

CHAPTER 548

JUDGMENTS

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NOTE: For rules of civil procedure, district court, see Appendix 8.

548.01 [Repealed, 1974 c 394 s 12]

548.02 [Repealed, 1974 c 394 s 12]

548.03 [Repealed, 1974 c 394 s 12]

548.04 JUDGMENT IN REPLEVIN. In an action to recover the possession of personal property, judgment may be rendered for the plaintiff and for the defendant, or for either. Judgment for either, if the property has not been delivered to him, and a return is claimed in the complaint or answer, may be for the possession or the value thereof in case possession cannot be obtained, and damages for the detention, or the taking and withholding. If possession cannot be obtained of the whole of such property but may be obtained for part thereof then the party entitled thereto may have possession of the part which may be obtained and recover the value of the remainder or may elect to take judgment for the value of the whole of such property. When the prevailing party is in possession of the property, the value thereof shall not be included in the judgment. If the property has been delivered to the plaintiff, and the action be dismissed before answer, or if the answer so claim, the defendant shall have judgment for a return, and damages, if any, for the detention, or the taking and withholding, of such property; but such judgment shall not be a bar to another action for the same property or any part thereof; provided, that in an action for the recovery of specific personal property by the vendor in a conditional sale contract therefor, or by his successor in interest, by reason of default in the terms of such conditional sale contract, where it shall appear that the defendant in said action is an innocent purchaser for value of the property and without actual knowledge of the existence of such conditional sale contract, in the event that the plaintiff shall prevail in the action, the measure of his recovery shall be the balance unpaid on the conditional sale contract with interest thereon at the rate fixed in the conditional sale contract, if any, reasonable attorney's fees to be approved by the court and the costs and disbursements of the action.

[*RL s 4267; 1931 c 202 s 1*] (9395)

548.05 TREBLE DAMAGES FOR TRESPASS. Whoever shall carry away, use or destroy any wood, timber, lumber, hay, grass, or other personal property of another person, without lawful authority, shall be liable to the owner thereof for treble the amount of damages assessed therefor in an action to recover such damages. If he shall show, upon the trial, that he had probable cause to believe that such property was his own, or was owned by the person for whom he acted, judgment shall be given for the actual damages only, and for costs.

[*RL s 4268*] (9396)

548.06 DAMAGES FOR LIBEL. In an action for damages for the publication of a libel in a newspaper, the plaintiff shall recover no more than special damages, unless a retraction be demanded and refused as hereinafter provided. He shall serve upon the publisher at the principal place of publication, a notice, specifying the statements claimed to be libelous, and requesting that the same be withdrawn. If a retrac-

tion thereof be not published on the same page and in the same type and the statement headed in 18 point type or larger "RETRACTION," as were the statements complained of, in a regular issue thereof published within one week after such service, he may allege such notice, demand, and failure to retract in his complaint and recover both special and general damages, if his cause of action be maintained. If such retraction be so published, he may still recover general damages, unless the defendant shall show that the libelous publication was made in good faith and under a mistake as to the facts. If the plaintiff was a candidate for office at the time of the libelous publication, no retraction shall be available unless published on the same page and in the same type and the statement headed in 18 point type or larger "RETRACTION," as were the statements complained of, in a regular issue thereof published within one week after such service and in a conspicuous place on the editorial page, nor if the libel was published within one week next before the election. This section shall not apply to any libel imputing unchastity to a woman.

[*RL s 4269; 1937 c 299 s 1*] (9397)

548.07 JUDGMENT AFTER DEATH OF PARTY. Judgment may be entered after the death of a party upon a verdict, or decision upon an issue of fact, rendered in his lifetime. Such judgment shall not be a lien on real property of the decedent, but shall be payable, in the course of administration of his estate, as if allowed by the probate court against his estate.

[*RL s 4270*] (9398)

548.08 JUDGMENT ROLL, HOW MADE UP. Upon entering the judgment, the clerk shall forthwith attach together and file the following papers, which shall constitute the judgment roll:

(1) If the complaint be not answered, the summons and proof of its service, the complaint, proof that no answer has been received, any report, decision or order filed in the case, and a copy of the judgment;

(2) In all other cases, the summons and pleadings, notices of motion and orders made thereon, a copy of the judgment, the verdict, decision, or report, all offers of the defendant, and all orders involving the merits of the action and affecting the judgment. If any original paper be lost or withheld, the court may permit a copy to be filed and used in its stead. A settled case or bill of exceptions, if one be filed, shall be attached to the judgment roll upon the request of either party.

[*RL s 4271*] (9399)

548.09 LIEN OF JUDGMENT. Every judgment requiring the payment of money shall be docketed by the clerk upon the entry thereof, and, upon a transcript of such docket being filed with the clerk in any other county, such clerk shall also docket the same. From the time of such docketing the judgment shall be a lien, to the amount unpaid thereon, upon all real property in the county then or thereafter owned by the judgment debtor. Such judgment shall survive, and the lien thereof continue, for the period of ten years next after its entry, and no longer. No judgment, except for taxes, shall be docketed until the judgment creditor, or his agent or attorney, shall have filed with the clerk an affidavit, stating the full name, occupation, place of residence, and post office address of the judgment debtor, to the best of affiant's information and belief; and, if such residence be within an incorporated place having more than 5,000 inhabitants, the street number of both his place of residence and place of business, if he have one, shall be stated. If the clerk shall violate this provision, neither the judgment nor the docketing thereof shall be invalid, but he shall be liable to any person damaged thereby in the sum of \$5.

[*RL s 4272; 1913 c 112 s 1*] (9400)

548.10 NEW COUNTY; DOCKETING OLD JUDGMENTS; REAL ESTATE TAX JUDGMENTS. When a new county is created, the clerk of the district court thereof shall transcribe into his records all the docket entries relative to judgments for the payment of money, including real estate tax judgments, against lands situated in such new county, rendered within the ten years next preceding such creation and docketed in the counties from which such new county was set off, and such transcribed entries shall have the same effect as transcripts of dockets of judgments made by the clerk of court of the county where the originals were docketed and filed in another county. For

such transcription the clerk shall receive from the new county 15 cents for each judgment.

[*RL s 4273; 1907 c 159 s 1*] (9401)

548.11 FEDERAL COURT JUDGMENT; DOCKETING. Every judgment requiring the payment of money rendered in a circuit or district court of the United States within this state shall be, from the docketing thereof in said court, a lien upon the real property of the judgment debtor situated in the county in which it is so docketed, the same as a judgment of the state court. A transcript of such docket may be filed with the clerk of the district court of any other county, and shall be docketed in his office as in the case of judgments of the state courts, and with like effect.

[*RL s 4274*] (9402)

548.12 LIEN DISCHARGED BY DEPOSIT OF MONEY, WHEN. Whenever an appeal shall be taken from a docketed judgment, or any motion shall be pending to set the same aside or for a new trial, the judgment debtor may deposit in court an amount sufficient to secure the payment of such judgment, with all interest and costs likely to accrue thereon pending the appeal or motion. The court shall make an order approving such deposit, and thereupon the judgment lien upon the real estate of the debtor shall cease and be transferred to the money so deposited. A certified copy of such order may be filed with the clerk in any county in which a transcript of the judgment shall have been docketed.

[*RL s 4275*] (9403)

548.13 ASSIGNMENT OF JUDGMENT; MODE AND EFFECT. Every assignment of a judgment shall be in writing, signed and acknowledged by the assignor, and no such assignment shall be valid as against a subsequent purchaser of the judgment in good faith for value, or against a creditor levying upon or attaching the same, unless it is filed with the clerk and an entry thereof made in the docket. When so filed and entered, none but the assignee, his agent or attorney, shall be authorized to collect or enforce such judgment; provided, that the lien of an attorney thereon shall not be affected by the assignment.

[*RL s 4276*] (9404)

548.14 JUDGMENTS, PROCURED BY FRAUD, SET ASIDE BY ACTION. Any judgment obtained in a court of record by means of perjury, subornation of perjury, or any fraudulent act, practice, or representation of the prevailing party, may be set aside in an action brought for that purpose by the aggrieved party in the same judicial district within three years after the discovery by him of such perjury or fraud. In such action the court may either enjoin the enforcement of the judgment or command the satisfaction thereof, may compel the party procuring the same to restore any property received by virtue thereof, and may make such other or further order or judgment as justice shall require; but no right or interest of a third party acquired under such judgment in good faith, and without knowledge of the wrong complained of, shall be affected by the action herein provided for; provided, if during the pendency of such action the enforcement of such judgment or an action thereon shall become barred by the statute of limitations, and such judgment is sustained, the same may be enforced, or an action commenced thereon, within one year after such action is finally determined.

[*RL s 4277*] (9405)

548.15 DISCHARGE OF RECORD. Upon the satisfaction of a judgment, whether wholly or in part, or as to all or any of several defendants, the clerk shall enter such satisfaction in the judgment book, and note the same, with the date thereof, on the docket. If the docketing be upon a transcript from another county, the entry on the docket shall be sufficient. A judgment shall be deemed satisfied when there is filed with the clerk:

- (1) An execution satisfied, to the extent stated in the sheriff's return thereon;
- (2) A certificate of satisfaction signed and acknowledged by the judgment creditor;
- (3) A like certificate signed and acknowledged by the attorney of such creditor, unless his authority as such has previously been revoked and an entry of such revocation made upon the register; but the authority of an attorney to satisfy a judgment

shall cease at the end of two years from its entry;

(4) An order of the court, made on motion, requiring the execution of a certificate of satisfaction, or directing satisfaction to be entered without it;

(5) Where a judgment is docketed on transcript, a copy of either of the foregoing documents, certified by the clerk of the court in which the judgment was originally entered and in which the originals were filed.

A satisfaction made in the name of a partnership shall be valid if executed by a member thereof while the partnership continues. The judgment creditor, or his attorney while his authority continues, may also satisfy a judgment of record by a brief entry on the register, signed by him and dated and witnessed by the clerk, who shall thereupon note such satisfaction on the margin of the docket. When a judgment is satisfied otherwise than by return of execution, the judgment creditor or his attorney shall give a certificate thereof.

[*RL s 4278*] (9406)

548.16 SATISFACTION AND ASSIGNMENT BY STATE. The commissioner of finance or the attorney general may execute satisfactions and assignments of judgments in behalf of the state.

[*RL s 4279; 1929 c 186; 1973 c 492 s 14*] (9407)

548.17 PAYMENT AND SATISFACTION BY CLERK. When a judgment debtor or other person whose property is subject to the lien of a money judgment shall file with the clerk an affidavit that he has made diligent search and inquiry and is unable to find any person having authority to receive payment and give satisfaction of such judgment, he may pay the amount due thereon to the clerk, who, upon receipt thereof, shall note satisfaction of such judgment on the docket and register of the action wherein it was entered, and issue under his seal to the person paying the same a certificate reciting such payment and satisfaction. The clerk shall at once notify all persons appearing of record to have an interest in such judgment, including the attorney of the judgment creditor, of its payment and satisfaction, and upon demand shall pay such money to the person entitled thereto, taking duplicate receipts therefor, one of which he shall retain, and file the other in the case.

[*RL s 4280*] (9408)

548.18 DISCHARGE OF JUDGMENTS AGAINST BANKRUPTS. Any person discharged from his debts pursuant to the act of congress known as "An act to establish a uniform system of bankruptcy throughout the United States, approved July first, 1898," and all amendments thereto, may, after the expiration of one year from the date of such discharge, apply to any court of record in which a judgment shall have been rendered or a transcript thereof filed against him, for the discharge thereof from record, and if it shall appear to the court that he has thus been discharged from the payment of such judgment, the court may order and direct that such judgment be discharged and satisfied of record, and thereupon the clerk of such court shall enter a satisfaction thereof. No such application shall be made or order granted except upon ten days' notice of such application to the judgment creditor whose judgment is sought thereby to be satisfied of record, his executors, administrators or assigns, served in the manner provided for the service of notices in civil actions, or in case such creditor, or his executors, administrators or assigns, shall not reside within this state, in such manner as the court shall provide by order. Nothing in this section shall be construed to apply to judgments not listed among the liabilities of the bankrupt in his petition to be adjudged a bankrupt under the act of July first, 1898, and all amendments thereto.

[*1909 c 230 s 1*] (9409)

548.19 JOINT DEBTORS; CONTRIBUTION AND SUBROGATION. When a judgment against two or more persons shall be enforced against or paid by one of them, or one of them shall pay more than his proper share as between himself and the other judgment debtors, he may continue the judgment in force for the purpose of compelling contribution; and, if within ten days after such enforcement or payment, he shall file with the clerk a notice of the amount paid by or collected from him in excess of his proper share, and of his claim for contribution, the clerk shall make a note thereof on the margin of the docket. Thereupon the judgment shall remain in effect in favor of the party filing such notice for the amount and against the party in such no-

tice specified.

[*RL s 4281*] (9410)

548.20 SEVERAL JUDGMENTS AGAINST JOINT DEBTORS. All parties to a joint obligation, including negotiable paper, copartnership debts, and all contracts upon which they are liable jointly, shall be severally liable also for the full amount thereof. They may be sued thereon jointly, or separate actions may be brought against each or any of them, and judgment rendered in each, without barring an action against any of those not included in such judgment, or releasing any of those not sued. The court, upon its own motion or on application of any interested party, may require the plaintiff to bring in as defendants all the parties jointly liable on the obligation in suit.

[*RL s 4282*] (9411)

548.21 DISCHARGE OF JOINT DEBTOR. A creditor who has a debt, demand, or judgment against a copartnership, or several joint obligors, promisors, or debtors, may discharge one or more of such copartners, obligors, promisors, or debtors, without impairing his right to recover the residue of his debt or demand against the others, or preventing the enforcement of the proportionate share of any undischarged under such judgment. The discharge shall have the effect of a payment by the party discharged of his equal share of the debt, according to the number of debtors, aside from sureties. Such discharge shall not affect the liability of such copartners, obligors, promisors, or debtors to each other. In an action by the creditor to recover against those not discharged, the complaint shall set forth that the contract was made with the defendants and the party discharged, and that such party has been discharged.

[*RL s 4283*] (9412)

548.22 CONFESSION OF JUDGMENT. A judgment for money due or to become due, or to secure any person against a contingent liability on behalf of the defendant, or for both, may be entered in the district court by confession and without action, upon filing with the clerk a statement, signed and verified by the defendant, authorizing the entry of judgment for a specified sum. If the judgment be for money due or to become due, the writing shall state concisely the facts out of which the debt arose, and show that the sum confessed is justly due or to become due. If the judgment be for the purpose of securing the plaintiff against a contingent liability, the writing shall state concisely the facts constituting the liability, and show that the sum confessed does not exceed the same. The clerk shall enter judgment for the amount specified, as in other cases, and shall attach a copy of the judgment to the statement, which shall constitute the judgment roll. The judgment shall be final, and, unless special provision be made for a stay, execution may issue immediately.

[*RL s 4284*] (9413)

548.23 PLEA OF CONFESSION. Judgment in the cases mentioned in section 548.22 may also be entered in the district court in the manner therein provided, and with like effect, upon filing with the clerk a plea of confession signed by an attorney of such court, together with an instrument signed by the debtor authorizing such confession; but such instrument must be distinct from that containing the bond, contract, or other evidence of the demand for which judgment is confessed.

[*RL s 4285*] (9414)

548.24 SUBMISSION WITHOUT ACTION. Parties to a controversy which might be the subject of a civil action may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court which would have jurisdiction if an action had been brought. It must appear by affidavit that the controversy is real, and that the proceedings are had in good faith to determine the rights of the parties. The court shall thereupon hear and determine the case at a general or special term, and order judgment thereon as in a civil action. Judgment shall be entered as in other cases, and the case, submission, and a copy of the judgment shall constitute the judgment roll. The judgment may be enforced, and shall be subject to appeal, as in other cases.

[*RL s 4286*] (9415)

548.25 VACATING REAL ESTATE JUDGMENT; WITHIN WHAT TIME. No judgment or decree quieting title to land or determining the title thereto or adverse

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claims therein heretofore entered or hereafter to be entered shall be adjudged invalid or set aside, unless the action or proceeding to vacate or set aside such judgment or decree shall be commenced, or application for leave to defend be made, within five years from the time of filing a certified copy of such judgment or decree in the office of the county recorder of the county in which the lands affected by such judgment or decree are situated.

[1909 c 451 s 1; 1976 c 181 s 2] (9284)