

MINNESOTA STATUTES 1953 ANNOTATIONS

1451

JUDGMENTS 548.01

547.04 Superseded by Rules of Civil Procedure, Rule 59.07.

Annotations relating to superseded section 547.04.

Newly discovered evidence having no bearing upon any fact found in the record will not be considered on a motion for a new trial. *State v Martin*, 223 M 414, 27 NW(2d) 158.

Inaccurate or misleading newspaper reports of trial proceedings which find their way into the hands of jurors may be a proper basis for granting a new trial after a verdict where prejudice results. Prejudice, however, cannot be presumed. *Eichten v Central Minnesota Assn.*, 224 M 180, 28 NW(2d) 862.

Where a newspaper article published during the trial gave account of a verdict recovered in a prior action in the same courtroom and in a case not connected in any way with this action, and where no objection was made thereto and no showing having been made to indicate that the article had been read by the jury, or that it influenced their verdict in the present action, such publication did not constitute prejudicial error to the extent of requiring a new trial. *Eichten v Central Minnesota Co-operative Power Assn.*, 224 M 180, 28 NW(2d) 862.

Where the trial court made an order or judgment exclusively upon the original records on file, the appellate court, on review, need not require a settled case or bill of exceptions, if the original file has been returned to the reviewing court. A litigant who desires the benefit of this rule has the burden of taking the necessary steps to have the original file forwarded prior to the date of the argument. *Viillainen v American Finnish Works*, 236 M 412, 53 NW(2d) 112.

547.05 Superseded by Rules of Civil Procedure, Rule 59.07.

Annotations relating to superseded section 547.05

A trial court has jurisdiction to settle and allow a case after an appeal has been taken from an order denying a new trial. Where an appeal has been taken promptly and in good faith, a settled case is needed for proper presentation and determination of appeal, appellant has proceeded with due diligence, and there is no showing that hearing of appeal will be delayed or that any other prejudice will result, exercise of sound judicial discretion requires that trial court should facilitate hearing of appeal on its merits by allowing and certifying settled case. *State v Baker*, 234 M 528, 49 NW(2d) 107.

The law favors settlement of claims without recourse to litigation. Where during pendency of the action by the occupant of an automobile against a railway company and the automobile owner as joint tortfeasors, the railway company paid plaintiff \$6,000 for covenant not to sue and for dismissal of her action, and thereafter the automobile owner insurer paid the injured party \$5,000 for her release in favor of the automobile owner and then brought suit against the railway company for contribution, the payment made by the railway company was a substantial and partial compensation and the insurer was not entitled to contribution. *Employers Mutual Casualty Co. v Chicago, St. Paul & Omaha Ry.*, 235 M 304, 50 NW(2d) 689.

547.06 Superseded by Rules of Civil Procedure, Rule 59.08.

CHAPTER 548

JUDGMENTS

548.01 Superseded by Rules of Civil Procedure, Rule 54.03.

Annotations relating to superseded section 548.01.

Binding effect of state trial court decisions on federal courts. 32 MLR 825.

MINNESOTA STATUTES 1953 ANNOTATIONS

548.01 JUDGMENTS

1452

Judgments of foreign courts; basis of regulation in the United States. 33 MLR 659.

Judgments; res judicata in a subsequent action between co-defendants. 36 MLR 983.

Defendants are entitled to relief from default in not answering where they relied upon the advice of their attorney that an answer was not necessary. A litigant should not be penalized for the neglect or mistakes of his lawyer, and courts will relieve a party from the consequences of the neglect or mistakes of his attorney when it can be done without substantial prejudice to his adversary. *Duenow v Lindeman*, 223 M 505, 27 NW(2d) 421.

A real estate broker procures a purchaser of land where he finds a prospective buyer, sends the buyer to the principal, informs the principal that the buyer is coming and the buyer on that same day purchases the real estate from the principal at the price demanded by the principal; and if plaintiff establishes the right to recover within the allegations of the complaint, he has the right to have the case tried and proper relief administered upon the facts proven. *Schimmelpfennig v Gaedke*, 223 M 542, 27 NW(2d) 416.

In habeas corpus proceedings where the petitioner is petitioned under a sentence based upon his plea of guilty to a crime committed in this state and of a prior conviction of a crime in another state, the judgment of conviction is not subject to collateral attack upon the ground that the judgment of prior conviction is invalid. *Willoughby v Utecht*, 223 M 572, 27 NW(2d) 779.

A judgment is not subject to collateral attack on the ground that it is based on an invalid judgment, but the judgment so attacked is res judicata as to the validity of the prior judgment. *Willoughby v Utecht*, 223 M 572, 27 NW(2d) 779.

A judgment is not res judicata as to matters not in issue. *Enger's Will*, 225 M 229, 30 NW(2d) 694.

The "matters" determined in action or judicial proceedings are the questions decided in determining issues raised by conflicting claims of parties, and such word in the phrases "matter in controversy," "matter in dispute" and "matter in issue" refer to the cause of action asserted in the complaint and issue joined thereon; and a judgment is not res judicata as to matters not in issue. *Enger's Will*, 225 M 229, 30 NW(2d) 694.

Regardless of whether or not the court has jurisdiction of the parties and subject matter, proceedings outside the authority of the court or in violation or contravention of statutory prohibitions are void. *Land O'Lakes v County of Douglas*, 225 M 535, 31 NW(2d) 474.

An order of the probate court allowing and settling a guardian's final account is a final and appealable order and cannot be attacked collaterally for want of jurisdiction not affirmatively appearing on the face of the record. *Re Hudson's Guardianship*, 226 M 532, 33 NW(2d) 848.

The doctrine of res judicata has no application in an action for equitable relief against a judgment. *Anderson v Lyons*, 226 M 330, 32 NW(2d) 849.

A judgment affecting a party's title to realty binds not only the party, but all those whose succession to the right of property occurred prior to the commencement of the action in which the judgment was rendered. *Henschke v Christian*, 228 M 142, 36 NW(2d) 547.

An order affecting a substantial right, and appealable, made in determining a motion after a full hearing has been had on a controverted question of fact, and deciding a point actually litigated is binding upon the parties in a subsequent suit and conclusive upon the point determined. *Atwood v Holmes*, 229 M 37, 38 NW(2d) 62.

A judgment based on another judgment which subsequent to recovery of judgment based thereon is reversed may be set aside by appropriate proceedings. *Seagram Distillers Corp. v Lang*, 230 M 118, 41 NW(2d) 429.

A judgment on the merits operates as an estoppel in a subsequent action between the same parties upon a different claim or demand only as to those matters in issue or points controverted, upon the determination of which the finding or verdict was rendered. An issue withdrawn or withheld from consideration by the court is not adjudicated. *Smith v Smith*, 235 M 412, 51 NW(2d) 276.

Where the transaction was by cash payment brought by the buyer against the seller dismissal of the action by the buyer did not bar a subsequent action against his agent to recover elements of damage in relation to the sale transaction which were recoverable against the agent and not involved in the action for rescission. *Tarnowski v Resop*, 236 M 33, 51 NW(2d) 801.

Validity of a judicial determination and its res judicata effect, is limited by the court's compliance with procedural requirements of due process such as adequate and proper notice of adverse claim. *Schwartz v First Trust Co.*, 236 M 165, 52 NW(2d) 290.

Doctrine of estoppel of verdict applies when it affirmatively appears that the issues sought to be litigated in an accident have already been litigated and determined in a prior suit, and where the determination of such issues was necessary to warrant the verdict or judgment sought and obtained in the former action. *Hierl v McClure*, M, 56 NW(2d) 721.

In proceedings upon motion for a summary judgment the burden of establishing nonexistence of genuine issues of fact is upon the moving party and all doubts must be resolved against such party in considering his motion. Where, in an action for alleged libel, based upon a letter with an unsigned statement enclosed accusing plaintiff of embezzlement, written and deposited in the mail by one of the defendants, defendants would not be entitled to a summary judgment as a matter of law on the showing made. *Jensen v Macartney*, 95 F Supp 598.

548.02 Superseded by Rules of Civil Procedure, Rule 20.01.

Annotations relating to superseded section 548.02.

Unless they were adversaries in the original action, a judgment in favor of a plaintiff against two or more defendants is not res judicata or conclusive of the rights and liabilities of the defendants inter se in a subsequent action between them not involving contributions or indemnity. *Bunge v Yäger*, 236 M 245, 52 NW(2d) 446.

548.05 Superseded by Rules of Civil Procedure, Rule 58.01.

Annotations relating to superseded section 548.05.

In a transaction involving the sale by plaintiff to defendant of certain standing timber, where plaintiff claimed that the receipt or release he gave defendant evidencing the terms of the deal had been altered by the insertion of the word "timber" in place of the word "posts," and that he had sold defendant green posts only and not green timber, evidence was insufficient to justify a finding that there had been an alteration. *Tellock v Backholm*, 237 M 328, 54 NW(2d) 838.

548.06 DAMAGES FOR LIBEL

Application of criminal statute prescribing means of publication in a civil suit for libel. 32 MLR 841.

Application of "single publications" rule to the distribution of books. 33 MLR 87.

Testamentary libel; right to recover damages for libel contained in will. 33 MLR 171.

Law of defamation. 33 MLR 609.

Libel and slander; constitutionality of retraction statutes. 34 MLR 249.

Admission of contemporary critical evaluation of libeled book. 35 MLR 326.

548.09 LIEN OF JUDGMENT

Priority of claim for unemployment compensation contributions in distributing insolvent estates, as between federal and state claims. 35 MLR 470.

Validity of transferor's creditor's judicial lien obtained on property within four months of the bankruptcy and while the bankrupt was insolvent. 35 MLR 486.

In habeas corpus proceedings, where petitioner is imprisoned under a sentence based upon his plea of guilty to a crime committed in this state, and of a prior conviction of a crime in another state, the judgment of conviction is not subject to collateral attack upon the ground that the judgment of prior conviction is invalid. *Wiloughby v Utecht*, 223 M 572, 27 NW(2d) 779.

The provision exempting certain property from attachment for debt, but subjecting realty otherwise exempt to seizure and sale for debts incurred for labor, enlarges the class of realty upon which a judgment for personal services may operate to include the homestead. The lien for labor performed is acquired on docketing a judgment in personam. *Curran v Nash*, 224 M 571, 29 NW(2d) 436.

In an action for money or for personal services the court must render a judgment in personam before plaintiff can docket a judgment and acquire a lien. The provision subjecting the homestead to debts for labor or services performed thereon does not automatically create a lien. The lien is derived from a judgment in personam. *Curran v Nash*, 224 M 571, 29 NW(2d) 436.

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.

A suit to enforce provisions of a Wisconsin divorce decree for payments for support of a minor child was an action on a "foreign judgment" within the provisions of section 541.04, and as more than ten years had elapsed since the minor had attained his majority the action could not be maintained. *Knipfer v Buhler*, 227 M 334, 35 NW(2d) 425.

Where the summons and complaint were served on defendant on May 3, 1946, to commence an action to renew a judgment made on May 8, 1936, but summons was fatally defective in failing to direct defendant to serve an answer on the subscriber within twenty days at a specified place in the state, an amendment sought on hearing had after May 8, at which time the ten-year statute of limitation covering judgment had run, was properly denied. *Tharp v Tharp*, 228 M 23, 36 NW(2d) 1.

Where in a prior action an issue covered by the pleadings is withheld from determination by stipulation of the parties, by action of the court, or otherwise, it cannot be said to have been adjudicated, and the judgment in such action will not constitute a bar to the determination of the issue thus withheld in a subsequent action between the parties. This is an exception to the general rule that a judgment on the merits constitutes a bar in a subsequent action between the same parties as to the issues. A statement in the findings of the court that in a prior action it "has found it necessary to determine the rights" under a described mortgage clearly manifests that the issue with respect thereto was withdrawn from determination. *Nelson v Dorr*, M, 58 NW(2d) 876.

Where a borrower did not disclose to the prospective lender that a prior loan transaction pursuant to which the borrower had executed a conveyance of realty and contract for deed was usurious, and the borrower requested the lender to advance money for the payment of the obligation evidenced by the prior transaction, and agreed that the lender accept as security therefor a conveyance of the title and assignment of the contract from the title holder under previous transactions, the borrower was estopped from asserting the invalidity of the prior action as against the lender. *Nelson v Dorr*, M, 58 NW(2d) 876.

It is the general rule that a verdict does not operate as an estoppel until it has passed into a judgment. An exception to this rule exists in cases where the parties have acquiesced in the verdict; where, through the lapse of time or other cause, a motion for a new trial or for judgment notwithstanding the verdict cannot be granted; where the jurisdiction of the court to set aside or impair the force of the verdict rendered on the merits has come to an end; or where the parties have agreed to let the verdict stand in place of a judgment. Where a plaintiff has fully litigated the issue of an employee's negligence in a former action between the plaintiff and the employer in which there has been a verdict in favor of the employer which has become final, the plaintiff, under the doctrine of estoppel by verdict, is precluded from again litigating the issue of the employee's negligence in an action against the employee. *Miller v Simons*, M, 59 NW(2d) 837.

A docketed judgment in paternity proceedings requiring the adjudged father to pay a certain amount monthly for care and support of an illegitimate child would become a lien against the judgment debtor's land in the county to the extent of the amount past due. OAG Oct. 18, 1948 (840-C-10).

548.14 JUDGMENTS, PROCURED BY FRAUD, SET ASIDE BY ACTION

Property division pursuant to a stipulation as a consent judgment in divorce decrees; power to modify or vacate the judgment. 37 MLR 395.

The Nationality Act of 1940 is not exclusive procedure for vacating naturalization orders. It does not preclude the use of state procedure for vacating a judgment nor does it prohibit the state courts from exercising their inherent power to vindicate themselves for fraudulently procuring judgments. 35 MLR 483.

A judgment is entitled under the federal constitution to the same, but no more, faith and credit in the state other than the one wherein it was rendered as it is entitled to in the state of its rendition; and equitable relief may be granted against the decree of the probate court of a sister state distributing plaintiff's share of the estate of the decedent to the proponent-executor of the decedent's will and to others as residuary legatees where the decree was obtained by the proponent executive by concealing from the court a violation of his statutory duty, plaintiff's existence and his right to take under the will; and concealing from the plaintiff the pendency of the probate proceedings; and this notwithstanding the fact that the estate has been distributed. *Anderson v Lyons*, 226 M 330, 32 NW(2d) 849.

No fixed period of time can be asserted to constitute laches where the action is for the purpose of opening a judgment obtained by extrinsic fraud. *Berg v Berg*, 227 M 173, 34 NW(2d) 722.

Dismissal of an action by the buyer against the sellers for rescission of sale upon cash payment by the sellers did not bar a subsequent action by the buyer against his agent to recover elements of damage in relation to the sale transaction which were recoverable against the agent and which were not involved in the action for rescission. *Tarnowski v Resop*, 236 M 33, 51 NW(2d) 801.

548.19 JOINT DEBTORS; CONTRIBUTION AND SUBROGATION

The Federal Tort Claims Act permits both suit for contribution against the United States and an impleader of the United States as a third-party defendant for the purposes of contribution. 35 MLR 593.

Contribution and indemnity among tortfeasors. 37 MLR 470.

The guarantor is not entitled to subrogation to the rights of a creditor against the principal debtor until the guarantor pays the debt upon default by the principal debtor. *Bennett v Bennett*, 230 M 415, 42 NW(2d) 40.

Section 548.19, providing that a judgment debtor paying more than his proper share of the judgment shall be entitled to recover contribution from his judgment codebtors and that upon filing within ten days after payment, a notice of claim of contribution, the judgment shall be continued in force in his favor for the purpose

MINNESOTA STATUTES 1953 ANNOTATIONS

549.01 COSTS, DISBURSEMENTS

1456

of compelling payment of contribution from his judgment codebtors, with right (as judicially construed) to proceed by execution to enforce his claim therefor, does not authorize the probate court to enforce payment of contribution by the representative to his judgment codebtors upon the mere filing of a judgment without any proceedings to determine as between the representative and his judgment codebtors whether there is any liability for contribution. *Schunk v Hotchkiss*, 231 M 219, 43 NW(2d) 104.

The statute relating to contribution and subrogation between joint debtors did not change the substantive law of contribution, but merely provided a summary method for enforcing the right. *Gustafson v Johnson*, 235 M 376, 51 NW(2d) 118.

There may be contribution between tortfeasors where one seeking a contribution was not guilty of intentional wrong and where the ground of the original common liability was simple negligence in a lawful undertaking. "Common liability" exists immediately after the acts of the tortfeasors which gives rise to a cause of action against them. The parties seeking contribution need not make payment pursuant to a judgment, but may settle by a fair and provident payment and then seek contribution from other joint tortfeasors for their fair share of the settlement price. *Employers Mutual Casualty Co. v Chicago, St. Paul & Omaha Ry.*, 238 M 304, 50 NW(2d) 689.

An unsuccessful defendant may challenge a verdict or ruling in favor of a codefendant, even though there is no cross-claim between them, because a judgment rendered on such a verdict or ruling conclusively and finally determines that such codefendant is not liable to claimant, thus precluding the unsuccessful defendant from ever recovering contribution from such codefendant. *Muggenburg v Leighton*, M, 60 NW(2d) 9.

CHAPTER 549

COSTS, DISBURSEMENTS

549.01 AGREEMENT AS TO FEES OF ATTORNEY

Under a trust agreement which provides that expenses incurred by the trustee be paid, an allowance of attorney's fees for services rendered to a trustee rests in the discretion of the court. Where the individual trustee served without compensation, payment for legal services can only be made when the services are beyond the duties the trustee should perform. *In re Conan's Will*, 231 M 164, 42 NW(2d) 400.

549.02 COSTS IN DISTRICT COURT

By intervention a third party becomes a party to a suit pending between others and an intervenor is liable for costs if he fails to sustain his claim and he may recover costs if he prevails. *State ex rel v Fitzsimmons*, 226 M 557, 33 NW(2d) 854.

Where the state acts in its sovereign capacity costs and disbursements cannot be taxed against it except as otherwise provided by law. *State v Bentley*, 231 M 531, 45 NW(2d) 185.

549.04 DISBURSEMENTS, TAXATION AND ALLOWANCE

An intervenor is liable for costs if he fails to sustain his claim. He may recover costs if he prevails. *Bergin v Fitzsimmons*, 226 M 557, 33 NW(2d) 854.

Costs and disbursements are taxable against the state where it was acting in its proprietary capacity in unsuccessfully claiming title to land under a pond in a registration proceeding. *Bingenheimer v Diamond Iron Mining Co.*, 237 M 332, 54 NW(2d) 912.