1898 s. 2618; 1925 c. 4; Stats. 1925 s. 260.27; Sup. Ct. Order, 245 W vii.

Revisers' Note, 1878: A new section to define an established and necessary practice as to guardians for plaintiff, and to declare the law as to guardians of defendants. By rule, any attorney is bound to act as a guardian for a defendant on direction of the court.

CHAPTER 261.

Place of Trial of Civil Actions.

261.01 History: R. S. 1849 c. 90 s. 5; 1856 c. 120 s. 27 to 29; 1858 c. 91 s. 2; R. S. 1858 c. 123 s. 1 to 5; 1868 c. 139; 1869 c. 185; 1872 c. 119 s. 42; R. S. 1878 s. 2619; 1885 c. 111; Ann. Stats. 1889 s. 2619; 1893 c. 60, 303; 1895 c. 34; Stats. 1898 s. 2619; 1905 c. 366; Supl. 1906 s. 2619a; 1907 c. 282; 1915 c. 604 s. 39; Stats. 1915 s. 2619; 1917 c. 152 s. 5; 1919 c. 334; 1919 c. 679 s. 92; 1925 c. 4, 383; Stats. 1925 s. 261.01; 1929 c. 42; 1935 c. 541 s. 14; 1943 c. 394; 1945 c. 197, 427; 1947 c. 383; 1951 c. 261 s. 3; 1959 c. 690.

Revisers' Note, 1878: This section embraces sections 1, 2, 3, 4 and 5 of chapter 123, R. S. 1858, section 4 as amended by section 2, Chapter 91, Laws 1859; and in part by chapter 185, Laws 1869, and the first part of section 42, chapter 119, Laws 1872, and section 1, chapter 139, Laws 1868, condensed. It has seemed the most convenient way to state the proper place of trial of all actions in one section, as thus all cases are more readily brought within view. The statutory declaration of a place of trial does not, as the court has decided, take away jurisdiction from the circuit court, although the proper county be not designated. All the provisions stand, therefore, on the same footing and ought to be arranged together.

Revisers' Note, 1898: The fourth subdivision is written from chapter 303, Laws 1893, with several changes of language. The provision as to trespass is from chapter 60, Laws 1893, as amended by chapter 34, Laws 1895. The exception is inserted because it is not believed that there was any purpose to repeal the subdivision referred to. The last sentence has been rewritten to make the meaning clear.

Revisor's Note, 1935: It is desirable that all provisions as to the place of trial be in this chapter. 220.12 is special. It governs venue in actions to enjoin the banking commissioner. The exception in (2) (a) is to harmonize it with (9). Ninth is the latest enactment. First (2) is made general to cover personalty. Fifth, "existing under the laws of this state" includes a licensed foreign company. State ex rel. Wis. D. M. Co. v. Circuit Court, 176 W 198, 204. Sixth. The amendment makes the statute express clearly the meaning given to it in State ex rel. Wis. D. M. Co. v. Circuit Court, 176 W 198, 204. Eighth. 261.01 deals with the place of trial. Change of venue is covered by other provisions (261.08) and so is "calling in a judge." [Bill 50-S, s. 14]

Editor's Note: In Beach v. Sumner, 20 W 274, the supreme court held that under sec. 1, ch. 243, Laws 1862, the circuit court for any county could not acquire jurisdiction of an action commenced therein, for the foreclosure of a mortgage on real estate, unless the mortgaged premises were situated wholly or partly in such county. The cited statute was not incorporated in sec. 2619, R. S. 1878, but was repealed.

1. General.
2. Where subject of action situated.
3. Where cause of action arises.
4. Actions against railroad corporations.
5. Actions against insurance companies.
6. Actions against other corporations.
7. Actions against the state.
8. Motor vehicle accident actions.
9. Other actions.

1. General.

If venue is laid improperly in commencing the action and no steps are taken to change the venue to the proper county, the action is triable in the county where it was begun. Dells P. & P. Co. v. Willow River L. Co. 170 W 19, 173 NW 317.

Actions commenced under 261.01 (1) are an exception, however, to the general rule, since the place of trial for such local actions is a jurisdictional requirement. State ex rel. Hammer v. Williams, 209 W 541, 245 NW 663.

2. Where Subject of Action Situated.

When more than one tract is involved, separate actions must be brought. Hackett v. Carter, 38 W 394.

Where land is situated in 2 or more counties the statute permits the action to be brought in either county. Geise v. Greene, 49 W 334; Lohmiller v. Indian Ford W. P. Co. 51 W 683.

A judgment of a county court foreclosing a mortgage on realty in another county was void; but the judgment as subsequently amended for damages in the amount due on the notes secured by the mortgage, though the defendants had not appeared or answered in the action, while irregular under 270.57 was not void and could not be collaterally attacked because the court had jurisdiction of the parties and general jurisdiction to render judgments for damages in proper cases, such as promissory notes. State ex rel. Hammer v. Williams, 209 W 541, 245 NW 663.

A specific performance action to enforce an option to purchase real estate does not constitute an action within 261.01 (1) (a), since the contract (option) and not the land is the subject matter of the action, and such a suit can be brought in the county in which any of the defendants reside pursuant to 261.01 (12). State v. Conway, 26 W (2d) 410, 132 NW (2d) 539.

3. Where Cause of Action Arises.

A determination for venue purposes of where the cause of action arose must include the facts showing (1) the plaintiff's right, (2) the defendant's corresponding duty, and (3) the defendant's breach of that duty, or to put it more tersely, the plaintiff's right and the violation of it by the defendant. McArthur v. Moffett, 143 W 564, 128 NW 445.

Location of property or agents of a corporate defendant are not, in themselves, im-

portant to determine where the cause of action arose. State ex rel. Wisconsin Dry Milk Co. v. Circuit Court, 176 W 198, 186 NW 732.

When no place of payment for goods purchased is specified in the contract, payment should be made at the place of business of the seller, and, upon the buyer's failure to make payment, the cause of action arises in the county of the seller's place of business. Upon an action being brought in that county, the defendant, being a nonresident, is not entitled to a change of venue. State ex rel. Donahue-Stratton Co. v. Grimm, 186 W 154, 202 NW 162.

In an action originally instituted against officers for false arrest, venue was properly laid in the county where the first steps leading to imprisonment of the plaintiff were taken. Jordan v. Koerth, 212 W 109, 248 NW 918.

As regards venue, a breach of a contract to pay arises at the place where payment is to be made. State ex rel. Connor L. & L. Co. v. Circuit Court, 213 W 141, 250 NW 753.

In ascertaining the proper place of trial of a contract action under 261.01 (6), 2 factors are determinative: (1) Where the default in performance of the contract takes place, and (2) where the acceptance of the contract takes place. In an action arising out of an alleged breach of contract to process and market turkeys, instituted by plaintiff in the county where his turkey farm was located, and brought against a processing corporation doing business in another county, there being no dispute about the making of the contract, the proper place of trial was in the latter county, the record disclosing that the alleged breach was grounded on the corporation's failure as broker to market the turkeys after they had been picked up and processed at defendant's plant, which default could only have occurred in the county where defendant had its place of business. State ex rel. Hartwig's Poultry Farm, Inc. v. Bunde, 44 W (2d) 229, 170 NW (2d) 734.

4. Actions Against Railroad Corporations.

A locomotive was repaired in Ashland county and there delivered to the owner, a corporation having its place of business in another county. The cause of action for the recovery of compensation arose in Ashland county. State ex rel. Gurney L. Co. v. Risjord, 161 W 118, 152 NW 847.

5. Actions Against Insurance Companies.

Prior to the enactment of ch. 334, Laws 1919, inserting in this section its present subsection fifth, the proper place of trial of an action against an insurance corporation for a wrongful discharge of an agent was either the county in which the corporation was situated or had its principal office or place of business, or where the cause of action or some part thereof arose. The addition of present subsection fifth worked no change in the proper place of such trial as the amendment relates to actions on policies only. State ex rel. Time Ins. Co. v. Superior Court for Douglas County, 176 W 269, 186 NW 748.

The demand of a defendant domestic insurance company for a change of venue from a county other than that of the residence of either party, based on 261.01 which did not tender to plaintiff the right of election to change the venue to the county of his residence was properly denied. State ex rel. Federal Mut. Auto. Ins. Co. v. Kellogg, 189 W 638, 208 NW 246.

6. Actions Against Other Corporations.

The principal office of a corporation is not necessarily the county that appears as the location of the company in the articles of incorporation. The corporation must actually be situated at the place named in the complaint. State ex rel. Howard Cole & Co. v. Circuit Court, 178 W 89, 189 NW 259.

In the case of a foreign corporation the term refers to the principal office of the firm located within the state, whether it is a general or merely a state headquarters of the company. State ex rel. Johnson v. Aarons, 231 W 524, 286 NW 27.

7. Actions Against the State.

The reason for the subsection appears to be to confine strictly to Dane County such actions against state officers who have their headquarters in that county. State ex rel. Milwaukee Med. College v. Chittendon, 127 W 468, 107 NW 500.

8. Motor Vehicle Accident Actions.

In an action growing out of the negligent operation of a motor vehicle, both the alleged tortfeasor and his liability insurer are proper defendants, liable to the plaintiff directly if negligence and damages are proved, and the defendant insurer is a "defendant" within the meaning of 261.11 (11) governing the venue of such an action. State ex rel. Boyd v. Aarons, 239 W 643, 2 NW (2d) 221.

9. Other Actions.

Where there was only one defendant a demand for a change of venue to the county of his residence was sufficient. (Anderson v. Arpin L. Co. 131 W 34, 110 NW 788, distinguished.) State ex rel. Bessie v. Halsey, 148 W 171, 134 NW 362.

A defendant in an action on a promissory note has an absolute right to have the trial in the county of his residence, even though his answer admits the plaintiff's cause of action and interposes a counterclaim, the proper venue being determined by the complaint and not by the counterclaim. State ex rel. Meyer v. Park, 174 W 452, 183 NW 165.

The proper place of trial of a malpractice suit against attorneys, both of whom at the time of the commencement of the action resided in the same county, was, as indicated in 261.01 (12), Stats. 1965 (which governed all "other actions" for which the place of trial is not specifically prescribed), their county of actual residence as of that time. State ex rel. Klabacka v. Charles, 36 W (2d) 122, 152 NW (2d) 857.

261.02 History: 1856 c. 120 s. 29; R. S. 1858 c. 123 s. 4, 5; 1862 c. 243 s. 1; R. S. 1878 s. 2620; Stats. 1898 s. 2620; 1925 c. 4; Stats. 1925 s. 261.02; 1929 c. 494 s. 3; 1935 c. 541 s. 16; 1947 c. 227; 1955 c. 83; 1961 c. 33.

The objection that the action is not brought

in the proper county cannot now be taken by the pleadings or on the trial, but only in the manner provided in ch. 119, R. S. 1878. Woodward v. Hanchett, 52 W 482, 9 NW 468.

A maker agreeing that judgment on a note might be entered in any state or county waived the right to change of venue in an action thereon after opening of a judgment upon cognovit. State ex rel. Bobroff v. Braun, 209 W 483, 245 NW 176.

261.021 History: 1955 c. 83; Stats. 1955 s. 261.021.

261.03 History: 1856 c. 120 s. 29; R. S. 1858 c. 123 s. 4; 1869 c. 185 s. 1; R. S. 1878 s. 2621; Stats. 1898 s. 2621; 1925 c. 4; Stats. 1925 s. 261.03; 1929 c. 494 s. 2; 1935 c. 541 s. 17.

Revisers' Note, 1878: This section is substituted for the last part of section 4, chapter 123, R. S. 1858, and section 1, chapter 185, Laws 1869. The latter chapter relates only to changes because of the residence of the defendant. But the right to a change to the proper county is the same in all cases; hence all should be under the same mode. The enactment of the latter chapter has indeed produced much confusion, and led to mistakes and error. See Bonnell v. Gray, 36 W 574. The practice proposed seems simple and clearly defined. No provision for any stay of proceedings is made. None is necessary in almost every case, while if there should be a necessity, there exists general power in any judge or court commissioner to grant it. It would not be permissible to provide that the demand should stay proceedings as in chapter 185, Laws 1869. Under that chapter a demand and motion must stay proceedings until a determination of the motion, whether for or against, which affords a ready means of obstructing a cause. The time within which demand and motion is to be made is limited by days to avoid any question of the right being connected with other proceedings. Nothing waives the right but a failure to exercise it.

Revisor's Note, 1935: The complaint determines the county in which the action is laid State ex rel. Schauer v. Risjord, 183 W 553. The addition of "county or counties" is to indicate the proper demand as held in State ex rel. Shawano County v. Werner, 181 W 275. The matter of service on a party is covered elsewhere (269.37). The addition for making an order is from 261.04. [Bill 50-S, s. 17]

On jurisdiction of the supreme court (general superintending control over inferior courts) see notes to sec. 3, art. VII; on jurisdiction of circuit courts (appellate jurisdiction and supervisory control) see notes to sec. 8, art. VII; and on appealable orders see notes to 274.33.

Even though the circuit judge in defendant's county be disqualified to try the case, the defendant is entitled to the change. State ex rel. Brownell v. McArthur, 13 W 407; Moe v. Moe, 39 W 308.

Demand and notice do not stay proceedings. Moe v. Moe, 39 W 308; Levy v. Goldberg, 40 W 308.

If the venue is changed by stipulation jurisdiction of the person is transferred to the court to which the cause has been sent. Carpenter v. Shepardson, 43 W 406.

After he had given notice of retainer defendant's attorney served the following: "I demand that the place of trial of this action be changed," etc., signed "Y., defendant's attorney." This was sufficient. Lee v. Buckheit, 46 W 246, 49 NW 977.

The defendant does not waive his right to a change by appearing in the court in which the action is brought and moving to strike the case from the calendar. Tucker v. Grover, 53 W 53, 9 NW 820.

All the defendants must move for a change of venue; an action cannot be divided. Eldred v. Becker, 60 W 48, 18 NW 720.

Any action may be tried in the county designated unless the defendant obtains a change as provided in sec. 2621. No objection can be taken, either by pleading or on the trial, that the action is not brought in the proper county. Woodward v. Hanchett, 52 W 482, 9 NW 468; West v. Walker, 77 W 557, 46 NW 819.

One defendant cannot insist upon a change of venue when the other defendant does not desire it, each being equally interested and having answered separately, and there being no collusion between such defendant and the plaintiff. Zeller v. Martin, 84 W 4, 54 NW 330.

If a cause is commenced in the wrong county the defendant's right to a change is absolute. Consent of the plaintiff to such a change is not a waiver of his right to move the court to which the cause is sent for a change on the ground that the convenience of witnesses and the ends of justice would thereby be promoted. Maher v. Davis & Starr L. Co. 86 W 530, 57 NW 357.

The demand for change of venue and consent work a change ipso facto. Anderson v. Arpin L. Co. 131 W 34, 110 NW 788.

A single defendant may demand the change if the other defendants have not appeared. A defect in the application for change is waived by plaintiff if he notices the action for trial in the county to which it has been sent. Stahl v. Broeckert, 167 W 113, 166 NW 653.

A demand for a change need not use the words, "proper county." It is sufficient if the county named is in fact the proper county for the trial. State ex rel. Wisconsin D. M. Co. v. Circuit Court, 176 W 198, 186 NW 732.

An order to show cause why the venue of an action should not be changed, served on the opposite party, and filed within the 20 days allowed after a demand not consented to, "to move to change the place of trial," was a motion. State ex rel. Webster M. Co. v. Reid, 177 W 612, 188 NW 67.

Where the defendants resided in different counties, and had an absolute right to a change of venue, and made separate demands for a change but neither demand used the term "proper county," nor fully stated the facts showing the proper counties nor gave the plaintiff a choice between those counties, such demands were defective, and upon certiorari an order changing the venue was subject to reversal. State ex rel. Shawano County v. Werner, 181 W 275, 194 NW 847.

The time for a change of venue may be enlarged after its expiration, under sec. 2831,

Stats. 1923. But an application for such enlargement was properly denied where on the twenty-first day after service of the complaint the defendant served his demand for a change, but made no move to ascertain whether his tardy demand would be complied with for 31 days longer, the plaintiff having in meantime ignored the demand. State ex rel. Oelhafen-Mondeau Co. v. Werner, 182 W 637, 197 NW 252.

The right for a change of venue being statutory, substantial compliance with the statute is requisite. In case of a demand for a change the proper county selected should be determined by the complaint. A demand before service of the complaint was premature. State ex rel. Schauer v. Risjord, 183 W 553, 198 NW 273.

261.03, Stats. 1931, is not applicable to the situation presented upon the opening of a judgment by cognovit. State ex rel. Bobroff v. Braun, 209 W 483, 245 NW 176.

A person not properly a party to an action is not entitled to a change of the place of trial although he is, on the record as it stands, a nominal party. A change of venue is granted only to give a defendant moving for it a right to a trial in the proper county. State ex rel. Jackson v. Leicht, 231 W 178, 285 NW 335.

Where the alleged tortfeasor and his liability insurer are defendants in an action growing out of the negligent operation of a vehicle, 261.01 (11) applies so as to permit the venue to be laid either in the county where the accident occurred or in a county which is the residence of the alleged tortfeasor or of the liability insurer. The alleged tortfeasor is not entitled to a change of venue to a different county where the venue is laid in the county of the residence of the insurer. State ex rel. Boyd v. Aarons, 239 W 643, 2 NW (2d) 221.

It is only where the county designated in the complaint is not the proper place of trial that a demand for and consent to a change of venue operate to change the place of trial without an order of the court. State ex rel. Birnamwood Oil Co. v. Shaughnessy, 243 W 306, 10 NW (2d) 292.

A demand for a change of venue alleging that the acts complained of occurred in another county and that defendants resided there was insufficient because it did not state that they resided there at the time of the commencement of the action, but where plaintiff's complaint supplied this information, the defect is immaterial and the change of venue must be granted. State ex rel. Klabacka v. Charles, 36 W (2d) 122, 152 NW (2d) 857.

261.04 History: 1856 c. 120 s. 30; R. S. 1858 c. 123 s. 6; 1878 c. 146; R. S. 1878 s. 2622; Stats. 1898 s. 2622; 1925 c. 4; Stats. 1925 s. 261.04; 1935 c. 541 s. 18; Sup. Ct. Order, 239 W vi.

Revisers' Note, 1878: Section 6, chapter 123, R. S. 1858, amending the first subdivision to conform to the preceding section, and adding words to the last subdivision to obviate delay.

Revisor's Note, 1935: Old (1) is covered by amendment to 261.03. The addition to old (2) is from 261.09. (5) was a paraphrase of (2). [Bill 50-S, s. 18]

Comment of Advisory Committee: 261.04 (4) was promulgated Feb. 13, 1942, effective July 1, 1942. All causes of actions growing out of an automobile accident may be included in one action and all persons in interest may be joined as parties or interpleaded (260.11) and separate actions "pending in the same court" may be consolidated (269.05). To nullify the rules for consolidation, actions have been started in as many different courts and counties as possible. The new rule is to facilitate consolidation of actions and to checkmate that move. See 269.59, created by 1939 c. 100. [Re Order effective July 1, 1942]

Under the statutes of 1858 the defendant did not waive his right to a change by demurring and resisting the entry of judgment. Foster v. Bacon, 9 W 345.

Plaintiff does not waive his right to a change of venue for the causes mentioned in the statute by bringing his action in defendant's county. Lego v. Shaw, 38 W 401.

The granting or denying of an application duly made for a change of venue, upon the grounds named in the statute, is a matter within the sound discretion of the court in which the action is pending, and its ruling will not be disturbed unless there has been an abuse of discretion. Lego v. Shaw, 38 W 401.

The judge may take into account matters within his own knowledge and observation as well as proofs presented. Schattschneider v. Johnson, 39 W 387.

A second application may be made for the same reasons, where the party has learned material facts after the first application affecting the question. Lego v. Shaw, 38 W 401; Schattschneider v. Johnson, 39 W 387.

The inability to obtain an impartial jury must be clearly shown. The facts must be set out so that the court can see whether the application is well founded. Ross v. Hanchett, 52 W 491, 9 NW 624.

Where an order is made it will be assumed that the judge was satisfied that there was good reason to believe an impartial trial could not be had. Giese v. Schultz, 60 W 449, 19 NW 447.

The court to which an action is sent has no power to annul a valid order changing the venue and to remit the cause. Giese v. Schultz, 60 W 449, 19 NW 447.

Sec. 2622 (2), R. S. 1878, was not affected by ch. 314, Laws 1883; and where venue is changed the case may be sent to any county where the causes urged as ground for a change do not exist. Bradley v. Cramer, 61 W 572, 21 NW 519.

The ruling upon an application for a change will not be disturbed unless there is an abuse of discretion. But where it appeared in an action against a railroad company to recover damages for property destroyed by fire negligently started, and affidavits were furnished to the effect that the people of the county were hostile and prejudiced against the defendant, a change was improperly denied. Cyra v. Stewart, 79 W 72, 48 NW 50.

Granting an order changing the place of trial for the convenience of witnesses is a mat-

ter resting in the sound discretion of the court. Postel v. Weinhagen, 86 W 302, 56 NW 913.

A plaintiff whose action has been instituted in the wrong county does not waive, by consenting to a change in the place of trial, his right to move the court to which the venue is changed to have it changed back, on the ground that the convenience of witnesses and the ends of justice would be thereby promoted. Maher v. Davis & Starr L. Co. 86 W 530, 57 NW 357.

Unless upon such application the inability to obtain an impartial jury clearly appears the motion will be denied. The determination of such motion is necessarily within the sound discretion of the trial court and will not be disturbed unless it clearly appears that there has been an abuse of such discretion. Schafer v. Shaw, 87 W 185, 58 NW 240.

All the defendants must unite in the demand and motion for change of place of trial. Zeller v. Martin, 84 W 4, 54 NW 330; Holm v. Colman, 89 W 233, 61 NW 767.

The convenience of parties who are witnesses may be considered to the same extent as other witnesses. No affidavit or sworn petition is required to accompany the application. It is sufficient if the judge is satisfied by proof that a cause for the change exists; and he may consider matters within his own knowledge as well as the proofs. Challoner v. Boyington, 86 W 217, 56 NW 640; Kopf v. Encking, 91 W 15, 64 NW 318.

The fact that a large number of witnesses will be inconvenienced by the trial of the case far from their residences may of itself be sufficient ground for the conclusion that a removal of the case would promote the ends of justice. Kopf v. Encking, 91 W 15, 64 NW 318.

If the affidavits for the change are to the effect that persons named had said that an impartial trial could not be had, and the opposing affidavits deny such statements and there are affidavits of others who would be likely to hear statements indicating prejudice, if it existed, that they had heard none, there is no abuse of discretion in denying the application. Pool v. Milwaukee M. Ins. Co. 94 W 447, 69 NW 65.

Where a court has jurisdiction of the action, the subject matter and parties it cannot, without its consent, be ousted by a stipulation of the parties; and an appearance in and trial of the cause by another court does not waive the want of jurisdiction therein. Swan v. Porter, 96 W 34, 70 NW 1068.

The court was not required to consider an application for change of venue made by an attorney who was not the attorney of record, where consent to his substitution in place of the attorneys of record had been signed by the latter but not by the party herself. McMahon v. Snyder, 117 W 463, 90 NW 351.

Where an application for change of venue on account of the convenience of witnesses is denied on the ground of lack of power and so entered in the record, and the party applying objects to proceeding to trial on the ground that the court had declined to pass upon the merits of the application and thereupon the court stated that no request had been made for a decision on the other ground, the right to object was not waived and the failure to consider the application constituted reversible error where change of venue was allowable upon such ground. Sanders v. German Fire Ins. Co. 126 W 172, 105 NW 787.

Sec. 2622, Stats. 1898, applies in the case of a county court where all laws relating to proceedings in civil actions in the circuit court were applicable. Sanders v. German Fire Ins. Co. 126 W 172, 105 NW 787.

A change of venue for the prejudice of the people rests largely in the discretion of the trial court, and its action will not be overruled in the absence of abuse. Krueger v. State, 171 W 566, 177 NW 917; Theresa F. Ins. Co. v. Wisconsin C. R. Co. 144 W 321, 128 NW 103.

A motion for change of venue made simultaneously with a motion for a new trial is not timely. Bruno v. Hickman, 174 W 63, 182 NW 356.

An order granting or denying a change of venue is not appealable, since an error in venue is not a question of jurisdiction. Trossen v. Burckhardt, 9 W (2d) 304, 100 NW (2d) 918.

It is not error to refuse a change of venue on the ground of local prejudice supported by the defendant's affidavit only. O'Keefe v. State, 177 W 64, 187 NW 656.

A stipulation of the parties consenting to a change of venue to a court which had jurisdiction of the subject matter was binding, notwithstanding noncompliance with the requirements of 261.10, as to transmission of record, etc., within 20 days from the making of the order. Necedah M. Corp. v. Juneau County, 206 W 316, 237 NW 277, 240 NW 405.

A sales contract which provides that actions to enforce the contract may be brought in any county selected by the seller is a valid provision. State ex rel. Kuhn v. Luchsinger, 231 W 533, 286 NW 72.

The refusal of the trial court to grant a change of venue in a prosecution for arson, sought on the ground that public sentiment in the county was such that a fair trial could not be had, was not error, where no sufficient showing of excitement or prejudice that would interfere with the defendant's rights was made, and where no difficulty was encountered in securing a fair and unbiased jury. State v. Zuehlke, 239 W 111, 300 NW 746.

The denial of the plaintiff's motion for a change of venue, sought on the ground that prejudice of the people would prevent obtaining a fair jury in the county wherein the case was pending, was not prejudicial where the case did not go to the jury but was ultimately decided by granting the defendant's motion for a directed verdict. Kalb v. Luce, 239 W 256, 1 NW (2d) 176.

If the judge of the circuit was without jurisdiction to hear and decide a motion for a change of venue in a criminal case on account of community prejudice after an affidavit of prejudice had been filed against him, such motion for a change of venue was still pending when the case went to trial before an outside judge, and the defendant waived such motion by failing to renew it at that time and proceeding to trial without objection. State v. Ketchum, 263 W 82, 56 NW (2d) 531.

Abuse of discretion denying change of venue. 34 MLR 141.

261.05 History: 1909 c. 453; Stats. 1911 s. 2622m; 1925 c. 4; Stats. 1925 s. 261.05; 1935 c. 541 s. 19; 1961 c. 495.

Revisor's Note, 1935: 261.05 was created by chapter 453, Laws 1909. The language is changed to make the procedure conform to the procedure in 261.03 where change is by consent. There is no reason for a technical requirement for an order. Swan v. Porter, 96 W 34, which was a glaring miscarriage of justice. [Bill 50-S, s. 19]

261.06 History: R. S. 1849 c. 95 s. 1; R. S. 1858 c. 123 s. 7; R. S. 1878 s. 2623; Stats. 1898 s. 2623; 1899 c. 40 s. 1; Supl. 1906 s. 2623; 1925 c. 4; Stats. 1925 s. 261.06; 1935 c. 541 s. 21.

Revisers' Note, 1878: Section 7, chapter 123, R. S. 1858, omitting words "in term time," because the expression "the court" is intended to refer to similar action in all cases where it is used; and inserting words to allow the judge to do it; but not a county judge or court commissioner.

The interest which disqualifies must be a pecuniary one. Hungerford v. Cushing, 2 W 397.

Where the judge was an inhabitant and taxpayer of a defendant county, in an action by an adjoining county, the place of trial, on a proper application, should have been changed. Jefferson County v. Milwaukee County, 20 W 139.

Though the judge was an original incorporator and director in the defendant corporation, it not appearing that he retained any interest therein at the commencement of the action, there was not sufficient ground for a change of venue. Brown v. La Crosse C. G. L. & C. Co. 21 W 51.

If the court on its own motion changes the place of trial and the record fails to show the reason for the change, the order will be reversed. Mills v. National Fire Ins. Co. 88 W 351, 60 NW 426.

A group of defendants having interests in common may be regarded as a party within the meaning of sec. 2623, Stats. 1898, and may make an application for the change of place of trial, although not joined by the other defendants. State ex rel. Rowell v. Dick, 125 W 51, 103 NW 229.

Where the plaintiff, in an automobile collision case, was circuit judge, denying defendant's application for a change of venue to an adjoining circuit was an abuse of discretion. Belden v. Field, 211 W 485, 248 NW 417.

The purpose of 256.19, relating to disqualification of a judge to try an action in which he is "interested," and of 261.06, relating to change of venue if the judge is disqualified by interest, is to provide a fair and impartial trial. The interest of the trial judge must be pecuniary and real, rather than indirect and remote, in order to disqualify him. Goodman v. Wisconsin Elec. Power Co. 248 W 52, 20 NW (2d) 553.

261.07 History: 1872 c. 8; R. S. 1878 s. 2624; 1885 c. 366; Ann. Stats. 1889 s. 2624; Stats. 1898 s. 2624; 1909 c. 132; 1925 c. 4; Stats. 1925 s. 261.07; Sup. Ct. Order, 212 W viii; 1961 c. 495; 1967 c. 276 s. 39.

Revisers' Note, 1878: Chapter 8, Laws 1872, amended to cover an action commenced by any process personally served, and to require the motion to be made at the first term, in analogy to other cases removable for nonresidence.

Ch. 8, Laws 1872, does not apply to a case where it is not shown that all of the defendants are nonresidents of the county in which the action is brought. Campbell v. Chambers, 34 W 310.

Sec. 2624, R. S. 1878, is mandatory, and the doctrine of Couillard v. Johnson, 24 W 533, to the effect that a motion for change of venue may be successfully opposed by showing that, for some other reason, the cause should be retained, does not apply. Van Kleck v. Hanchett, 51 W 398, 8 NW 236.

It is not essential that the action should be noticed for trial as a condition of the right or power of the court to change the place of trial; nor need the motion be made at the first term at which it could be noticed. Main v. McLaughlin, 58 W 628, 17 NW 304.

Sec. 2624, R. S. 1878, as amended, gives an absolute right to a change of the place of trial in the case specified in it, whether the action was or was not properly brought in the county where it was commenced; and that right is not affected by a statute (289.19) which provides that a petition for a lien on logs shall be filed in certain counties, and an action to foreclose brought in the county where the property is at the time the petition is filed. Rayson v. Horton, 90 W 367, 63 NW 278.

261.08 History: 1853 c. 51 s. 1; 1875 c. 53 s. 1; 1876 c. 104; R. S. 1878 s. 2625; 1887 c. 306, 435; Ann. Stats. 1889 s. 2624a, 2625; Stats. 1898 s. 2625; 1901 c. 101 s. 1; 1905 c. 282 s. 1; Supl. 1906 s. 2625; 1913 c. 592; 1915 c. 516 s. 3; 1921 c. 216, 428; 1921 c. 590 s. 31; 1923 c. 231 s. 5; 1925 c. 4; Stats. 1925 s. 261.08; 1935 c. 541 s. 22; 1961 c. 140, 495, 643.

Revisers' Note, 1878: Chapter 104, Laws 1876, altered in phraseology somewhat, and part of section 1, chapter 53, Laws 1875. The former act virtually repealed all previous acts on the same subject, being section 8, chapter 123, R. S. 1858, as affected by chapter 206, Laws 1862; chapter 26, Laws 1869; chapter 69, Laws 1870 (the moonshine act, Van Slyke v. Trempealeau C. F. M. F. Ins. Co. 39 W 390); chapter 107, Laws 1872; chapter 99, Laws 1873, and sections 3 and 4, chapter 53, Laws 1875, and it may be hoped will be allowed to r. i. p. No provision is made for the judge to change the place of trial, because valuable as this section may be in many cases, it is so employed for the most part, that changes are made at term only; and when it is desired by applicant in good faith to remove a cause without delay, he can apply successfully to the other party in most cases for a stipulation and take the order of a judge or court commissioner thereon, upon payment of terms, since his right is made certain by the statute. So that it seems the act of 1876 repealed so much of the former acts as authorized the judge to change the place of trial for sufficient

reasons. See Rupp v. Swineford, 41 W 28, for construction of the first sentence.

Revisers' Note, 1898: Section 2624a, Ann. Stats. 1889, is included, except so much as relates to criminal actions, which is in section 4680. The last clause is added to prevent changes of venue from being obtained solely for the purpose of continuing causes in counties where the terms of court do not usually last as long as the time the party applying for the change has to procure a transmission of the record. An amendment is suggested to section 2627 which will also tend to prevent the abuse of the right to a change of venue.

Revisor's Note, 1923: In Sieb v. Racine, 187 NW 989 (April 11, 1922), Justice Owen said in speaking of section 2625 (3): "What is meant by the term 'resumed session' is certainly a matter of great doubt. It is a question upon which we are equally divided. We suggest that the situation affords possibilities for legislative clarification."

Subsection (3) was added by section 26, chapter 592, Laws 1913. It could have been construed to cover or mean what was added by chapter 428, Laws 1921. The case cited did not settle the meaning. The ruling of the lower court was affirmed per force because the supreme court justices were equally divided. Another circuit judge may rule likewise or differently. As the statute stands it is a pitfall for attorneys; and a source of litigation. Certainly it should be amended. Having no idea of what is the legal intent of the quoted words the bill is drawn for their repeal. [Bill 4-S, s. 21]

It seems that the prejudice of the judge contemplated by the statute is a feeling for or against a party and not a bias on the legal questions. The only person authorized to make an affidavit of prejudice is the party himself; thus the affidavit by an attorney for a party has been held insufficient. Western Bank v. Tallman, 15 W 92.

After a jury called and trial commenced it is too late to make such application. Swineford v. Pomeroy, 16 W 533. See also Cairns v. O'Bleness, 40 W 469.

The fact that the judge for whose prejudice a change of venue was made has become judge of the court to which the removal was made is immaterial. A second change is prohibited. Heath v. Mathiew, 19 W 115.

After an order changing the place of trial has been made, and before the papers have been transmitted, the court, during the same term, may direct that the cause be sent to a different county. Servatius v. Pickel, 30 W 507.

In equity, where all the defendants joined in the application, affidavit of one was sufficient. Wolcott v. Wolcott, 32 W 63.

The ground of the removal is limited to prejudice alone. An application stating that from "prejudice or other cause," etc., is insufficient. Dodge v. Barden, 33 W 246.

Where a removal is granted on payment of costs the venue is not changed until they are paid; and in case of refusal to pay them the court may proceed to judgment without vacating its order. Harder v. Smith, 33 W 274.

The application may be verified on belief alone. The party cannot in the very nature of things swear positively to the existence of prejudice. Seehawer v. Milwaukee, 39 W 409.

At law all the defendants must join. And in all actions it seems that all the plaintiffs must join. Rupp v. Swineford, 40 W 28.

An affidavit stating that the party "verily believes that, for the reason that the judge of said court is prejudiced, he cannot have a fair trial" is, it seems, insufficient, not stating that he has "good reason to believe." Carpenter v. Shepardson, 43 W 406.

An affidavit strictly in the language of the statute is sufficient. Bachmann v. Milwaukee, 47 W 435, 2 NW 543.

If the party be a corporation the affidavit may be made by such officers as are authorized to verify statements of corporate affairs. The secretary may verify for the corporation. State ex rel. Cuppel v. Milwaukee Chamber of Commerce, 47 W 670, 3 NW 760.

In garnishment, after interpleader of a person claiming ownership of the debt, it being alleged that it did not belong to the judgment defendant, such person is entitled to have a change of venue under sec. 2625, R. S. 1878. Hewitt v. Follett, 51 W 264, 8 NW 177.

After a refusal to change, on proper application, going to trial is no waiver of the right to such change. Hewitt v. Follett, 51 W 264, 8 NW 177.

The motion, made upon a proper affidavit, goes to the competency of the judge to hear the case, and he loses all right to proceed further with the action. Hewitt v. Follett, 51 W 264, 8 NW 177.

The statute does not apply to bastardy proceedings. Baker v. State, 56 W 568, 14 NW 718.

One who is "general agent or managing agent of the corporation within this state" cannot make the affidavit; it must be made by an officer. Wheeler & W. M. Co. v. Lawson, 57 W 400, 15 NW 398.

An application was made in time although the cause was upon the calendar for trial and the parties had agreed that it should be referred. Eldred v. Becker, 60 W 48, 18 NW 720.

Where change is made under a stipulation the obligation to pay the costs rests equally upon both parties; and a failure of both so to do amounts to a stipulation that the order be vacated, and is no bar to a subsequent application for a change on account of the prejudice of the judge. Eldred v. Becker, 60 W 48, 18 NW 720.

Costs cannot be imposed upon the applicant when the application is made before a continuance. Brothers v. Williams, 65 W 401, 27 NW 157.

An affidavit stating that affiant "has reason to fear, and does fear, that he cannot have a fair trial" is insufficient. Smith v. Clarke, 70 W 137, 35 NW 318.

The affidavit of a party applying for a change of venue is not conclusive as to the fact that the judges of certain other circuits are prejudiced, and the place of trial may be changed to a circuit the judge of which is alleged to be prejudiced. Will of McCrary, 71 W 83, 36 NW 603.

A statement in the affidavit that the judge

of another circuit is also prejudiced does not preclude the court from sending the cause to a county in such circuit. Davies v. State, 72 W 54, 38 NW 722.

If the papers are regular in form and an application is duly made the right to a change of venue is absolute. If an application is denied at a regular term the court is without power at a subsequent term, and after an appeal from the order has been perfected, to modify the order so that it shall appear to have been made at chambers. Fatt v. Fatt, 78 W 633, 48 NW 52.

Upon making payment of the costs the right to a change of venue is absolute under sec. 2625, R. S. 1878. The costs of the term are fixed at $2; "no other item of expense can be added, save the costs of making the change, which must be the legal fees of the clerk." Bentley v. Stowell, 82 W 244, 52 NW 92.

An affidavit which fails to allege that the affiant has good reason to believe that the judge is prejudiced is probably defective. Winn v. State, 82 W 571, 52 NW 775.

The death of the judge alleged to be prejudiced, before any valid order is made changing the place of trial, renders the affidavit inoperative and his successor has jurisdiction. Winn v. State, 82 W 571, 52 NW 775.

The right to a change of venue can be obtained only by complying with the statute. French v. State, 93 W 325, 67 NW 706.

A stipulation to try an action by a struck jury does not waive the right to apply for a change of venue. Peterson v. Daniel Shaw L. Co. 93 W 500, 67 NW 1118.

An application is in time though made after a struck jury is in attendance, no other proceedings being had. (Grobman v. Hahn, 59 W 93, 17 NW 545, distinguished.) Peterson v. Daniel Shaw L. Co. 93 W 500, 67 NW 1118.

Where the records of the circuit court disclose that the affidavit and motion for change of venue were presented and that an order was made in open court there was complete compliance with this section. Allen v. Voje, 114 W 1, 89 NW 924.

Mandamus will not lie to compel action on the application to change the venue until the end of the term. State ex rel. Deleglise v. Goodland, 128 W 57, 107 NW 29.

Where a judge is called from another circuit, hears a motion for a stay of proceedings and grants it so far as to prevent the noticing of the case for trial at the next term, a motion made at the close of the term to send the case out of the county should be denied. Odegard v. North Wisconsin L. Co. 130 W 659, 110 NW 809.

A provision as to witness fees is not applicable unless the party has obtained a continuance prior to making application for change of venue. American F. Co. v. Board of Education, 131 W 220, 110 NW 403.

Where an affidavit of prejudice is filed and another judge is called in and attends upon the last day of the term when he is ready to try the case, it is not error to refuse to change the venue to another county. State ex rel. Watson v. Clementson, 133 W 458, 113 NW 667.

Fordyce v. State, 115 W 608, 92 NW 430, is overruled so far as it is in conflict with Odegard v. North W. L. Co. 130 W 659, 110 NW 809, as to change of venue upon the filing of an affidavit of prejudice. State ex rel. Watson v. Clementson, 133 W 458, 113 NW 667.

So long as an application for change of venue is pending it deprives the presiding judge of jurisdiction except as required by the statute to make a proper order calling in another judge or removing the cause to another jurisdiction. In re Fraser, 135 W 401, 116 NW 3.

Applications by a part only of either plaintiffs or defendants cannot be granted. Will of Rice, 150 W 401, 136 NW 956, 137 NW 778.

There is no change of venue when a judge of one branch of the circuit court of Milwaukee county is called in to try a case in another branch. Greene v. American M. Co. 153 W 216, 140 NW 1130.

Although an affidavit of prejudice of the judge of one branch of the circuit court for Milwaukee county, before whom an action was pending, was filed after the expiration of the statutory period therefor, it was not error for the judge to send the action for trial to some other branch of the court. Dibbert v. Metropolitan Inv. Co. 158 W 69, 147 NW 3, 148 NW 1095.

An order changing the place of trial to a county court which had no jurisdiction of the action was a nullity and the jurisdiction remained in the circuit court. State ex rel. Owen v. Reisen, 164 W 123, 159 NW 747.

The right to a change of venue can be insisted upon in such situations only as are expressly prescribed; and the refusal of such change because of alleged prejudice of the judge, not made on or before the first day of the term, was not erroneous even though the facts upon which the application was made were not known until after the commencement of the term. Groeschner v. John Gund B. Co. 173 W 366, 181 NW 212.

Upon filing of an affidavit of prejudice, if the circuit judge calls in another judge to hold court, no duty rests on the first judge to send the case to another county, and the court where the action was begun does not lose jurisdiction. The venue need be changed only when another judge cannot be secured. Golos v. Worzalla, 178 W 414, 190 NW 114.

A case triable at a March term and adjourned over the term at defendant's request was not removable on ground of prejudice of judge upon defendant's affidavit filed at the September term. Waldkirch v. Hoff, 184 W 505, 199 NW 51.

In an action to enforce a lien, wherein the contractor and the city for whom the improvement had been made were the defendants, and the defendant contractor alone applied for a change of venue for prejudice of the judge, the court properly denied the application on the ground that it was not joined in by all the defendants on the same side and also on the ground that the affidavit was not filed within 10 days after the case was noticed for trial. Morris v. P. & D. General Contractors, Inc. 236 W 513, 295 NW 720.

Where the contempt proceeding against the defendant was in the action, and was instituted subsequent to the defendant's filing of an affidavit of prejudice, the presiding judge

against whom the affidavit was filed had no jurisdiction to proceed in the action except to change the venue or call in another judge, and the contempt proceeding and order adjudging the defendant guilty of contempt were void. Woods v. Winter, 252 W 240, 31 NW (2d) 504.

The filing of a properly worded affidavit of prejudice is a condition precedent to challenging on appeal the refusal of the trial judge to honor such affidavit, and hence the supreme court will not consider any issue grounded on the filing of an affidavit not made a part of the record on appeal. Long Inv. Co. v. O'Donnell, 3 W (2d) 291, 88 NW (2d) 674.

After an appeal to circuit court, where an affidavit of prejudice is filed, the judge has no jurisdiction except to order removal or call in a judge; if he does neither, he cannot later dismiss the appeal under 306.15 for failure to bring the appeal to trial. It was not the duty of appellant's counsel to draft the order for removal in the absence of a request that he do so, nor has he any duty to take action to bring the case on for trial. Schwanke v. Reid, 16 W (2d) 521, 114 NW (2d) 845.

In a proceeding to modify a divorce judgment as to alimony, the judge may reject an affidavit of prejudice filed by the moving party. Luedtke v. Luedtke, 29 W (2d) 567, 139 NW (2d) 553.

All the parties who have appeared and are interested in a controversy constitute one party within the meaning of 261.08, Stats. 1965, and must act in harmony when seeking a change of venue grounded on alleged prejudice of the presiding trial judge, and this rule is equally applicable where only one of several parties on the same side seeks a new judge rather than a change of venue. Dutcher v. Phoenix Ins. Co. 37 W (2d) 591, 155 NW (2d) 609.

261.09 History: R. S. 1849 c. 95 s. 1; 1853 c. 51 s. 1; R. S. 1858 c. 123 s. 9; 1875 c. 53 s. 1, 2; R. S. 1878 s. 2626; 1889 c. 166; Ann. Stats. 1889 s. 2926; Stats. 1898 s. 2626; 1925 c. 4; Stats. 1925 s. 261.09; 1935 c. 541 s. 23.

The party who has obtained a continuance cannot demand a change of venue thereafter unless he shows that the cause alleged was discovered or developed after the continuance was granted. Schafer v. Shaw, 87 W 185, 58 NW 240.

261.10 History: 1856 c. 120 s. 31; R. S. 1858 c. 123 s. 10; R. S. 1878 s. 2627; Stats. 1898 s. 2627; 1925 c. 4; Stats. 1925 s. 261.10; 1929 c. 262 s. 19; 1935 c. 541 s. 24.

Revisers' Note, 1878: Section 10, chapter 123, R. S. 1858, with addition especially directing how the papers shall be sent, at what time the change shall be deemed made, and requiring the mover to procure it to be done, or surrender his change. The manner in which causes have been suspended in practice upon orders changing the venue seems to render the requirement necessary. The provision indicating that further proceedings may be had after a change is ordered in the county from which sent, upon the order of the judge, must probably be taken to be limited to cases which he is not absolutely bound to change upon application. It is left, however, as it has always been.

Revisers' Note, 1898: The first amendments are suggested to clearly provide that the plaintiff must procure the transmission of the papers where he begins suit in the wrong county, and to make an order following a demand equivalent to consent. The last amendment is made to prevent the use of orders changing the venue serving merely as continuances, and is supplementary to the amendment proposed to section 2625.

Revisor's Note, 1929: "It is well settled that an appeal does not lie from an order denying or granting a change of venue." Brust v. First Nat. Bank, 176 Wis. 14. The amendment is to clarify without changing the law * * *. The amendment made in 1898 has some reference to F. Dohmen Co. v. Niagara F. Ins. Co., 96 Wis. 38. See Wisconsin Annotations of 1914, page 982. (Bill 104-S, s. 19)

Revisor's Note, 1935: 261.08 (3) says court of origin may decide pending motions. 261.03 says plaintiff shall pay costs if action is brought in wrong county. (Bill 50-S, s. 24)

It seems that the provision concerning the vacation of the order does not apply where the venue has been changed by consent under sec. 2621, R. S. 1878. Woodward v. Hanchett, 52 W 482, 21 NW 297.

Under sec. 2831, R. S. 1878, after expiration of the time limited by sec. 2627 for transmitting the record, the court or a judge may extend the time therefor on an ex parte application. Cartright v. Belmont, 58 W 370, 17 NW 237.

When the place of trial is changed the clerk of court to which the papers are sent is under no legal duty to file them unless his fees are paid; and if the papers are not filed because of nonpayment of fees within 20 days the order changing the place of trial is vacated, notwithstanding a custom of the clerk to charge fees to the attorneys. Muntz v. Werner, 64 W 408, 25 NW 206.

The failure to transmit the papers as required is an irregularity which is waived by giving notice of a motion for leave to amend a pleading and a written offer of judgment. Starkweather v. Johnson, 66 W 469, 29 NW 284.

If the record has been taken from the court in which the cause was begun by an attorney the opposing attorney is excused from taking any further steps until it is returned or its place supplied. Such a case is not within sec. 2627, R. S. 1878. Cook v. McDonnell, 70 W 329, 35 NW 556.

If the clerk's fees are not paid and the papers are not transmitted within 20 days his authority to transmit the papers is gone, and a motion thereafter, and after payment of his fees, to direct the transmission of the papers is properly denied. F. Dohmen Co. v. Niagara Fire Ins. Co. 96 W 38, 71 NW 69.

A stipulation of parties consenting to a change of venue to the court which had jurisdiction of the subject matter is binding. Necedah M. Corp. v. Juneau County, 206 W 316, 237 NW 277.

261.11 History: 1870 c. 106 s. 1; R. S. 1878 s. 2628; 1887 c. 306 s. 2; Ann. Stats. 1889 s. 2628; Stats. 1898 s. 2628; 1925 c. 4; Stats. 1925 s. 261.11; 1935 c. 541 s. 25.

Revisers' Note, 1878: This section is designed to cover accidents and mistakes not known or taken advantage of until after a trial, embracing the idea of section 1, chapter 106, Laws 1870; and also to provide the effect of a reversal, the latter provision being borrowed from the work of the last New York revisers.

It is too late to object for the first time on the trial in the court to which a removal has been made that the application for removal was insufficient. Montgomery v. Scott, 32 W 249.

As consent gives jurisdiction of the person a general appearance in the court to which a venue is changed is a waiver of all defects in the affidavit. Carpenter v. Shepardson, 43 W 406, 412; Estate of Schaeffner, 45 W 614.

Objection that notice was not given of the motion for a change of venue is too late when first made on appeal from the judgment. Appearing and resisting a motion to change the place of trial is a waiver of such notice. Cartright v. Belmont, 58 W 370, 17 NW 237.

An objection to a change of venue cannot be made the first time in the supreme court on appeal. Allen v. Voje, 114 W 1, 89 NW 924.

CHAPTER 262.

Commencing Civil Actions.

Editor's Note: The following histories and notes are to ch. 262, Stats. 1959, as created by ch. 226, Laws 1959. The notes were prepared by Professor G. W. Foster, Jr., of the University of Wisconsin Law School, who served as reporter for the Judicial Council in preparing the revision.

General Objectives and Scope of Revised Chapter 262.

The primary objective sought in revising Chapter 262 is to expand the exercise of personal jurisdiction over nonresidents in cases having substantial contacts with Wisconsin. The new features found in Chapter 262 are largely additions to, rather than replacements for, old law. Thus, the old familiar means of acquiring personal jurisdiction have been retained. See new sections 262.05 (1) and (2); 262.06; and 262.07. And the language of old Chapter 262 has been employed as far as consistent with the new additions.

The scope of state jurisdiction over nonresidents has expanded enormously in recent years. The Nonresident Motorist Process Acts marked a beginning of this trend more than thirty years ago. And further legislative action in Florida, Illinois, Maryland, North Carolina, Texas, Washington and West Virginia provides for jurisdiction over nonresidents in numerous actions arising out of torts or contracts having substantial local connections. Other states—among them California, New Jersey, New Mexico, Oregon and Wisconsin—have by judicial decision redefined their "doing business" concepts so broadly that they now include much or perhaps all that is permitted to state judicial power over foreign corporations under the due process clause of the Fourteenth Amendment.

The Supreme Court of the United States has lent the states an important helping hand in these developments. The rigid rule of Pennoyer v. Neff, 95 U. S. 714 (1877), has not wholly disappeared, as the Court pointed out in Hanson v. Denckla, 357 U. S. 235 at 251 (1958). But the rigidity of Pennoyer has given way to the flexible standard of International Shoe Co. v. Washington, 326 U. S. 310 (1945), and McGee v. International Life Ins. Co., 355 US 220 (1958).

The new, flexible standard of International Shoe and McGee comes to this: A state may exercise personal jurisdiction whenever, in the context of our federal system, it is reasonable for the state to try the particular case against the particular defendant. In other words, the modern test depends upon the relation between the state and the particular litigation sued upon. Importance attaches to what, with respect to the action brought, the defendant has caused to be done in the forum state.

The International Shoe and the McGee cases lay down general applications of the new due process standard. State legislation and lower court decisions have applied this general standard to a wide variety of fact situations which have not yet reached the United States Supreme Court for decision. The new revision of Chapter 262 is based upon a comprehensive study of these legislative and judicial materials from other states. When collectively considered, these state materials form a broad and largely interconnected framework which supports the exercise of state jurisdiction over nonresidents in virtually every kind of personal action which has substantial connections with the forum state.

Revised Chapter 262, relying upon these legislative and judicial materials from other states, attempts to provide a means for trying in Wisconsin all personal actions which, in a due process sense, it is reasonable to try here against the named defendant.

Summary of Contents of Revised Chapter 262.

Title XXV of Wisconsin Statutes deals with the procedure in civil actions. Within Title XXV, Chapter 262 deals with commencing civil actions. Chapter 262 is to be "liberally construed to the end that actions be speedily and finally determined on their merits." See s. 262.01; and also see s. 262.03, which defines, for use in this chapter, the words "person", "plaintiff" and "defendant" in a manner which stresses the liberal scope intended for the operation of the chapter.

A civil action is commenced "by the service of a summons or an original writ." Sec. 262.02. Civil actions are of two general types. When directed against a person, they are spoken of as "personal actions" and require the exercise of "personal jurisdiction" over the parties. When directed against a status or thing (rather than against a person), they are spoken of as actions "in rem" or "quasi in rem" and require the exercise of "jurisdiction in rem" or "jurisdiction quasi in rem" with respect to the status or thing acted upon. Section 262.04 makes the distinction between