

MINNESOTA STATUTES 1953 ANNOTATIONS

CHAPTER 545

MOTIONS, ORDERS

545.01 Superseded by Rules of Civil Procedure, Rules 6.04 and 7.02.

545.02 MOTIONS, WHERE NOTICED AND HEARD

HISTORY. RS 1851 c 82 s 16; PS 1858 c 72 s 16; 1867 c 67 s 4; GS 1878 c 66 s 87; 1881 c 7 s 1; 1885 c 267; GS 1894 s 5227; RL 1905 s 4124; 1909 c 433 s 1; GS 1913 s 7750; 1945 c 563 s 1.

Admissions by one who moves for judgment on the pleadings are admissions for the purpose of the motion only and if the motion is denied the mover is not denied the right of trying the issues of fact. *Minneapolis Street Railway Co. v City of Minneapolis*, 229 M 502, 40 NW(2d) 353.

545.03 EX PARTE MOTIONS

In a personal injury action brought against the owner and against the driver of an automobile which struck the plaintiff, where defendants moved for continuance on the ground that the automobile driver was in service, the trial court is vested with discretionary power to determine whether the ability of the automobile driver to conduct his defense would be materially affected by his absence, but such discretion should be exercised cautiously with the object in mind of giving effect to the purpose of the Soldiers and Sailors Civil Relief Act and to protect the civil rights of a person who, on account of his service in the armed forces, cannot be present at a trial or proceeding. A writ of prohibition may issue as well as to restrain the court from exceeding its legitimate powers in the matter over which it has jurisdiction as to restrain it from proceeding in a matter over which it has no jurisdiction, and such writ may lie to prevent an abuse of discretion where there is no other adequate remedy at law. *State ex rel v Wilson*, 234 M 570, 48 NW(2d) 513.

CHAPTER 546

TRIALS

546.01 ISSUES AND TRIALS

State and federal income tax statutes, notable differences. 38 MLR 1.

The demonstrated physical facts, fortified by the positive testimony of disinterested witnesses, must in the instant case prevail over the declarations of plaintiffs, who were vitally interested in securing a favorable outcome. It is manifest that the evidence, with its undisputed physical facts, so overwhelmingly and conclusively preponderates against the verdict as to negate the testimony of the plaintiffs and to leave the verdict without a reasonable basis for its support. *Cofran v Swanman*, 225 M 40, 29 NW(2d) 448.

Order sustaining a general demurrer to a complaint, but permitting plaintiff 30 days within which to file an amended complaint, became final upon the expiration of said 30-day period without interposition of the amended complaint in the absence of appeal or vacation of the order. Thereafter, under section 546.39, neither plaintiff nor the trial court may dismiss the action without prejudice, and the defendant is en-