

MINNESOTA STATUTES 1953 ANNOTATIONS

1371

EXECUTIONS, APPEALS, EXTRAORDINARY REMEDIES 532.37

CHAPTER 532

EXECUTIONS, APPEALS, EXTRAORDINARY REMEDIES

EXECUTIONS

532.01 STAY OF EXECUTION, WHEN GRANTED

HISTORY. 1871 c 68 s 1; GS 1878 c 65 s 84; 1879 c 24 s 1; GS 1894 s 5038; RL 1905 s 3946; GS 1913 s 7565.

REPLEVIN

532.15 AFFIDAVIT

Plea of property in a stranger as a defense in a replevin action. 32 MLR 84.

The action of replevin has been replaced by the statutory action for claim and delivery under which the title and right of possession of personal property is determined. *A & A Credit Co. v Berquist*, 230 M 303, 41 NW(2d) 582.

532.22 JUDGMENT FOR DEFENDANT

HISTORY. RS 1851 c 69 art 4 s 92; 1852 amend p 7 s 15; PS 1858 c 59 s 105; GS 1866 c 65 s 88; GS 1878 c 65 s 95; Ex1881 c 5 s 5; 1885 c 33 s 5; GS 1894 s 5049; RL 1905 s 3966; GS 1913 s 7586.

ATTACHMENT

532.27 BOND

HISTORY. RS 1851 c 69 art 4 s 81; PS 1858 c 59 s 107; PS 1858 c 59 s 94; 1860 c 85; GS 1866 c 65 s 93; GS 1878 c 65 s 100; GS 1894 s 5054; RL 1905 s 3971; GS 1913 s 7591.

APPEALS

532.37 WHEN TAKEN

HISTORY. Amended, 1949 c 275 s 1.

Appeals from the probate court to the district court under sections 525.71 to 525.731, and from the justice court to the district court under sections 532.37 to 532.50 upon questions of law and fact, are appeals in the strict and original sense because the trials in the district court are de novo. *State ex rel v Civil Service Board*, 226 M 240, 253, 32 NW(2d) 574.

An appeal under MSA Section 43.12 to the state civil service board from an allocation of an employee to a position by the civil service director entitles the employee-appellant to a public trial de novo before the state civil service board with all the incidents of a trial before a court of law, including the right of subpoena, production of witnesses and documents, or taking of testimony, examination and cross-examination of witnesses, representation by counsel, hearing, argument, decision on the merits, and the like. The meaning of the word "appeal" when used in granting a right of appeal depends upon the legislative intention. Strictly speak-

MINNESOTA STATUTES 1953 ANNOTATIONS

532.40 EXECUTIONS, APPEALS, EXTRAORDINARY REMEDIES

1372

ing, it is a proceeding by which a case is removed from a lower court to a higher court for a trial there de novo either upon the record made in the lower court, or upon evidence newly introduced; and an appeal in a civil action from the district court to the supreme court is governed by principles applicable to a writ of error and is, in substance, a writ of error. State ex rel v Civil Service Board, 226 M 240, 32 NW(2d) 574.

An "appeal" under sections 525.71 to 525.731, or under sections 532.37 to 532.50 from the probate court and from the court of a justice of the peace to the district court upon questions of law and fact, is an "appeal" in the strict and original sense and is tried de novo in the appellate court. State ex rel Spurck v Civil Service Board, 226 M 253, 32 NW(2d) 574.

532.40 RETURN, EVIDENCE, WHEN INCLUDED

HISTORY. RS 1851 c 69 art 4 s 126; 1852 amend p 8 s 18; PS 1858 c 59 s 139; GS 1866 c 65 s 106; 1872 c 66 s 1; 1873 c 66 s 1; GS 1878 c 65 s 116; GS 1894 s 5070; RL 1905 s 3984; GS 1913 s 7604.

532.41 TRIAL, JUDGMENT

An appeal properly perfected in a criminal case, from a justice of the peace to the district court, upon questions of law alone, operates to supersede the judgment of the justice, and the district court may enter such judgment on an affirmation as the law of the case requires. State v Hedstrom, 233 M 17, 45 NW(2d) 715.

FORMS IN CIVIL ACTIONS

532.51 SCHEDULE OF FORMS

Title to a motor vehicle may be transferred, based upon a certified copy of the court record relating to sale or execution. OAG Nov. 8, 1948 (632-E-27).

JUDICIAL PROCEDURE; DISTRICT COURT

CHAPTER 540

PARTIES TO ACTIONS

540.01 Superseded, Rules of Civil Procedure, Rule 1.

Annotations relating to superseded section, 540.01.

Suretyship and the statute of frauds. 31 MLR 633.

Jurisdiction of the federal district court in an application under section 23a of the Bankruptcy Act to suits against a trustee in bankruptcy. 32 MLR 627.

Tort actions against a receiver appointed under section 77 of the Bankruptcy Act. 32 MLR 829.

Action for breach of contract based upon contention that a telegram accepting an offer constituted a valid contract. 33 MLR 73.

Action for breach of contract; retention of case to award damages. 33 MLR 77.

Damages for breach of contract; sickness as an element. 33 MLR 189.

Plight of a strike-bound carrier. 33 MLR 255.