

CHAPTER 330.

LIMITATIONS OF COMMENCEMENT OF ACTIONS AND PROCEEDINGS.

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330.01 Civil actions; objection as to time of commencing. Civil actions can only be commenced within the periods prescribed in this chapter, except when, in special cases, a different limitation is provided by statute. But the objection that the action was not commenced within the time limited can only be taken by answer or demurrer in proper cases.

330.02 Realty, seizin and possession of. No action for the recovery of real property or the possession thereof shall be maintained unless it appear that the plaintiff, his ancestor, predecessor or grantor was seized or possessed of the premises in question within twenty years before the commencement of such action.

330.03 Defense or counterclaim, when effectual. No defense or counterclaim, founded upon the title to real property or to rents or services out of the same, shall be effectual unless the person making it or under whose title it is made, or his ancestor, predecessor or grantor was seized or possessed of the premises in question within twenty years before the committing of the act with respect to which it is made.

330.04 Entry upon realty, when valid. No entry upon real estate shall be deemed sufficient or valid as a claim unless an action be commenced thereupon within one year after the making of such entry and within twenty years from the time when the right to make such entry descended or accrued; and when held adversely under the provisions of section 330.07, within ten years from the time when such adverse possession begun.

330.05 Presumption from legal title. In every action to recover real property or the possession thereof the person establishing a legal title to the premises shall be presumed to have been possessed thereof within the time required by law, and the occupation of such premises by another person shall be deemed to have been under and in subordination to the legal title unless it appear that such premises have been held and possessed adversely to such legal title for ten years, under the provisions of section 330.06, or twenty years under the provisions of section 330.08, before the commencement of such action.

330.06 Presumption on adverse holding under conveyance or judgment. Where the occupant or those under whom he claims entered into the possession of any premises under claim of title, exclusive of any other right, founding such claim upon some written instrument, as being a conveyance of the premises in question, or upon the judgment of some competent court, and that there has been a continual occupation and possession of the premises included in such instrument or judgment or of some part of such premises

under such claim for ten years, the premises so included shall be deemed to have been held adversely; except that when the premises so included consist of a tract divided into lots the possession of one lot shall not be deemed the possession of any other lot of the same tract.

330.07 Adverse possession defined. For the purpose of constituting an adverse possession by any person claiming a title founded upon some written instrument or some judgment land shall be deemed to have been possessed and occupied in the following cases:

- (1) Where it has been usually cultivated or improved;
- (2) Where it has been protected by a substantial inclosure;
- (3) Where, although not inclosed, it has been used for the supply of fuel or of fencing timber for the purpose of husbandry or for the ordinary use of the occupant;
- (4) Where a known farm or a single lot has been partly improved the portion of such farm or lot that may have been left not cleared or not inclosed, according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved or cultivated.

330.08 Extent of possession not founded on writing, judgment, etc. When there has been an actual continued occupation of any premises under a claim of title, exclusive of any other right, but not founded upon any written instrument or any judgment or decree, the premises so actually occupied, and no other, shall be deemed to be held adversely.

330.09 Adverse possession, what is. For the purpose of constituting an adverse possession by a person claiming title, not founded upon some written instrument or some judgment or decree, land shall be deemed to have been possessed and occupied in the following cases only:

- (1) When it has been protected by a substantial inclosure.
- (2) When it has been usually cultivated or improved.

330.10 Action barred by adverse possession, when. An adverse possession of ten years under sections 330.06 and 330.07 or of twenty years under sections 330.08 and 330.09 shall constitute a bar to an action for the recovery of such real estate so held adversely or of the possession thereof. But no person can obtain a title to real property belonging to the state by adverse possession, prescription or user unless such adverse possession, prescription or user shall have been continued uninterruptedly for more than forty years.

330.11 Tenant's possession that of landlord. Whenever the relation of landlord and tenant shall have existed between any persons the possession of the tenant shall be deemed the possession of the landlord until the expiration of ten years from the termination of the tenancy; or where there has been no written lease until the expiration of ten years from the time of the last payment of rent, notwithstanding such tenant may have acquired another title or may have claimed to hold adversely to his landlord; but such presumption shall not be made after the periods herein limited.

330.12 What use not adverse. (1) No presumption of the right to maintain any wire or cable used for telegraph, telephone, electric light or any other electrical use or purpose whatever shall arise from the lapse of time during which the same has been or shall be attached to or extended over any building or land; nor shall any prescriptive right to maintain the same result from the continued maintenance thereof.

(2) The mere use of a way over uninclosed land shall be presumed to be permissive and not adverse.

Cross Reference: See 180.17 (5) relating to right to condemn for easement for transmission lines.

330.13 Rights not impaired. The right of any person to the possession of any real estate shall not be impaired or affected by a descent being cast in consequence of the death of any person in possession of such estate.

330.135 Limitation if disability exists; temporary. (1) If a person entitled to commence any action for the recovery of real property or to make an entry or defense founded on the title to real property or to rents or services out of the same be, at the time such title shall first descend or accrue, either (a) within the age of 21 years; or (b) insane; or (c) imprisoned on a criminal charge or in execution upon conviction of a criminal offense, for a term less than for life, the time during which such disability shall continue shall not be deemed any portion of the time in this chapter limited for the commencement of such action or the making of such entry or defense; but such action may be commenced or entry or defense made, after the time limited and within 5 years after the disability shall cease or after the death of the person entitled, who shall die under such disability; but such action shall not be commenced or entry or defense made after that period.

(2) After December 31, 1945, the provisions of this section shall not operate to extend the time for commencing any action with respect to which the 30-year or the 60-year limitation period established in section 330.15 shall have expired, whether the cause of action shall have arisen prior or subsequent to the enactment of this subsection.

[330.14 Stats 1939 repealed by 1941 c. 293]

330.14 Actions, time for commencing. The following actions must be commenced within the periods respectively hereinafter prescribed after the cause of action has accrued.

[330.15 Stats. 1939 renumbered section 330.14 by 1941 c. 293]

330.15 Action concerning real estate. (1) Except as provided in subsection (5), no action affecting the possession or title of any real estate shall be commenced by any person, the state, or any subdivision thereof after January 1, 1943, which is founded upon any unrecorded instrument executed more than 30 years prior to the date of commencement of such action, or upon any instrument recorded more than 30 years prior to the date of commencement of the action, or upon any transaction or event occurring more than 30 years prior to the date of commencement of the action, unless within 30 years after the execution of such unrecorded instrument or within 30 years after the date of recording of such recorded instrument, or within 30 years after the date of such transaction or event there is recorded in the office of the register of deeds of the county in which the real estate is located, some instrument expressly referring to the existence of such claim, or a notice setting forth the name of the claimant, a description of the real estate affected and of the instrument or transaction or event on which such claim is founded, with its date and the volume and page of its recording, if it be recorded, and a statement of the claims made. This notice may be discharged the same as a notice of pendency of action. Such notice or instrument recorded after the expiration of 30 years shall be likewise effective, except as to the rights of a purchaser for value of the real estate or any interest therein which may have arisen prior to such recording.

(2) The recording of such notice, or of an instrument expressly referring to the existence of the claim, shall extend for 30 years from the date of recording (whether such recording occurred before or after the enactment of this section), the time in which any action founded upon the written instrument or transaction or event referred to in the notice or recorded instrument may be commenced; and like notices or instruments may thereafter be recorded with like effect before the expiration of each successive 30-year period.

(3) This section does not extend the right to commence any action beyond the date at which such right would be extinguished by any other statute.

(4) This section shall be construed to effect the legislative purpose of barring all claims to an interest in real property, whether dower (which for the purpose of this section shall be considered as based on the title of the husband without regard to the date of marriage) inchoate or consummate, curtesy, remainders, reversions, mortgage liens, old tax deeds, inheritance, gift and income tax liens, rights as heirs or under wills, or any claim of any nature whatsoever, however denominated, and whether such claims are asserted by a person sui juris or under disability, whether such person is within or without the state, and whether such person is natural or corporate, or private or governmental, unless within such 30-year period there has been recorded in the office of the register of deeds some instrument expressly referring to the existence of such claim, or a notice pursuant to this section. This section does not apply to any action commenced by any person who is in possession of the real estate involved as owner at the time the action is commenced, nor does this section apply to any real estate or interest therein while the record title thereto remains in a railroad corporation or a public service corporation as defined in section 184.01, or any trustee or receiver thereof, or to claims or actions founded upon mortgages or trust deeds executed by such corporations, or trustees or receivers thereof; nor does this section apply to any real estate or interest therein while the record title thereto remains in the state or any political subdivision or municipal corporation thereof.

(5) Actions to enforce easements, or covenants restricting the use of real estate set forth in any instrument of public record shall not be barred by this section for a period of 60 years after the date of recording such instrument, and the timely recording of instruments expressly referring to such easements or covenants or of notices pursuant to this section shall extend such time for 60-year periods from such recording.

(6) The word "purchaser" as used in this section shall be construed to embrace every person to whom any estate or interest in real estate shall be conveyed for a valuable consideration and also every assignee of a mortgage or lease or other conditional estate.

330.16 Within twenty years. Within twenty years:

(1) An action upon a judgment or decree of any court of record of this state or of the United States sitting within this state.

(2) An action upon a sealed instrument when the cause of action accrues within this state, except those mentioned in sections 19.015, 321.02 and 330.19 and subsection (2) of section 330.20.

A provision "Witnesseth our hands and tract an instrument under seal. Skelly Oil seals" was not sufficient to constitute a con- Co. v. Peterson, 257 W 300, 43 NW (2d) 449.

330.17 Within twenty years, against railroads and utilities for entry on lands. Whenever any land or any interest therein has been or shall hereafter be taken, entered upon or appropriated for the purpose of its business by any railroad corporation, electric railroad or power company, telephone company or telegraph company without said corporation or company having first acquired title thereto by purchase or condemnation, as by statute provided, the owner of any such land, his heirs, assigns and legal representatives shall have and are hereby given the right to at any time within twenty years from the date of such taking, entry or appropriation, sue for damages sustained because of such taking, from the corporation or company so taking, entering upon or appropriating said lands or its successors in title, in the circuit court of the county in which said land is situated.

330.18 Within ten years. Within ten years:

(1) An action upon a judgment or decree of any court of record of any other state or territory of the United States or of any court of the United States sitting without this state.

(2) An action upon a sealed instrument when the cause of action accrued without this state, except those mentioned in section 330.19.

(3) An action for the recovery of damages for flowing lands, when such lands have been flowed by reason of the construction or maintenance of any milldam.

(4) An action which, on and before the twenty-eighth day of February in the year one thousand eight hundred and fifty-seven, was cognizable by the court of chancery, when no other limitation is prescribed in this chapter.

(5) An action for the recovery of damages for flowing lands when such lands shall have been flowed by reason of the construction or maintenance of any flooding dam or other dams constructed, used or maintained for the purpose of facilitating the driving or handling of saw logs on the Chippewa, Menomonee, or Eau Claire rivers or any tributary of either of them, provided that in cases where the ten years have already expired, the parties shall have six months from and after the passage and publication hereof within which an action may be brought.

(6) Any action in favor of the state when no other limitation is prescribed in this chapter. No cause of action in favor of the state for relief on the ground of fraud shall be deemed to have accrued until discovery on the part of the state of the facts constituting the fraud.

(7) (a) No action or proceeding affecting the title to or possession of any real estate which is founded on a defect in jurisdiction over a person named as a party defendant in a judgment entered in a court of record of this state shall be commenced after 10 years from the filing of such judgment with the clerk of the said court, provided that during such time a lis pendens or such judgment or a certified copy thereof, naming such person as a party defendant, has been of record in the office of the register of deeds of the county in which such real estate is located, unless within 10 years after the date of the filing of such judgment with the said clerk there is filed in the office of such register of deeds some instrument or notice giving the name of the person claiming to have been affected thereby, describing such defect, and the real estate affected. Any such instrument or notice filed after the expiration of such 10 years shall be likewise effective, except as to the rights of a purchaser, without notice and for value, of such real estate or interest therein which may have arisen prior to such filing. Such instrument or notice may be discharged in the same manner as a lis pendens.

(b) Paragraph (a) shall have no application to judgments in estates of decedents.

[(7) takes effect July 1, 1952]

History: 1951 c. 321.

(4) does not apply in all cases where equitable relief is sought, but only in controversies between trustee and beneficiary as to the establishment, enforcement, protection and preservation of trusts of which controversies the court of chancery had sole and exclusive jurisdiction. (4) does not apply to an ordinary action by a corporation against its former general manager for an accounting of corporate funds. Haueter v. Budlow, 256 W 561, 42 NW (2d) 261.

330.19 Within six years; foreign limitation; notice of injury. Within six years:

(1) An action upon a judgment of a court not of record.

(2) An action upon any bond, coupon, interest warrant or other contract for the payment of money, whether sealed or otherwise, made or issued by any town, county, city, village or school district in this state.

(3) An action upon any other contract, obligation or liability, express or implied, except those mentioned in sections 330.16 and 330.18.

(4) An action upon a liability created by statute when a different limitation is not prescribed by law.

(5) An action to recover damages for an injury to property, real or personal, or for an injury to the person, character or rights of another, not arising on contract, except in case where a different period is expressly prescribed. But no action to recover damages for injuries to the person, received without this state, shall be brought in any court in this state when such action shall be barred by any statute of limitations of the state or country in which such injury was received unless the person so injured shall, at the time of such injury, have been a resident of this state. No action to recover damages for an injury to the person shall be maintained unless, within two years after the happening of the event causing such damages, notice in writing, signed by the party damaged, his agent or attorney, shall be served upon the person or corporation by whom it is claimed such damage was caused, stating the time and place where such damage occurred, a brief description of the injuries, the manner in which they were received and the grounds upon which claim is made and that satisfaction thereof is claimed of such person or corporation. Such notice shall be given in the manner required for the service of summons in courts of record. No such notice shall be deemed insufficient or invalid solely because of any inaccuracy or failure therein in stating the description of the injuries, the manner in which they were received or the grounds on which the claim is made, provided it shall appear that there was no intention on the part of the person giving the notice to mislead the other party and that such party was not in fact misled thereby; provided, that the provision herein requiring notice of two years shall not apply to any event causing damage which happened before the passage and publication of this act. When an action shall be brought and a complaint actually served within two years after the happening of the event causing such damages, the notice herein provided for need not be served.

(6) An action to recover personal property or damages for the wrongful taking or detention thereof.

(7) An action for relief on the ground of fraud. The cause of action in such case is not deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud.

(8) No action against any railroad corporation for damages to property occasioned by fire set from a locomotive or for stock killed or injured by such corporation shall be maintained unless within one year after the happening of the event causing such damage the complaint be served or a notice in writing, signed by the party owning such property or stock, his agent or attorney, shall be given to the corporation in the manner provided for service of a circuit court summons, stating the time and place such damage occurred and that satisfaction therefor is claimed of such corporation. No such notice shall be deemed insufficient solely because of any inaccuracy or failure therein in stating the time when or describing the place where such damages occurred if it shall appear that there was no intention on the part of the claimant to mislead said corporation and that the latter was not in fact misled thereby.

(9) An action upon a claim, whether arising on contract or otherwise, against a decedent or against his estate, unless probate of his estate in this state shall have been commenced within six years after his death. This subsection shall not have the effect of barring any claim prior to 1942.

Cross Reference: See 81.15 as to notice of injury caused by defective highway or street. See 316.01 (2) for statute of limitation of lien on lands of a decedent for payment of his debts. See 330.25 for limitation of an action on a "mutual and open account."

See note to 102.17, citing *Fossman v. Industrial Comm.* 257 W 540, 44 NW (2d) 266.

A motion to amend a complaint based on express contract, by setting forth an alternative cause of action in quantum meruit, should have been denied as too late for the commencement of an action on such alternative cause of action, the statute of limitations, (3), having run thereon. *Halvorson v. Tarnow*, 258 W 11, 44 NW (2d) 577.

In the absence of actual service of a complaint, the service of notice of injury within the 2-year period required by (5) is a condition precedent to the right to maintain an action for the injury, so that a failure in that respect leaves a plaintiff in a position where the courts cannot assist him. *Martin v. Lindner*, 258 W 29, 44 NW (2d) 558.

See also note to 269.38, citing *Martin v. Lindner*, 258 W 29, 44 NW (2d) 558.

The requirement of notice of injury, contained in the 6-year statute of limitations, (5), relating generally to actions for person-

al injuries, does not apply to an action for assault and battery, which latter action is expressly governed by the 2-year limitation of 330.21 (2). *Asplund v. Palmer*, 258 W 34, 44 NW (2d) 624.

Where the first item in the plaintiff's account for fees earned in reporting hearings was \$11.60 earned in 1940, and his action for such fees was not brought until 1948, the statute of limitations had run as to such item. *O'Leary v. Hannaford*, 258 W 146, 44 NW (2d) 908.

A complaint alleging that, because of fraudulent representations made by the defendants, the plaintiff signed a release of his cause of action for personal injuries, not knowing it to be a release, but failing to allege that thereby he was prevented from serving notice of his claim under (5), or was delayed in bringing action on account of his injuries until the time had run when he could no longer do so, and hence failing to plead a causal connection between his fraud-

ulently induced act or failure to act and the damage sustained in the loss of his right to sue for his personal injuries, did not state a cause of action in deceit. (Krestich v. Stefanecz, 243 W 1, distinguished.) Gerke v. Johnson, 258 W 583, 46 NW (2d) 829.

A motorist's liability insurer, which had made settlements of claims for personal injuries with guest occupants of the other car involved in a collision, within 2 years after the happening of the accident, was not precluded from maintaining an action for contribution against the liability insurer of the

driver of the other car more than 2 years after the happening of the accident by the fact that no notice of claim for injuries had been served within 2 years, as would have been required of the injured guests, if they had been seeking to maintain an action against their host-driver or his insurer more than 2 years after the happening of the accident. (Ainsworth v. Berg, 253 W 438, followed and applied.) American Casualty Co. v. American Auto. Ins. Co. 259 W 201, 47 NW (2d) 898.

330.20 Within three years. Within three years:

(1) An action against a sheriff, coroner, town clerk, or constable upon a liability incurred by the doing of an act in his official capacity and in virtue of his office or by the omission of an official duty, including the nonpayment of money collected upon execution; but this subsection shall not apply to an action for an escape.

(2) An action by the state or any of its departments or agencies or by any county, town, village, city, school district or other municipal unit to recover any sum of money by reason of the breach of an official bond or the breach of a bond of any nature whatsoever, whether required by law or not, given by a public officer or any agent or employe of a governmental unit; such period to commence running when such governmental unit receives knowledge of the fact that a default has occurred in some of the conditions of such bond and that it was damaged because thereof.

(3) An action or proceeding to test the validity of a change of any county seat, within three years after the date of the publication of the governor's proclamation of such change; and every defense founded upon the invalidity of any such change must be interposed within three years after the date of the aforesaid publication, and the time of commencement of the action or proceeding to which any such defense is made shall be deemed the time when such defense is interposed.

Cross Reference: For statute of limitation of lien on lands of a decedent for payment of his debts, see 316.01 (2).

330.21 Within two years. Within two years:

(1) An action by a private party upon a statute penalty or forfeiture when the action is given to the party prosecuting therefor and the state, except when the statute imposing it provides a different limitation.

(2) An action to recover damages for libel, slander, assault, battery or false imprisonment.

(3) An action brought to recover damages for death caused by the wrongful act, neglect or default of another.

(4) An action to recover a forfeiture or penalty imposed by any by-law, ordinance or regulation of any town, county, city or village or of any corporation organized under the laws of this state, when no other limitation is prescribed by law.

(5) Any action to recover unpaid salary, wages or other compensation for personal services, except fees for professional services; provided, that any such action founded on a cause of action which accrued between July 1, 1941, and January 1, 1946 may be commenced at any time prior to February 1, 1948.

History: 1951 c. 727.

330.22 Within one year. Within one year:

(1) An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process.

(2) All actions for damages for seduction or alienation of affections.

(3) Any action to recover possession of, or to avoid the title to, any property real or personal acquired by the defendant or his predecessors in title, from a foreign corporation because such property was acquired by such corporation before complying with the terms of sections 180.801, 180.813 to 180.821 and 180.845.

(4) Any action to recover the possession of, or avoid the title to, any property real or personal because such property was acquired by a corporation before complying with the terms of said sections brought against any foreign corporation which shall before the commencement of the action have complied with the terms of said sections, such year to be computed from the date of compliance with said sections.

(5) Any action brought against any foreign corporation which has heretofore complied with the terms of said sections to recover the possession of, or to avoid the title to, any property real or personal because such property was acquired by such corporation before complying with the terms of said sections shall be brought on or before March 1, 1920, and not thereafter.

330.23 Within thirty days. Within thirty days: An action to contest the validity of any state or municipal bond which has been certified by the attorney-general, as provided in subsection (5a) of section 14.53, for other than constitutional reasons, must be commenced within thirty days after such certification in the case of a state bond, and within thirty days after the recording of such certificate as provided by subsection (3) of section 67.02, in the case of a municipal bond.

330.24 Within nine months. Every action or proceeding to avoid any special assessment pursuant to section 62.16, or taxes levied pursuant to the same, or to restrain the levy of such taxes or the sale of lands for the nonpayment of such taxes, shall be brought within nine months from the end of the period of thirty days limited by the city improvement notice provided for by section 62.21, and not thereafter. This limitation shall cure all defects in the proceedings, and defects of power on the part of the officers making the assessment, except in cases where the lands are not liable to the assessment, or the city has no power to make any such assessment, or the amount of the assessment has been paid or a redemption made.

330.25 Actions upon accounts. In actions brought to recover the balance due upon a mutual and open account current the cause of action shall be deemed to have accrued at the time of the last item proved in such account.

Where each of successive contracts provided that it canceled all prior contracts between the parties, any cause of action which a distributor had for the return of his deposits under any particular contract commenced with the termination of that contract, and the 6-year statute of limitations applied as to each such separate contract. *Skelly Oil Co. v. Pederson, 257 W 300, 43 NW (2d) 449.*

330.26 Other personal actions. All personal actions on any contract not limited by this chapter or any other law of this state shall be brought within ten years after the accruing of the cause of action.

330.27 Defenses barred. A cause of action upon which an action cannot be maintained, as prescribed in this chapter, cannot be effectually interposed as a defense, counterclaim or set-off.

[330.28 Stats. 1929 repealed by 1931 c. 79 s. 38]

330.29 Bank bills not affected. None of the provisions of this chapter shall apply to any action brought upon any bills, notes or other evidences of debt issued by any bank or issued or put into circulation as money.

330.30 Limitation when person out of state. If when the cause of action shall accrue against any person he shall be out of this state such action may be commenced within the terms herein respectively limited after such person shall return or remove to this state. But the foregoing provision shall not apply to any case where, at the time the cause of action shall accrue, neither the party against or in favor of whom the same shall accrue is a resident of this state; and if, after a cause of action shall have accrued against any person, he shall depart from and reside out of this state the time of his absence shall not be deemed or taken as any part of the time limited for the commencement of such action; provided, that no foreign corporation which shall have filed with the secretary of state, or any other state official or body, pursuant to the requirements of any applicable statute of this state, an instrument appointing a registered agent as provided in chapter 180, a resident or any state official or body of this state, its attorney or agent, on whom, pursuant to such instrument or any applicable statute, service of process may be made in connection with such cause of action, shall be deemed a person out of this state within the meaning of this section for the period during which such appointment is effective, excluding from such period the time of absence from this state of any registered agent, resident agent or attorney so appointed who shall have departed from and resided outside of this state.

History: 1951 c. 731 s. 9.

Note: The amendment made by ch. 731, Laws 1951, applies to all causes of action, whether arising before or after August 19, 1951, except that such amendment shall not have the effect of barring prior to July 1, 1952 any cause of action which would not have been barred prior to July 1, 1952 under 330.30 as it existed prior to such amendment. (Sec. 10, ch. 731, Laws 1951)

Revision Committee Note, 1951: 330.30 (1949) requires amendment to make its reference to the instrument appointing an agent for service, conform to the form of the appointments under such sections as 180.813 (1) (d), 180.823, 180.837, 180.845 (2), 180.801 (2) and 180.68, and the effect given under section 180.825 to the appointment of a registered agent. In addition, this revision eliminates the present provision that a qualified foreign corporation does not have the benefit of the

statutes of limitation unless it has a manufacturing plant in the state. There appears no defensible reason why the benefit of the statutes of limitation should not be extended to a foreign corporation with a retail store, sales office, warehouse, or truck fleet, for example, or in fact to any foreign corporation (including an insurance company), which has fully complied with all statutory requirements to do business in this state and by statutory requirement has expressly appointed a resident or state official to accept service of process. If the effect of the present provision were generally understood, it is believed that it would be a serious deterrent to the conduct by foreign corporations of business in this state. (Bill 763-S)

See note to 272.04, citing *Stanley C. Hanks Co. v. Scherer, 259 W 148, 47 NW (2d) 905.*

330.31 Application to alien enemy. When a person shall be an alien subject or citizen of a country at war with the United States the time of the continuance of the war shall not be a part of the time limited for the commencement of the action.

330.32 Effect of military exemption from civil process. The time during which any resident of this state has been exempt from the service of civil process on account of being in the military service of the United States or of this state, shall not be taken as any part of the time limited by law for the commencement of any civil action in favor of or against such person.

330.33 Persons under disability. (1) If a person entitled to bring an action mentioned in this chapter, except actions for the recovery of a penalty or forfeiture or against a sheriff or other officer for an escape, or for the recovery of real property or the possession thereof be, at the time the cause of action accrued, either

- (a) Within the age of twenty-one years; or
- (b) Insane; or
- (c) Imprisoned on a criminal charge or in execution under sentence of a criminal court for a term less than his natural life.

(2) The time of such disability is not a part of the time limited for the commencement of the action, except that the period within which the action must be brought cannot be extended more than five years by any such disability, except infancy; nor can it be so extended in any case longer than one year after the disability ceases.

An action for assault and battery was not barred by the 2-year limitation of 330.21 (2), where the plaintiff was an infant when the assault took place, and the disability of infancy still existed when the summons and complaint were served. *Asplund v. Palmer*, 258 W 34, 44 NW (2d) 624.

330.34 Limitation in case of death. If a person entitled to bring an action die before the expiration of the time limited for the commencement thereof and the cause of action survive an action may be commenced by his representatives after the expiration of that time and within one year from his death. If a person against whom an action may be brought die before the expiration of the time limited for the commencement thereof and the cause of action survive an action may be commenced after the expiration of that time and within one year after the issuing, within this state, of letters testamentary or of administration.

330.35 Appeals; if judgment for defendant reversed, new action for plaintiff. If an action shall be commenced within the time prescribed therefor and a judgment therein for the plaintiff, or the defendant, be reversed on appeal, the plaintiff, or if he die and the cause of action survive, his heirs or representatives may commence a new action within one year after the reversal.

330.36 When action stayed. When the commencement of an action shall be stayed by injunction or statutory prohibition the time of the continuance of the injunction or prohibition shall not be part of the time limited for the commencement of the action.

330.37 Disability. No person shall avail himself of a disability unless it existed when his right of action accrued.

330.38 More than one disability. When two or more disabilities shall coexist at the time the right of action accrued the limitation shall not attach until they all be removed.

330.39 Action, when commenced. An action shall be deemed commenced, within the meaning of any provision of law which limits the time for the commencement of an action, as to each defendant, when the summons is served on him or on a codefendant who is a joint contractor or otherwise united in interest with him.

330.40 Attempt to commence action. An attempt to commence an action shall be deemed equivalent to the commencement thereof, within the meaning of any provision of law which limits the time for the commencement of an action, when the summons is delivered, with the intent that it shall be actually served, to the sheriff or other proper officer of the county in which the defendants or one of them usually or last resided; or if a corporation organized under the laws of this state be defendant to the sheriff or the proper officer of the county in which it was established by law, or where its general business is transacted, or where it keeps an office for the transaction of business, or wherein any officer, attorney, agent or other person upon whom the summons may by law be served resides or has his office; or if such corporation has no such place of business or any officer or other person upon whom the summons may by law be served known to the plaintiff, or if such defendant be a nonresident, or a nonresident corporation, to the sheriff or other proper officer of the county in which plaintiff shall bring his action. But such an attempt must be followed by the first publication of the summons or the service thereof within sixty

days. If the action be in a court not of record the service thereof must be made with due diligence.

330.41 Presenting claims. The presentation of any claim, in cases where by law such presentment is required, to the county court shall be deemed the commencement of an action within the meaning of any law limiting the time for the commencement of an action thereon.

330.42 Acknowledgment or new promise. No acknowledgment or promise shall be sufficient evidence of a new or continuing contract, whereby to take the cause out of the operation of this chapter, unless the same be contained in some writing signed by the party to be charged thereby.

In an action to recover on a promissory note, the evidence warranted findings that the note was given as a renewal of previous notes and obligations owed by the defendant to the plaintiff, and hence constituted a sufficient written acknowledgment or promise to pay the past-due obligations to the extent of the amount of the renewal note, so as to take the cause of action for the recovery of that amount out of the operation of the statute of limitations. *Hessman v. O'Brien*, 253 W 243, 45 NW (2d) 730.

330.43 Acknowledgment, who not bound by. If there are two or more joint contractors or joint administrators of any contractor no such joint contractor, executor or administrator shall lose the benefit of the provisions of this chapter so as to be chargeable by reason only of any acknowledgment or promise made by any other or others of them.

330.44 Actions against parties jointly liable. In actions commenced against two or more joint contractors or joint executors or administrators of any contractors, if it shall appear, on the trial or otherwise, that the plaintiff is barred by the provisions of this chapter as to one or more of the defendants, but is entitled to recover against any other or others of them, by virtue of a new acknowledgment or promise, or otherwise, judgment shall be given for the plaintiff as to any of the defendants against whom he is entitled to recover and for the other defendant or defendants against the plaintiff.

330.45 Parties need not be joined, when. If in any action on contract the defendant shall answer that any other person ought to have been jointly sued and shall verify such answer by his oath or affirmation, and issue shall be joined thereon, and it shall appear on the trial that the action is barred against the person so named in such answer by reason of the provisions of this chapter, the issue shall be found for the plaintiff.

330.46 Payment, effect of, not altered. Nothing contained in sections 330.42 to 330.45 shall alter, take away or lessen the effect of a payment of any principal or interest made by any person, but no indorsement or memorandum of any such payment, written or made upon any promissory note, bill of exchange or other writing, by or on behalf of the party to whom such payment shall be made or purport to be made, shall be deemed sufficient proof of the payment so as to take the case out of the operation of the provisions of this chapter.

330.47 Payment by one not to affect others. If there are two or more joint contractors or joint executors or administrators of any contractor no one of them shall lose the benefit of the provisions of this chapter, so as to be chargeable, by reason only of any payment made by any other or others of them.

330.48 Computation of time, basis for. The periods of limitation, unless otherwise specially prescribed by law, must be computed from the time of the accruing of the right to relief by action, special proceedings, defense or otherwise, as the case requires, to the time when the claim to that relief is actually interposed by the party as a plaintiff or defendant in the particular action or special proceeding, except that as to a defense, set-off or counterclaim the time of the commencement of the plaintiff's action shall be deemed the time when the claim for relief as to such defense, set-off or counterclaim is interposed.

330.49 Dismissal of suit after answer. When a defendant in an action has interposed an answer as a defense, set-off or counterclaim upon which he would be entitled to rely in such action the remedy upon which, at the time of the commencement of such action, was not barred by law, and such complaint is dismissed or the action is discontinued the time which intervened between the commencement and the termination of such action shall not be deemed a part of the time limited for the commencement of an action by the defendant to recover for the cause of action so interposed as a defense, set-off or counterclaim.

330.50 Extension of time if no person to sue. There being no person in existence who is authorized to bring an action thereon at the time a cause of action accrues shall not extend the time within which, according to the provisions of this chapter, an action can be commenced upon such cause of action to more than double the period otherwise prescribed by law.

330.51 What actions not affected. This chapter shall not affect actions against directors or stockholders of a moneyed corporation or banking association to recover a forfeiture imposed or to enforce a liability created by law; but such actions must be brought within six years after the discovery by the aggrieved party of the facts upon which the forfeiture attached or the liability was created.

330.52 County court; insufficient service. No action or proceeding to set aside any judgment, order or decree entered before June 10, 1951, by any county court after notice of the application for such judgment, order or decree has been given in accordance with the requirements of the then existing applicable statutes, shall be commenced after one year from said date, based solely on the ground of failure to give other or additional notice of the application therefor; and no such judgment, order or decree shall be subject to direct or collateral attack in any action or proceeding based solely on such ground, after one year from said date.

History: 1951 c. 295.