

CHAPTER 544

PLEADINGS

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544.01 PLEADINGS, HOW REGULATED. The forms of proceedings in civil actions, and the rules by which the sufficiency of pleadings is to be determined, shall be governed by statute. The pleadings shall be:

- (1) On the part of the plaintiff, a complaint, and a demurrer, or a reply;
- (2) On the part of the defendant, a demurrer, or an answer.

[R. L. s. 4126] (9249)

544.02 CONTENTS OF COMPLAINT. The complaint shall contain:

- (1) The title of the action, naming the court and the county in which it is brought, and the parties, plaintiff and defendant, therein;
- (2) A plain and concise statement of facts constituting a cause of action, without unnecessary repetition;
- (3) A demand for the relief desired by the plaintiff; and, if a recovery of money be demanded, the amount shall be stated.

[R. L. s. 4127] (9250)

544.03 DEMURRER TO COMPLAINT. Subdivision 1. **Grounds.** Within the time allowed by law for answering the complaint, the defendant may demur thereto if it shall appear therefrom either: ..

- (1) That the court has not jurisdiction of the defendant's person or of the subject of the action;
- (2) That the plaintiff has not legal capacity to sue;
- (3) That there is another action pending between the same parties for the same cause;
- (4) That there is a defect of parties, plaintiff or defendant;
- (5) That several causes of action are improperly united;
- (6) That the facts stated do not constitute a cause of action.

Subd. 2. **Requisites.** The demurrer may be taken to the whole complaint, or to any of the causes of action therein stated. It shall distinctly specify the grounds of objection; otherwise it may be disregarded. If any such ground exists, but does not appear upon the face of the complaint, the objection may be taken by answer.

Subd. 3. **Waiver.** If not taken by either demurrer or answer, the defendant shall be deemed to have waived the same, save only the objection to the jurisdiction of the court and to the sufficiency of the facts to constitute a cause of action.

Subd. 4. **Hearing and Determination.** Demurrers may be heard and determined as provided in section 545.02.

[R L s 4124, 4128, 4129; 1909 c 433 s 1] (9251, 9252)

544.04 CONTENTS OF ANSWER. The answer shall contain:

- (1) A denial of each allegation of the complaint controverted by the defendant, or an averment that he has not knowledge or information thereof sufficient to form a belief;
- (2) A statement, in ordinary and concise language, of any new matter constituting a counter-claim or defense;
- (3) All equities in favor of the defendant existing at the time of the commencement of the action, or afterwards and before the service of the answer. If the same be admitted or the issue thereon be determined in favor of the defendant, he shall be entitled to such relief as the nature of the case demands.

[R. L. s. 4130] (9253)

544.05 REQUISITES OF A COUNTER-CLAIM; PLEADING DOES NOT ADMIT.

The pleading of a counter-claim shall not be construed as an admission of any cause of action alleged in the complaint. Such counter-claim must be an existing one in favor of a defendant and against a plaintiff, between whom a several judgment might be had in the action, and must be:

- (1) A cause of action arising out of the contract or transaction pleaded in the complaint as the foundation of plaintiff's claim, or connected with the subject of the action; or
- (2) In an action arising on contract, another cause of action arising also on contract, and existing when the action was begun.

[R. L. s. 4131] (9254)

544.06 DEFENSES, HOW PLEADED; ANSWER AND DEMURRER. The defendant may set forth by answer as many defenses and counter-claims as he has. They shall be separately stated, and so framed as to show the cause of action to which each is intended to be opposed. He may also demur to one or more of several causes of action in the complaint and answer to the remainder.

[R. L. s. 4132] (9255)

544.07 JUDGMENT ON DEFENDANT'S DEFAULT. On proof being filed that the summons has been duly served, and that no answer or demurrer to the complaint has been received within the time allowed therefor by law, judgment may be had as follows:

- (1) If the action be upon contract for the payment of money only, the clerk shall enter judgment for the amount stated in the summons;
- (2) In other actions for the recovery of money only, the court shall ascertain, by a reference or otherwise, the amount to which plaintiff is entitled, and order judgment therefor;
- (3) If other relief be demanded, and the taking of an account, or the proof of any fact, be necessary to enable the court to give judgment, it may take or hear the same or order a reference for that purpose, and order judgment accordingly;
- (4) When service of the summons has been made by published notice, or by delivery of a copy without the state, no judgment shall be entered on default until the plaintiff shall have filed a bond, approved by the court, conditioned to abide such order as the court may make touching the restitution of any property collected or obtained by virtue of the judgment in case a defense is thereafter permitted and sustained; provided that in actions involving the title to real estate or to foreclose mortgages thereon, such bond shall not be required.

[R. L. s. 4133] (9256)

544.08 DEMURRER OR REPLY TO ANSWER. The plaintiff, within 20 days after the answer is served, may demur thereto, or to any counter-claim or defense pleaded therein, upon the ground that the same does not state facts sufficient to constitute a defense or a counter-claim, as the case may be; and he may demur to one or more of such defenses or counter-claims, and reply to the remainder. If the answer contain new matter not demurred to, the plaintiff shall reply thereto, denying the averments controverted by him, or averring that he has not knowledge or information thereof sufficient to form a belief, or alleging any new matter, not inconsistent with the complaint, constituting a defense thereto.

[R. L. s. 4134; 1913 c. 54 s. 1] (9257)

544.09 FAILURE TO REPLY; JUDGMENT. If the plaintiff shall fail, within the time allowed by law, to demur or reply to new matter contained in the answer, the court, on motion, may order such judgment in defendant's favor as he may be entitled to upon his answer, or may direct a reference or an assessment of damages by a jury, as the case requires.

[R. L. s. 4135] (9258)

544.10 SHAM AND FRIVOLOUS PLEADINGS. Sham, irrelevant, or frivolous answers, defenses, or replies, and frivolous demurrers, may on motion be stricken out, or judgment rendered notwithstanding the same, as for want of answer or reply.

[R. L. s. 4136] (9259)

544.11 SUPPLEMENTAL PLEADINGS. The plaintiff may be permitted, on motion, to file a supplemental complaint or reply, and the defendant a supplemental answer, alleging material facts which have occurred since the former pleading.

[R. L. s. 4137] (9260)

544.12 INTERPLEADER. In an action for the recovery of money upon contract, or of specific real or personal property, if any person not a party to the action demands of the defendant the same debt or property, the defendant may move the court to substitute such claimant as defendant in his stead, and that he be permitted to pay the money into court, or deliver the property or its value to such person as the court may direct. If it be made to appear that such demand is without collusion with the defendant, the motion may be granted, and upon compliance with the order the defendant shall be discharged. Thereafter the action shall proceed against the substituted defendant and the court may compel the parties to interplead.

[R. L. s. 4138] (9261)

544.13 INTERVENTION. Any person having such an interest in the matter in litigation between others that he may either gain or lose by the direct legal effect of the judgment therein may serve a complaint in the pending action, at any time before the trial begins, alleging the facts which show such interest, and demanding appropriate relief against either or both of the parties. Such intervenor shall not be entitled to delay, and, if a continuance be occasioned by him, it may be granted at his expense. The ordinary rules of pleading shall govern, except that the court, in order to avoid delaying the trial, may shorten the time within which subsequent pleadings shall be served. All the issues shall be determined together, and if the intervenor's claim be not sustained he shall pay the costs resulting therefrom.

[R. L. s. 4140] (9263)

544.14 DEPOSIT WHEN NO ACTION IS BROUGHT. When money or other personal property in the possession of any person, as bailee or otherwise, is claimed adversely by two or more other persons, and the right thereto as between such claimants is in doubt, the person so in possession, though no action be commenced against him by any of the claimants, may place the property in the custody of the court. He shall apply to the district court of the county in which the property is situated, or to any municipal court therein, setting forth by petition the facts which bring the case within the provisions of this section, and the names and places of residence of all known claimants of such property. If satisfied of the truth of such showing, the court, by order, shall designate a depository to whom the money or other property may be delivered, and direct that upon such delivery, and upon giving notice thereof to all persons interested, personally or by registered mail, as in such order prescribed, the petitioner be relieved from further liability on account thereof. This section shall apply to cases where property held under like conditions is garnished in the hands of the possessor; but in such cases the application shall be made to the court in which the garnishment proceedings are pending.

[R. L. s. 4139] (9262)

544.15 SUBSCRIPTION AND VERIFICATION. Every pleading in a court of record shall be subscribed by the party or his attorney, and may be verified in the manner following:

(1) By the affidavit of the party, or of one or more of the parties pleading together, that the affiant knows the contents of the pleading, that the averments thereof are true of his own knowledge, save as to such as are therein stated on information and belief, and that as to those he believes them to be true;

(2) If the party be a corporation, the affidavit may be made by any officer thereof having knowledge of the facts sworn to; if the state, or any officer thereof acting in its behalf, by the attorney general;

(3) If no party or officer acquainted with the facts and capable of making such affidavit be within the county where the attorney resides, the pleading may be verified by the attorney or agent of the party, stating the fact of such absence, and that the pleading is true to the best of his knowledge and belief.

When any pleading is so verified, all subsequent pleadings in the case, except demurrers, shall be verified also. The verification may be omitted when an admission of the truth of the allegation might subject the party to prosecution for felony.

[R. L. s. 4142] (9265)

544.16 PLEADINGS LIBERALLY CONSTRUED. For the purpose of determining the effect of a pleading, it shall be liberally construed, with a view to substantial justice between the parties.

[R. L. s. 4143] (9266)

544.17 IRRELEVANT, REDUNDANT, AND INDEFINITE PLEADINGS. If irrelevant or redundant matter is inserted in a pleading, it may be stricken out on motion; and when a pleading is double, or does not conform to the statute, or when the allegations thereof are so indefinite or uncertain that the precise nature of the charge or defense is not apparent, the court may strike it out on motion, or require it to be amended.

[R. L. s. 4144] (9267)

544.18 AVERMENTS, WHEN DEEMED ADMITTED. Every material allegation of the complaint, and of new matter in the answer, not controverted by the answer or reply, respectively, shall be taken as true. All allegations of new matter in the reply shall be deemed denied, and may be controverted by defendant at the trial by proofs, either in direct denial or in avoidance thereof.

[R. L. s. 4145] (9268)

544.19 JUDGMENT, HOW PLEADED; PROOF. In pleading a judgment or other determination of a court or officer of general or special jurisdiction, it shall be sufficient to allege that the same was duly made or given, without stating the facts conferring jurisdiction. In cases of special jurisdiction, if such allegation be controverted, the party pleading the judgment or determination must prove the facts conferring jurisdiction.

[R. L. s. 4146] (9269)

544.20 ORDINANCES AND LOCAL STATUTES. In pleading any ordinance of a city or village, or any special or local statute, or any right derived from either, it shall be sufficient to refer to the ordinance or statute by its title and the date of its approval, and thereupon the court shall take judicial notice thereof.

[R. L. s. 4147] (9270)

544.21 INCORPORATION, PLEADING AND PROOF. In actions by or against a corporation, domestic or foreign, it shall be a sufficient averment of its incorporation to allege, in substance, that the party is a corporation duly organized and existing under the laws of the designated state, country, or place. Unless the adverse party shall specifically aver that the plaintiff or defendant is not a corporation, no proof thereof shall be required at the trial.

[R. L. s. 4148] (9271)

544.22 PARTNERSHIPS; PROOF AS TO MEMBERS. When two or more persons sue or defend as copartners they may give in evidence any contract admissible under the pleadings. Unless the partnership is specifically denied by the adverse party, no proof shall be required that they are the same persons who composed such copartnership when the contract was made or at any subsequent time.

[R. L. s. 4149] (9272)

544.23 CONDITIONS PRECEDENT. In pleading the performance of conditions precedent in a contract, it shall not be necessary to allege the facts showing such performance, but it may be stated generally that the party duly performed all the conditions on his part; and if such allegation be denied, the party so pleading must prove the facts showing such performance.

[R. L. s. 4150] (9273)

544.24 ITEMS OF ACCOUNT, HOW PLEADED. The items of an account need not be set forth in a pleading, but the party alleging it, if a written demand therefor be served by the adverse party, shall deliver a copy of the account within ten days after such demand, verified by the affidavit of himself, or of some person having knowledge thereof, as in the case of a pleading. If such copy be withheld, or if a further or more particular bill be not furnished when ordered by the court, evidence of the account may be excluded.

[R. L. s. 4151] (9274)

544.25 PLEADINGS IN SLANDER AND LIBEL. In actions for libel or slander, it shall be sufficient instead of stating extrinsic facts showing the application to plaintiff of the defamatory matter complained of, to allege, generally, that the same was published or spoken concerning the plaintiff; and if such allegation is controverted, the plaintiff is bound to establish on the trial that it was so published or spoken. The defendant may allege, in his answer, both the truth of the matter charged as defamatory and any circumstances in mitigation of damages, and, whether he proves the justification or not, he may give in evidence the mitigating circumstances.

[R. L. s. 4152] (9275)

544.26 ANSWER IN ACTION FOR DISTRAINED ANIMALS. In actions for the recovery of animals distrained while doing damage, an answer alleging that defendant, or the person under whose command he acted, was lawfully possessed of the land upon which the distress was made, and that the animal at the time was doing damage thereon, shall be sufficient, without alleging title to such land.

[R. L. s. 4153] (9276)

544.27 JOINDER OF CAUSES OF ACTION. Two or more consistent causes of action, whether legal or equitable, may be united in one pleading, being separately stated therein; provided, that they must affect all parties to the action, must not require separate places of trial, and must be included in one only of the following classes:

- (1) The same transaction, or transactions connected with the same subject of action;
- (2) Contracts, express or implied;
- (3) Injuries to either person or property, or both;
- (4) Injuries to reputation;
- (5) For the recovery of real property, with or without damages for withholding the same, and of the rents and profits thereof;
- (6) For the recovery of personal property, with or without damages for withholding the same; or
- (7) Claims against a trustee by virtue of a contract, or arising by operation of law.

[R. L. s. 4154] (9277)

544.28 UNKNOWN DEFENDANT, HOW DESIGNATED. When the plaintiff is ignorant of the name of a defendant, and shall so allege in his complaint, such defendant may be designated by any name; and when his true name is discovered, the process and all pleadings and proceedings in the action may be amended by substituting the same.

[R. L. s. 4155] (9278)

544.29 AMENDMENTS OF COURSE, AND AFTER DEMURRER. A pleading may be once amended, without costs and without prejudice to proceedings already had, at any time before the period for answering it has expired; or, if the trial be not delayed thereby, it may be so amended within 20 days after the same has been answered, demurred to or replied to, in which case the adverse party shall have 20 days after service of the amended pleading in which to plead thereto. Upon the decision of a demurrer which appears to have been interposed in good faith, the court, in its discretion, may permit the party to plead over, or, if the demurrer be sustained, may allow an amendment upon proper terms.

[R. L. s. 4156] (9279)

544.30 AMENDMENT BY ORDER. The court, in furtherance of justice and upon proper terms, may amend any pleading, process, or proceeding, either before or after judgment, by adding or striking out the name of a party, by correcting

a mistake in the name of a party or in any other particular, by inserting other material allegations, or, if the amendment does not substantially change the claim or defense, by conforming any pleading or proceeding to the facts proved.

[R. L. s. 4157] (9280)

544.31 AVERMENTS. Subdivision 1. **Variance; amendment; exceptions.** No variance between the allegations in the pleading and the proof is material unless it has actually misled the adverse party to his prejudice in maintaining his action or defense on the merits. When a party alleges that he has been so misled, he shall prove the fact to the satisfaction of the court, showing in what respect he has been misled; and thereupon the court may order the pleading to be amended upon such terms as may be just. When the variance is not material, the court may direct the fact to be found according to the evidence, or may order an immediate amendment without costs.

Subd. 2. **Failure of proof.** When the averment to which the proof is directed is unproved, not in some particulars only, but in its entire scope and meaning, it shall not be deemed a case of variance within subdivision 1, but a failure of proof.

[R. L. ss. 4158, 4159] (9281, 9282)

544.32 EXTENSIONS OF TIME; RELIEF AGAINST MISTAKES. The court, in its discretion, may likewise permit an answer or reply to be made, or other act to be done, after the time limited therefor by this chapter, or by its order may enlarge such time; or at any time within one year after notice thereof, in its discretion, may relieve a party from any judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect; or may, for good cause shown, modify or set aside its judgments, orders, or proceedings, whether made in or out of term and may supply any omission in any proceeding, or in the record, or by amendment conform any proceeding to the statute under which it was taken. This section shall not apply to a final judgment in an action for a divorce, nor shall any relief granted thereunder affect the title to real estate as determined by any final judgment which shall have been of record in the office of the proper register of deeds for three years next prior to the date of application for such relief, as against any bona fide purchaser or encumbrancer thereof; but this shall not prevent the granting of just and equitable relief against any party to any such action affecting real estate, his heirs or devisees.

[R. L. s. 4160] (9283)

544.33 UNIMPORTANT DEFECTS DISREGARDED. In every stage of an action, the court shall disregard all errors or defects in the pleadings and proceedings which do not affect the substantial rights of the adverse party, and no judgment shall be reversed or affected by reason thereof.

[R. L. s. 4161] (9285)

544.34 DEFECTS RELIEVED AGAINST. A notice or other paper shall be effectual though the title of the action be omitted, or it be otherwise defective as to the designation of the court or the parties, if it intelligibly refers to the action or proceeding. In furtherance of justice, the court, on proper terms, may permit any other defect or error in the papers to be amended, and may relieve against any mischance, omission, or defect within one year after it occurs; and, for good cause shown, the court may enlarge the time within which any act or proceeding is required by law to be done or taken, permitting the same within such enlarged time on reasonable terms; provided, that the time for bringing a writ of error or for taking an appeal shall not be so extended.

[R. L. s. 4120] (9243)

544.35 PLEADINGS, TO BE FILED; PENALTY. All pleadings, affidavits, bonds, and other papers in an action shall be filed with the clerk, unless otherwise provided by law or by order of the court. All pleadings shall be so filed on or before the second day of the term at which the action is noticed for trial; otherwise the court may continue the action or strike it from the calendar.

[R. L. s. 4121] (9244)