

CHAPTER 531

ACTIONS AND PROCEEDINGS IN CIVIL CASES

COMMENCEMENT OF ACTIONS

531.01 ACTIONS, HOW COMMENCED.

In suretyship cases. 12 MLR 716.

531.04 SUMMONS; SERVICE.

In an action on a justice court judgment, the defendant may, by way of counterclaim, attack the jurisdiction of the court. A general denial of jurisdiction, or of the service of the summons, is not sufficient. The defendant must plead facts sufficient to constitute a cause of action to the same extent as though he had brought an original action attacking the judgment for want of jurisdiction. *Vaule v Miller*, 69 M 440, 72 NW 452; *Deering v Posten*, 78 M 29, 80 NW 783; *Stevenson v Murphy*, 106 M 243, 119 NW 47.

Section 531.04 refers to service of a summons issued by a justice of the peace upon individuals. *Thomas v Hector*, 216 M 215, 12 NW(2d) 769.

PLEADINGS AND TRIAL

531.11 TRANSFER OF ACTION.

Where the defendant, a non-resident of the county, is served with process within the county in a civil action before a justice of the peace at the county seat, jurisdiction is acquired and no change of venue to the defendant's county is permitted. If defendant can change the venue to a municipal court in the county where the case is pending, he might be able to change the venue to a municipal court in his own county under section 542.15. 1944 OAG 72, Nov. 10, 1943 (266-B-11).

531.14 PLEADINGS IN JUSTICES' COURTS.

The defendant under justice practice may be required to make at least two appearances in justice court, the first under section 531.14 to interpose pleadings, and the second under section 531.27 for trial. *Thomas v Hector*, 216 M 217, 12 NW(2d) 769.

531.17 COMPLAINT.

Sufficiency of complaint as against objection raised for the first time after judgment. *Taylor v Parker*, 17 M 469 (447); *Chesterton v Munson*, 27 M 498, 8 NW 593; *Kubesh v Hanson*, 93 M 259, 101 NW 73.

531.18 ANSWER.

Pleadings in justice court must be construed with great liberality. *McGrath v O'Brien*, 42 M 13, 43 NW 486; *Harm v Davies*, 79 M 311, 82 NW 585.

531.26 AMENDMENT.

In justice's court it is error for the justice to dismiss an action for defects in the complaint without first ordering an amendment after pleading. *Middlestadt v McIntyre*, 55 M 69, 56 NW 464.

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TRIAL BY JURY

531.34 JURY, HOW CHOSEN.

In addition to the five dollar deposit required upon appeal from conciliation court to the municipal judge, the municipal judge in his discretion may require sufficient deposit to cover jury fees. OAG June 1, 1943 (199-A-2).

JUDGMENTS

531.43 BY CONFESSION.

Non-appearance of a defendant in a justice court is not a confession of judgment or of the claim of the plaintiff. The plaintiff must prove his claim notwithstanding the defendant's failure to appear and answer. *Larson v Kelly*, 72 M 116, 75 NW 13.

531.51 OPENING DEFAULT.

Cases involving lack of service or lack of jurisdiction. *Knutson v Davies*, 51 M 363, 53 NW 646; *Kane v Arneson*, 94 M 451, 103 NW 218.

531.52 TRANSCRIPT; DOCKETING IN DISTRICT COURT.

The law providing for the filing of transcript of judgment rendered in the municipal courts of the state (L. 1895, c. 229, s. 30) is distinct from and not controlled by, the statute relating to the returning of filing transcripts of justice court judgments, and the former are sufficient if they contain the docket entries of the same. *Schmahl v Thompson*, 82 M 78, 84 NW 649.

531.54 EXECUTION, ON WHAT LEVIED.

Garnishment and bankruptcy. 27 MLR 1.