

they select such tribunals. Mistakes that will void an award are those appearing on its face, or gross mistakes of the arbitrators extraneously appearing as to their powers or duties, which result in real injustice or constructive fraud; and the mistake must so mislead the arbitrators that they did not apply the rules which they intended to apply, so that upon their own theory a mistake was made which has caused the result to be something different from that which they had reached by their reason and judgment. *Putterman v. Schmidt*, 209 W 442, 245 NW 78.

298.11 History: 1931 c. 274; Stats. 1931 s. 298.11.

In a proceeding for the confirmation of an award of arbitrators appointed by the parties to a contract, where none of the conditions prescribed as grounds for vacating or modifying an award were present, and where the arbitrators at most made merely an error of fact or law in awarding interest to the contractor, the trial court had no power to modify the award by striking the item of interest therefrom. *Standard Construction Co. v. Hoeschler*, 245 W 316; 14 NW (2d) 12.

298.12 History: 1931 c. 274; Stats. 1931 s. 298.12.

298.13 History: 1931 c. 274; Stats. 1931 s. 298.13.

298.14 History: 1931 c. 274; Stats. 1931 s. 298.14.

298.15 History: 1931 c. 274; Stats. 1931 s. 298.15.

Under 298.15, Stats. 1951, no appeal lies from an order which denies a motion to vacate an award. *Pick Industries, Inc. v. Gebhard-Berghammer, Inc.* 262 W 498, 56 NW (2d) 97, 57 NW (2d) 519.

298.17 History: 1931 c. 274; Stats. 1931 s. 298.17.

298.18 History: 1931 c. 274; Stats. 1931 s. 298.18.

CHAPTER 299.

Procedure in County Court in Small Claims Type Actions.

299.01 History: 1961 c. 519, 614, 684; Stats. 1961 s. 299.01; Sup. Ct. Order, 14 W (2d) vii; 1965 c. 507 s. 5 (2); 1965 c. 560; 1967 c. 201; 1969 c. 284.

A *cognovit* judgment must be taken in accordance with the procedure prescribed in 270.69 rather than the procedure for small claims type actions prescribed in ch. 299. 59.42, 271.04 and 271.21, regarding fees and costs, are applicable. 52 Atty. Gen. 60.

299.02 History: 1961 c. 519; Stats. 1961 s. 299.02; 1965 c. 560.

299.03 History: 1961 c. 519, 618; Stats. 1961 s. 299.03.

299.04 History: 1961 c. 519; Stats. 1961 s. 299.04; 1969 c. 284.

299.05 History: 1961 c. 519, 643; Stats. 1961 s. 299.05; 1969 c. 284.

Small claims practice. *Boden*, 47 MLR 38.

299.06 History: 1961 c. 519, 618; Stats. 1961 s. 299.06; 1969 c. 284.

299.06 (2) gives authority to the trial judge in the proper exercise of his discretion to insist on appearance of a party in person or by attorney, but it does not make it mandatory that the judge dismiss the action or hold against the offending party if the provisions of the statute are violated. *Littleton v. Langlois*, 37 W (2d) 360, 155 NW (2d) 150.

See note to sec. 2, art. VII, on judicial power generally, citing 54 Atty. Gen. 49.

299.07 History: 1961 c. 519; Stats. 1961 s. 299.07.

299.08 History: 1961 c. 643; Stats. 1961 s. 299.08; 1963 c. 37; 1969 c. 392.

The state does not pay any suit tax under 299.08, Stats. 1965. 55 Atty. Gen. 57.

299.10 History: 1961 c. 519; Stats. 1961 s. 299.10.

299.11 History: 1965 c. 560; Stats. 1965 s. 299.11; 1969 c. 284.

299.12 History: 1965 c. 560; Stats. 1965 s. 299.12; 1969 c. 284.

Small claims practice. *Boden*, 47 MLR 38.

299.14 History: 1961 c. 519; Stats. 1961 s. 299.14; 1965 c. 560.

299.16 History: 1961 c. 519, 643; Stats. 1961 s. 299.16; 1963 c. 37; 1965 c. 252; 1965 c. 560 s. 7 (1); 1969 c. 284.

299.20 History: 1961 c. 519; Stats. 1961 s. 299.20; 1963 c. 343.

299.205 History: 1961 c. 519; Stats. 1961 s. 299.205; 1963 c. 407.

299.21 History: 1961 c. 519, 618, 643; Stats. 1961 s. 299.21; 1965 c. 390, 560; 1967 c. 201; 1969 c. 125, 255, 284; 1969 c. 392 ss. 67g, 67r.

Legislative Council Note, 1969: Sub. (2) is amended to make all appeals from a trial by jury to the supreme court.

Sub. (5) is amended to limit appeals to the circuit court to the trial record in county court. If a new trial is ordered it would be held in county court. In all appeals to the circuit court under this bill, the trial would be one in which the trial had been to the court as all jury cases would be appealed to the supreme court. [Bill 7-S]

299.215 History: 1963 c. 37; Stats. 1963 s. 299.215.

299.22 History: 1961 c. 519; Stats. 1961 s. 299.22.

299.225 History: 1963 c. 37; Stats. 1963 s. 299.225.

299.23 History: 1961 c. 519; Stats. 1961 s. 299.23.

299.24 History: 1961 c. 519, 618; Stats. 1961 s. 299.24; Sup. Ct. Order, 14 W (2d) vii; 1963 c. 407.

The statutes governing the docketing of small claims judgments rendered in county courts are discussed in 52 Atty. Gen. 157.

299.25 History: 1961 c. 519, 643; Stats. 1961 s. 299.25; 1965 c. 560 s. 7 (2); 1967 c. 201; 1969 c. 125, 284.

299.255 History: 1963 c. 37; Stats. 1963 s. 299.255.

299.26 History: 1961 c. 519; Stats. 1961 s. 299.26; 1963 c. 407.

299.27 History: 1961 c. 519; Stats. 1961 s. 299.27; 1969 c. 284.

299.28 History: 1961 c. 519; Stats. 1961 s. 299.28; 1963 c. 407.

299.29 History: 1963 c. 407; Stats. 1963 s. 299.29.

299.30 History: 1961 c. 519; Stats. 1961 s. 299.30; 1963 c. 407; 1969 c. 125, 284, 392, 411. See note to 274.09, on jurisdiction on appeal, citing Milwaukee County v. Caldwell, 31 W (2d) 286, 143 NW (2d) 41.

See note to 66.12, citing Milwaukee v. Trzesniewski, 35 W (2d) 487, 151 NW (2d) 109.

299.31 History: 1961 c. 519; Stats. 1961 s. 299.31.

299.40 History: 1969 c. 284; Stats. 1969 s. 299.40.

299.41 History: 1969 c. 284; Stats. 1969 s. 299.41.

299.42 History: 1969 c. 284; Stats. 1969 s. 299.42.

299.43 History: 1969 c. 284; Stats. 1969 s. 299.43.

299.44 History: 1969 c. 284; Stats. 1969 s. 299.44.

299.45 History: 1969 c. 284; Stats. 1969 s. 299.45.

CHAPTER 300.

Municipal Court Procedure.

300.01 History: 1945 c. 441; Stats. 1945 s. 300.001; 1965 c. 617; 1967 c. 276 s. 39; 1969 c. 87; Stats. 1969 s. 300.01.

300.02 History: R. S. 1849 c. 88 s. 14; R. S. 1858 c. 120 s. 14; R. S. 1878 s. 3593; Stats. 1898 s. 3593; 1925 c. 4; Stats. 1925 s. 301.01; 1935 c. 273; 1945 c. 441; 1969 c. 87 ss. 64, 65; Stats. 1969 s. 300.02.

Jurisdiction over defendants who were served with process or who appeared is not lost by rendering a default judgment against one who was not served and who did not appear. French v. Ferguson, 77 W 121, 45 NW 817.

It is the fact of service of the summons, not the proof of such service, that gives jurisdiction. Even after attack by certiorari the return may be amended to show the fact. De Laval S. Co. v. Hofberger, 161 W 344, 154 NW 387.

300.03 History: 1969 c. 87; Stats. 1969 s. 300.03.

Legislative Council Note, 1969: (1) and (2) are based in part upon present s. 960.09, but

are more detailed to insure that defendant is informed of his rights before being required to plead. The explanation of the possible penalties is somewhat analogous to the requirement in criminal cases as stated in *State v. Strickland*, 27 Wis. (2d) 623. Sub. (3) permits the justice to act immediately on pleas of guilty or no contest. Sub. (4) requires the justice to inform the defendant of his right to jury trial and set the date of the trial when the plea is not guilty; it also allows immediate trial. Sub. (5) specifies the requirements of bail. (Bill 9-A)

300.04 History: 1969 c. 87; Stats. 1969 s. 300.04.

Legislative Council Note, 1969: This new procedure provides for transfer of a case to county court when a jury trial is requested. There are no jury trials in municipal court under this bill. (Bill 9-A)

300.05 History: 1969 c. 87, 255, 392; Stats. 1969 s. 300.05.

Legislative Council Note, 1969: This section replaces present ss. 301.24 and 301.245 and adopts an affidavit of prejudice similar to that used in courts of record. Fees are similar to those in present s. 301.245. (Bill 9-A)

Editor's Note: On removal of cases from justice courts to other courts, see notes of decisions under 301.24 in Wis. Annotations, 1960.

300.055 History: 1969 c. 87; Stats. 1969 s. 300.055.

Editor's Note: This section is similar to 301.045, Stats. 1959, which was construed in *State ex rel. Mitchell v. Superior Court*, 14 W (2d) 77, 109 NW (2d) 522. See also: 39 Atty. Gen. 268, 39 Atty. Gen. 613, and 43 Atty. Gen. 319.

300.06 History: 1969 c. 87; Stats. 1969 s. 300.06.

Legislative Council Note, 1969: Sub. (1) is similar to present s. 960.11, which is repealed. Sub. (2) is similar to the present s. 66.114 (2), which is not repealed. (Bill 9-A)

300.07 History: 1969 c. 87; Stats. 1969 s. 300.07.

Legislative Council Note, 1969: This section is similar to s. 302.21. (Bill 9-A)

300.08 History: 1969 c. 87, 331; Stats. 1969 s. 300.08.

Legislative Council Note, 1969: This section is substantially similar to s. 254.09 except that commitment is in a jail in the county where the cause of action arose instead of in the county in which the offense was tried. Persons committed may be allowed to work under the Huber Act and the justice may stay execution for up to 30 days in order for a person to pay the forfeiture. (Bill 9-A)

300.09 History: 1969 c. 87; Stats. 1969 s. 300.09.

Legislative Council Note, 1969: This section adopts the procedure for execution used in courts of record. (Bill 9-A)