

CHAPTER 547

DISTRICT COURT; NEW TRIALS

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| <p>Sec. 547.01 New trials; grounds; presumption on appeal 547.02 Basis of motion 547.03 Exceptions to ruling, order, decision, or instruction of court</p> | <p>Sec. 547.04 Bill of exceptions and case 547.05 Bill of exceptions or case, how and when settled 547.06 Bill of exceptions; when judge incapacitated</p> |
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547.01 NEW TRIALS; GROUNDS; PRESUMPTION ON APPEAL. A verdict, decision, or report may be vacated, and a new trial granted, on motion of an aggrieved party, for any of the following causes materially affecting his rights, except that no order shall be issued granting a new trial unless accompanied by a memorandum stating reasons therefor:

- (1) Irregularity in the proceedings of the court, referee, jury, or prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair trial;
- (2) Misconduct of the jury or prevailing party;
- (3) Accident or surprise which could not have been prevented by ordinary prudence;
- (4) Material evidence, newly discovered, which with reasonable diligence could not have been found and produced at the trial;
- (5) Excessive or insufficient damages, appearing to have been given under the influence of passion or prejudice;
- (6) Errors of law occurring at the trial, and either excepted to at the time, or clearly assigned in the notice of motion;
- (7) That the verdict, decision, or report, is not justified by the evidence, or is contrary to law; but, unless it be so expressly stated in the order granting a new trial, it shall not be presumed, on appeal, to have been made on the ground that the verdict, decision, or report was not justified by the evidence.

[R. L. s. 4198; 1939 c. 52] (9325)

547.02 BASIS OF MOTION. If the motion be made for a cause mentioned in section 547.01, clauses (1) to (4), pertinent facts not appearing of record shall be shown by affidavit; if for any other cause, a case or bill of exceptions shall first be settled, and included in the record, unless the moving party within 15 days of the rendition of verdict or notice of the filing of the decision or report, notices the motion to be heard on the minutes of the court, in which case the judge shall hear the motion on the minutes of the judge or of the stenographer, but it shall not be necessary for the moving party to furnish the court or the opposing party a transcript of the stenographer's minutes, nor of any part thereof, as a condition to have the motion heard. If the motion is to be heard on the minutes of the court, it shall be heard within 30 days after the coming in of the verdict or notice of the filing of the decision or report, unless the time be extended by written stipulation of the parties or by the court for cause, such extension to be granted without costs to either party. If the motion be on the minutes, and the order be appealed from, a case or bill of exceptions shall be proposed by the appellant, and be settled and returned with the record to the supreme court. The records and files of the court pertaining to the case may be referred to without being mentioned in the notice of motion.

[R. L. s. 4199; 1907 c. 450] (9326)

547.03 EXCEPTIONS TO RULING, ORDER, DECISION, OR INSTRUCTION OF COURT. A party may except orally at the trial to any ruling, order, decision, or instruction of the court on a matter of law. No particular form of exception is required. A minute of the exception shall be made by the judge or stenographer, and the same may be preserved either in a bill of exceptions or a settled case; provided that in order to obtain a review of any such ruling, order, decision, or instruction made or given by the court it shall not be necessary to take an exception

thereto, but in lieu of an exception the aggrieved party shall clearly specify the alleged error in his notice of motion for a new trial or other relief therefrom.

[R. L. s. 4200; 1919 c. 115 s. 1] (9327)

547.04 BILL OF EXCEPTIONS AND CASE. The term "bill of exceptions," as used herein, shall mean a written statement of exceptions duly taken at the trial, with so much of the evidence and proceedings as may be necessary to explain them. The word "case," as so used, shall mean a like statement of the proceedings in the cause, excluding all pleadings and other papers properly filed with the clerk. A case may contain all the evidence given or offered at the trial and all the proceedings had, or only so much thereof as the parties may choose to present for review.

[R. L. s. 4201] (9328)

547.05 BILL OF EXCEPTIONS OR CASE, HOW AND WHEN SETTLED. The party preparing a bill of exceptions or case shall serve the same on the adverse party by copy, within 40 days after verdict, or, if the trial be by the court or a referee, after notice of the filing of the decision or report. The party served in like manner may propose amendments thereto within ten days. Such bill or case, with the amendments, if any, shall, within 15 days after the service of such amendments, be presented to the judge or referee who tried the cause for allowance or settlement, upon a notice of five days. If a motion be heard on the minutes, the aggrieved party may propose a bill or case within 20 days after notice of the decision thereon. The times herein limited may be extended by agreement of the parties or by order of the court; and the court, in its discretion and upon proper terms, may grant leave to propose a bill or case after the time herein allowed therefor has expired.

[R. L. s. 4202] (9329)

547.06 BILL OF EXCEPTIONS; WHEN JUDGE INCAPACITATED. When the judge who tried the cause ceases to be such, or dies or becomes incapacitated from sickness or other cause, or is without the state at the time limited for such allowance or settlement, such bill may be allowed or case settled by the judge of a district adjoining that in which the action is pending; and when a referee dies, or becomes incapacitated, or is so absent, the bill may be allowed, or case settled, by the judge of the court in which the action is pending. In either case the allowance or settlement shall be made upon the files in the cause, the minutes of the judge or referee, or of the stenographer, if obtainable, and upon such proof of what occurred at the trial as may be presented by affidavit, with like effect as if the allowance or settlement were by the judge or referee who tried the cause.

[R. L. s. 4203] (9330)