

570.093 BOND OF DEFENDANT FOR RELEASE OF PROPERTY

HISTORY. 1953 c 110 s 3.

570.11 SATISFACTION; DISCHARGE, REAL ESTATE

HISTORY. 1861 c 17 s 1, 2; GS 1866 c 66 s 143, 144; 1868 c 68 s 1; GS 1878 c 66 s 160, 161; 1881 c 63 s 1; 1883 c 102 s 1; 1885 c 110; GS 1894 s 5302, 5303; RL 1905 s 4225; GS 1913 s 7855.

570.12 SATISFACTION, DISCHARGE; PERSONAL PROPERTY

HISTORY. 1861 c 17 s 3; GS 1866 c 66 s 146; GS 1878 c 66 s 163; GS 1894 s 5305; RL 1905 s 4226; GS 1913 s 7856.

570.13 WHEN ACTION IS ABANDONED

HISTORY. 1861 c 17 s 1; GS 1866 c 66 s 143; 1868 c 68 s 1; GS 1878 c 66 s 160; 1881 c 63 s 1; 1883 c 102 s 1; 1885 c 110; GS 1894 s 5302; RL 1905 s 4227; GS 1913 s 7857; 1945 c 272 s 1.

570.14 ATTACHMENTS AND RELEASES; RECORD AND INDEX

HISTORY. 1861 c 17 s 1, 3; GS 1866 c 66 s 143, 145; 1868 c 68 s 1; GS 1878 c 66 s 160, 162; 1881 c 63 s 1; 1883 c 102 s 1; 1885 c 110; GS 1894 s 5302, 5304; RL 1905 s 4228; GS 1913 s 7858.

CHAPTER 571

GARNISHMENT

571.41 GARNISHEE SUMMONS; EXCEPTIONS

HISTORY. 1945 c 424 s 1; 1951 c 197 s 1.

Laws 1945, Chapter 424, repeals the old chapter on garnishment and in its place puts into effect a new chapter. The old act required the garnishee to appear in court, while the new act provides for response by written disclosure. By the new act the garnishee is required to retain in his possession property of the defendant in an amount not exceeding twice the amount of the plaintiff's claim. The plaintiff may serve written interrogatories with the garnishee summons. 32 MLR 378.

Discussion of the abandonment of the rule requiring recourse to state law for determination of whether garnishment is merely ancillary and auxiliary or an independent suit and removable. 35 MLR 675.

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

Dissolution of the garnishment lien in proceedings based upon a judgment on a note where the judgment debtor seeks a discharge in bankruptcy. 32 MLR 815.

Contingent right of indemnity or contribution as an action for the recovery of money. 36 MLR 543.

Garnishment is a statutory remedy which may not be enlarged or extended by implication to cover cases which are not clearly within both its letter and spirit. Insofar as construction becomes necessary, the Garnishment Act is to be construed in favor of the garnishee to the end that his rights as a neutral or unwilling litigant may be preserved unimpaired. *Henderson v Northwest Airlines*, 231 M 503, 43 NW(2d) 786.

When two depositors maintain their funds in a "joint and several" bank account under a contract which gives either depositor alone an unconditional right to any of the account at any time, such account can be garnished for the individual debt of one of the depositors. *Park Enterprises v Trach*, 233 M 473, 47 NW(2d) 194.

An action for contribution or indemnity against a third-party defendant brought into the action on motion of the defendant originally sued is an action for the recovery of money within the meaning of our garnishment statute. *Gustafson v Johnson*, 235 M 358, 51 NW(2d) 109.

Where the summons in a civil action in the municipal court of St. Cloud, which has jurisdiction over three counties, is issued within the meaning of section 571.41 by delivery to a sheriff or constable over one of the three counties for service in one of the other counties, the fees of sheriff or constable are taxable. OAG Sept. 20, 1949 (847-A-8).

571.42 EFFECT OF SERVICE OF SUMMONS

In the absence of exercise by the insured of his option to take the cash surrender value and the defendants of a policy that has not matured, there is no debt due and payable by the insurer to the insured, and the right of the insured to create such a debt by the exercise of the option is not an asset available to creditors, but is a right purely personal to the insured alone. A life policy is not liable to seizure under any form of judicial process so long as the duty of the insurer to pay is subject to any contingency or to any condition precedent. *Fox v Swartz*, 235 M 337, 51 NW(2d) 80.

Where the garnishee bank failed to impound the garnished funds pending final judgment, and permitted the defendant depositor to withdraw the entire amount credited to his checking account, the bank did so at its own risk and had no right of setoff by reason thereof against subsequent garnishers thereof who garnished new deposits made by the defendant before the original garnishment was satisfied. *Johnson v Dutch Mill Dairy*, 237 M 117, 54 NW(2d) 1.

A garnishment impounds only those assets in possession of the garnishee at the time of the service of the garnishment summons. It does not reach assets subsequently acquired by the garnishee. *Johnson v Dutch Mill Dairy*, 237 M 117, 54 NW(2d) 1.

571.43 WHEN GARNISHMENT PROHIBITED

In quasi-in-rem jurisdiction over nonresidents obtained through garnishment proceedings trial of the issues may be raised by a supplemental complaint. 35 MLR 501.

571.47 IN DISTRICT COURT

Where the state oil inspector called at the bulk oil station five days after the fire, said to have been caused by an improper mixture of gasoline and kerosene, occurred at the oil company's branch 35 miles away, and notified the company of the facts, but no claim was made by the plaintiff for injuries sustained until three months later when the complaint was served, whereupon the company promptly notified the insurer, whether or not the oil company gave the insurance company notice "as soon as practicable," as required by the policy, was for the jury in garnishment proceedings against the insurer. *Williams v Cass-Crow Wing Co-op. Assn.*, 224 M 275, 28 NW(2d) 646.

A garnishment impounds only those assets in possession of the garnishee at the time of the service of the garnishment summons. It does not reach assets subsequently acquired by the garnishee. *Johnson v Dutch Mill Dairy*, 237 M 117, 54 NW(2d) 1.

Where the garnishee bank failed to impound the garnished funds pending final judgment, and permitted the defendant depositor to withdraw the entire amount credited to his checking account, the bank did so at its own risk and had no right

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of setoff by reason thereof against subsequent garnishers thereof who garnished new deposits made by the defendant before the original garnishment was satisfied. *Johnson v Dutch Mill Dairy*, 237 M 117, 54 NW(2d) 1.

571.49 DISCLOSURE

A garnishee may assert any or all setoffs which existed in his favor when the garnishment summons were served, and which he might have enforced had an action then been brought against him. Relief issued by way of setoff is allowed as a counterclaim and by statute has been extended to include all causes of action arising ex contractu, whether arising under a contract entirely distinct from that upon which the plaintiff's claim is founded and whether the damages claimed are liquidated or unliquidated. *Henderson v N.W. Airlines*, 231 M 503, 43 NW(2d) 786.

571.50 EFFECT OF DISCLOSURE

Whether plaintiff could proceed by garnishment to enforce payment by automobile liability insurer of the judgment against insured while an appeal from such judgment was pending was rendered moot by affirmance of such judgment before appeal from the judgment in the garnishment proceeding. *Nikkari v Jackson*, 226 M 393, 33 NW(2d) 37.

Where the insurer undertakes defense of a suit against insured under an automobile liability policy it elects to treat the insured's liability therein as covered by the policy, and when it has thus substituted itself and its judgment for that of the insured, both plaintiff and insured are entitled to insist that judgment in favor of the plaintiff in such action establishes insurer's liability both as to the insured and the plaintiff to the extent of such policy. *Nikkari v Jackson*, 226 M 393, 33 NW(2d) 37.

Where insurer undertook defense of a suit against the insured under an automobile liability policy and insured through the insurer appealed from a judgment in favor of plaintiff in such action without filing a supersedeas bond, plaintiff could proceed to enforce payment of the judgment under the policy in garnishment proceedings and upon disclosure by motion against insurer although appeal from the judgment in the main action was then pending. *Nikkari v Jackson*, 226 M 393, 33 NW(2d) 36.

571.51 ORAL DISCLOSURE, SUPPLEMENTAL COMPLAINT

Where the garnishee bank failed to impound the garnished funds pending final judgment, and permitted the defendant depositor to withdraw the entire amount credited to his checking account, the bank did so at its own risk and had no right of setoff by reason thereof against subsequent garnishers thereof who garnished new deposits made by the defendant before the original garnishment was satisfied. *Johnson v Dutch Mill Dairy*, 237 M 117, 54 NW(2d) 1.

571.63 CHANGE OF VENUE

Garnishment; quasi-in-rem jurisdiction over nonresidents; trial of issue raised by a supplemental complaint. 35 MLR 501.

571.64 APPEAL

Where the insurer undertakes defense of a suit against insured under an automobile liability policy it elects to treat the insured's liability therein as covered by the policy, and when it has thus substituted itself and its judgment for that of the insured, both plaintiff and insured are entitled to insist that judgment in favor of the plaintiff in such action establishes insurer's liability both as to the insured and the plaintiff to the extent of such policy. *Nikkari v Jackson*, 226 M 393, 33 NW(2d) 37.

Whether plaintiff could proceed by garnishment to enforce payment by automobile liability insurer of the judgment against insured while an appeal from such judgment was pending was rendered moot by affirmance of such judgment before

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appeal from the judgment in the garnishment proceeding. *Nikkari v Jackson*, 226 M 393, 33 NW(2d) 37.

571.36 Subdivision 1, renumbered, 550.142.

Subdivision 2, repealed, 1953 c 110 s 4.

Subdivision 3, repealed, 1953 c 110 s 4.

CHAPTER 572

ARBITRATION AND AWARD

572.01 WHAT SUBMITTED; SUBMISSION IRREVOCABLE; LABOR DISPUTES

HISTORY. RS 1851 c 96 s 1, 2, 5, 19; 1852 Amend s 98; PS 1858 c 85 s 1, 2, 5, 19; GS 1866 c 89 s 1, 2, 5, 19; GS 1878 c 89 s 1, 2, 5, 19; GS 1894 s 6210, 6211, 6214, 6228; RL 1905 s 4380; GS 1913 s 8016; 1939 c 4 s 39.

572.02 AGREEMENT

Jurisdiction of the federal district court is not presumed but must affirmatively appear; and where the trustees of a Wisconsin railroad in reorganization proceedings had sued in the state court another Wisconsin railroad for amount due on ore pooling agreement containing an arbitration clause and had refused to consent to be sued in bankruptcy court or to bring an action on the ore contracted in such court, the federal court was without jurisdiction to direct the trustees and the other railroad to arbitrate the controversy in conformity with the arbitration clause. *Re Wisconsin Central Railway*, 74 F Supp 85.

572.03 POWERS AND DUTIES OF ARBITRATORS, FILING OF AWARD

In an action for wrongful death of a grandmother, admission of testimony as to services and contributions furnished by decedent to son and daughter, as well as contributions of necessities to their minor children for whose care and support the parents are responsible was not reversible error. *Holtz v Pearson*, 229 M 395, 39 NW(2d) 867.

A finding on a question of law by the appraisers that the loss was not within the coverage of the extended policy was not within their powers and was not fixed. *Mork v Eureka-Security Co.*, 230 M 382, 42 NW (2d) 33.

There being no statutory provisions authorizing payment of compensation of expense of an arbitrator appointed by the labor conciliator, they must be paid as provided in section 572.03. OAG April 27, 1949 (270-D-1).

572.04 PROCEDURE AFTER FILING

An award in arbitration is attended with every presumption of validity. Mere inadequacy of an award is not sufficient ground for setting it aside. But in particular cases it may be so gross as to evidence or establish fraud or corruption, or partiality, or malfeasance, misfeasance on the part of the appraisers. *Mork v Eureka-Security Fire & Marine Ins. Co.*, 230 M 382, 42 NW(2d) 33.

572.05 GROUNDS OF VACATING AWARD

Mere inadequacy of an award is not grounds for setting it aside unless it be so grossly inadequate as to establish fraud, or malfeasance of the appraisers. *Mork v Eureka-Security Co.*, 230 M 382, 42 NW(2d) 33.