CHAPTER 532

EXECUTIONS, APPEALS AND EXTRAORDINARY REMEDIES

EXECUTION

532.01 STAY OF EXECUTION, WHEN GRANTED.

HISTORY. 1871 c. 68 s. 1; G.S. 1878 c. 65 s. 84; 1879 c. 24 s. 1; G.S. 1894 s. 5038; R.L. 1905 s. 3946; G.S. 1913 s. 7566; G.S. 1923 s. 9058; M.S. 1927 s. 9058.

532.02 RECOGNIZANCE.

HISTORY. 1871 c. 68 s. 1; G.S. 1878 c. 65 s. 84; 1879 c. 24 s. 1; G.S. 1894 s. 5038; R.L. 1905 s. 3947; G.S. 1913 s. 7566; G.S. 1923 s. 9059; M.S. 1927 s. 9059.

532.03 FORM OF RECOGNIZANCE.

HISTORY. 1871 c. 68 s. 3; G.S. 1878 c. 65 s. 86; 1879 c. 24; G.S. 1894 s. 5040; R.L. 1905 s. 3948; G.S. 1913 s. 7567; G.S. 1923 s. 9060; M.S. 1927 s. 9060.

532.04 EXECUTION AT END OF STAY.

HISTORY. 1871 c. 68 ss. 2, 4; G.S. 1878 c. 65 ss. 85, 87; 1879 c. 24; G.S. 1894 ss. 5039, 5041; R.L. 1905 s. 3949; G.S. 1913 s. 7568; G.S. 1923 s. 9061; M.S. 1927 s. 9061.

532.05 EXECUTION, WHEN ISSUED.

HISTORY. R.S. 1851 c. 69 art. 4 s. 75; P.S. 1858 c. 59 s. 89; G.S. 1866 c. 65 s. 73; 1867 c. 88 s. 2; G.S. 1878 c. 65 ss. 9, 76; G.S. 1894 s. 4963, 5030; R.L. 1905 s. 3950; G.S. 1913 s. 7569; G.S. 1923 s. 9062; M.S. 1927 s. 9062.

The validity of a sale under an old execution was not affected by the irregularity in the issuing process. Millis v Lombard, 32 M 259, 20 NW 187.

532.06 WHAT TO CONTAIN.

HISTORY. R.S. 1851 c. 69 art. 4 s. 77; 1855 c. 47 s. 1; P.S. 1858 c. 59 s. 90; G.S. 1866 c. 65 s. 74; G.S. 1878 c. 65 s. 77; G.S. 1894 s. 5031; R.L. 1905 s. 3951; G.S. 1913 s. 7570; G.S. 1923 s. 9063; M.S. 1927 s. 9063.

The fact that there was a misrecital of the date of the judgment in the execution did not affect the validity of the sale under execution. Millis v Lombard, 32 M 259, 20 NW 187.

532.07 ENTRIES IN DOCKET; ENDORSEMENT.

HISTORY. R.S. 1851 c. 69 art. 4 s. 78; P.S. 1858 c. 59 s. 91; G.S. 1866 c. 65 s. 75; G.S. 1878 c. 65 s. 78; G.S. 1894 s. 5032; R.L. 1905 s. 3952; G.S. 1913 s. 7571; G.S. 1923 s. 9064; M.S. 1927 s. 9064.

532.08 RENEWAL.

HISTORY. R.S. 1851 c. 69 art. 4 s. 79; P.S. 1858 c. 59 s. 92; G.S. 1866 c. 65 s. 76; 1871 c. 71 s. 1; G.S. 1878 c. 65 s. 79; G.S. 1894 s. 5033; R.L. 1905 s. 3953; G.S. 1913 s. 7572; G.S. 1923 s. 9065; M.S. 1927 s. 9065.

532.09 EXECUTION AFTER FILING TRANSCRIPT.

HISTORY. R.S. 1851 c. 69 art. 4 s. 79; P.S. 1858 c. 59 s. 92; G.S. 1866 c. 65 s. 76; 1871 c. 71 s. 1; G.S. 1878 c. 65 s. 79; G.S. 1894 s. 5033; R.L. 1905 s. 3954; G.S. 1913 s. 7573; G.S. 1923 s. 9065a; M.S. 1927 s. 9065a.

532.10 ENDOREMENT; NOTICE OF SALE.

HISTORY. R.S. 1851 c. 69 art. 4 s. 80; P.S. 1858 c. 59 s. 93; G.S. 1866 c. 65 s. 77; G.S. 1878 c. 65 s. 80; G.S. 1894 s. 5034; R.L. 1905 s. 3955; G.S. 1913 s. 7574; G.S. 1923 s. 9065b; M.S. 1927 s. 9065b.

532.11 SALE, RETURN.

HISTORY. R.S. 1851 c. 69 art. 4 s. 81; P.S. 1858 c. 59 s. 94; G.S. 1866 c. 65 s. 78; G.S. 1878 c. 65 s. 81; G.S. 1894 s. 5035; R.L. 1905 s. 3956; G.S. 1913 s. 7575; G.S. 1923 s. 9066; M.S 1927 s. 9066.

532.12 OFFICER PROHIBITED FROM PURCHASING.

HISTORY. R.S. 1851 c. 69 art. 4 s. 82; P.S. 1858 c. 59 s. 95; G.S. 1866 c. 65 s. 79; G.S. 1878 c. 65 s. 82; G.S. 1894 s. 5036; R.L. 1905 s. 3957; G.S. 1913 s. 7576; G.S. 1923 s. 9067; M.S. 1927 s. 9067.

532.13 RECEIPT OF MONEY TENDERED.

HISTORY. R.S. 1851 c. 69 art. 4 s. 84; P.S. 1858 c. 59 s. 97; G.S. 1866 c. 65 s. 80; G.S. 1878 c. 65 s. 83; G.S. 1894 s. 5037; R.L. 1905 s. 3958; G.S. 1913 s. 7577; G.S. 1923 s. 9068; M.S. 1927 s. 9068.

532.14 EXECUTIONS AND TRANSCRIPTS WHERE COURT DISCONTINUED.

HISTORY. 1911 c. 177 s. 1; G.S. 1913 s. 7578; G.S. 1923 s. 9069; M.S. 1927 s. 9069.

Upon the establishment of a municipal court in the city of Springfield, that court succeeded to all the books and records of the justice court with power to issue transcripts. 1934 OAG 286, March 17, 1934 (306a-4).

REPLEVIN

532.15 AFFIDAVIT.

HISTORY. R.S. 1851 c. 69 art. 4 ss. 85, 86; P.S. 1858 c. 59 ss. 98, 99; G.S. 1866 c. 65 ss. 81, 82; G.S. 1878 c. 65 ss. 88, 89; G.S. 1894 ss. 5042, 5043; R.L. 1905 s. 3959; G.S. 1913 s. 7579; G.S. 1923 s. 9070; M.S. 1927 s. 9070.

The jurisdiction of a justice of the peace is not derived from the complaint, but from filing an affidavit stating the value to be $100.00 or less, and a bond. Hecklin v Ess, 16 M 51 (38).

In an action to recover exempt property in justice court a replevin affidavit quoting the language of the statute as to the right of exemption is sufficient. Carlson v Small, 32 M 492, 21 NW 737; Whitney v Swenson, 43 M 337, 45 NW 609.

532.16 BOND.

HISTORY. R.S. 1851 c. 69 art. 4 s. 87; P.S. 1858 c. 59 s. 100; G.S. 1866 c. 65 s. 83; G.S. 1878 c. 65 s. 90; Ex. 1881 c. 5 s. 1; 1885 c. 33 s. 1; G.S. 1894 s. 5044; R.L. 1905 s. 3960; G.S. 1913 s. 7580; G.S. 1923 s. 9071; M.S. 1927 s. 9071.

If an action in replevin before a justice is dismissed with costs, there being no judgment for a return, the defendant cannot recover the value of the property in an action on the replevin bond. Clark v Norton, 6 M 412 (277).

The fact that the name of a surety who signs a bond is not mentioned therein does not affect its validity, if it is apparent from the face of the bond that he intended to be bound by its conditions. Campbell v Rotering, 42 M 115, 43 NW 795; Wheeler v. Paterson, 64 M 231, 66 NW 964.

532.17 WRIT; WHEN RETURNABLE.

HISTORY. R.S. 1851 c. 69 art. 4 s. 88; P.S. 1858 c. 59 s. 101; G.S. 1866 c. 65 s. 84; G.S. 1878 c. 65 s. 91; Ex. 1881 c. 5 s. 2; 1885 c. 33 s. 2; G.S. 1894 s. 5045; 1895 c. 78; R.L. 1905 s. 3961; G.S. 1913 s. 7581; G.S. 1923 s. 9072; M.S. 1927 s. 9072.

Issuance of a writ is compulsory. Hecklin v Ess, 16 M 51 (38).

Where the property has been delivered to the plaintiff, and if on appeal on questions of law alone there is a reversal, it is in effect a dismissal of the action, and the defendant is entitled to return of the property or its value. Terryll v Bailey, 27 M 304, 7 NW 261.

Defects in a writ are waived by answering without objection. McKee v Metraw, 31 M 429, 18 NW 148.

The actual taking of the property is not necessary. Jurisdiction depends upon service of process on the defendant. McKee v Metraw, 31 M 429, 18 NW 148; White v Flamme, 64 M 5, 65 NW 959.

A writ of replevin issued pursuant to Laws 1895, Chapter 229, Section 22, is valid; the protection of the writ extends to the officer and all who assist him; and any action against an officer must be brought within the three-year limitation. Dahl v Halverson, 178 M 174, 226 NW 405.

532.18 TAKING PROPERTY; SERVICE OF WRIT.

HISTORY. R.S. 1851 c. 69 art. 4 s. 89; P.S. 1858 c. 59 s. 102; G.S. 1866 c. 65 s. 85; G.S. 1878 c. 65 s. 92; Ex. 1881 c. 5 s. 3; 1885 c. 33 s. 3; G.S. 1894 s. 5046; R.L. 1905 s. 3962; G.S. 1913 s. 7582; G.S. 1923 s. 9073; M.S. 1927 s. 9073.

532.19 RETURN OF PROPERTY TO DEFENDANT; BOND.

HISTORY. R.S. 1851 c. 70 s. 127; P.S. 1858 c. 60 s. 135; G.S. 1866 c. 66 s. 119; G.S. 1878 c. 66 s. 136; G.S. 1894 s. 5278; 1897 c. 32; R.L. 1905 s. 3963; G.S. 1913 s. 7583; G.S. 1923 s. 9074; M.S. 1927 s. 9074.

532.20 OFFICER'S RETURN; CLAIMANT MADE CODEFENDANT.

HISTORY. R.S. 1851 c. 69 art. 4 ss. 89, 90; P.S. 1858 c. 59 ss. 102, 103; G.S. 1866 c. 65 ss. 85, 86; G.S. 1878 c. 65 ss. 92, 93; Ex. 1881 c. 5 s. 3; 1885 c. 33 s. 3; G.S. 1894 ss. 5046, 5047; R.L. 1905 s. 3964; G.S. 1913 s. 7584; G.S. 1923 s. 9075; M.S. 1927 s. 9075.

532.21 JUDGMENT FOR RETURN TO DEFENDANT; EFFECT.

HISTORY. G.S. 1866 c. 65 s. 89; G.S. 1878 c. 65 s. 96; G.S. 1894 s. 5050; R.L. 1905 s. 3965; G.S. 1913 s. 7585; G.S. 1923 s. 9076; M.S. 1927 s. 9076.

Where the property is delivered to plaintiff, and on trial he fails to substantiate his claim, the defendant is entitled to return of the property or a judgment for its value. Terryll v Bailey, 27 M 304, 7 NW 261; Pabst v Butchart, 68 M 303, 71 NW 273.

532.22 JUDGMENT FOR DEFENDANT.

HISTORY. R.S. 1851 c. 69 art. 4 s. 92; P.S. 1858 c. 59 s. 105; G.S. 1866 c. 65 s. 88; G.S. 1878 c. 65 s. 95; Ex. 1881 c. 5 s. 5; 1885 c. 33 s. 5; G.S. 1894 s. 5049; R.L. 1905 s. 3966; G.S. 1913 s. 7586; G.S. 1923 s. 9077; M.S. 1927 s. 9077.

In replevin before a justice of the peace the judgment should be entered in the alternative, and on appeal to the district court on questions of law alone the court may modify the judgment for the value of the property so as to make it a judgment in the alternative. Kates v Thomas, 14 M 460 (343); Terryll v Bailey, 27 M 304, 7 NW 261; Larson v Johnson, 83 M 351, 86 NW 350.

Defendant's damages for retention is not a counter-claim and requires no seply. Ward v Anderberg, 36 M 300, 30 NW 890.

532.23 JUDGMENT FOR PLAINTIFF; EXECUTION.

HISTORY. R.S. 1851 c. 69 art. 4 s. 91; P.S. 1858 c. 59 s. 104; G.S. 1866 c. 65 s. 87; G.S. 1878 c. 65 s. 94; Ex. 1881 c. 5 s. 4; 1885 c. 33 s. 4; G.S. 1894 s. 5048; R.L. 1905 s. 3967; G.S. 1913 s. 7587; G.S. 1923 s. 9078; M.S. 1927 s. 9078.

If plaintiff recovers but has not obtained possession, the judgment should be in the alternative. McKee v Metraw, 31 M 429, 18 NW 148; Larson v Johnson, 83 M 351, 86 NW 350.

ATTACHMENT

532.24 WHEN ALLOWED.

HISTORY. R.S. 1851 c. 69 art. 4 s. 93; P.S. 1858 c. 59 s. 106; G.S. 1866 c. 65 s. 90; G.S. 1878 c. 65 s. 97; G.S. 1894 s. 5051; 1899 c. 80; R.L. 1905 s. 3968; G.S. 1913 s. 7588; G.S. 1923 s. 9079; M.S. 1927 s. 9079.

Where proceedings are not had by way of attachment under sections 532.24 to 532.36, jurisdiction of an action before a justice of the peace cannot be had. Thomas v Hector, 216 M 208, 12 NW(2d) 769.

Plaintiff did not file the requisite affidavit, nor bond, and no writ was issued, jurisdiction cannot be sustained. Thomas v Hector, 216 M 218, 12 NW(2d) 769.

532.25 AFFIDAVIT; REQUISITES.

HISTORY. R.S. 1851 c. 69 art. 4 s. 94; P.S. 1858 c. 59 c. 107; G.S. 1866 c. 65 s. 91; G.S. 1878 c. 65 s. 98; G.S. 1894 s. 5052; 1899 c. 80; R.L. 1905 s. 3969; G.S. 1913 s. 7589; G.S. 1923 s. 9080; M.S. 1927 s. 9080.

An affidavit for an attachment need not set forth the evidence. It is sufficient if it is in the language of the statute. Curtis v Moore, 3 M 29 (7); Baumgardner v Dowagiac, 50 M 381, 52 NW 964.

An attachment may be issued in an action upon a contract in which the damages claimed are unliquidated. Baumgardner v Dowagiac, 50 M 381, 52 NW 964.

An affidavit for an attachment which shows by recital that the party procuring it is the agent of the plaintiff, is presumptively deemed made on behalf of the plaintiff; or if the files and records disclose the agency. Smith v Victorin, 54 M 338, 56 NW 47; West v Berg, 66 M 287, 68 NW 1077.

The affidavit in the justice court being false the municipal court might have dismissed the action, but the appeal was on questions of law and fact so the municipal court thus acquired general jurisdiction. McCubrey v Lankis, 74 M 302, 77 NW 144.

532.26 WRIT, WHEN RETURNABLE.

HISTORY. R.S. 1851 c. 69 art. 4 s. 95; P.S. 1858 c. 59 s. 108; G.S. 1866 c. 65 s. 92; G.S. 1878 c. 65 s. 99; G.S. 1894 s. 5053; R.L. 1905 s. 3970; G.S. 1913 s. 7590; G.S. 1923 s. 9081; M.S. 1927 s. 9081.

532.27 BOND.

HISTORY. R.S. 1851 c. 69 art. 4 s. 81; P.S. 1858 c. 59 s. 94; 1860 c. 85; G.S. 1866 c. 65 s. 93; G.S. 1878 c. 65 s. 100; G.S. 1894 s. 5054; R.L. 1905 s. 3971; G.S. 1913 s. 7591; G.S. 1923 s. 9082; M.S. 1927 s. 9082.

532.28 WRIT, HOW EXECUTED.

HISTORY. R.S. 1851 c. 69 art. 4 s. 97; P.S. 1858 c. 59 s. 110; 1860 c. 85; G.S. 1866 c. 65 s. 94; G.S. 1878 c. 65 s. 101; G.S. 1894 s. 5055; 1895 c. 34; R.L. 1905 s. 3972; G.S. 1913 s. 7592; G.S. 1923 s. 9083; M.S. 1927 s. 9083.

Failure to serve copy of inventory does not affect the validity of the levy. West v Berg, 66 M 287, 68 NW 1077.

532.29 WHERE DEFENDANT RESIDES IN ANOTHER COUNTY.

HISTORY. 1871 c. 69 s. 1; G.S. 1878 c. 65 s. 102; G.S. 1894 s. 5056; R.L. 1905 s. 3973; G.S. 1913 s. 7593; G.S. 1923 s. 9084; M.S. 1927 s. 9084.

In an action attaching personal property where the defendant resided in another county, the summons may be served upon him personally in the county

of his residence, and the judgment will be valid to the extent of the property attached. Flohrs v Forsyth, 78 M 87, 80 NW 852; State ex rel v Baker, 114 M 209, 130 NW 999.

532.30 SERVICE BY PUBLICATION.

HISTORY. 1871 c. 69 ss. 1 to 3; G.S. 1878 c. 65 ss. 102 to 104; G.S. 1894 ss. 5056 to 5058; R.L. 1905 s. 3974; G.S. 1913 s. 7594; G.S. 1923 s. 9085; M.S. 1927 s. 9085.

The property of a non-resident being attached, and the published summons being defective because the return-day was less than six days after expiration of the publication, the judgment was without jurisdiction and the sale under execution void. Bird v Norquist, 46 M 318, 48 NW 1132.

532.31 FORTHCOMING BOND.

HISTORY. R.S. 1851 c. 69 art. 4 ss. 98, 108; P.S. 1858 c. 59 ss. 111, 121; G.S. 1866 c. 65 ss. 95, 96; G.S. 1878 c. 65 ss. 105, 106; G.S. 1894 ss. 5059, 5060; R.L. 1905 s. 3975; G.S. 1913 s. 7595; G.S. 1923 s. 9086; M.S. 1927 s. 9086.

The bond in attachment was executed by the obligors as principals without any sureties. The obligors when sued cannot question the validity of the officer's levy. Scanlan v O'Brien, 21 M 434.

532.32 PERISHABLE PROPERTY.

HISTORY. R.S. 1851 c. 69 art. 4 s. 99; P.S. 1858 c. 59 s. 112; G.S. 1866 c. 65 s. 97; G.S. 1878 c. 65 s. 107; G.S. 1894 s. 5061; R.L. 1905 s. 3976; G.S. 1913 s. 7596; G.S. 1923 s. 9087; M.S. 1927 s. 9087.

532.33 COMPENSATION OF OFFICER.

HISTORY. R.S. 1851 c. 69 art. 4 s. 100; P.S. 1858 c. 59 s. 113; G.S. 1866 c. 65 s. 98; G.S. 1878 c. 65 s. 108; G.S. 1894 s. 5062; R.L. 1905 s. 3977; G.S. 1913 s. 7597; G.S. 1923 s. 9088; M.S. 1927 s. 9088.

532.34 PROCEDURE.

HISTORY. R.S. 1851 c. 69 art. 4 s. 105; P.S. 1858 c. 59 s. 118; G.S. 1866 c. 65 s. 99; G.S. 1878 c. 65 s. 109; G.S. 1894 s. 5063; R.L. 1905 s. 3978; G.S. 1913 s. 7598; G.S. 1923 s. 9089; M.S. 1927 s. 9089.

532.35 DISSOLUTION.

HISTORY. R.S. 1851 c. 69 art. 4 ss. 106, 107; P.S. 1858 c. 59 ss. 119, 120; G.S. 1866 c. 65 ss. 100, 101; G.S. 1878 c. 65 ss. 110, 111; G.S. 1894 ss. 5064, 5065; R.L. 1905 s. 3979; G.S. 1913 s. 7599; G.S. 1923 s. 9090; M.S. 1927 s. 9090.

The municipal court of Duluth had authority to vacate an attachment only upon bond being given as prescribed. It is unnecessary to employ such means as a condition of maintaining an action for the malicious procuring and levy of same. Rossiter v Minnesota, 37 M 296, 33 NW 855.

532.36 SALE ON EXECUTION.

HISTORY. R.S. 1851 c. 69 art. 4 s. 109; P.S. 1858 c. 59 s. 122; G.S. 1866 c. 65 s. 102; G.S. 1878 c. 65 s. 112; G.S. 1894 s. 5066; R.L. 1905 s. 3980; G.S. 1913 s. 7600; G.S. 1923 s. 9091; M.S. 1927 s. 9091.

APPEALS

532.37 MAY BE TAKEN, WHEN.

HISTORY. R.S. 1851 c. 69 art. 4 s. 123; P.S. 1858 c. 59 s. 136; 1865 c. 22 s. 1; G.S. 1866 c. 65 s. 103; G.S. 1878 c. 65 s. 113; G.S. 1894 s. 5067; R.L. 1905 s. 3981; G.S. 1913 s. 7601; G.S. 1923 s. 9092; M.S. 1927 s. 9092.

Appeal from a justice court to the district court cannot be taken where the judgment of the justice court is less than $15.00, exclusive of costs. Dodd v Cody, 1 M 289 (223).

Defendant may appeal on questions of law and fact where the amount claimed exceeds $30.00, although the recovery is less than $15.00. Shunk v Hellmiller, 11 M 164 (104); Koetke v Ringer, 46 M 259, 48 NW 917.

The "amount claimed in the complaint" governs the right to appeal, and the amount claimed in the counter-claim does not save the right of appeal to the aggrieved party. Ross v Evans, 30 M 206, 14 NW 897.

Where the parties appeared in the district court and consented to go to trial on a day certain, the court acquiesed jurisdiction notwithstanding the irregular mode of appeal. Wrolson v Anderson, 53 M 508, 55 NW 597.

Ortonville is composed of territory within two counties, and an appeal from justice court may be taken to the district court of either county. Minneapolis v Voight, 63 M 145, 65 NW 261.

A judgment for the defendant, dismissing an action of forcible entry, upon withdrawal of the plaintiff, is a final judgment and appealable by plaintiff. Van Vlissingen v Oliver, 102 M 237, 113 NW 383.

An appeal from the judgment of a justice of the peace holding his office in a village incorporated pursuant to Laws 1891, Chapter 146, is properly taken to the district court. Gordon v Freeman, 112 M 482, 128 NW 834, 1118.

No appeal from order of municipal court directing judgment "to be entered accordingly". Thompson v Berg, 152 M 538, 187 NW 703.

Where on appeal taken on questions of law alone a justice court was reversed, the suit is no longer pending within the rule which forbids a second suit on the same cause of action during the pendency of the first. Quammen v Solberg, 173 M 29, 216 NW 252.

532.38 REQUISITES FOR APPEALS.

HISTORY. R.S. 1851 c. 69 art. 4 s. 123; P.S. 1858 c. 59 s. 136; 1865 c. 22 s. 2; G.S. 1866 c. 65 s. 104; 1868 c. 93 s. 1; G.S. 1878 c. 65 s. 114; G.S. 1894 s. 5068; R.L. 1905 s. 3982; G.S. 1913 s. 7602; 1917 c. 283 s. 1; G.S. 1923 s. 9093; M.S. 1927 s. 9093.

1. Affidavit
2. Time of appeal
3. Notice
4. Generally

1. Affidavit

Where the return of a justice of the peace, on appeal, does not include an affidavit for appeal, it is presumed that there was none, and the district court has not jurisdiction, but if in existence it may be carried to the district court in a supplementary return. McFarland v Butler, 11 M 72 (42).

It need not be made before the justice who tried the case; need not be sworn to; and is not invalid because of an error in the date of the judgment. Rahilly v Lane, 15 M 447 (360).

It must appear on its face to have been taken before the proper officer. Knight v Elliott, 22 M 551.

If it appears upon the face of an affidavit that the person subscribing the jurat was a proper officer to take the affidavit, it is sufficient, though the official designation be not affixed to such subscription. Bandy v Chic. St. P. & O. 33 M 380, 23 NW 547.

The filing of proof of a legally effectual service of the notice of appeal is jurisdictional, and failure to comply with the statute cannot be cured by amendment after the ten days within which to appeal has expired. Stolt v Chic. Milw. & St. P. 49 M 353, 51 NW 1103; Grimes v Fall, 81 M 225, 83 NW 835.

An affidavit of service on the "wife" is not sufficient unless the affidavit also states "at the residence" of the party to be served. Stolt v Chic. Milw. & St. P. 49 M 353, 51 NW 1103.

Execution and filing of an affidavit by each defendant who appeals is required where defendants are jointly liable and judgment rendered against them jointly. Harm v Davies, 79 M 311, 82 NW 585.

2. Time of appeal

A defendant against whom a default judgment is entered is out of court, and he is not entitled to notice of further proceedings in the case. Anderson v Graue, 183 M 336, 236 NW 483.

Having paid the fine imposed, defendant has waived the right to appeal. 1942 OAG 10, Feb. 27, 1942 (208-G).

3. Notice

The notice of appeal from the judgment of the justice must be in writing and signed by the appellant, his agent or attorney. Jurisdiction of the justice to allow the appeal depends on the notice, and cannot be waived. The return of the justice must include a proper notice, otherwise the return shows want of jurisdiction. It cannot be supplied after the prescribed time. Larrabee v Morrison, 15 M 196 (151); Marsile v Milw. & St. P. 23 M 4; Pettingill v Donnelly, 27 M 332, 7 NW 360; Cremer v Hartmann, 34 M 97, 24 NW 341; Stolt v Chic. Milw. & St. P. 49 M 353, 51 NW 1103; Looney v Drometer, 69 M 505, 72 NW 797; Smith v Kistler, 84 M 102, 86 NW 876; Treat v Court Minnesota, 109 M 110, 123 NW 62; Wagner v Olson, 134 M 475, 159 NW 751.

If the notice of appeal was in fact filed with the justice, but the justice's return was defective, the appellant might, on proper showing, have applied to the district court for an order directing the justice to make an amended return. An admission of service is proof. Rahilly v Lane, 15 M 447 (360); Looney v Drometer, 69 M 505, 72 NW 797.

A defective notice or proof of service cannot be aided by extrinsic evidence, or amended after the statutory time has expired. Marsile v Milwaukee, 23 M 4; Pettingill v Donnelly, 27 M 332, 7 NW 360; Cremer v Hartmann, 34 M 97, 24 NW 341; Stolt v Chicago, 49 M 353, 51 NW 1103; Graham v Conrad, 66 M 471, 69 NW 334; Grimes v Fall, 81 M 225, 83 NW 835.

While an affidavit of service is to be liberally construed, an affidavit of service on the wife without showing that service was at the residence of a party is insufficient. Toner v Advance, 45 M 293, 47 NW 810; Stolt v Chic. Milw. & St. P. 49 M 353, 51 NW 1103.

Although in Larrabee v Morrison, 15 M 196 (151), it was held that service of notice cannot be waived, that holding has since been very much modified. Wrolson v Anderson, 53 M 508, 55 NW 597; McCubrey v Lankis, 74 M 302, 77 NW 144; Spitzhak v Regenik, 122 M 352, 142 NW 709.

Absolute accuracy is not required in spelling names in legal proceedings, where the difference is not misleading. State v Jones, 55 M 329, 56 NW 1068.

A notice served upon the county attorney need not designate him as such. State v Jones, 55 M 329, 56 NW 1068.

Proof of service upon Empey and Empey is not proof of service on E. E. Empey. Graham v Conrad, 66 M 471, 69 NW 334.

Even though neither the party nor his attorney appeared before the justice, a notice of appeal may be signed by an attorney for the appellant. Conrad v Swanke, 80 M 438, 83 NW 383.

The notice must state specifically the grounds on which the appeal is taken, whether on questions of law or upon questions of law and fact. Smith v Kistler, 84 M 102, 86 NW 876; Buie v Great Northern, 94 M 405, 103 NW 11; Spicer v Kennedy, 144 M 158, 174 NW 821.

Docket entries certified to the district court are not conclusive as against jurisdictional facts in the notice itself. Smith v Kistler, 84 M 102, 86 NW 876.

Defendant's appeal from the municipal court to the district court was fatally defective; but, as the district court has original as well as appellate jurisdiction of such causes the motion of plaintiffs for judgment against the garnishee volun-

tarily made in district court gave it jurisdiction over them. Brennan v Cavanaugh, 178 M 366, 227 NW 200.

One appealing from conviction of violation of a village ordinance should proceed under section 532.38 and not under section 633.20, and notice should be served on the village or its attorney and not on the county attorney. OAG Nov. 20, 1935 (779a-5).

4. Generally

Presence in court at a general term call of the calendar when the case is set for trial, without either participation or objection, does not constitute a general appearance. Spitzhak v Regenik, 122 M 352, 142 NW 709.

The statute expressly authorizes the appellate court to enter judgment affirming the justice court where the case is dismissed; and asking the court under those circumstances to enter an affirmance does not constitute a general appearance. Spicer v Kennedy, 144 M 158, 174 NW 821.

On appeal from a justice to the municipal court of St. Paul, the municipal court acquires jurisdiction of the action when the justice's return is filed in the appellate court and not before. If the complaint is amended, the defendant will not be in default except as to new matter pleaded. Kelly v Anderson, 156 M 71, 194 NW 102.

For purposes of appellate procedure, prosecutions for the violation of municipal ordinances are criminal actions and appeals to the district court must be taken pursuant to sections 633.20, 633.21. Village of Crosby v Stemich, 160 M 261, 199 NW 918.

An order dismissing an appeal from a justice court judgment is not appealable, nor from an order denying a motion to vacate an order dismissing an appeal. Hershman v Razkin, 168 M 31, 209 NW 488.

St. Louis Park is not required to advance any appeal fee in criminal actions. 1934 OAG 273, May 29, 1934 (266b-1).

The right of appeal is waived upon payment of fine for breach of the game laws. 1942 OAG 10, Feb. 27, 1942 (208-G).

532.39 ALLOWANCE; EFFECT.

HISTORY. R.S. 1851 c. 69 art. 4 s. 124; P.S. 1858 c. 59 s. 137; G.S. 1866 c. 65 s. 105; G.S. 1878 c. 65 s. 115; G.S. 1894 s. 5069; R.L. 1905 s. 3983; G.S. 1913 s. 7603; G.S. 1923 s. 9094; M.S. 1927 s. 9094.

The justice cannot allow an appeal unless it is taken within the statutory time. Wagner v Olson, 134 M 475, 159 NW 751.

532.40 RETURN; EVIDENCE, WHEN INCLUDED.

HISTORY. R.S. 1851 c. 69 art. 4 s. 126; P.S. 1858 c. 59 s. 139; G.S. 1866 c. 65 s. 106; 1872 c. 66 s. 1; 1873 c. 66 s. 1; G.S. 1878 c. 65 s. 116; G.S. 1894 s. 5070; R.L. 1905 s. 3984; G.S. 1913 s. 7604; G.S. 1923 s. 9095; M.S. 1927 s. 9095.

An amended return may be compelled under the statute. McFarland v Butler, 11 M 72 (42); Rahilly v Lane, 15 M 447 (360); State v Christensen, 21 M 500; Craighead v Martin, 25 M 41; Plymat v Brush, 46 M 23, 48 NW 443; Cour v Cowdery, 53 M 51, 54 NW 935; Smith v Victorin, 54 M 338, 56 NW 47; Looney v Drometer, 69 M 505, 72 NW 797; Smith v Kistler, 84 M 102, 86 NW 876.

The return must show affirmatively compliance with every jurisdictional prerequisite to an appeal; otherwise the district court will not acquire jurisdiction. McFarland v Butler, 11 M 72 (42); Knight v Elliott, 22 M 551; Stolt v Chicago, 49 M 353, 51 NW 1103; Looney v Drometer, 69 M 505, 72 NW 797; Harm v Davies, 79 M 311, 82 NW 585; Grimes v Fall, 81 M 225, 83 NW 835; Smith v Kistler, 84 M 102, 86 NW 876.

The certificate of the justice that the return contains all the evidence must be definite and certain. "The above is all the testimony" held sufficient. Payson v Everett, 12 M 216 (137); Smith v Force, 31 M 119, 16 NW 704; Plymat v Brush, 46 M 23, 48 NW 443; Dean v St. Paul & Duluth, 53 M 507, 55 NW 628; Continental

v Richardson, 69 M 433, 72 NW 458; Kloss v Sanford, 77 M 510, 80 NW 628; Davis v Van Berg, 79 M 233, 82 NW 311.

The return must show jurisdiction of the person and of the subject matter, and is construed as a whole. Barnes v Holton, 14 M 357 (275); Larrabee v Morrison, 15 M 196 (151).

The statute does not require the return of a justice to show of what county he is justice. Barber v Kennedy, 18 M 216 (196).

On trial, the appeal being taken on questions of law alone, in case it does not appear that the return contains all the testimony, and no request therefor is shown, the question of the sufficiency of the evidence to support the judgment cannot be considered. Distinguished from Payson v Elliott, 12 M 216 (137). Hinds v American Express, 24 M 95; Warner v Fischbach, 29 M 262, 13 NW 47; Tune v Sweeney, 34 M 295, 28 NW 628; Continental v Richardson, 69 M 433, 72 NW 458.

Though, on appeal on questions of law alone, there be no request to return the evidence, yet, if it affirmatively appear to be all returned, the appellate court will consider it. Smith v Force, 31 M 119, 16 NW 704.

The return of a justice cannot be disputed or supplemented by affidavits. If either party claims evidence is omitted, a further return should be applied for. Plymat v Brush, 46 M 23, 48 NW 433.

In the absence of a return from the justice court, the district court on dismissing the appeal cannot legally enter against the defendant a judgment of affirmance. Rowell v Zier, 66 M 432, 69 NW 222.

The district court is "possessed of" the action upon the filing of the justice's return. Christian v Dorsey, 69 M 346, 72 NW 568.

Docket entries of a justice, certified by the justice, are not conclusive against the jurisdictional facts contained in the notice itself. Smith v Kistler, 84 M 102, 86 NW 876.

On appeal from a justice of the peace to the municipal court of the city of St. Paul, the municipal court acquires jurisdiction of the action when the return is filed. Kelly v Anderson, 156 M 71, 194 NW 102.

532.41 APPEALS, HOW TRIED; JUDGMENT.

HISTORY. R.S. 1851 c. 69 art. 4 s. 127; P.S. 1858 c. 59 s. 140; 1865 c. 22 s. 3; G.S. 1866 c. 65 s. 107; 1868 c. 93 s. 2; G.S. 1878 c. 65 s. 117; G.S. 1894 s. 5071; 1895 c. 24; R.L. 1905 s. 3985; G.S. 1913 s. 7605; G.S. 1923 s. 9096; M.S. 1927 s. 9096.

1. Appeals on questions of law and fact
2. Appeals on questions of law alone
3. Presumptions
4. Status after appeal
5. Dismissal

1. Appeals on questions of law and fact

The trial in the district court is of the issues framed by the pleadings in the justice court, unless other pleadings are ordered or allowed. Desnoyer v L'Hereux, 1 M 17 (1); Barth v Horejs, 45 M 184, 47 NW 717; State ex rel v Long, 103 M 29, 114 NW 248.

Where the justice renders judgment in favor of one defendant and against the other, and the latter appeals, the trial in district court proceeds against, and judgment may be rendered against both. Hooper v Farwell, 3 M 106 (58).

Appeal on questions of law and fact brings the case to the district court for trial de novo, and irregularities in the justice court may be disregarded. Hooper v Farwell, 3 M 106 (58); Bingham v Stewart, 14 M 214 (153); Barber v Kennedy, 18 M 216 (196); Craighead v Martin, 25 M 41; Seurer v Horst, 31 M 479, 18 NW 283; Webb v Paxton, 36 M 532, 32 NW 749; Welter v Nakken, 38 M 376, 37 NW 947; McAmber v Balow, 40 M 388, 42 NW 83; Finke v Lukensmeyer, 51 M 252, 53 NW 546; McCubrey v Lankis, 74 M 302, 77 NW 144.

The appellant by appeal permits an amendment of the answer setting up a new defense. Bingham v Stewart, 14 M 214 (153).

By taking an appeal the appellant waives all objections because of the amount in controversy. Lee v Parrett, 25 M 128.

If the defendant appeals after defaulting in the justice court, the court on cause shown will be liberal in permitting him to file answer but he is not privileged to answer as a matter of course. Libby v Mikelborg, 28 M 38, 8 NW 903; Webb v Paxton, 36 M 532, 32 NW 749; Conrad v Swanke, 80 M 438, 83 NW 383.

Appellant waives objection to the jurisdiction of the court over his person. Seurer v Horst, 31 M 479, 18 NW 283; McCubrey v Lankis, 74 M 302, 77 NW 144.

On appeal the court may permit an amendment increasing the amount beyond the jurisdiction of the justice court. McAmber v Balow, 40 M 388, 42 NW 83.

If on appeal plaintiff amends his complaint the defendant may answer. Conrad v Swanke, 80 M 438, 83 NW 383.

Where defendant appeals from a judgment rendered in justice court for trial de novo, such appeal constitutes a general appearance and a waiver of previous lack of jurisdiction. Minneapolis v King, 198 M 420, 270 NW 148.

A party who appeals from justice court upon questions of law and fact waives objections to irregularities in proceedings in justice court. Schutt v Brown, 201 M 106, 275 NW 413.

2. Appeals on questions of law alone

An appeal on questions of law brings before the court for review all errors of law, jurisdictional or otherwise, apparent on the return of the justice and properly excepted to in those cases where an exception is necessary. Mattice v Litcherding, 14 M 142 (110); Craighead v Martin, 25 M 41.

On an appeal upon questions of law alone, the statute does not say that the judgment appealed from shall be reversed, affirmed or modified, but that the appeal shall be tried; and the court tries the issues presented by the record and renders the proper judgment. Kates v Thomas, 14 M 460 (343); Craighead v Martin, 25 M 41.

The district court may affirm, reverse or modify the judgment appealed from, and in case of a reversal and in a proper case determine the merits, and render judgment accordingly. Kates v Thomas, 14 M 460 (343); State v Bliss, 21 M 458; Craighead v Martin, 25 M 41; Watson v Ward, 27 M 29, 6 NW 407; Terryl v Bailey, 27 M 304, 7 NW 261; Johnston v Clark, 30 M 308, 15 NW 252; Meister v R. P. Russell, 53 M 54, 54 NW 935; Thorson v Sandby, 68 M 166, 70 NW 1083; Hardenberg v Roesner, 83 M 7, 85 NW 719; Larson v Johnson, 83 M 351, 86 NW 350; Newhauser v Banish, 84 M 286, 87 NW 774.

A judgment will not be reversed for any mere defect in the return. Rahilly v Lane, 15 M 447 (360).

It is necessary to accept to the rulings of the justice as to the admission of evidence, the competency of witnesses, and to all other rulings made in the course of the trial in order to review them on appeal on question of law alone. Witherspoon v Price, 17 M 337 (313); Franek v Vaughn, 81 M 236, 83 NW 982.

A perfected appeal operates to supersede the judgment of the justice, whether of law and fact or on law alone. A case is never remanded to the justice for new trial. State v Bliss, 21 M 458; Terryl v Bailey, 27 M 304, 7 NW 261.

If the return does not contain all the evidence or any request for its return, the sufficiency of the evidence will not be considered but it will be presumed that sufficient competent evidence was introduced under the issues to support the judgment. Hinds v American Express Co. 24 M 95; Warner v Fischbach, 29 M 262, 13 NW 47; Tune v Sweeney, 34 M 295, 25 NW 628; Continental v Richardson, 69 M 433, 72 NW 458.

By appealing on questions of law alone a party does not waive objection to the jurisdiction of the court over his person. Craighead v Martin, 25 M 41; McCubrey v Lankis, 74 M 302, 77 NW 144.

Pleadings will be construed with great liberality when objected to for the first time on appeal. Thompson v Killian, 25 M 111; Polk v American Mortgage, 68 M 169, 70 NW 1078.

A reversal, not determining the merits, has the effect of a dismissal; and it annuls all proceedings before the justice and leaves the party to proceed de novo. Terryl v Bailey, 27 M 304, 7 NW 261; Daley v Mead, 40 M 382, 42 NW 85.

If all the evidence is included in the return it will be considered even if appeal was on law alone and the evidence included without request. Smith v Force, 31 M 119, 16 NW 704.

Failure to file the note sued upon is not ground for reversal. Tune v Sweeney, 34 M 295, 25 NW 628.

The appeal being on questions of law alone, the evidence being returned, the appellant may make and avail himself of the point that there was no evidence to justify the judgment; but the court will consider the evidence only so far as to determine whether from the facts the justice's finding would justify the judgment. The appellate court will not consider the question of preponderance. Palmer v St. Paul & Duluth, 38 M 415, 38 NW 100; Croonquist v Flatner, 41 M 291, 43 NW 9; Larson v Johnson, 83 M 351, 86 NW 350; Newhauser v Banish, 84 M 286, 87 NW 774.

Dismissing an appeal instead of affirming the judgment where the respondent is entitled to an affirmance is immaterial error. Schroeder v Harris, 43 M 160, 45 NW 4.

Admissions in an unauthorized reply when a part of the record on appeal may be treated as formal admission in the district court. Warder v Willyard, 46 M 531, 49 NW 300.

A judgment of a justice, appealed from on law alone, cannot be reversed because the justice, having been requested to do so, has not returned all the evidence. The party's remedy in such case is by proceedings to compel a full return. Cour v Cowdery, 53 M 51, 54 NW 395.

On an appeal on questions of law alone, the district court may, after a decision, reconsider and modify it. Meister v Russell, 53 M 54, 54 NW 935.

In case of erroneous or incomplete return of taxation of costs the remedy is to require an amended return. Smith v Victorin, 54 M 338, 56 NW 47.

Under our present statutes the district court is not limited to objections raised and passed upon by the justice. This modifies the holdings in Bennett v Phelps, 12 M 326 (216) and Barber v Kennedy, 18 M 216 (196). Franek v Vaughan, 81 M 236, 83 NW 982; Newhauser v Banish, 84 M 286, 87 NW 774.

Where a justice excludes a material issue from consideration, the district court passes upon the issue as if it were an original issue therein. Newhauser v Banish, 84 M 286, 87 NW 774.

The appeal being on law alone, the district court cannot relieve a party from an admission made of record on trial in the justice court. Merriman v Anselment, 86 M 6, 89 NW 1125.

On appeal on questions of law alone the cause is tried on the evidence returned, and where such evidence does not support a verdict for the plaintiff, it is proper to order judgment for defendant. Phillips v Webb, 125 M 300, 146 NW 1100.

3. Presumptions

The justice having acquired jurisdiction the same presumption as to regularity applies as in a court of record. Payson v Everett, 12 M 216 (137); Hecklin v Ess, 16 M 51 (38); Clague v Hodgson, 16 M 329 (291); Anderson v Southern Minnesota, 21 M 30; Burt v Bailey, 21 M 403; State v Schmahl, 21 M 370; Smith v Victorin, 54 M 338, 56 NW 47; Wheeler v Paterson, 64 M 231, 66 NW 964; Vaule v Miller, 64 M 485, 67 NW 540; Ellegaard v Hankaas, 72 M 246, 75 NW 128.

After judgment every presumption favors the regularity and validity of the proceedings in the justice court. Payson v Everett, 12 M 216 (137); State v Christensen, 21 M 500; Polk v American Mortgage, 68 M 169, 70 NW 1078; Smith v Kistler, 84 M 102, 86 NW 876.

Docket entries are presumed to be valid. State v Christensen, 21 M 500.

Oral complaints are presumed to be verified. Burt v Bailey, 21 M 403.

It is presumed that the justice taxed only such costs as are legally taxable. Smith v Victorin, 54 M 338, 56 NW 47.

A certificate that all papers have been returned will be presumed to refer to the only notice found in the file so returned. Smith v Kistler, 84 M 102, 86 NW 876.

4. Status after appeal

An appeal having been properly and regularly taken the proceedings before the justice become lis pendens in the district court. Fallman v Gillman, 1 M 179 (153); Bryan v Farnsworth, 19 M 239 (198); Larson v Johnson, 83 M 351, 86 NW 350.

On appeal the district court becomes "possessed of" the action, and acquires complete jurisdiction. Christian v Dorsey, 69 M 346, 72 NW 568.

5. Dismissal

The plaintiff, on appeal, may dismiss his action. Fallman v Gillman, 1 M 179 (153).

532.42 ENTRY ON CALENDAR.

HISTORY. R.S. 1851 c. 69 art. 4 s. 128; P.S. 1858 c. 59 s. 141; G.S. 1866 c. 65 s. 108; 1871 c. 73 s. 1; G.S. 1878 c. 65 s. 118; G.S. 1894 s. 5072; R.L. 1905 s. 3986; G.S. 1913 s. 7606; G.S. 1923 s. 9097; M.S. 1927 s. 9097.

An appeal on questions of law alone may be brought on for hearing at any time; even within 30 days from filing. Chesterson v Munson, 27 M 498, 8 NW 593; Rollins v Notting, 53 M 232, 54 NW 1118.

The district court by order may relieve the appellant from the consequences of his omission, and try the cause on its merits. Christian v Dorsey, 69 M 346, 72 NW 568; Sundet v Steenerson, 69 M 351, 72 NW 569.

The absolute right of an appellant to enter his appeal from trial on the district court calendar terminates with the second day of the term. Sundet v Steenerson, 69 M 351, 72 NW 569.

Where relief from omission to enter an appeal within the statutory time has been improvidently ordered, the district court may vacate the order and restore to the respondent the right to have the judgment entered. Sundet v Steenerson, 69 M 351, 72 NW 569; Rowell v Zier, 66 M 432, 69 NW 222.

The mere absence from the judgment roll of papers which ought to have been included, and which if included, would affirmatively show that the court had jurisdiction, is not enough to "make it affirmatively appear from the face of the record that the court had no jurisdiction". Gullickson v Bodkin, 78 M 33, 80 NW 783.

Setting aside of a judgment entered upon motion of appellee, for failure to place a justice appeal on the calendar, is wholly discretionary; and the order of the district court in such case will not be disturbed, unless in a clear case of abuse of discretion. Locke v Osborne, 80 M 22, 82 NW 1084.

Where the appellant does not appear and prosecute his appeal, the district court is not required to hear evidence or determine the case; and an application to be relieved from such default on appeal from the probate court is addressed to the discretion of the district court. Blandin v Brennin, 106 M 353, 119 NW 57.

532.43 ALLOWANCE COMPELLED, WHEN.

HISTORY. R.S. 1851 c. 69 art. 4 s. 130; P.S. 1858 c. 59 s. 143; G.S. 1866 c. 65 s. 110; G.S. 1878 c. 65 s. 120; G.S. 1894 s. 5074; R.L. 1905 s. 3987; G.S. 1913 s. 7607; G.S. 1923 s. 9098; M.S. 1927 s. 9098.

532.44 RETURN OR AMENDMENT COMPELLED, WHEN.

HISTORY. R.S. 1851 c. 69 art. 4 ss. 129, 131; P.S. 1858 c. 59 ss. 142, 144; G.S. 1866 c. 65 ss. 109, 111; G.S. 1878 c. 65 ss. 119, 121; G.S. 1894 ss. 5073, 5075; R.L. 1905 s. 3988; G.S. 1913 s. 7608; G.S. 1923 s. 9099; M.S. 1927 s. 9099.

532.45 DEFECTIVE BOND.

HISTORY. R.S. 1851 c. 69 art. 4 s. 132; P.S. 1858 c. 59 s. 145; G.S. 1866 c. 65 s. 112; G.S. 1878 c. 65 s. 122; G.S. 1894 s. 5076; R.L. 1905 s. 3989; G.S. 1913 s. 7609; G.S. 1923 s. 9100; M.S. 1927 s. 9100.

The transcript shows that a bond was filed. The return did not contain any, but the absence of a bond is not grounds for dismissal. The district court has full power to correct and supply such omissions. Rahilly v Lane, 15 M 447 (360); Marsile v Milwaukee, 23 M 4.

The filing of a bond by the appellant is essential to the jurisdiction of the justice to proceed. A bond requires two or more sureties. State ex rel v Fitch, 30 M 532, 16 NW 411.

A bond purporting to be the obligation of one as principal and others as sureties, but executed by one surety only is insufficient for the purposes of appeal in road proceedings and the justice does not acquire jurisdiction. State ex rel v Austin, 35 M 51, 26 NW 906.

Filing of the duly approved bond within the prescribed 30 days is, in highway proceedings, a jurisdictional prerequisite. Schwede v Burnstown, 35 M 468, 29 NW 72.

A bond on appeal, although not conditioned in the exact words of the statute, is in the instant case sufficient. Anderson v County of Meeker, 46 M 237, 48 NW 1022.

Before a motion to dismiss is determined, the appellant may furnish a proper bond. Mills v Wilson, 59 M 107, 60 NW 1083; Eidam v Johnson, 79 M 249, 82 NW 578.

Upon the denial of the district court to allow the sureties to justify it was proper to have the clerk enter judgment against the party prosecuting the appeal. Peterson v Kjellin, 93 M 422, 101 NW 948.

The provisions in section 532.45 regarding bond apply to civil actions only. State v Mattson, 105 M 63, 117 NW 227.

The appeal must be taken within the ten-day limit prescribed by statute. Wagner v Olson, 134 M 475, 159 NW 751.

One who appeals from a judgment rendered in justice court has no right to substitute a new bond after his appeal has been dismissed because the original bond was insufficient or defective. Hershman v Razkin, 168 M 31, 209 NW 488.

532.46 APPEAL TO BE TRIED, WHEN.

HISTORY. R.S. 1851 c. 69 art. 4 s. 133; P.S. 1858 c. 59 s. 146; G.S. 1866 c. 65 s. 113; G.S. 1878 c. 65 s. 123; G.S. 1894 s. 5077; R.L. 1905 s. 3990; G.S. 1913 s. 7610; G.S. 1923 s. 9101; M.S. 1927 s. 9101.

An appeal on questions of law alone may be heard at any time, and unless objected to, in an adjoining county, it may be heard at the next term of the district court even though 30 days have not expired. Chesterson v Munson, 27 M 498, 8 NW 593; Rollins v Nolting, 53 M 232, 54 NW 1118.

532.47 JUDGMENT, WHEN AFFIRMED; AGAINST SURETIES.

HISTORY. R.S. 1851 c. 69 art. 4 s. 134; P.S. 1858 c. 59 s. 147; G.S. 1866 c. 65 s. 114; G.S. 1878 c. 65 s. 124; G.S. 1894 s. 5078; 1895 c. 24; R.L. 1905 s. 3991; G.S. 1913 s. 7611; G.S. 1923 s. 9102; M.S. 1927 s. 9102.

The statute authorizing judgment, upon affirmance on appeal from the judgment of the justice of the peace to be entered against the surety in the recognizance is valid. Davidson v Farrell, 8 M 258 (225); Libby v Mickleborg, 28 M 38, 8 NW 903; Libby v Husby, 28 M 40, 8 NW 903; Stopp v Steamboat Clyde, 44 M 510, 47 NW 160; Meilke v Nelson, 81 M 228, 83 NW 836.

Judgment cannot be entered in cases where no return is filed, the district court having no jurisdiction. Rowell v Zier, 66 M 432, 69 NW 222.

No appeal lies from the order of dismissal, but does lie from the entry of a judgment based thereon. Graham v Conrad, 66 M 470, 69 NW 215.

On affirmance of the judgment and dismissal of the appeal because of default on the part of the appellant it is within the power but not mandatory for the court to enter judgment of affirmance and against the sureties. State ex rel v Long, 103 M 29, 114 NW 248; Blandin v Brennin, 106 M 353, 119 NW 57; Spicer v Kennedy, 144 M 158, 174 NW 821.

This section applies to proceedings in the municipal court of the city of St. Paul. Holmes v Igo, 110 M 133, 124 NW 974.

532.48 ENFORCEMENT AGAINST SURETIES.

HISTORY. R.S. 1851 c. 69 art. 4 s. 135; P.S. 1858 c. 59 s. 148; G.S. 1866 c. 65 s. 115; G.S. 1878 c. 65 s. 125; G.S. 1894 s. 5079; R.L. 1905 s. 3992; G.S. 1913 s 7612; G.S. 1923 s. 9103; M.S. 1927 s. 9103.

532.49 RIGHTS OF SURETY PAYING.

HISTORY. R.S. 1851 c. 69 art. 4 s. 136; P.S. 1858 c. 59 s. 149; G.S. 1866 c. 65 s. 116; G.S. 1878 c. 65 s. 126; G.S. 1894 s. 5080; R.L. 1905 s. 3993; G.S. 1913 s. 7613; G.S. 1923 s. 9104; M.S. 1927 s. 9104.

532.50 RETURN; JUSTICE OUT OF OFFICE.

HISTORY. G.S. 1866 c. 65 s. 118; G.S. 1878 c. 65 s. 127; G.S. 1894 s. 5081; R.L. 1905 s. 3994; G.S. 1913 s. 7614; G.S. 1923 s. 9105; M.S. 1927 s. 9105.

FORMS IN CIVIL ACTIONS

532.51 SCHEDULE OF FORMS.

HISTORY. R.S. 1851 c. 69 art. 4 s. 164; P.S. 1858 c. 59 s. 178; G.S. 1866 c. 65 s. 129; G.S. 1878 c. 65 s. 138; G.S. 1894 s. 5092; R.L. 1905 s. 3998; G.S. 1913 s. 7618; G.S. 1923 s. 9109; M.S. 1927 s 9109.