

CHAPTER 531

ACTIONS AND PROCEEDINGS

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COMMENCEMENT OF ACTIONS

531.01 ACTIONS, HOW COMMENCED. Actions may be instituted before a justice of the peace, either by the voluntary appearance and agreement of the parties, or by the usual process. When the name of the defendant is not known to the plaintiff, an action may be commenced against him by a fictitious name and his true name shall be inserted when discovered.

[*R. L. s. 3891*] (9002)

531.02 SECURITY FOR COSTS. A justice of the peace, in any action instituted before him, either before or after the process issues, may require of the plaintiff security for costs; and the person giving such security shall sign a memorandum to that effect, which such justice shall keep as a part of the record in the cause, and an action may be maintained thereon before the justice to recover the costs. If the plaintiff refuses to give such security, the justice shall dismiss the action.

[*R. L. s. 3892*] (9003)

531.03 REQUISITES OF PROCESS. Every process issued by a justice shall run in the name of the State of Minnesota, be dated on the day it issues, signed by the justice issuing the same, directed to the sheriff or any constable of the proper county and may be executed anywhere in the county in which it is issued by the sheriff or any constable of the county. It shall be entirely filled up, and have no blank in date or otherwise, when delivered to the officer to be executed. Every process issued by a justice in a civil action shall be returnable not earlier than nine o'clock a. m., nor later than five o'clock p. m., and every summons shall contain a statement of the amount claimed by the plaintiff. Process issued and delivered to the officer to be executed contrary to the provisions of this section shall be void.

[*R. L. s. 3893; 1945 c. 100 s. 1*] (9004)

531.04 SUMMONS; SERVICE. In all cases not otherwise provided for, the first process shall be a summons commanding the officer to summon the defendant to appear before such justice at a time and place specified therein, not less than six, nor more than 20, days from the date thereof, to answer to the plaintiff in a civil action, which shall be served at least six days before the time of appearance therein mentioned by reading the same to the defendant, and delivering a copy

thereof to him, if he can be found, and if not found, by leaving a copy thereof at his last usual place of abode, with a person of suitable age and discretion, then residing therein. No justice of the peace shall issue any summons or other process in a civil action to be served in any city having a population of 200,000 or over, except executions upon existing judgments and service of summons in accordance with the provisions of section 532.29, and other service of such process made within any such city shall be void.

[R. L. s. 3894; 1909 c. 348 s. 1] (9005)

531.05 SERVICE BY PUBLICATION. When the plaintiff, or his agent, shall make an affidavit stating that the plaintiff has a just cause of action against the defendant, founded upon a contract, express or implied, and that the defendant cannot be found in the state, a justice may order that service be made by three weeks' published notice of the summons, in the form hereinafter prescribed, in either of the following cases:

(1) When the defendant, being a resident of the state, has departed therefrom with intent to defraud his creditors or to evade the service of a summons, or keeps himself concealed therein with like intent;

(2) When the defendant is not a resident of the state, but has property, real or personal, therein, and the justice has jurisdiction of the action.

[R. L. s. 3895] (9006)

531.06 WHEN RETURNABLE; MAILING. In such case the summons shall be made returnable in not less than six, nor more than 20, days from the expiration of the period of publication, and the justice shall direct a copy of the summons and complaint to be forthwith deposited in the post-office, with postage prepaid, directed to the defendant at his place of residence, unless it is stated in the affidavit that such residence is not known to the party making the application.

[R. L. s. 3896] (9007)

531.07 SERVICE BY PRIVATE PERSON. Every justice issuing any summons authorized by this chapter, upon being satisfied by the affidavit of the party applying therefor, his agent or attorney, that the defendant is about to depart from the state, or is about to dispose of his property with the intention of defrauding his creditors, and setting forth that he has made diligent search for an officer to serve the same, and that no qualified officer can be found in the county to serve such summons in time, may empower any suitable person not a party to the action to serve the same, by an endorsement thereon to the following effect: "At the request, cost, and risk of the plaintiff, I authorize A. B. to serve and return this summons. E. F., Justice of the Peace." The person so empowered shall possess all the authority of a constable in relation to the service of such summons and be subject to the same obligations.

[R. L. s. 3897] (9008)

531.08 FAILURE TO EXECUTE; FALSE RETURNS. If any officer, without showing good cause therefor, shall fail to execute and duly return any process to him delivered, or make a false return, he shall pay to the party injured \$10.00, and all damages such party may have sustained by reason thereof, to be recovered in a civil action.

[R. L. s. 3898] (9009)

531.09 NEXT FRIEND FOR INFANT PLAINTIFF. No action shall be instituted by an infant until a next friend is appointed for him. When requested, the justice shall appoint some suitable person, who consents thereto in writing, named by such infant, to act as his next friend in such action, who shall be responsible for the costs therein.

[R. L. s. 3899] (9010)

531.10 GUARDIAN FOR INFANT DEFENDANT. After the service and return of process against an infant defendant, the action shall not be further prosecuted until a guardian for such defendant is appointed. Upon the request of such defendant, the justice shall appoint some person, who consents thereto in writing, to be his guardian in defending the action; and if the defendant does not appear on the return day of the process, or if he neglects or refuses to nominate such guardian, the justice, at the request of the plaintiff, may appoint any discreet person as such guardian. The consent of such next friend or guardian shall be filed with the justice, and such guardian shall not be liable for costs.

[R. L. s. 3900] (9011)

531.11 TRANSFER OF ACTION. If, on the return of the process, or at any time before the trial commences, in any action or proceeding, civil or criminal, either party, his agent or attorney, makes and files an affidavit stating that the justice before whom the same is pending is a material witness for the party, without whose testimony he cannot safely proceed to trial, or that, from prejudice, bias, or other cause, he believes such justice will not decide impartially in the matter or if the justice is near of kin to either party, such justice shall transfer the action, and all papers pertaining to the same, to some other justice of the same or an adjoining election district, and, if there be no other justice in the same or adjoining district, then to the nearest justice in the same county, who may thereupon proceed to hear and determine such action or proceeding in the same manner as the justice before whom it was commenced might have done; but no cause or proceeding shall be removed more than once, and no justice is required to transfer any civil action until all his costs in the same are paid.

[R. L. s. 3901] (9012)

531.115 PROCEEDINGS COMMENCED BEFORE FEE BASIS JUDGE. Subdivision 1. **Certain criminal matters.** Whenever a person is charged with a criminal offense or violation of an ordinance in which jurisdiction is in a justice court or a court in which the judge is paid upon a fee basis, the defendant may at any time before trial demand in writing that his case be removed to another court having jurisdiction within the county and presided over by a salaried judge.

When such justice of the peace or such judge is furnished with a demand for change of venue, he shall forthwith transmit such files and proceedings to the court in the county to which transfer is requested by the defendant. Thereafter such proceedings will be had in such court to which the case has been transferred as if such proceedings had been originally commenced therein.

If the defendant is under bail, the bail shall be continued with the same effect as if the bail had been authorized by the court to which the proceeding is transferred.

Subd. 2. **In civil matters.** Whenever a civil action is commenced in which jurisdiction is in a justice court or a court in which the judge is paid upon a fee basis, any defendant may at any time before trial demand in writing that the case be removed to another court having jurisdiction within the county and presided over by a salaried judge.

When such justice of the peace or such judge is furnished with a demand for change of venue, he shall forthwith transmit such files and proceedings to the court in the county to which transfer is requested by a defendant. Thereafter such proceedings will be had in such court to which the case has been transferred as if such proceedings had been originally commenced therein.

Subd. 3. **Exception.** No criminal proceedings or civil matter shall be transferred to the district court under this section and the provisions of this section shall not apply in any county wherein there is no court of appropriate jurisdiction presided over by a salaried judge other than the district court.

[1959 c 450 s 1]

531.12 TIME FOR APPEARANCE. The parties are entitled to one hour after the time for appearance mentioned in the summons in which to appear, but are not bound to remain longer than that time unless both parties appear, and the justice, being present, is actually engaged in the trial of another action or proceeding. In such case he may postpone the time for appearance until the close of such trial or proceeding.

[R. L. s. 3902] (9013)

531.13 FAILURE OF PARTIES TO APPEAR. If either party fails to appear within one hour after the time specified for the return of the process, or to which the cause is adjourned, the justice shall dismiss the action, or proceed to hear the evidence of the party present, and render judgment thereon. In an action upon contract for the payment of money only, if the plaintiff shall, at the time of the issuance of the process, file with the justice a verified complaint and attach a copy thereof to the process and cause a copy of such complaint to be served upon the defendant in the manner prescribed by law for the service of the process in such action, if the defendant fails to appear within one hour after the time specified for the return of the process, or to which the cause is adjourned, the justice shall enter judgment against the defendant on such complaint without requiring proof of the cause of action therein pleaded. A defendant who has appeared may, before

answering the complaint, offer to allow judgment to be taken against him for the sum or property in the offer specified, with costs. If the offer is accepted, the justice shall thereupon enter judgment accordingly. If refused, the same is to be deemed withdrawn, and cannot be given in evidence; and, if the plaintiff fails to obtain a more favorable judgment, he cannot recover costs made subsequent to such offer, but must pay the defendant's costs and disbursements made and expended subsequently thereto.

[R. L. s. 3903; 1917 c. 309 s. 1] (9014)

PLEADINGS, TRIAL

531.14 PLEADINGS IN JUSTICES' COURTS. The pleadings in justices' courts shall take place at the time mentioned in the summons for the appearance of the parties or at such time thereafter, not exceeding one week, as the justice may appoint for the convenience of the parties and by their consent. Unless the defendant at the time the summons is returnable shall be required by order of the court to plead, he shall have right to plead at the time to which the cause is continued.

[R. L. s. 3904; 1919 c. 177 s. 1] (9015)

531.15 PLEADINGS; NAME AND CONTENTS. The pleadings in justice's court are:

- (1) The complaint, stating the cause of action;
- (2) The answer, stating the grounds of defense;
- (3) When the answer sets up a counter-claim by way of set-off, the reply.

[R. L. s. 3905] (9016)

531.16 ORAL OR IN WRITING. The pleadings may be oral or in writing. If oral, the substance of them shall be entered by the justice in his docket. If in writing, they shall be filed in his office, and a reference to them made in his docket.

[R. L. s. 3906] (9017)

531.17 COMPLAINT. The complaint shall state in a plain and direct manner the facts constituting the cause of action.

[R. L. s. 3907] (9018)

531.18 ANSWER. The answer shall contain a denial of all the material facts stated in the complaint which the defendant believes to be untrue, and also a statement in a plain and direct manner of any other facts constituting a defense, or a counter-claim upon which an action might be brought by the defendant against the plaintiff in a justice court.

[R. L. s. 3908] (9019)

531.19 REPLY. When the answer contains a counter-claim, the plaintiff may reply, denying any of the material allegations relating thereto.

[R. L. s. 3909] (9020)

531.20 DENIAL OF KNOWLEDGE OR INFORMATION. A statement in the answer or reply that the party has not sufficient knowledge or information in respect to a particular allegation in the previous pleading of the adverse party to form a belief, is equivalent to a denial.

[R. L. s. 3910] (9021)

531.21 ACCOUNTS AND INSTRUMENTS; INSPECTION BY ADVERSE PARTY. When a cause of action or counter-claim arises upon an account or instrument for the payment of money only, it shall be sufficient for the party to deliver the account or instrument to the court, and to state that there is due to him thereon, from the adverse party, a specified sum, which he claims to recover or set off. The court may at the time of pleading require that such writing or account be exhibited to the adverse party for inspection, with liberty to copy the same, and, if not so exhibited, may prohibit its afterward being given in evidence.

[R. L. s. 3911] (9022)

531.22 PLEADINGS VERIFIED. Every complaint, answer, or reply shall be verified by the oath of the party pleading, or, if he be not present, by the oath of his agent or attorney to the effect that he believes it to be true. The verification shall be oral or in writing, in conformity with the pleading verified.

[R. L. s. 3912] (9023)

531.23 ADMISSION BY FAILURE TO DENY; PROOF ON DEFAULT. Every material allegation in the complaint, or relating to a counter-claim in the answer, not denied by the pleading of the adverse party, shall on the trial be taken to be

true, except that, when a defendant who has not been served with a copy of the complaint with the summons, fails to appear and answer, the plaintiff cannot recover without proving his case.

[R. L. s. 3913] (9024)

531.24 OBJECTIONS TO PLEADINGS. Either party may object to a pleading of his adversary, or to any part thereof, that it is not sufficiently explicit to enable him to understand it, or that it contains no cause of action or defense. If the court deems the objection well founded, it shall order the pleading to be amended, and, if the party refuses to amend, the defective pleading shall be disregarded.

[R. L. s. 3914] (9025)

531.25 VARIANCE. A variance between the evidence and the allegations in the pleadings shall be disregarded, as immaterial, unless the court is satisfied that the adverse party is prejudiced thereby.

[R. L. s. 3915] (9026)

531.26 AMENDMENT. The pleadings may be amended at any time before or during the trial, to supply any deficiency or omission in the allegations necessary to support the action or defense. If the amendment is made after the issue, and it appears to the satisfaction of the court that an adjournment is necessary to the adverse party in consequence thereof, an adjournment may be granted.

[R. L. s. 3916] (9027)

531.27 ADJOURNMENT WHEN PLEADINGS CLOSED. When the pleadings are closed, the justice, on the application of either party, shall adjourn the cause for not exceeding one week, or, upon application on oath, for any further time not exceeding 30 days.

[R. L. s. 3917] (9028)

531.28 TITLE TO REAL ESTATE; CASE CERTIFIED. If it appears on the trial of any action, from the evidence of either party, that the title to real estate is involved, which title is disputed by the other party, the justice shall immediately make an entry thereof in his docket, and all other proceedings in the case shall cease. He shall certify and return to the district court a transcript of all the entries made in his docket relating to the case, together with all process and other papers relating to the action, in the same manner and within the same time as upon appeal; and thereupon the district court shall proceed in the cause the same as if the action had been originally commenced therein.

[R. L. s. 3918] (9029)

531.29 ADJOURNMENT SUBSEQUENT TO FIRST. Every adjournment after the first shall be for such reasonable time as will enable the party to procure such absent testimony or witness as is necessary and material, which the party applying for the adjournment has not been able to procure by the use of proper diligence.

[R. L. s. 3919] (9030)

531.30 WHEN DEMANDS MAY BE SET OFF. Demands may be set off in the following cases:

(1) A demand arising upon a judgment or contract, express or implied; but, if it is founded upon a bond or other contract having a penalty, only the sum equitably due by virtue of the condition shall be set off;

(2) It must be due to defendant in his own right, either as the original creditor or payee, or as the assignee and owner of the demand;

(3) It must be for real or personal property sold, or for money paid or services done, or, if not such a demand, the amount must be liquidated, or be capable of liquidation by calculation;

(4) It must exist at the time the action is commenced, and then belong to the defendant;

(5) It can only be allowed in actions founded upon demands which could themselves be the subject of set-off;

(6) If there are several defendants, the demand set off must be due to all of them jointly;

(7) It must be a demand existing against the plaintiff, unless the action is brought in the name of a plaintiff who has no real interest in the contract upon which the action is founded in which case no set-off of a demand against the plaintiff shall be allowed, except as hereinafter specified;

(8) If the action is founded upon a contract other than a negotiable promissory note or bill of exchange which has been assigned to the plaintiff, a demand against

such plaintiff or any assignor of such contract existing at the time of the assignment thereof, and belonging to the defendant in good faith before notice of such assignment, may be set off to the amount of the plaintiff's demand, if the demand is such as might have been set off against such plaintiff's assignor while the contract belonged to him;

(9) If the plaintiff is trustee for another, or if the action is in the name of a plaintiff who has no real interest in the contract upon which it is founded, so much of the demand existing against those whom the plaintiff represents, or for whose benefit the action is brought, may be set off, as will satisfy the plaintiff's demand, if the same might be set off in an action brought by those beneficially interested.

[R. L. s. 3920] (9031)

531.31 SET-OFFS AGAINST ASSIGNEES. If the action is upon a negotiable promissory note or bill of exchange assigned to the plaintiff after it became due, a set-off to the amount of the plaintiff's demand may be made of a demand existing against any person who has assigned or transferred such note or bill after it became due, if the demand is such as might have been set off against such assignor while the note or bill belonged to him.

[R. L. s. 3921] (9032)

531.32 JUDGMENT ON SET-OFF. If the amount of the set-off established is less than the plaintiff's demand, plaintiff shall have judgment for the residue only. If it equals or exceeds such demand, defendant shall have judgment for his costs and for any balance found due him. No such judgment shall be given against the plaintiff for a balance due from any other person.

[R. L. s. 3922] (9033)

TRIAL BY JURY

531.33 DEMAND FOR JURY. After issue is joined in any civil action in justice court, and before the commencement of the trial thereof, either party, on first paying to the justice the jury fees in advance for one day's attendance, may demand that the action be tried by a jury.

[R. L. s. 3923] (9034)

531.34 JURY, HOW CHOSEN. Upon such demand being made, the justice shall direct the sheriff or any constable of the county to make a list in writing of the names of 24 persons qualified to serve as jurors in the district court, from which each party, commencing with the party demanding such jury, may strike alternately six names; and in case of the absence of either party, or his refusal to strike, the justice shall strike for him. Upon consent of both parties, entered on the record, a jury of six may be ordered by the justice, in which case a list of 18 names shall be made, from which each party may strike six.

[R. L. s. 3924] (9035)

531.35 VENIRE. The justice shall issue a venire requiring the officer to summon the persons whose names remain on such list to appear at a time and place mentioned therein to make a jury for the trial of the action, and if, in his opinion, the jurors cannot appear forthwith, he shall adjourn the cause for such reasonable time as he deems proper to enable the officer to summon the jurors, and for them to appear.

[R. L. s. 3925] (9036)

531.36 TALESMEN. If any juror shall not attend at the time, or if legal objections are raised to any who appear, the officer shall summon talesmen to supply the deficiency.

[R. L. s. 3926] (9037)

531.37 JURY SWORN AND KEPT TOGETHER. The jury shall take the oath required by law, and, after the cause is submitted to them, shall be kept together in some convenient place, under the charge of the proper officer sworn for that purpose, until they agree upon a verdict, or are discharged by the justice.

[R. L. s. 3927] (9038)

531.38 VERDICT; JUDGMENT. When the jurors have agreed upon their verdict, they shall deliver the same to the justice publicly, who shall enter the same in his docket, and render judgment according thereto.

[R. L. s. 3928] (9039)

531.39 FAILURE TO AGREE. When the justice shall be satisfied that a jury, after having been out a reasonable time, cannot agree on a verdict, he may discharge them and issue a new venire, unless the parties consent that the justice may render judgment on the evidence already before him, or that a new trial be had before him.

[R. L. s. 3929] (9040)

531.40 FAILURE TO APPEAR; PUNISHMENT. Every person who, being duly summoned as a juror, shall fail to appear or render a reasonable excuse for such failure, or who shall refuse to serve, shall be subject to a fine of not more than \$10.

[R. L. s. 3930] (9041)

531.41 CHALLENGES. Either party may challenge any juror for cause, and have him sworn to answer questions concerning the same, and may prove such cause by other evidence. Such challenge shall be decided by the justice.

[R. L. s. 3931] (9042)

531.42 TRIAL WITHOUT JURY. When the trial is before the justice without a jury, he shall hear the proofs and allegations of the parties, and, after the case has been submitted, shall permit no further evidence to be given, or suffer any communication from either party or from any other person in relation to such action, except in the presence of both parties, or on due notice thereof served upon the absent party, until he has rendered judgment.

[R. L. s. 3932] (9043)

JUDGMENTS

531.43 BY CONFESSION. A justice may enter a judgment by confession of the defendant in any case when the debt or damage does not exceed \$100, upon compliance with the following requisites:

- (1) The defendant shall personally appear before the justice;
- (2) The confession shall be in writing, signed by the defendant, and verified by his oath, and filed with the justice;
- (3) If it is for money due or to become due, the confession shall state concisely the facts out of which it arose, and show that the sum confessed therefor is justly due or to become due;
- (4) If it is for the purpose of securing a contingent liability, it shall state concisely the facts constituting the liability, and show that the sum confessed therefor does not exceed the same.

[R. L. s. 3933] (9044)

531.44 COSTS; JUDGMENT ROLL. The statement and affidavit shall be filed with the justice, who shall endorse upon it the time of filing, and enter in his docket a judgment for the amount confessed, with \$1 costs. The statement and affidavit, with the judgment endorsed thereon, thereupon constitute the judgment roll.

[R. L. s. 3934] (9045)

531.45 TIME OF ENTRY. In cases where the action is dismissed or the plaintiff withdraws his action or is non-suited, or where judgment is confessed, and where a verdict is rendered, the justice shall forthwith render judgment, and enter the same in his docket. In all other cases he shall render judgment and enter the same in his docket within three days after the action is submitted to him for decision.

[R. L. s. 3935] (9046)

531.46 FOR COSTS ON DISMISSAL. When an action is dismissed, judgment shall be rendered for costs, and execution may issue to enforce such judgment in the same manner and with the same effect as in other cases.

[R. L. s. 3936] (9047)

531.47 MUTUAL JUDGMENTS SET OFF. If there are mutual justices' judgments between the same parties, upon which the time for appeal has expired, and on which there is no existing execution, on the application of either party, and reasonable notice given to the adverse party, one judgment may be set off against the other by the justice who rendered the judgment against which the set-off is proposed.

[R. L. s. 3937] (9048)

531.48 SET-OFF WHEN BEFORE DIFFERENT JUSTICES. If the judgment proposed as a set-off was rendered before another justice, the party proposing such set-off shall produce before the justice a transcript of such judgment, accompanied

by a certificate of the justice rendering the same that it is unsatisfied, in whole or in part, and that there is no appeal or existing execution thereon, and that such transcript was obtained for the purpose of being a set-off against the judgment to which it is offered as such. The justice granting such transcript shall make an entry thereof in his docket, and all further proceedings on such judgment shall be stayed, unless such transcript is returned with the proper justice's certificate thereon that it has not been allowed in set-off.

[R. L. s. 3938] (9049)

531.49 DUTY OF JUSTICE. If any justice shall set off one judgment against another, he shall make an entry thereof in his docket, and execution shall issue only for the balance. If the justice allows the transcript of a judgment rendered by another justice to be set off, he shall file such transcript among the papers relating to the judgment to which it is allowed as a set-off. If he refuses such transcript as a set-off, he shall so certify on the same, and return it to the party who offered it.

[R. L. s. 3939] (9050)

531.50 BOND FOR RESTITUTION. Where the summons is served by publication, or by leaving a copy thereof at the last usual place of abode of the defendant, before judgment is rendered the plaintiff shall cause to be filed with the justice a bond, with sufficient sureties, to be approved by the justice in double the amount of the judgment claimed, conditioned that if the defendant, within six months from the rendition of the judgment, shall appear and be admitted to defend the action, the plaintiff will abide the order of the court therein, and will refund all sums collected upon such judgment, and make restitution of all property received in virtue thereof, if ordered by the court, and pay all costs and damages that may be adjudged against him.

[R. L. s. 3940] (9051)

531.51 OPENING DEFAULT. At any time within six months from the rendition of the judgment as provided in section 531.50, the defendant shall be permitted to appear and defend such action upon complying with the following conditions:

(1) He shall serve a notice upon the plaintiff, his agent or attorney, specifying that on the day therein named, which shall not be less than three nor more than ten days from the day of service thereof, he will apply to the justice before whom the judgment was rendered, or his successor in office, to have it reopened;

(2) He shall file a bond with the justice, with sureties approved by him, in a sum double the amount of the judgment, conditioned that he will abide the order of the court in the case, and pay all costs and damages that may be adjudged against him therein;

(3) He shall file a verified answer.

If such answer contains a good defense to any cause of action stated in the complaint, the justice shall order the judgment reopened, and like proceedings shall thereafter be had therein as in other civil causes in justice's court.

[R. L. s. 3941] (9052)

531.52 TRANSCRIPT; DOCKETING IN DISTRICT COURT. Every justice who has rendered judgment for more than \$10, exclusive of costs, or who has the custody, by virtue of his office, of the docket of a former justice in which any such judgment appears, on demand and payment of his fees, shall give to the person in whose favor such judgment was rendered a certified transcript thereof. Upon filing such transcript with the clerk of the district court of the county, such clerk shall forthwith enter such judgment in the district court judgment docket, and note thereon the time of such filing.

[R. L. s. 3942] (9053)

531.53 EFFECT OF FILING TRANSCRIPT; EXECUTION. From the time of filing the transcript thereof, every such judgment shall become a lien on the real estate of the defendant to the same extent as a judgment of the district court, shall be equally under its control, and execution shall issue thereon in the same manner and with like effect as upon a judgment of such court, and upon filing with the clerk of the district court of any other county a transcript of the original docket of the justice's judgment in the district court of the county in which it was rendered, such judgment shall be docketed therein, and thereupon become a lien upon the real property of the judgment debtor in such county in the same manner as in the case of filing transcripts of judgments in district court. No execution shall be issued

thereon out of any district court until an execution has been issued by the justice, and returned that the defendant has no personal property whereon to levy the same, which shall appear by the certificate of the justice filed with the clerk of the court.

[*R. L. s. 3943*] (9054)

531.54 EXECUTION, ON WHAT LEVIED. In cases where the summons was served by publication, any execution issued out of a district or justice court shall be enforced only against property seized or attached by virtue of attachment or garnishee process issued in the action.

[*R. L. s. 3944*] (9056)

531.55 PRESUMPTION IN FAVOR OF JUDGMENT. When a judgment rendered by a justice of the peace has remained undisturbed for a period of not less than two years, the jurisdiction of the justice over the parties and subject matter of the action at the time of rendering the same shall be presumed, when it appears from the docket or a transcript thereof on file in the office of the clerk of the district court of the proper county that at the time of rendering such judgment he had acquired such jurisdiction.

[*R. L. s. 3945*] (9057)