties defendant in tort actions. 1 MLR 429.

Finding that defense was conducted by a person not a party. 26 MLR 129.

Judgments *res judicata* as between codefendants. 27 MLR 519.

#### 548.03 HOW SIGNED AND ENTERED; CONTENTS.

If an order dismissing a cause of action is one on which a judgment may be entered, the appeal should be taken from the judgment. However, where the dismissal is for want of jurisdiction an appeal may be taken from the order. *Bulau v Bulau*, 208 M 529, 294 NW 845.

An appeal from a judgment before it has been entered is premature and should be dismissed. An entry *nunc pro tunc* cannot validate a premature appeal, where, as in the instant case, actual entry of the judgment is prerequisite to an appeal and the time to appeal dates from the entry. *Hampshire Arms v Wells*, 210 M 286, 298 NW 452.

A judgment is never void for error, provided the court rendering it had jurisdiction over the person of the defendant and the subject matter of the action. *Sheridan v Sheridan*, 213 M 24, 4 NW(2d) 785.

Where defendant answered and admitted service of the reply in an action brought in the municipal court of Minneapolis, but did not appear at the trial of the action on September 11, 1935, the trial court did not abuse its discretion in holding that plaintiff was not guilty of laches in not having judgment entered until December 12, 1944, on the findings filed September 19, 1935. Either plaintiff or defendant may cause judgment to be entered based upon findings of fact, conclusions of law and an order for judgment previously filed. *Industrial Loan v Benson*, 221 M 70, 21 NW(2d) 99.

*Nunc pro tunc* entries of judicial action are permitted to correct the record in furtherance of justice where error or delay is caused by action of the court. It is the office of such entries to record and not supply judicial action. *Nunc pro tunc* order directing that record indicate that motion for directed verdict was made at close of testimony and denied, when in fact no such motion was then made, is a nullity. *Wilcox v Schloner*, 222 M 45, 23 NW(2d) 19.

**548.05 TREBLE DAMAGES FOR TRESPASS.**

A verdict is not as a matter of law excessive where there is sufficient evidence to go to the jury that actual damages as distinguished from treble damages amounted to \$1,300, the verdict being for actual damages of \$400 and treble damages of \$1,200. *Lawrenz v Langford Electric Co.* 206 M 315, 288 NW 727.

**548.06 DAMAGES FOR LIBEL.**

The publications being qualifiedly privileged, the burden was rightly placed upon plaintiff to prove malice on the part of the defendants, even though they failed to establish that the publications were true in substance or were fair comments on past official acts of the plaintiff. The court's instruction as to malice was legally correct and adequate. *Clancy v Daily News Corp.* 202 M 1, 277 NW 264.

In the instant case, the innuendo of insolvency or financial embarrassment as pleaded is not warranted by the language used; but although the complaint fails to state a cause of action for defamation, it contains an adequate statement of malicious injury to plaintiff's business and is therefore not vulnerable to a demurrer interposed upon the ground that it does not state a cause of action. *Marudas v Odegard*, 215 M 357, 10 NW(2d) 233.

Newspaper libel. 13 MLR 21.

Defendants ignorance of facts not a defense. 14 MLR 187.

Insanity as a defense to civil liability for libel or slander. 18 MLR 356.

Defamation of a dead person; right of surviving relative to sue. 25 MLR 243.

Publication of inadvertent defamatory material. 25 MLR 495, 511.

Charge of poverty as defamatory. 26 MLR 563.

**548.09 LIEN OF JUDGMENT.**

Equitable estates of judgment debtor. 7 MLR 420, 8 MLR 68.

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

Diligence of junior judgment creditors. 23 MLR 97.

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

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.

**548.13 ASSIGNMENT OF JUDGMENT; MODE AND EFFECT.**

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

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

Where an action has been fully litigated and upon appeal the decision affirmed, the defeated party may not again have a new trial on the ground that witnesses made mistakes or wilfully testified falsely in the trial. *Nichols v Village of Morristown*, 204 M 212, 283 NW 748.

Self or double-dealing by a fiduciary renders the transaction voidable by the beneficiary. But where, as here, the facts were fully disclosed to the court, and the action of the guardian was on the advice of independent counsel whose only duty was to, and whose whole interest was that of, the ward, and the transaction was approved by the court, it cannot thereafter be disaffirmed by the ward. *Fiske v First National*, 207 M 44, 291 NW 289.

That a judgment is erroneous as a matter of law is ground for an appeal, writ of error, or certiorari, according to the case, but it is no ground for setting aside on motion. *State ex rel v Probate Court*, 221 M 337, 22 NW(2d) 448.

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

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

Fraud as a ground for vacating divorce decree. 17 MLR 441.

Full faith and credit. 20 MLR 140, 160.

Defects in the judgment. 24 MLR 815.

Collateral attack upon the judgment. 24 MLR 819.

Right of one district court to enjoin the enforcement of a judgment of another district court. 25 MLR 378.

## 548.15 HOW DISCHARGED OF RECORD.

Because certain tax certificates had been included, as to amount, in a judgment for money and had therefore become merged, as to the debt, in the judgment, they were discharged by settlement and satisfaction of judgment. It was therefore error to hold that they evidenced a lien superior to plaintiff's mortgage. *Walton v Investment Holding Co.* 200 M 337, 274 NW 239.

## 548.18 DISCHARGE OF JUDGMENTS AGAINST BANKRUPTS.

A bankruptcy court should be reluctant to be used as a forum for the determination of the dischargeability of creditors' claims when such question may be determined in other courts having jurisdiction; and the federal court will not exercise its jurisdiction, as a court of equity ancillary to the bankruptcy court, to enjoin the enforcement of a municipal court judgment, where state statute provided for proceedings to obtain a discharge of the judgment, if the debt was dischargeable in bankruptcy, and it was not shown that the remedy under the state statute was inadequate. *In re Grover*, 63 F. Supp. 644.

Agriculture and the bankruptcy act. 19 MLR 1.

Stockbrokers' bankruptcy; problems created by the Chandler act. 24 MLR 52.

Dischargeable debts. 25 MLR 791.

## 548.19 JOINT DEBTORS; CONTRIBUTION AND SUBROGATION.

When a defendant in a criminal case, out on a recognizance bond, fails to appear as required and judgment was taken against both his sureties, and one surety made full payment of the judgment, such surety was entitled to contribution from co-surety as against the contention that such contribution was against public policy. *Sansome v Samuelson*, 222 M 417, 24 NW(2d) 702.

Contribution and indemnity between joint tortfeasors. 16 MLR 73, 81; 21 MLR 764.

Res judicata as between co-defendants. 27 MLR 519, 538.

## 548.20 SEVERAL JUDGMENTS AGAINST JOINT DEBTORS.

All who actively participate in the commission of a tort or who procure, advise, encourage, aid, or abet its commission, or ratify it after it is done, are jointly and severally liable for resulting injury, though their acts are independently done and without concert of action or common purpose, provided the several acts concur in producing one resulting event. *Greenwood v Evergreen Mines*, 220 M 296, 19 NW(2d) 733.

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

Merger by judgment. 28 MLR 419, 450.

Suretyship and the statute of frauds. 31 MLR 1, 25.



**548.21 DISCHARGE OF JOINT DEBTOR.**

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

**548.22 BY CONFESSION; ON STATEMENT.**

Validity of power of attorney to confess judgment in note. 15 MLR 466.

Revocation of power to confer judgment by subsequent insanity of principal. 16 MLR 874.

**548.23 ON PLEA.**

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.

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

Regarding merger by judgment, many statutes have been enacted abrogating the common law rule. 28 MLR 450.

**548.24 SUBMISSION WITHOUT ACTION.**

Declaratory judgment act. 5 MLR 32, 172, 181; 6 MLR 327.