

CHAPTER 302.

TRIALS AND JUDGMENTS.

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302.01 Action, dismissal of. If it appears on trial, from the plaintiff's own showing, that the title to lands is in question, which title shall be disputed by the defendant, the justice shall dismiss the cause and the plaintiff shall pay the costs.

302.02 [Repealed by Supreme Court Order, effective Jan. 1, 1937]

302.03 Minutes of evidence; attendance of constable. The justice shall take full minutes of all evidence given before him on the trial of a cause and file the same among the papers in the case. He may, when he shall deem it necessary, command any constable to attend at the trial of a cause and shall make an entry thereof in his docket.

302.04 Demand for jury; waiver. After issue joined in any civil action in a justice's court, and before the commencement of the trial thereof, either party, on first paying to the justice the jury fees in advance for one day's attendance, may demand that the action be tried by a jury of six men; and a neglect to make such demand shall be a waiver of the right to trial by jury. The money so advanced shall be paid to the jurors when they shall have rendered their verdict.

Note: Where defendant in action for violation of county traffic ordinance demands jury trial in justice court, he must pay fees therefor as in other civil actions. 28 Atty. Gen. 636.

302.05 Officer to write names. Upon such demand of a jury the justice shall direct the sheriff or any constable of the county who may be present to write down the names of eighteen persons of the county, qualified to serve as jurors in courts of record, who shall be in no wise of kin to the plaintiff or defendant nor interested in the action.

302.06 Who to write if officer absent. If no officer be present the justice may appoint a suitable person to write down the names of such persons, to whom he shall administer an oath or affirmation, which shall be as follows:

You do solemnly swear (or affirm) that you will perform the duties required of you according to the best of your abilities, without partiality to either party.

302.07 Jurors, how chosen. From such list of names each party, commencing with the party demanding such jury, may strike out alternately six names; and in case of the absence of either party or his refusal to strike out the justice shall appoint some other person to strike out six names.

302.08 Venire to issue. The justice shall issue a venire requiring the officer to summon the six persons whose names remain upon the said list of names to appear at the time and place mentioned therein to make a jury for the trial of the action between the parties in the venire mentioned.

302.09 Parties may agree upon jury. The parties may agree upon six or any less number of jurors to try the cause, and in such case the justice shall direct in the venire the summoning of the persons agreed upon, who, when summoned and appearing, shall compose the jury; and the justice shall make a minute of such agreement in his docket.

302.10 Talesmen. If any of said jurors shall not attend at the time so summoned to appear or in case there should be legal objections raised to any of those who shall appear the justice may order the officer to summon a sufficient number of talesmen to supply the deficiency.

302.11 Form of venire. The following form of a venire may be used:

.... County, }
Town of, } ss.

THE STATE OF WISCONSIN, to the sheriff or any constable of said county:

You are hereby commanded to summon to be and appear before the undersigned, one of the justices of the peace in and for said county, on the day of, at o'clock in thenoon of said day, at my office in said town, to make a jury for the trial of an action between, plaintiff, and, defendant.

And have you then and there this writ.

Given under my hand this day of, 19...

J. P., Justice of the Peace.

302.12 Jurors, how summoned. The officer shall summon the jurors personally by reading the venire to them and shall certify and return his doings thereon to the justice.

302.13 Failure to appear contempt; penalty; proceedings. Every person who, being duly summoned as a juror, shall fail to appear or who shall refuse to serve shall be deemed guilty of a contempt, and it shall be the duty of the justice to fine each of such persons in a sum not less than five nor more than ten dollars and to commit him to the common jail of the proper county until such fine be paid; and whenever any person, duly summoned to appear before him to serve as a juror, shall refuse to appear the justice shall issue an attachment for such person, directed to the sheriff or any constable of his county, requiring such officer to attach the body of the person so summoned and to bring him before such justice to serve as a juror. The fees for issuing and executing said attachment shall be the same as are now allowed by law in cases of civil warrant and they shall, in all cases, be paid by the person attached; but if any person summoned as a juror shall appear before the justice and show good cause therefor the justice may excuse him from such service.

302.14 Challenges. Either party may challenge any juror summoned as aforesaid for cause and may have him sworn to answer questions concerning such challenge, and may prove such cause by other evidence; and such challenge shall be decided by the justice.

302.15 Oath to jurors. To each juror, selected as aforesaid, the justice shall administer the following oath:

You and each of you do solemnly swear (or affirm) that you will well and truly try the issue joined between, plaintiff, and, defendant, and a true verdict give, according to law and the evidence given in court, so help you God.

302.16 Jury to hear the parties. After the jury shall have been sworn they shall sit together and hear the proofs and allegations of the parties, which shall be delivered in public in their presence and hearing.

302.17 [*Repealed by Supreme Court Order, effective Jan. 1, 1937*]

302.18 Return of verdict. When the jurors have agreed upon their verdict they shall deliver the same to the justice publicly, who shall enter the same in his docket and enter judgment according to said verdict. A verdict agreed to by five jurors shall be the verdict of the jury.

302.19 Discharge of jury. Whenever a justice shall be satisfied that a jury sworn in any civil cause before him, after having been out a reasonable time, cannot agree on their verdict he may discharge them and issue a new venire, unless the parties consent that the justice may render judgment on the evidence already before him or that a new trial be had before the justice.

302.20 Trial without jury. When the trial is before the justice without a jury he shall hear the proofs and allegations of the parties, and after the case has been submitted for his decision he shall not permit any further evidence to be given or suffer any communication from either party or from any other person in relation to such action, except in the presence of the parties or on due notice thereof served upon the absent party, until he has rendered judgment.

302.21 Rules in courts of record to apply. The rules and laws of evidence shall be the same in actions and proceedings before justices of the peace as in courts of record in this state.

302.22 Judgment by confession. A judgment by confession may be entered before a justice of the peace in any sum not exceeding three hundred dollars without action, either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, if a statement in writing be made signed by the defendant, verified by his oath and filed with the justice to the following effect:

(1) It must state the amount for which judgment may be entered and authorize the entry of judgment therefor by the justice;

(2) If it be for money due or to become due it must state concisely the facts out of which it arose and must show that the sum confessed therefor is justly due or to become due;

(3) If it be for the purpose of securing the plaintiff against a contingent liability it must state concisely the facts constituting the liability and must show that the sum confessed therefor does not exceed the same.

302.23 On default. If the defendant shall fail to appear within one hour after the time specified for the return of process duly served or after the hour of adjournment the justice shall proceed to hear the proofs of the plaintiff and render judgment thereon according to law and equity, as the very right of the case may appear.

302.24 Nonsuit. Judgment of nonsuit shall be rendered against the plaintiff prosecuting an action before a justice of the peace in the following cases:

(1) If he discontinue or withdraw his action at any time before the argument to the jury has been concluded or waived.

(2) If he fail to appear on the return of any process, within one hour after the same is returnable.

(3) If, after an adjournment, he fail to appear within one hour after the time to which the adjournment shall have been made.

(4) If he become nonsuited on the trial; but a compulsory nonsuit shall not be ordered by the justice after evidence has been submitted to the jury.

302.245 Contents of judgments. Each judgment for money damages shall specify clearly the relief granted and the place of abode, and occupation, trade or profession of each party as accurately as can be ascertained. [*Supreme Court Order, effective Jan. 1, 1935*]

302.25 For defendant. Judgment for the defendant shall be rendered whenever a trial has been had and it be found by verdict or by the decision of the justice that the plaintiff has no cause of action against the defendant.

302.26 Costs. Whenever a judgment shall be rendered by a justice against any party, unless herein otherwise provided, it shall be with costs of the action.

302.27 Judgment, when to be rendered. In all cases where judgment shall have been confessed, or the plaintiff shall be nonsuited, or withdraw his action, or where a verdict shall be rendered in favor of either party, or the defendant shall be in custody at the time of the trial of the cause, the justice shall forthwith render judgment and enter the same in his docket. In all other cases, when the cause shall have been submitted to the justice for his decision, he may take time to consider his judgment and in such case he shall continue the cause to a time to be by him named, not more than seventy-two hours from the time the same is so submitted, at which time he shall enter his judgment.

Note: See note to 253.03, citing *State ex rel Leverance v. Prey*, 231 W 661, 286 NW 705.

302.28 Judgment, when all not served. In actions against two or more persons jointly indebted upon any joint contract or liability if the process be issued against all the persons so indebted and shall have been duly served upon one or more of them the defendants so served shall answer to the plaintiff, and the judgment, if rendered in favor of the plaintiff, shall be against all the defendants in the same manner as if all had been served with process. Such judgment shall be conclusive evidence of the liability of the defendants so served with process or who appeared therein; but against any other defendant it shall be presumptive evidence only of the extent of the plaintiff's demand after the liability of such defendant shall have been established by other evidence.

302.29 Release of sum in excess of jurisdiction. If any sum be found in favor of a party, either by the verdict of a jury or upon hearing of the cause before a justice, exceeding the sum for which a justice is authorized to give judgment such party may remit or release the excess and take judgment for the residue.

302.30 Judgment on indivisible set-off. When the justice or jury shall find in favor of the defendant on a claim of set-off and such set-off shall be indivisible the justice may, at the request of the defendant, enter a judgment for such sum as he has jurisdiction of; and if such set-off be in writing he shall indorse the amount of the claim of the plaintiff and the judgment allowed by him on such writing. The finding and allowance of a set-off shall not be a bar to any action brought for the balance of such set-off; but the same may be recovered in any court having jurisdiction thereof.

302.31 New trial. A new trial may be granted at any time within one year from the rendition of any judgment by a justice of the peace upon a publication of notice, in the cases authorized by law, where no service has been had and the defendant did not appear at the trial.

302.32 Application for. Such new trial shall be granted upon a petition subscribed and sworn to by the defendant in such action, his agent or attorney, addressed to the justice before whom the same was rendered, or the justice to whom or the court into which the judgment has been removed, and setting forth a valid defense, in whole or in part, to the cause of action upon which such judgment was founded; and if the court to which such petition is addressed is satisfied that it sets forth a valid defense, in whole or in part,

to the plaintiff's cause of action it shall make an order setting forth the time and place and the court before which a new trial will take place. A copy of such petition and order shall be served on the plaintiff at least ten days previous to the time fixed for the new trial. At the time so fixed the defendant shall answer to the complaint the same matters of defense set forth in his petition, and thereafter the same proceedings shall be had as in other trials.

302.33 Action on judgment. No action on a judgment rendered by a justice of the peace shall be brought in the same county within five years after its rendition, except in case of his death, resignation, incapacity to act or removal from the county, or that the process was not personally served on the defendant or on all the defendants, or in case of the death of some of the parties, or when the docket or record of such judgment is or shall have been lost or destroyed.

302.34 Transcript of judgment. (1) Every justice, on demand of any person in whose favor a judgment for more than ten dollars, exclusive of costs, shall have been rendered, either by said justice or by any predecessor in such office whose dockets are in his custody, shall give to such person a certified transcript of such judgment. Such transcript may be in the following form:

Justice's Court,

A. B. }
vs. } County, ss.
C. D. }

..... (date), 19...

Judgment for the plaintiff for the sum of

Costs

Costs of copy twenty-five cents.

Name of attorney for judgment creditor, if any,

Name, abode and vocation of judgment debtor,

I certify the above to be a true copy of a judgment rendered before me (or before E. F., late justice of the peace), in the above entitled cause, as appears from my (or his) docket now in my custody.

Dated at, this day of, A. D. 19...

J. P., Justice of the Peace.

(2) When the execution upon any judgment has been stayed as provided by law the justice, in giving a transcript of such judgment, shall state in the transcript that execution was stayed and give the name of the person who entered into the recognizance for that purpose. [*Supreme Court Order, effective July 1, 1939*]

302.35 Index to judgments. Every justice shall keep an alphabetical index of all judgments entered in his docket in the course of any judicial proceedings had before him, in which shall be inserted the names of the parties to each judgment and the page of his docket where such judgment is entered.

302.36 Setoff of judgments. If there be mutual justice's judgments equitably belonging to the same parties, upon which the time of appealing has elapsed on which there is no existing execution, one judgment, on the application of either party and reasonable notice given to the adverse party, may be set off against the other by the justice before whom the judgment against which the set-off is proposed may be.

302.37 When judgments before different justices. If the judgment proposed as a set-off was rendered before another justice the party proposing such set-off must produce before the justice a transcript of such judgment, upon which there is a certificate of the justice rendering the judgment that it is unsatisfied in whole or in part and that there is no appeal or existing execution thereon, and that such transcript was obtained for the purpose of being set off against the judgment to which it is offered as a set-off. The justice granting such transcript shall make an entry thereof in his docket and all further proceedings on such judgment shall be stayed unless such transcript shall be returned with the proper justice's certificate that it has not been allowed in set-off.

302.38 Duty on setting off judgments. If any justice shall set off one judgment against another he shall make an entry thereof in his docket, and execution shall issue only for the balance which may be found due after such set-off. If a justice shall allow a transcript of a judgment rendered by another justice to be set off he shall file such transcript among the papers relating to the judgment in which it is allowed in set-off. If he shall refuse such transcript as a set-off he shall so certify on the transcript and return the same to the party who offered it.