

# MINNESOTA STATUTES 1953 ANNOTATIONS

## 541.15 LIMITATION OF TIME, COMMENCING ACTIONS

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question of whether or not there was a change of domicile so as to toll the statute of limitations that had begun to run after the infant plaintiff reached majority, was a question of fact for the jury. *Nelson v Sandkamp*, 227 M 177, 34 NW(2d) 640.

An action to recover unpaid support money for a minor child, awarded by the decree of a Wisconsin divorce court and not in any way amended, modified, or altered when the child reaches his majority and all payments are due, is an action upon a foreign judgment, and, in conformance with MSA, Section 541.04, must be commenced within ten years from that time. This statute is absolute and is not in any way tolled by defendant's absence from the state. Limitation statutes are procedural and the law of the forum applies. *Knipfer v Buhler*, 227 M 334, 35 NW(2d) 425.

Where a promissory note shows on its face that it is more than six years past due, if the holder relies upon part payment to avoid the bar of the statute of limitations, the burden is on him to prove it. The trial court's finding against the plaintiff on this issue was justified by the evidence. The departure from the state which involves merely a temporary sojourn elsewhere, as distinguished from the acquirement of a new domicile, is insufficient to toll the statute of limitations. *Beckos v Hamre*, 236 M 494, 53 NW(2d) 234.

## 541.15 PERIODS OF DISABILITY NOT COUNTED

**HISTORY.** Amended, 1949 c 304 s 1.

In construing section 541.15, section 645.15 is applicable. The time during which a party is within the age of 21 years old and for an additional period of one year thereafter his disability of infancy had ceased requires the exclusion of the fees and inclusion of the last day in determining the expiration of the 1-year period. *Nelson v Sandkamp*, 227 M 177, 34 NW(2d) 640.

When the mortgagee who bid in the property at foreclosure sale acquired possession of such property by action in ejectment, and thereafter held title under claim of ownership to the exclusion of all others, under requirements for acquisition of title by adverse possession, for more than 15 years, she thereby acquired title, regardless of whether foreclosure was invalid because mortgagee was unconscionably enriched as a result of excess of land value over the mortgage debt. *Voegele v Mahoney*, 237 M 43, 54 NW(2d) 15.

Where owners of undivided shares in real estate were minors in 1933 when the adverse claimant went into possession of such real estate, but all of such minors attained their majority by 1944, the statute tolling the running of the period of limitation would be inapplicable to an action brought in 1949 to quiet title to such land in adverse possession. In the absence of fraud, ignorance of the existence of a cause of action for the recovery of real estate does not toll the statute of limitations, but the statute does not run against actions for fraud until the fraud is discovered. There was no evidence of fraud in the instant case. *Voegele v Mahoney*, 237 M 43, 54 NW(2d) 15.

## CHAPTER 542

### VENUE OF ACTIONS

#### 542.01 VENUE; GENERAL RULE; EXCEPTION

Venue provisions in section 1404 (2) of the federal code. 33 MLR 536, 34 MLR 146.

Forum non conveniens. 33 MLR 536.

State statutes as affecting jurisdiction of federal courts. 33 MLR 664.

Removal of causes under the revised judicial code. 33 MLR 738.

Illegality of contracts restricting venue under the Federal Employers' Liability Act. 34 MLR 342.

Federal jurisdiction over a non-federal issue when joined with a federal question. 34 MLR 559.

Separate and independent claim or cause of action within the meaning of Title 28, United States Code, Section 1441. 35 MLR 413.

Removal of cases; right of removal; garnishment as civil action. 35 MLR 675.

Intentional multi-state torts. 36 MLR 1.

Power to decline the exercise of federal jurisdiction. 37 MLR 46.

The law of the place of contracting determines the validity and effect of a promise with respect to fraud, illegality or any other circumstance which may make it void or voidable; the law of the place of performance of a contract applies only to questions relating to the manner, time, location, and sufficiency of the performance. This rule applies to the seller of a secret process or of an employee to whom it has been disclosed, not to disclose such secret or make use thereof. *Larx v Nicol*, 224 M 1, 28 NW(2d) 705.

In cases brought under the Federal Employers' Liability Act, plaintiff's choice of a forum cannot be defeated by doctrine of "forum non conveniens." In the instant case the evidences established that the contract by which the injured employee, in consideration of advancement by the company, agreed not to sue the railroad except within the state where the injuries occurred, was void as obtained by fraud. *Porter v Fleming*, 74 F Supp. 378.

The phrase, "court of competent jurisdiction" as used with respect to federal district courts in a suit under the Federal Housing Act to recover damages for rents exceeding the maximum rent includes federal district courts which would have jurisdiction of the parties, regardless of the amount involved and regardless of the fact that the amount claimed by the plaintiff was less than \$3,000. *Albright v Nelson*, 87 F Supp 737.

## 542.02 ACTIONS RELATING TO LAND, SITUS TO GOVERN

Actions to enjoin trespass to lands which are wholly local in nature must be tried where the land is situated. Statutory provisions relating to venue of actions involving trespass to lands must prevail over the common law principle defining action against municipal corporations as local. *State ex rel v District Court of Ramsey County*, 230 M 507, 42 NW(2d) 201.

The language in section 542.02 is broad enough to cover a mandamus proceeding where the sole question involved is whether or not the land has been taken or damaged by the state. *State ex rel v Hoffman*, 233 M 186, 46 NW(2d) 468.

While it is the general rule that civil actions shall be tried in the county in which one or more of the defendants resided when the action is begun, an exception exists in the case of actions relating to land. *State ex rel v Hoffman*, 233 M 186, 46 NW(2d) 468.

Section 484.49 providing for trial of civil actions brought in the district court for St. Louis county before the court at the location reinstated to defendant's residence is qualified by the provisions of section 484.19, subdivision 2, requiring specified actions to be tried at the county seat in the absence of written consent of all the parties to the trial at one of the other three locations to which the terms of court are held. *Fitger Brewing Co. v Cupoletti*, 235 M 559, 49 NW(2d) 584.

Whether an action is local or transitory is to be determined from the complaint, and although the prayer for relief may be considered in a proper case for the purpose of determining the nature of the action, the bare prayer for relief, unsupported by any allegation of fact which would justify the granting of the relief prayed for,

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cannot be used to determine the nature of the action. *Marion v Miller*, ..... M ....., 58 NW(2d) 185.

Actions brought by specific performance of contracts to sell land are transitory and triable in the county of defendant's residence. An action to set aside a conveyance of land alleged to be fraudulent is local in character and triable in the county in which the land is situated, but where an action is part local and part transitory, section 542.02 does not apply. *Marion v Miller*, ..... M ....., 58 NW(2d) 185.

Where it appears from the record that an action involves the determination in any form of an estate or interest in land, it must be tried in the county where such real estate is located. *Studeman v Palmer*, ..... M ....., 55 NW(2d) 439.

Where a Missouri corporation claiming an option to purchase realty brought a specific performance action against grantors who were residents of Minnesota and against a Minnesota corporation which claimed the right by cross-bill to the same relief under the same option, and the pleading sought no relief against the Minnesota corporation, and the relief to be granted to the claimants under the option would be identical, the court would realign the Minnesota corporation on the plaintiff's side and dismiss the action for lack of jurisdiction on the ground that diversity of citizenship was absent. *Knaus Truck Lines v Mair*, 85 F Supp 101.

## 542.05 COST BOND; RECOGNIZANCES; NONRESIDENTS

Forum non conveniens; claims instituted in state courts under the Federal Employers' Liability Act. 35 MLR 496.

## 542.06 REPLEVIN

In claim and delivery where the original acquisition of possession by defendant is lawful, the subsequent demand and refusal by defendant to return the property amounts, in the eyes of the law, to a wrongful taking, and the plaintiff has an election under section 542.06 to bring and maintain action in the county in which he resides. *A & A Credit Co. v Berquist*, 230 M 303, 41 NW(2d) 582.

## 542.08 ACTIONS FOR WAGES

Under section 586.11 the district court has exclusive original jurisdiction in all cases of mandamus except where such writ is to be directed to a district court or a judge thereof in his official capacity. Where change of venue is sought, a party cannot ask this court for a writ of mandamus to direct the transmission of files and records in an action to another county until the district court or its judge has been requested to act. The refusal of the clerk of the district court to transmit the files when such change is demanded cannot be construed to be the refusal of the court or its judge. *Hassing v Zahalka*, ..... M ....., 60 NW(2d) 86.

## 542.09 VENUE IN OTHER CASES; RESIDENCE OF DEFENDANT; OF CORPORATION

Conclusiveness of statement in articles of incorporation as to residence for the purpose of venue. 32 MLR 823.

Forum non conveniens; claims instituted in state courts under the Federal Employers' Liability Act. 35 MLR 496.

Jurisdiction as applied to actions for injury to out-of-state real property. 36 MLR 523.

In claim and delivery where the original acquisition of possession by defendant is lawful, the subsequent demand and refusal by defendant to return the property amounts, in the eyes of the law, to a wrongful taking, and the plaintiff has an election under section 542.06 to bring and maintain action in the county in which he resides. *A & A Credit Co. v Berquist*, 230 M 303, 41 NW(2d) 582.

In an action arising out of an automobile accident occurring in Becker county, and where the action was brought by a resident of Hennepin county against a resi-

dent of Fargo, N. D., in the district court of Washington county, the denial of the defendant's application for a change of venue to the county in which the accident occurred, was abuse of discretion, where numerous witnesses who would be called resided in or near the vicinity of the accident. A writ of mandamus is issued to compel the change of venue as applied for. *King v Schultz*, 231 M 569, 43 NW(2d) 278.

Where venue does not affect the jurisdiction of the subject matter a failure to object to the venue in the trial court or the act of seeking affirmative relief in an improper venue constitutes waiver of a defective venue. *Kowalke's Guardianship*, 232 M 292, 46 NW(2d) 275.

Pursuant to section 542.09, a corporation, whether domestic or foreign, with exceptions as to certain utilities, for venue purposes resides in any county wherein it has an office, resident agent, or business place. An insurance agent residing in the county, who has no powers other than those of soliciting applications and the collecting of premiums, is not a resident agent of a corporate defendant within the meaning of section 542.09. A general insurance agent residing in the county where a transitory action is brought against a foreign or domestic corporation is, for venue purposes, a resident agent of the corporation under section 542.09. While an agent's place of business is not necessarily the place of business of his corporate principal, nevertheless, where major business transactions of the corporate principal are regularly conducted at the agent's place of business and the corporate principal has no other place of business within the county, the agent's place of business also becomes that of his corporate principal within the meaning of this section. *Smith v Utah Home Fire Insurance Co.*, 234 M 169, 47 NW(2d) 787.

Where an action in Hennepin county against an electrical co-operative domiciled in Pine county for burns caused by a broken power line in Pine county was transferred to Pine county, and the plaintiff showed that her medical experts and eye-witnesses would be inconvenienced by a trial in Pine county as against the inconvenience of only a few proposed witnesses of defendant by the trial in Hennepin county and that the residents of and a large percentage of former petit jurors in Pine county were members and customers of the co-operative, indicating a strong possibility that a fair and impartial trial might not be had in Pine county, denial of a motion for remand to Hennepin county was abuse of discretion. *Berry v Northern Pine Electrical Co-op*, 235 M 562, 50 NW(2d) 117.

An equitable action for support of the wife and minor child by the husband is a "transitory action" which can be brought by a nonresident of Minnesota by attaching property of a nonresident husband located within the state. In determining whether an action is "transitory" or "local" the test is that if the cause of action could have arisen in any place it is "transitory," while it is "local" if the transaction is necessarily local or one that could have happened only in one particular place. *Donigan v Donigan*, 236 M 516, 53 NW(2d) 635.

Actions brought by specific performance of contracts to sell land are transitory and triable in the county of defendant's residence. An action to set aside a conveyance of land alleged to be fraudulent is local in character and triable in the county in which the land is situated, but where an action is part local and part transitory, section 542.02 does not apply. *Marion v Miller*, ..... M ....., 58 NW(2d) 185.

Whether an action is local or transitory is to be determined from the complaint, and although the prayer for relief may be considered in a proper case for the purpose of determining the nature of the action, the bare prayer for relief, unsupported by any allegation of fact which would justify the granting of the relief prayed for, cannot be used to determine the nature of the action. *Marion v Miller*, ..... M ....., 58 NW(2d) 185.

An action to set aside a contract to sell land on the ground that one of the contracting parties has perpetrated a fraud, is transitory in that the contract is the subject matter of the action, but an action by one who is not a party to the contract, to set aside the conveyance so that the land fraudulently conveyed may be reached by plaintiff as a creditor and applied upon a judgment, involves the determination of an estate or interest in land and is local. *Marion v Miller*, ..... M ....., 58 NW(2d) 185.

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The matter of determining whether a change of venue should be granted on the ground that an impartial trial could not be had in the county in which the action was pending, rested upon the trial court's sound discretion, and its decision will not be reversed by the appellate court in the absence of clear abuse thereof. *Woodrow v Chicago, Milwaukee & Pacific Ry., ..... M .....*, 60 NW(2d) 49.

Where an action is brought in a Minnesota federal district court against a foreign airline to recover for the wrongful death of a passenger, the court properly applied the doctrine of *forum non conveniens*, where all the witnesses and real parties in interest were residents of California where the accident occurred. *Giles v Western Air Lines*, 73 F Supp 616.

In a libel against the seller of certain misbranded jellies, in which the buyer was interpleaded so as to determine ownership, the Minnesota federal district court had no jurisdiction over the buyer's claim that the seller is a Florida corporation with no resident agent in Minnesota and had committed a breach of warranty. *U. S. v 74 cases*, 73 F Supp 1009.

Since plaintiff was a resident and citizen of North Dakota and all witnesses that would be called on to testify resided in North Dakota, and the laws of negligence and applicable rules governing damages would be controlled by that state, the fact that the next term for trial of plaintiff's case did not convene in North Dakota until October would not unduly prejudice the plaintiff. The action would be transferred from the Fourth Division District of Minnesota to Northwestern Division of North Dakota. *Hansen v Nash*, 89 F Supp 108.

## 542.095 VENUE IN AUTO VEHICLE CASES

HISTORY. 1939 c 148 s 1.

The statute providing that an automobile negligence action may be brought in the county in which the action arises or in the county of the residence of defendants or a majority of defendants is not controlling in an action in which there are two defendants not having a common county of residence. *LaBere v Palmer*, 232 M 203, 44 NW(2d) 827.

For the purpose of an appeal, where the district court ordered judgment on the pleadings in favor of respondent, the facts alleged in appellant's statement must be taken as true. *Kinthead's Estate, ..... M .....*, 57 NW(2d) 628.

The substantive law of Wisconsin applies in actions brought in Minnesota by a Wisconsin resident for injuries received in Wisconsin as a result of being struck by an automobile driven by a resident of Minnesota. *Lang v Rogney*, 201 F(2d) 88.

## 542.10 CHANGE OF VENUE AS OF RIGHT, DEMAND

Characterization of *forum non conveniens* as substantive or procedural. 32 MLR 633.

Motion by plaintiff to transfer. 35 MLR 96.

Change of venue in adoption proceedings 36 MLR 387.

Actions to enjoin trespass to lands which are wholly located in nature must be tried where the land is situated. Statutory provisions relating to venues of actions involving trespass to lands must prevail over the common law principle defining action against municipal corporations as local. *State ex rel v District Court of Ramsey County*, 230 M 507, 42 NW(2d) 201.

In action by Minneapolis-St. Paul Sanitary District against cities of Minneapolis and St. Paul for declaratory judgment construing statute requiring each city to contribute to maintenance of sewage disposal plant so as to fix allocation of costs chargeable to each city for proposed improvements wherein position of city of St. Paul and Sanitary District with respect to cost of construction were the same, city of St. Paul was a necessary party defendant and not a mere defendant for purpose of preventing a change of venue, and hence court properly refused to change venue

from Ramsey county to Hennepin county. Minneapolis-St. Paul Sanitary District v City of St. Paul et al, 231 M 379, 43 NW(2d) 219.

Compliance with section 542.10 effects an automatic change of venue and in the instant case the commissioner of highways has an absolute right to have the papers and files transferred to the district court of the proper county. State ex rel v Hoffman, 233 M 186, 46 NW(2d) 468.

To avoid violation of the equal protection clause in section 542.09, a foreign corporation sued in Minnesota upon a transitory cause of action in a county where the corporation has no office, resident agent, or place of business, has the same rights as a domestic corporation to have such action removed to a county where it does have such office, resident agent, or place of business. Smith v Utah Fire Insurance Co., 234 M 169, 47 NW(2d) 785.

#### 542.11 CHANGE OF VENUE BY ORDER OF COURT, GROUNDS

There was no abuse of discretion by the trial court in denying a change of venue for the promotion of the convenience of witnesses and the ends of justice where the change was primarily sought by the defendant to enable it subsequently to move for a consolidation of the trials of four actions arising out of the same collision in order to avoid the alleged disadvantage of being compelled to try one of the actions in advance of the others. Chellico v Martire, 227 M 74, 34 NW(2d) 155.

Whether a change of venue should be granted because an impartial trial cannot be had in the county wherein the action is pending is a matter resting largely in the sound discretion of the trial court and its decision will not be reversed except for clear abuse of discretion. Sander v Dieseth, 230 M 125, 40 NW(2d) 844.

In an action arising out of an automobile accident occurring in Becker county, and where the action was brought by a resident of Hennepin county against a resident of Fargo, N. D., in the district court of Washington county, the denial of the defendant's application for a change of venue to the county in which the accident occurred, was abuse of discretion, where numerous witnesses who would be called resided in or near the vicinity of the accident. A writ of mandamus is issued to compel the change of venue as applied for. King v Schultz, 231 M 569, 43 NW(2d) 278.

The trial court in sound discretion may in a particular case suspend the operation of its rules and thereby excuse a party from formal compliance therewith. The grantee of a change of venue for the convenience of witnesses and to promote the ends of justice rests within sound discretion of the trial court and its action will not be disturbed except for a clear abuse of discretion. Thon v Erickson, 232 M 323, 45 NW(2d) 560.

Where a motion is made to change the venue to promote the ends of justice the court should consider among other relevant factors, where the cause of action arose, which venue will best facilitate a jury view where necessary, the state of the court calendars in the two venues, and whether the opposing party will be inconvenienced by the proposed change of venue. Miller v Anchor Casualty Co., 233 M 87, 45 NW(2d) 705.

Where an affidavit is submitted in support of a motion to change venue for convenience of witnesses, it is not necessary that the party so moving expose all his evidence by stating in detail what each witness will testify. Where the opposing party thinks that some of the witnesses named are incompetent or that their testimony will be inadmissible or unnecessary, he should submit affidavits so stating. Whether the trial court has abused its discretion in denying a change of venue is subject to review by application to the supreme court having a writ of mandamus. Miller v Anchor Casualty Co., 233 M 87, 45 NW(2d) 705.

Where venue of an action in Hennepin county against an electrical co-operative domiciled in Pine county for burns caused by broken power line in Pine county was changed to Pine county, and the plaintiff showed that a large number of her medical experts and eye-witnesses would be inconvenienced by a trial in Pine county against inconvenience to only a few witnesses by trial in Hennepin county; and that many residents of, and a large percentage of possible petit jurors in Pine county

had been members and customers of the co-operative so that there was a strong possibility that fair and impartial trial might not be had in Pine county, denial of a motion for remand to Hennepin county was abuse of discretion. *Berry v North Pine Electric Co-operative*, 235 M 562, 50 NW(2d) 117.

An affidavit in support of a motion for a change of venue for convenience of witnesses shall merely state that affiant had the benefit of an investigation of the case and which listed eleven witnesses who resided in another county, was insufficient to support the motion. Affiant should have stated facts within affiant's personal knowledge sufficient to support such motion. *Schultz v Land O'Lakes Creameries*, ..... M ....., 54 NW(2d) 781.

The matter of determining whether a change of venue should be granted on the ground that an impartial trial could not be had in the county in which the action was pending, rests upon the district court's decision, and will not be reversed by the appellate court in the absence of clear abuse. Inherently, an action against a municipality is a local one and in the instant case there was no abuse of discretion on the part of the trial judge. *Wolfe v City of Austin*, ..... M ....., 60 NW(2d) 74.

**542.13** Superseded by Rules of Civil Procedure, Rules 63.02 and 63.04.

**542.16** Superseded by Rules of Civil Procedure, Rules 63.03 and 63.04.

Annotations relating to superseded section 542.16.

No judge, when other judges are available, ought ever to try the cause of any citizen, even though he be entirely free from bias in fact, if circumstances have arisen which give a bona fide appearance of bias to litigants. The preservation of the constitutional right to a fair and impartial trial is the positive duty of the lawyer, but with that duty goes an obligation, as an officer of the court, to assert such right in a timely manner. The statute or rule prescribing the manner of asserting such constitutional right is given a liberal construction. A rule of the district court which provides that proceedings to modify a decree of divorce shall be heard by the judge upon whose order the decree was entered has no application where such judge is disqualified by the filing of an affidavit of prejudice. *Wiedemann v Wiedemann*, 228 M 174, 36 NW(2d) 811.

Prohibition is the proper remedy to restrain a judge from acting in a matter where he is disqualified by an affidavit of prejudice, but there is no statute authorizing the disqualification of a judge of the municipal court of South St. Paul by the mere filing of an affidavit of prejudice. Section 488.16 has no application to a prosecution for a violation of a city ordinance and is applicable only to civil actions. *State ex rel v Beaudoin*, 230 M 186, 40 NW(2d) 885.

## CHAPTER 543

### CIVIL ACTIONS, COMMENCEMENT

**543.01** Superseded by Rules of Civil Procedure, Rule 3.01.

Annotations relating to superseded section 543.01.

Venue; conclusiveness of statement in articles of incorporation as to residence. 32 MLR 823.

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

Violation of antitrust laws as a defense to a suit for patent royalties. 34 MLR 479.