

SENATE BILL 129

IN THE SENATE

January 16, 1979

Introduced and referred to
Committee on Judiciary.

April 20, 1979

Died in Committee.

1 *Senate* BILL NO. 139
 2 INTRODUCED BY *Blaylock*
 3 BY REQUEST OF THE CODE COMMISSIONER

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
 6 CLARIFY THE LAWS RELATING TO CIVIL PROCEDURE; REPEALING
 7 SECTIONS 16-809, 93-901, 93-1811, 93-2806, 93-2906(4),
 8 93-2907, 93-3002, 93-3008, 93-3011, 93-3012, 93-5302,
 9 93-5305 THROUGH 93-5307, 93-5501, 93-5503 THROUGH 93-5509,
 10 93-5606 THROUGH 93-5608, 93-5702, 93-5707, 93-6602(2),
 11 93-7202, 93-8003 THROUGH 93-8006, 93-8011, 93-8012, 93-8014
 12 THROUGH 93-8025, 93-8802, 95-1709, AND 95-2010, R.C.M.
 13 1947."

14
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 Section 1. Section 25-1-102, MCA, is amended to read:

17 "25-1-102. Limitations on commencing actions. (1)
 18 Civil actions ~~can~~ may only be commenced within the periods
 19 prescribed in ~~{93-2501 to 93-2720}~~ Title 27, chapter 2,
 20 after the cause of action ~~shall have accrued~~ accrues, except
 21 ~~where~~ when, in special cases, a different limitation is
 22 prescribed by statute.

23 (2) The word "action", as used in this section, is to
 24 be construed, whenever it is necessary so to do so, as
 25 including a special proceeding of a civil nature."

1 Section 2. Section 25-1-301, MCA, is amended to read:
 2 "25-1-301. Extension of time. When Subject to Rule
 3 6(b), M.R.Civ.P., whenever this code requires or allows an
 4 act to be done ~~as provided in this code, at or within a~~
 5 specified time, which act relates to the pleadings ~~in the~~
 6 ~~action, the filing of an undertaking~~ undertakings to be
 7 ~~filed, the justification of sureties, the preparation of~~
 8 ~~statements or of bills of exceptions~~ a statement or of
 9 amendments thereto, or the service of notices a notice other
 10 than of appeal, the time allowed ~~by this code~~ may be
 11 extended, upon good cause shown, by the court in which the
 12 action is pending or a judge thereof, ~~but such~~ However, the
 13 extension ~~shall~~ may not exceed 90 days without the consent
 14 of the adverse party."

15 Section 3. Section 25-2-103, MCA, is amended to read:

16 "25-2-103. Actions involving real property. (1)
 17 Actions for the following causes must be tried in the county
 18 in which the subject of the action or some part thereof is
 19 ~~situated~~ located, subject to the power of the court to
 20 change the place of trial ~~as provided in this code~~:

- 21 (a) for the recovery of real property or of an estate
- 22 or an interest therein or for the determination, in any
- 23 form, of such right or interest;
- 24 (b) for injuries to real property;
- 25 (c) for the partition of real property;

1 (d) for the foreclosure or enforcement of all liens
2 and mortgages on real property.

3 (2) Where if the real property is situated located
4 partly in one county and partly in another, the plaintiff
5 may select either of the counties and the county so selected
6 is the proper county for the trial of such the action.

7 ~~{3}--All actions for the recovery of the possession of
8 quieting the title to or the enforcement of liens upon real
9 property must be commenced in the county in which the real
10 property or any part thereof affected by such action or
11 actions is situated."~~

12 Section 4. Section 25-3-201, MCA, is amended to read:

13 "25-3-201. Delivery of papers to officer. ~~{1}~~ It is
14 the duty of the the clerk of any a district court, at the
15 request of a party in any a civil action pending in such
16 court or his agent or attorney, to shall forward by mail any
17 process, summons, or other papers required in the cause for
18 service in the appropriate county, and it is the duty of the
19 the sheriff or other officer to whom said such papers may be
20 are directed to shall receive the same them at the place
21 where the same they are directed. ~~When process in one county
22 is intended for service in another, it is the duty of the
23 clerk to forward the same in like manner--~~

24 ~~{2}--Any writs, orders or other papers for service must
25 be received at any place in the county where a sheriff or a~~

1 ~~deputy is found, but if~~ if the papers are delivered for
2 service away from the county seat, all necessary copies
3 thereof must be furnished ~~for service~~.

4 ~~{3}--If any sheriff or other officer refuse to receive
5 any summons or other process at the point where directed to
6 him or to serve the same, he is guilty of a misdemeanor and
7 upon conviction thereof must be fined in any sum not
8 exceeding \$100."~~

9 Section 5. Section 25-3-301, MCA, is amended to read:

10 "25-3-301. Time and manner of return. (1) ~~It shall be~~
11 ~~the duty of the~~ the sheriff or other person serving a
12 ~~summons or other process or order required by any of the~~
13 ~~provisions of this code, a notice issued out of any of the~~
14 ~~by a district courts of this state, to court shall~~ make due
15 ~~and legal~~ proper return of such service and file the same it
16 with the clerk of the court in which such the action or
17 proceeding is pending not more than 10 days after the making
18 of such service where the same if it was made in the county
19 in which such the action or proceeding is pending and not
20 more than 15 days after the making of such service when the
21 same if it was made outside of the such county in which such
22 action or proceeding is pending. Any failure to make and
23 file such the return as required may be punished as a
24 contempt of court.

25 (2) When whenever process or notices are a notice is

1 returnable to another county or was forwarded under
 2 25-3-201, the sheriff or other officer may enclose his
 3 return of such process or notice in an envelope addressed to
 4 the officer who sent it and deposit it the envelope in the
 5 post office, prepaying postage.

6 ~~{3}--in the case of papers forwarded under 25-3-201, it~~
 7 ~~is lawful for the officer to return the process to the court~~
 8 ~~by mail or express. When process in one county is intended~~
 9 ~~for service in another, the sheriff or other officer serving~~
 10 ~~the same may make the return of the papers served."~~

11 Section 6. Section 25-3-402, MCA, is amended to read:

12 "25-3-402. Persons to be served. When Subject to the
 13 provisions of Rule 5(b), M.R.Civ.P., whenever a plaintiff or
 14 a defendant who has appeared resides out of this state and
 15 has no attorney in the action or proceeding, the service may
 16 be made on the clerk of court for him. ~~But--in--all--cases~~
 17 where Whenever a party has an attorney in the action or
 18 proceeding, the service of papers, ~~when--required,--must--be~~
 19 ~~upon the attorney instead of the party,~~ except of subpoenas,
 20 writs, and other process issued in the suit and papers to
 21 bring him the party into contempt, when required, must be
 22 upon the attorney instead of the party unless the court
 23 orders otherwise."

24 Section 7. Section 25-3-501, MCA, is amended to read:

25 "25-3-501. Service of telephonic or telegraphic copy.

1 (1) Any & summons, writ, or order, or other paper requiring
 2 service in any a civil action or proceeding ~~and--all--other~~
 3 ~~papers--requiring--service~~ may be transmitted by telegraph or
 4 telephone for such service in any place, ~~and--the~~ The
 5 telegraphic or telephonic copy of such ~~writ, order, or paper~~
 6 ~~so--transmitted~~ may be served or executed by the officer or
 7 person to whom it is sent for that purpose and returned by
 8 him, if any a return be requisite is required, in the same
 9 manner and with the same force and effect ~~in--all--respects~~ as
 10 if the original thereof ~~might be had been~~ delivered to him, ~~and--the~~ The
 11 officer or person serving or executing the ~~same~~
 12 copy has the same authority and is subject to the same
 13 liabilities as if the copy were the original.

14 (2) The original, when if it is a writ or order, must
 15 also be filed in the court from which it was issued, and a
 16 certified copy thereof must be preserved in the telegraph or
 17 telephone office from which it is sent. ~~in--sending--it, The~~
 18 operator may use either the original or the certified copy
 19 ~~may--be--used--by--the--operator--for--that--purpose~~ in sending it.
 20 ~~Whenever any document to be sent by telegraph or telephone~~
 21 if the paper bears a seal, either private or official, ~~it is~~
 22 ~~not--necessary--for~~ the operator ~~in--sending--the--same--to~~ need
 23 not telegraph or telephone a description of the seal or any
 24 words or device thereon, but the same may be expressed in
 25 the telegraphic or telephonic copy by the letters "L.S." or

1 by the word "seal".

2 Section 8. Section 25-3-504, MCA, is amended to read:

3 "25-3-504. Designating unknown persons as defendants.

4 (1) In ~~all actions or proceedings to obtain title or~~
 5 ~~possession for partition for sale for foreclosure of any~~
 6 ~~encumbrance for enforcement of any trust for specific~~
 7 ~~performance of any contract to quiet title or for any~~
 8 ~~other disposition of any property real personal or mixed~~
 9 ~~situate within the state of Montana including choses in~~
 10 ~~action either situate within or due or claimed to be due~~
 11 ~~from persons firms or corporations resident within the~~
 12 ~~state of Montana the situations listed in Rule 40(5)(a),~~
 13 ~~MARCP,~~ persons whose names are unknown to the plaintiff
 14 may be made parties defendant, either on the filing of the
 15 complaint, cross complaint, or complaint in intervention, as
 16 the case may be, or at any time thereafter by amendment
 17 thereof, by the ~~name and description~~ designation of unknown
 18 owners, unknown heirs, or unknown devisees of any deceased
 19 person or by all of such designations.

20 (2) (a) When persons are made parties defendant by the
 21 designation of unknown owners, it ~~shall~~ is not be necessary
 22 to add to such designation in the title of the action a
 23 description of the property ~~involved~~, whether real,
 24 personal, or mixed, ~~including choses in action as aforesaid~~
 25 of which such persons are claimed or supposed to be unknown

1 owners or claimants or parties in interest; but a
 2 description of the property involved ~~shall~~ must be included
 3 in the body of the summons for publication ~~in the action~~.

4 (b) When persons are made parties defendant by the
 5 ~~style and description~~ designation of unknown heirs or
 6 devisees, there ~~shall~~ must be added to such designation of
 7 them the name of the deceased person of whom they ~~shall~~ be
 8 are claimed or supposed to be the heirs or devisees.

9 ~~(c) When persons are made defendant by the style and~~
 10 ~~description of unknown devisees, there shall be added to~~
 11 ~~such designation the name of the deceased person of whom~~
 12 ~~they shall be claimed or supposed to be devisees."~~

13 Section 9. Section 25-3-505, MCA, is amended to read:

14 "25-3-505. Effect of service by publication upon
 15 unknown persons. Judgments and decrees rendered in actions
 16 or proceedings when in which persons have been so made
 17 parties and served by publication of summons ~~shall~~ have the
 18 ~~same effect in all respects as if such persons had been made~~
 19 ~~parties by their own proper names and had been served by~~
 20 ~~publication and mailing of summons according to the rules of~~
 21 ~~civil procedure prescribed in Rule 40(5)(b), MARCP. If~~
 22 ~~in such action or proceeding such~~ persons are made parties
 23 by the designation of:

24 (1) unknown heirs, the judgment or decree ~~shall~~ be is
 25 conclusive as to against all heirs of such the deceased

1 party;

2 (2) unknown devisees, the judgment or decree ~~in such~~
3 ~~proceedings shall be~~ is conclusive as against all devisees
4 of such ~~the~~ deceased person;

5 (3) unknown owners, the judgment or decree ~~rendered in~~
6 ~~such action or proceeding shall be~~ is conclusive as against
7 the world, including ~~all~~ persons with contingent interests
8 in the controversy and persons not in being who may have an
9 interest or contingent interest therein."

10 Section 10. Section 25-4-101, MCA, is amended to read:

11 "25-4-101. Motions and orders when judge absent ~~or~~
12 ~~disqualified.~~ (1) Motions must be made in the county in
13 which the action is brought or in any adjoining county in
14 the same district. ~~in case of the absence of~~ If the judge of
15 ~~the district is absent~~ from his district or ~~in an action~~
16 ~~pending in which such judge~~ is disqualified to ~~act from~~
17 ~~acting,~~ such a motion may be made before the judge of any
18 adjoining district ~~provided unless~~ there is another judge
19 in the same district who is not disqualified to act, in
20 which case such ~~the~~ motion shall must be made before another
21 judge in the same district.

22 (2) Orders made out of court may be made by the judge
23 of the court in any part of the state."

24 Section 11. Section 25-4-102, MCA, is amended to read:

25 "25-4-102. Transfer when judge unable to hear motion

1 or return of order. ~~When a~~ Whenever notice of a motion is
2 given or an order to show cause is made returnable before a
3 judge out of court and, at the time fixed for hearing the
4 motion or on the return day of the order, the judge is
5 unable to hear the parties, the matter may be transferred by
6 his order to some other judge."

7 Section 12. Section 25-4-204, MCA, is amended to read:

8 "25-4-204. Time for amendment or reply after motion on
9 pleading. ~~When~~ Whenever a ~~demurrer or~~ motion to ~~any~~
10 ~~concerning~~ a pleading is sustained or overruled and time to
11 ~~amend answers~~ or reply is given, the time so given runs
12 from service of notice of the decision or order, except when
13 the party against whom the decision is made is in court. In
14 such case the time runs from the making of the decision or
15 order."

16 Section 13. Section 25-4-503, MCA, is amended to read:

17 "25-4-503. Postponement on other grounds. ~~Upon terms~~
18 ~~the court may in its discretion upon~~ Upon good cause shown
19 and in furtherance of justice, the court may, in its
20 discretion, postpone a trial or proceeding ~~upon other~~ on
21 grounds other than the absence of evidence under such
22 conditions as the court may direct."

23 Section 14. Section 25-4-601, MCA, is amended to read:

24 "25-4-601. Procedure when answer admits part of
25 plaintiff's claim. ~~Where~~ If the answer of the defendant,

1 expressly or by not denying, admits a part of the
 2 plaintiff's claim to be just, the court, upon the
 3 plaintiff's motion, may, in its discretion, order that the
 4 action be severed, that a judgment be entered for the
 5 plaintiff for the part so admitted, and if the plaintiff so
 6 elects, that the action be continued with like effect as to
 7 the subsequent proceedings as if it had been originally
 8 brought for the remainder of the claim. The order must
 9 prescribe the time and manner of the plaintiff's election.
 10 If the plaintiff elects to continue the action, his right to
 11 costs upon the judgment is the same as ~~if it were taken~~ in
 12 an action brought for only ~~that part~~ the remainder of the
 13 claim. If the plaintiff does not elect to continue the
 14 action, costs must be awarded as upon final judgment in any
 15 other case."

16 Section 15. Section 25-4-602, MCA, is amended to read:

17 "25-4-602. Judgment for excess when plaintiff admits
 18 counterclaim. In an action upon contract where in which the
 19 complaint demands judgment for a sum of money only, if the
 20 defendant ~~by his answer~~ does not deny the plaintiff's claim
 21 in his answer but sets up a counterclaim amounting to less
 22 than the plaintiff's claim, the plaintiff, upon filing with
 23 the clerk an admission of the counterclaim, may take
 24 judgment for the excess, as upon a default for want of an
 25 answer. ~~The admission must be made a part of the judgment~~

1 ~~note"~~

2 Section 16. Section 25-7-102, MCA, is amended to read:

3 "25-7-102. Issues of law to be decided by court. ~~***~~
 4 Except as provided in Article II, section 7, of the Montana
 5 constitution, all questions of law, including the
 6 admissibility of testimony, the facts preliminary to such
 7 admission, the construction of statutes and other writings,
 8 and other rules of evidence, ~~are to~~ must be decided by the
 9 court ~~unless they are referred upon consent~~ and all
 10 discussions of law ~~are to~~ must be addressed to ~~the court~~
 11 it."

12 Section 17. Section 25-7-103, MCA, is amended to read:

13 "25-7-103. When who decides issues of fact to be
 14 ~~decided by jury. ***~~ Whenever the trial is by jury, all
 15 questions of fact, where the trial is by jury, other than
 16 those mentioned in 25-7-102 ~~are to~~ must be decided by the
 17 jury and all evidence thereon ~~is to~~ must be addressed to
 18 them, except when as otherwise provided by ~~this code law.~~
 19 Whenever the trial of some or all of the questions of fact
 20 is not by jury, all evidence thereon must be addressed to
 21 the trial court, which shall decide such questions."

22 Section 18. Section 25-7-205, MCA, is amended to read:

23 "25-7-205. Persons drawn and approved to form jury.
 24 The first 12 persons, or such other number as will
 25 constitute the jury, who appear, as their names are drawn

1 and called, and are approved as indifferent between the
2 parties, and are not discharged or excused must be sworn and
3 constitute the jury to try the issue."

4 Section 19. Section 25-7-223, MCA, is amended to read:
5 "25-7-223. Challenges to jurors for cause. Challenges
6 for cause may be taken on one or more of the following
7 grounds:

8 (1) a want of any of the qualifications prescribed by
9 this code to render a person competent as a juror;

10 (2) ~~being the spouse of or related to a party by~~
11 consanguinity or affinity within the sixth degree to ~~any~~
12 ~~party;~~

13 (3) standing in the relation of guardian and ward,
14 ~~master--and--servant,~~ debtor and creditor, employer and ~~clerk~~
15 ~~employee,~~ or principal and agent to with either party or
16 ~~being a member of the family of either party or~~ a partner in
17 business with either party or surety on any bond or
18 obligation for either party. However, a challenge for cause
19 may not be taken because of ~~a debtor and creditor relation~~
20 ~~when relationship if~~ the same arises solely by reason of
21 current bills of gas, water, electricity, or telephone.

22 (4) having served as a juror or been a witness on in a
23 previous trial between the same parties for the same cause
24 of action;

25 (5) interest on the part of the juror in the event

1 subject of the action or in the main question involved in
2 the action, ~~except his other than~~ interest as a member or
3 citizen of a municipal corporation;

4 (6) having an unqualified opinion or belief as to the
5 merits of the action;

6 (7) the existence of a state of mind in the juror
7 evincing enmity against or bias in favor of either party."

8 Section 20. Section 25-7-224, MCA, is amended to read:

9 "25-7-224. Peremptory challenges to jurors. (1) Each
10 party is entitled to four peremptory challenges, except as
11 provided for under in subsection (2). ~~if no peremptory~~
12 ~~challenges are taken until the panel is fully they must be~~
13 ~~taken by the parties alternately commencing with the~~
14 ~~plaintiff.~~

15 (2) ~~Where~~ When a six-person jury is authorized by law,
16 each ~~side--shall--have~~ party is entitled to two peremptory
17 challenges. When the parties agree upon a jury consisting of
18 a number of persons other than 6 or 12, they shall also
19 agree in open court, with the approval of the court, upon
20 the number of peremptory challenges to be allowed.

21 (3) They ~~Peremptory challenges~~ shall be exercised ~~by~~
22 ~~the--plaintiff--first--striking--one--and--the--defendant--then~~
23 ~~striking--one--and--so--on--until--each--side--has--exhausted--or~~
24 ~~waived--his--rights~~ taken as provided in Rule 47(b)
25 MaB.Civ.P."

1 Section 21. Section 25-7-301, MCA, is amended to read:
 2 "25-7-301. Order of trial. When the jury has been
 3 sworn, the trial ~~shall~~ **must** proceed in the following order
 4 unless the court, for good cause and special reason,
 5 otherwise directs:

6 (1) The party ~~on-whom-rests~~ who has the burden of the
 7 issues persuasion may briefly state his case and the
 8 evidence by which he expects to sustain it.

9 (2) The adverse party may then or at the opening of
 10 his case briefly state his defense and the evidence he
 11 expects to offer in support of it.

12 (3) The party ~~on-whom-rests~~ who has the burden of the
 13 issues ~~must~~ persuasion shall first produce his evidence;
 14 ~~then~~ the adverse party ~~will~~ shall produce his evidence.

15 (4) The parties ~~will~~ **must** then be confined to
 16 rebutting evidence unless the court, for good reasons in
 17 furtherance of justice, permits them to offer evidence in
 18 their original case.

19 ~~(5) When the instructions have been passed upon and~~
 20 ~~settled by the court and before the arguments of counsel to~~
 21 ~~the jury have begun, the court shall charge the jury in~~
 22 ~~writing, giving in such charge only such instructions as are~~
 23 ~~passed upon and settled at such settlement. The jury must be~~
 24 ~~instructed as provided in Rule 51, M.R.Civ.P.~~ In charging
 25 the jury, the court shall give to it all matters of law

1 which the court thinks necessary for the jury's information
 2 in rendering a verdict.

3 (6) When the jury has been charged, unless the case is
 4 submitted to the jury on either side or on both sides
 5 without argument, the party ~~upon--whom-rests~~ who has the
 6 burden of ~~proof--must~~ persuasion shall commence and may
 7 conclude the argument. If several defendants having several
 8 defenses appear by different counsel, the court ~~must~~ shall
 9 determine their relative order in the evidence and argument.
 10 Counsel, in arguing the case to the jury, may argue and
 11 comment upon the law of the case as given in the
 12 instructions of the court, as well as upon the evidence in
 13 the case."

14 Section 22. Section 25-7-304, MCA, is amended to read:
 15 "25-7-304. Procedure when a juror becomes sick. If,
 16 after the impaneling of the jury and before verdict, a juror
 17 becomes sick so as to be unable to perform his duty, the
 18 court may order him to be discharged. In that case, subject
 19 to the provisions of Rule 47(c), M.R.Civ.P., the trial may
 20 proceed with the other jurors or another juror may be sworn
 21 and the trial may begin anew or the jury may be discharged
 22 and a new jury then or afterward impaneled."

23 Section 23. Section 25-8-102, MCA, is amended to read:
 24 "25-8-102. Enforcement of court's order. ~~Where~~
 25 Whenever the court directs a deposit or delivery of money or

1 where---judgment--directs--a--party--to--make--a--deposit--or
 2 ~~delivery--or--to--convey--real--property--or--other--thing--capable~~
 3 of delivery, if the direction is disobeyed, the court,
 4 besides punishing the disobedience as a contempt, may by
 5 order require the sheriff to take and deposit or deliver the
 6 money or ~~other--personal--property--or--to--convey--the--real~~
 7 property thing in conformity with the direction of the
 8 court."

9 Section 24. Section 25-8-103, MCA, is amended to read:
 10 "25-8-103. With whom money deposited. (1) Whenever
 11 ~~moneys--are~~ money is paid into or deposited in court, the
 12 ~~same--shall--it--must~~ be delivered to the clerk in person or to
 13 such of his deputies as ~~shall--be~~ are specially authorized by
 14 his appointment in writing to receive ~~the--same--it~~. He ~~must~~
 15 The clerk or deputy shall, unless otherwise directed by law,
 16 deposit it with the county treasurer to be held by him
 17 subject to the order of the court.

18 (2) Such An appointment shall ~~shall~~ must be filed with the
 19 county treasurer, who shall exhibit it and give a certified
 20 copy of it to each person applying for the same ~~a--certified~~
 21 ~~copy--of--the--same~~. It ~~shall--be~~ is in force until a revocation
 22 in writing is filed with the county treasurer, who shall
 23 thereupon write "revoked" in ink across ~~the--its--face--of--the~~
 24 its face of the appointment."

25 Section 25. Section 25-9-201, MCA, is amended to read:

1 "25-9-201. Whose rights determined in judgment.
 2 judgment Subject to the provisions of Rule 54(b),
 3 M.R.Civ.P., judgment may be given for or against one or more
 4 of several plaintiffs and for or against one or more of
 5 several defendants, and it may, when the justice of the case
 6 requires it, determine the ultimate rights of the parties on
 7 each side as between themselves."

8 Section 26. Section 25-9-311, MCA, is amended to read:

9 "25-9-311. Entry of satisfaction of judgment in
 10 docket. Satisfaction of a judgment may be entered in the
 11 clerk's docket upon whenever an execution is returned
 12 satisfied or upon an acknowledgment of satisfaction is filed
 13 with the clerk, Such acknowledgment may be made by the
 14 judgment creditor or his attorney, unless a revocation of
 15 the attorney's authority has been filed, in the manner of an
 16 acknowledgment of a conveyance of real property ~~by--the~~
 17 ~~judgment--creditor~~ or by his endorsement on the face or on
 18 the margin of the record of the judgment ~~or--by--his--attorney~~
 19 ~~unless--a--revocation--of--his--authority--is--filed~~. Whenever a
 20 judgment is satisfied in fact otherwise than upon an
 21 execution, the party or attorney must give such
 22 acknowledgment or make such endorsement, and upon motion,
 23 the court may compel ~~it~~ him to do so or may order the entry
 24 of satisfaction to be made without ~~it~~ the acknowledgment or
 25 endorsement."

1 Section 27. Section 25-10-202, MCA, is amended to
2 read:

3 "25-10-202. Costs of ~~demurrer or motion in all cases~~
4 where whenever a ~~demurrer or~~ motion is sustained or
5 overruled, the losing party must pay to the other \$10 as
6 costs. If a ~~demurrer or~~ motion be is withdrawn before the
7 hearing, it ~~shall~~ must be ~~deemed~~ considered overruled."

8 Section 28. Section 25-10-205, MCA, is amended to
9 read:

10 "25-10-205. Costs of securing witnesses --
11 ~~disqualification substitution of judge. Where an affidavit~~
12 ~~is filed disqualifying a judge as provided in [93-2906(4)],~~
13 Whenever a motion for substitution of a judge is filed after
14 the action or proceeding is set for trial or hearing, the
15 party filing the ~~same~~ motion shall pay to the opposite party
16 all costs necessarily incurred in securing the attendance of
17 witnesses between the date the order was made fixing the day
18 of hearing or trial and the time the ~~affidavit~~ motion was
19 filed, and such costs so paid ~~shall~~ are not be recoverable
20 in the action or proceeding."

21 Section 29. Section 25-11-102, MCA, is amended to
22 read:

23 "25-11-102. Grounds for new trial. The former verdict
24 or other decision may be vacated and a new trial granted on
25 the application of the party aggrieved for any of the

1 following causes materially affecting the substantial rights
2 of such party:

3 (1) irregularity in the proceedings of the court,
4 jury, or adverse party or any order of the court or abuse of
5 discretion by which either party was prevented from having a
6 fair trial;

7 (2) misconduct of the jury. Whenever any one or more
8 of the jurors have been induced to assent to any general or
9 special verdict or to a finding on any question submitted to
10 them by the court by a resort to the determination of
11 chance, such misconduct may be proved by the affidavit of
12 any one of the jurors.

13 (3) accident or surprise which ordinary prudence could
14 not have guarded against;

15 (4) newly discovered evidence material for the party
16 making the application which he could not, with reasonable
17 diligence, have discovered and produced at the trial;

18 (5) excessive damages appearing to have been given
19 under the influence of passion or prejudice;

20 (6) insufficiency of the evidence to justify the
21 verdict or other decision or ~~that it is against~~
22 inconsistency of the verdict or other decision with the law;

23 (7) error in law occurring at the trial and excepted
24 to by the party making the application;

25 ~~(8) that the right to have a bill of exceptions has~~

1 ~~been lost, either through the death or incapacity of the~~
 2 ~~court reporter or in any manner that was not the fault of~~
 3 ~~the losing party."~~

4 Section 30. Section 25-11-103, MCA, is amended to
 5 read:

6 "25-11-103. Grounds after trial by the court. No new
 7 trial ~~shall~~ may be granted ~~in equity cases or~~ in cases tried
 8 by the court without a jury, except on the grounds mentioned
 9 in subsections (1), (3), and (4) of 25-11-102."

10 Section 31. Section 25-11-104, MCA, is amended to
 11 read:

12 "25-11-104. How motion for new trial made. (1) Motions
 13 for new trials ~~shall~~ must be made as follows:

14 (a) For causes mentioned in 25-11-102(1), the motion
 15 ~~shall~~ must be made on affidavits or on the minutes of the
 16 court.

17 (b) For causes mentioned in subsection (2), (3), ~~or~~
 18 ~~(4) or (8)~~ of 25-11-102, the motion ~~shall~~ must be made only
 19 on affidavits.

20 (c) For causes mentioned in subsection (5), (6), or
 21 (7) of 25-11-102, the motion ~~shall~~ must be made only on the
 22 minutes of the court.

23 (2) The official stenographic reports of the trial may
 24 be referred to as a part of the minutes of the court."

25 Section 32. Section 25-12-101, MCA, is amended to

1 read:

2 "25-12-101. Exclusive method of review. A judgment or
 3 order in a civil action in district court, except when
 4 expressly made final by this code, may be reviewed as
 5 prescribed by the Rules of Appellate Civil Procedure and not
 6 otherwise."

7 Section 33. Section 25-13-104, MCA, is amended to
 8 read:

9 "25-13-104. Compelling contribution or repayment --
 10 joint debtor, surety. (1) When ~~when~~ whenever property liable to
 11 an execution against several persons is sold thereon and
 12 more than a due proportion of the judgment is satisfied out
 13 of the proceeds of the sale of ~~the~~ property of one of them
 14 or one of them pays, without a sale, more than his
 15 proportion, he may ~~compel~~ contribution from the others; and
 16 when ~~whenever~~ a judgment is against several and is upon an
 17 obligation of one of them as security surety for another and
 18 the surety pays the amount or any part thereof, either by
 19 sale of his property or before sale, he may ~~compel~~ repayment
 20 from the principal.

21 (2) ~~in such case, the~~ The person so-paying seeking
 22 repayment or contributing contribution is entitled to the
 23 benefit of the judgment to enforce contribution or repayment
 24 if, within 10 days after his payment, he ~~file~~ files with the
 25 clerk of the court where in which judgment was rendered

1 notice of his payment and claim to contribution or
2 repayment. Upon the filing of such notice, the clerk ~~must~~
3 shall make an entry thereof in the margin of the docket."

4 Section 34. Section 25-13-301, MCA, is amended to
5 read:

6 "25-13-301. Form and contents of writ. (1) The writ of
7 execution must:

8 (a) be issued in the name of the state of Montana,
9 sealed with the seal of the court, and subscribed by the
10 clerk;

11 (b) be directed to the sheriff;

12 (c) intelligibly refer to the judgment, stating the
13 court, ~~and~~ the county where ~~the judgment roll is filed~~ it
14 was entered, and if it be is for money, the amount thereof
15 and the amount actually due thereon; and

16 (d) require the sheriff to act substantially as
17 provided in this part.

18 (2) ~~in executions, the~~ The amount thereof of the
19 judgment must be computed and stated as near accurately as
20 may be possible in dollars and cents, rejecting fractions of
21 a cent."

22 Section 35. Section 25-13-302, MCA, is amended to
23 read:

24 "25-13-302. Execution against principal debtor before
25 surety. ~~Upon the rendition of any judgment, if it shall be~~

1 ~~shown that one or more of the defendants against whom the~~
2 ~~judgment is to be rendered are principal debtors and others~~
3 ~~of the said defendants are sureties of such principal~~
4 ~~debtor, the court may order the judgment so to state, and~~
5 ~~upon the issuance of an~~ an execution upon such a judgment,
6 ~~it shall~~ which designates principals and sureties as
7 prescribed in 25-9-202 must direct the sheriff to make the
8 amount due thereon out of the goods ~~and chattels, lands, and~~
9 tenements property of the principal debtor or debtors or, if
10 a sufficient amount thereof cannot be found within his
11 county to satisfy the same, to levy and make the same out of
12 the property, personal or real, of the judgment debtor who
13 was surety."

14 Section 36. Section 25-13-304, MCA, is amended to
15 read:

16 "25-13-304. Execution against property of judgment
17 debtor. If the writ be is against the property of the
18 judgment debtor, it ~~shall~~ must require the sheriff to
19 satisfy the judgment, with interest, out of the personal
20 property of such debtor and, if sufficient personal property
21 cannot be found, out of his real property as provided in
22 25-13-305."

23 Section 37. Section 25-13-307, MCA, is amended to
24 read:

25 "25-13-307. Execution requiring delivery of possession

1 of property. If the writ be is for the delivery of the
2 possession of real or personal property, it:

3 (1) must require the sheriff to deliver the possession
4 of ~~the--some~~ such property, particularly describing it, to
5 the party entitled thereto; and

6 (2) may ~~at any time~~ require the sheriff to ~~satisfy~~
7 ~~recover~~ any costs, damages, rents, or profits ~~recovered by~~
8 awarded in the same judgment out of the personal property of
9 the person against whom ~~it~~ the judgment was rendered--~~the~~
10 ~~value of the property for which the judgment was rendered to~~
11 ~~be--specified--therein--if--a--delivery--cannot--be--had,~~ and, if
12 sufficient personal property cannot be found, then out of
13 the his real property, as provided in 25-13-305; and

14 (3) may specify the value of the property for which
15 the judgment was rendered and require the sheriff to recover
16 such value, if delivery cannot be accomplished, in the
17 manner prescribed in subsection (2)."

18 Section 38. Section 25-13-404, MCA, is amended to
19 read:

20 "25-13-404. Return of the execution. The execution may
21 be made returnable, at any time not less than 10 or more
22 than 60 days after its receipt by the sheriff, to the clerk
23 with whom of the court in which the judgment ~~rot~~ is filed
24 was rendered. ~~When the execution is returned, the clerk~~
25 ~~must attach it to the judgment rot.~~"

1 Section 39. Section 25-13-505, MCA, is amended to
2 read:

3 "25-13-505. Personal property subject to a security
4 interest. Personal property subject to a security interest
5 may be taken on execution issued at the suit of a creditor
6 (other than the secured party) of the debtor under the
7 security agreement; but before the property is ~~so~~ taken, the
8 officer levying the writ must pay or tender to the secured
9 party the amount of the security agreement debt and interest
10 or must deposit the same with the county treasurer of the
11 county in which the financing statement covering the
12 security agreement is filed, if such statement is filed with
13 a county clerk and recorder, or, if such statement is filed
14 with another filing officer pursuant to law, then with such
15 other filing officer, payable to the order of the secured
16 party."

17 Section 40. Section 25-13-612, MCA, is amended to
18 read:

19 "25-13-612. Property necessary to carry on trade or
20 profession. (1) In addition to the property mentioned in
21 25-13-611, ~~there--shall--be--exempt--to--all~~ the following
22 property of a judgment debtors debtor who are is married or
23 who are heads of families the following property is the head
24 of a family is exempt from execution when the debtor is:

25 (a) to a farmer: farming utensils or implements of

1 husbandry, not exceeding in value \$600; two oxen or two
 2 horses or mules and their harness, one cart or wagon, ~~one~~
 3 set of sleds, and food for such oxen, horses, cows, or mules
 4 for 3 months; all seed, grain, or vegetables actually
 5 provided or on hand for the purpose of planting or sowing
 6 the following spring, not exceeding in value \$200;

7 (b) to a mechanic or artisan: ~~the~~ tools or implements
 8 necessary to carry on his trade;

9 (c) to a surgeon, physician, or dentist: the
 10 instruments and chest necessary to the exercise of his
 11 profession, with his scientific and professional libraries
 12 and necessary office furniture;

13 (d) ~~to--attorneys an attorney at law and--ministers of~~
 14 ~~the-gospel--etc., counselor, judge, editor, schoolteacher,~~
 15 ~~music teacher, or member of the clergy of any religion: the~~
 16 ~~his professional libraries of attorneys, counselors, judges,~~
 17 ~~ministers of the gospel, editors, schoolteachers, and--music~~
 18 ~~teachers library and their necessary office furniture, and,~~
 19 ~~in the case of a music teacher, the his musical instruments~~
 20 ~~of music teachers;~~

21 (e) the a notary public: his notarial seal, records,
 22 and office furniture ~~of a notary public~~;

23 (f)(f) to a miner: his cabin or dwelling, sluices, and
 24 pipes, hose, windlass, derricks, cars, pumps, tools,
 25 implements, and appliances necessary for carrying on any

1 kind of mining operations, not exceeding in value the
 2 aggregate sum of \$1,000; and one horse or mule with harness
 3 and food for such horse or mule for 3 months, when if such
 4 horse or mule is used in working his mine or mining claim;

5 (f)(g) to a civil, mining, or mechanical engineer: ~~the~~
 6 instruments, tools, books, and records necessary to carry on
 7 his profession;

8 (f)(h) to a chemist or assayer: the tools,
 9 instruments, and supplies necessary to carry on his
 10 profession;

11 (f)(i) to a cartman, hackman, huckster, peddler,
 12 teamster, or laborer: one horse or mule and harness for two
 13 animals or two oxen and harness; and one cart or wagon, one
 14 dray or truck, or one hack or carriage by the use of which
 15 such person ~~he~~ habitually earns his living;

16 (f)(j) ~~a physician, surgeon, or member of the clergy~~
 17 ~~of any religion: one vehicle, one horse, mule, or ox, and~~
 18 ~~harness or other equipment used by a physician or surgeon or~~
 19 ~~minister--of--the--gospel his~~ in making his professional
 20 visits, with food for such horse, mule, or oxen or for 3
 21 months;

22 (f)(k) to an osteopath or chiropractor: the
 23 instruments and equipment necessary to the exercise of his
 24 profession, with his scientific and professional library and
 25 necessary office furniture.

1 (2) No ~~However, no~~ article~~y~~-~~however~~ or species kind
 2 of property mentioned in ~~this--section~~ subsection (1) is
 3 exempt from execution issued upon a judgment recovered for
 4 its price or upon a judgment of foreclosure of a mortgage
 5 lien thereon, and no person not a bona fide resident of this
 6 state ~~shall--have~~ has the benefit of these exemptions. No
 7 person ~~can~~ may claim ~~exemptions granted to~~ more than one of
 8 the exemptions ~~professions~~ mentioned in subsections (1)(a)
 9 through (1)~~(f)~~(j) of this section."

10 Section 41. Section 25-13-701, MCA, is amended to
 11 read:

12 "25-13-701. Notice of sale on execution. (1) Before
 13 the sale of the property on execution, notice thereof must
 14 be given as follows:

15 (a) in the case of perishable property, by posting
 16 written notice of the time and place of the sale in three
 17 public places ~~of~~ in the township county or city where the
 18 sale is to take place, for such time as may be reasonable
 19 considering the character and condition of the property;

20 (b) in the case of other personal property, by posting
 21 a similar notice in three public places in the township
 22 county or city where the sale is to take place, for not less
 23 than 5 days or more than 10 days;

24 (c) in the case of real property, by posting a similar
 25 notice, particularly describing the property, for 20 days in

1 three public places ~~of~~ in the township county or city where
 2 the property is situated and also where the property is to
 3 be sold, which may be either at the courthouse or on the
 4 premises, and publishing a copy thereof ~~of the notice~~ once a
 5 week for the same period in some newspaper published in the
 6 county, if there ~~be~~ is one~~y~~-~~which~~. The notice ~~shall~~-~~be~~ must
 7 read substantially as follows:

SHERIFF'S SALE

9 Plaintiff,

10 vs.

11 Defendant,

12 To be sold at sheriff's sale on the day of
 13 19.., at (Here insert brief description of
 14 property.)

15 Signed Sheriff

16 (2) ~~Any~~ A sheriff ~~publishing~~ who publishes a notice
 17 which is not in accordance with the form set forth in
 18 subsection (1)(c) and which ~~shall~~-~~cost~~ costs more than such
 19 a notice ~~shall~~ is not be entitled to any costs ~~for~~ of
 20 publication of the same but ~~shall~~-~~be~~ is personally liable
 21 for the payment of for such publication."

22 Section 42. Section 25-13-703, MCA, is amended to
 23 read:

24 "25-13-703. Postponement of sale. Good For good cause
 25 ~~therefor~~-~~appearing~~, the officer holding the a sale on

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1 execution ~~which has been noticed~~ may postpone ~~any the~~ sale
 2 ~~noticed thereunder~~ for a period not exceeding 15 days, by
 3 public proclamation at the time and place fixed in the
 4 notice of sale and by posting a notice in three public
 5 places in the ~~township where~~ county in which the property
 6 ~~has was~~ previously been noticed ~~to be sold for sale.~~"

7 Section 43. Section 25-13-713, MCA, is amended to
 8 read:

9 "25-13-713. Procedure when sale invalidated, revival
 10 of judgment. (1) If the purchaser of real property sold on
 11 execution or his successor in interest ~~be~~ is evicted
 12 therefrom ~~in consequence because~~ of irregularities in the
 13 ~~proceedings concerning the sale~~ procedure or of the reversal
 14 or discharge of the judgment, he may recover the price paid,
 15 with interest, from the judgment creditor.

16 (2) ~~(a)~~ If the purchaser of property at a sheriff's
 17 sale or his successor in interest ~~fail~~ fails to recover
 18 possession ~~in consequence because~~ of irregularity in the
 19 ~~proceedings concerning the sale~~ procedure or because the
 20 property sold was not subject to execution and sale, the
 21 court having jurisdiction thereof shall, on petition of such
 22 ~~party in interest~~ purchaser or successor or his attorney,
 23 revive the original judgment for the amount paid by such
 24 purchaser at the sale, with interest thereon from the time
 25 of payment at the same rate that the original judgment bore.

1 The judgment shall be revived in the name of the original
 2 plaintiff or plaintiffs for the use of the petitioner.

3 (b) When so revived, the ~~said~~ judgment ~~shall have~~ has
 4 the same effect as an original judgment of the ~~said~~ court of
 5 that date, bearing interest as aforesaid; and any other or
 6 after-acquired property, rents, issues, or profits of the
 7 ~~said~~ debtor ~~shall be~~ are liable to levy and sale under
 8 execution in satisfaction of such debt, but no property of
 9 ~~such the~~ debtor sold bona fide before the filing of such ~~the~~
 10 petition ~~shall be~~ is subject to the lien of ~~said the~~
 11 judgment.

12 (c) ~~The notice~~ Notice of the filing of such ~~the~~
 13 petition shall be made by filing a notice thereof in the
 14 office of the county clerk ~~where such~~ of the county in which
 15 ~~the~~ property ~~may be situated,~~ is located, and ~~said~~ ~~judgment~~
 16 ~~shall be revived in the name of the original plaintiff or~~
 17 ~~plaintiffs for the use of said petitioner, the party in~~
 18 ~~interest."~~

19 Section 44. Section 25-13-714, MCA, is amended to
 20 read:

21 "25-13-714. Validation of defective judicial sales.
 22 ~~Att~~ (1) A judicial ~~sales~~ sale of real property conducted
 23 prior to January 1, 1973, is valid and legally sufficient to
 24 sustain a sheriff's deed and, if no sheriff's deed has been
 25 executed, entitles the purchaser to such a deed if all of

1 the following requirements are met:

2 (a) ~~provided no~~ No action is pending on July 1, 1973,
3 to set such sale aside;

4 (b) ~~where made~~ The sale was conducted in this state on
5 proceedings to satisfy a valid judgments judgment or decrees
6 ~~decrees~~ of any court, ~~and the moneys bidden thereon~~

7 (c) ~~The money bid by the purchaser has been paid to~~
8 ~~the officer making such who conducted the sale, shall be~~
9 ~~valid and sufficient in law to sustain a sheriff's deed~~
10 ~~based on such sale and when no such deed has been executed,~~
11 ~~shall entitle such purchaser to such deed; and~~

12 (2) ~~such Upon execution the sheriff's deed if now or~~
13 ~~when executed, shall be~~ is sufficient to convey to the
14 purchaser all the title of the judgment debtor in the real
15 property sold at the time of such the sale, in the premises
16 ~~so sold to the purchaser at said sale, and all~~ All defects
17 or irregularities in the issuance of execution, the manner
18 of making or conducting the sale, or the recitals or
19 references in such the deed shall be disregarded, and such
20 the sale shall is not be invalidated by reason of any such
21 defect or irregularity."

22 Section 45. Section 25-13-802, MCA, is amended to
23 read:

24 "25-13-802. Time for redemption -- amount to be paid.
25 ~~The judgment debtor or redemptioner~~ A person described in

1 25-13-801 may redeem the property from the purchaser any
2 time within 1 year after the sale on by paying the
3 purchaser:

4 (1) the amount of his purchase with 1/2 of 1% per
5 month thereon in addition, up to the time of redemption;

6 (2) the amount of any assessment or taxes which the
7 purchaser may have paid thereon on the property after
8 purchase and interest on such amount; and

9 (3) if the person redeeming is a redemptioner, as
10 defined in 25-13-801(2), and the purchaser be is also a
11 creditor having redemptioner who has a prior lien to that of
12 the redemptioner person redeeming other than the judgment
13 under which such the purchase was made, the amount of such
14 lien with interest."

15 Section 46. Section 25-13-803, MCA, is amended to
16 read:

17 "25-13-803. Subsequent redemptions -- when permitted,
18 amount paid. (1) if whenever property be so is redeemed by a
19 redemptioner, another redemptioner may, within 60 days after
20 the last redemption, again redeem it from the last
21 redemptioner on by paying the sum paid on such the last
22 redemption with interest thereon at the rate of 1/2 of 1%
23 per month in addition, the amount of any assessment or taxes
24 which the last redemptioner may have paid thereon on the
25 property after the redemption by him with like interest on

1 ~~such amount, and the amount of any liens, other than the~~
 2 ~~judgment under which the property was sold, held by the said~~
 3 ~~last redemptioner prior to his own, with like interest; but~~
 4 ~~the judgment under which the property was so sold need not~~
 5 ~~be so paid as a lien. The property may be again, and as~~
 6 ~~often as any redemptioner is so disposed, be redeemed from~~
 7 ~~any a previous redemptioner, within 60 days after the last~~
 8 ~~redemption, on by paying the sum paid on the last previous~~
 9 ~~redemption with interest thereon at the rate of 1/2 of 1%~~
 10 ~~per month, the amount of any assessment or taxes which the~~
 11 ~~last previous redemptioner paid after the redemption by him~~
 12 ~~with like interest thereon, and the amount of any liens~~
 13 ~~other than the judgment under which the property was sold~~
 14 ~~held by the last redemptioner previous to his own, with like~~
 15 ~~interest amounts prescribed in the last sentence.~~

16 (2) If the judgment debtor or the judgment debtor's
 17 spouse redeem or successor in interest redeems, the judgment
 18 debtor or the spouse he must make the same payments as are
 19 required to effect a redemption by a redemptioner except
 20 insofar as such payments are inapplicable."

21 Section 47. Section 25-13-804, MCA, is amended to
 22 read:

23 *25-13-804. Redemption by stockholder or corporation.
 24 (1) If Whenever a stockholder of a corporation redeems, the
 25 corporation, within 1 year after the date of sale, may

1 redeem by paying to the redemptioner stockholder or the
 2 sheriff for his benefit the amount paid to effect the
 3 redemption, with interest thereon at the rate of 1/2 of 1%
 4 per month from the date of redemption until the date of such
 5 payment, together with any taxes or assessments that may
 6 have been paid by the redemptioner stockholder, with like
 7 interest thereon.

8 (2) ~~When~~ Whenever a stockholder redeems, any other
 9 stockholder or stockholders may, at any time after such
 10 redemption and within 60 days after the expiration of 1 year
 11 from the date of sale, contribute to the redemption by
 12 paying to the redeeming stockholder or depositing with the
 13 sheriff for his benefit a sum which bears the same
 14 proportion to the amount necessary to redeem which the
 15 number of shares owned by such contributing stockholder or
 16 stockholders bears to the number of outstanding shares of
 17 such ~~the~~ corporation outstanding, with interest on such sum
 18 from the date of redemption until the date of contribution
 19 at the rate of 1/2 of 1% per month, together with a like
 20 proportion of the taxes or assessments paid by such ~~the~~
 21 redeeming stockholder, with like interest thereon, ~~and if~~
 22 If the corporation does not redeem the ~~property within the~~
 23 ~~time and in the manner and form as aforesaid~~ as prescribed
 24 in subsection (1), the ~~said~~ redeeming and contributing
 25 stockholders ~~shall be~~ are entitled to receive a sheriff's

1 deed for such ~~the~~ property so redeemed and ~~shall~~ succeed to
 2 the ~~said~~ property as tenants in common in such proportions,
 3 respectively, as they ~~shall respectively pay~~ have paid or
 4 ~~contribute~~ contributed to such ~~the~~ redemption as ~~---~~ --- ~~aforesaid~~.
 5 ~~The--redeeming--or--contributing~~ When applying to redeem or
 6 contribute, a stockholder shall, ~~in all cases when applying~~
 7 ~~to--redeem--or--contribute--as--aforesaid,~~ present an affidavit
 8 setting forth the number of shares of stock owned by him
 9 and, to the best of his knowledge, the number of outstanding
 10 shares of stock of the corporation outstanding."

11 Section 48. Section 25-13-806, MCA, is amended to
 12 read:

13 "25-13-806. Notice of redemption, liens, and taxes and
 14 assessments paid. Written notice of redemption must be given
 15 to the sheriff and a duplicate filed with the county clerk,
 16 ~~and--if~~ If any taxes or assessments are paid by the
 17 redemptioner person who redeemed or if he has ~~or--acquired~~
 18 any liens, acquired before or after he redeemed, other than
 19 ~~that--upon--which--the--redemption--was--made~~ the judgment under
 20 which the property was sold, notice thereof must in like
 21 manner be given to the sheriff and filed with the county
 22 clerk; and if such notice ~~be~~ is not filed, the property may
 23 be redeemed from such person without paying such tax taxes,
 24 assessments, or ~~lien~~ liens."

25 Section 49. Section 25-13-808, MCA, is amended to

1 read:

2 "25-13-808. To whom redemption money paid. The payment
 3 payments mentioned in 25-13-802 through 25-13-806 may be
 4 made to the purchaser or redemptioner the person who last
 5 redeemed, as the case may be, or for him to the officer who
 6 made conducted the sale or, in case his term of office has
 7 expired, to his successor in office."

8 Section 50. Section 25-13-810, MCA, is amended to
 9 read:

10 "25-13-810. When purchaser or person who redeems
 11 entitled to conveyance. If no redemption be has been made
 12 within 1 year after the sale, the purchaser or his ~~assignee~~
 13 successor in interest is entitled to a conveyance, ~~or--if--so~~
 14 ~~redeemed,~~ ~~whenever--60--days--have--elapsed--and--no--other~~
 15 ~~redemption--has--been--made--and--notice--thereof--given~~ if one or
 16 more redemptions have been made and the time for a
 17 subsequent redemption has expired, the last redemptioner
 18 person who redeemed or his ~~assignee~~ successor in interest is
 19 entitled to a sheriff's deed, ~~but--in~~ In all cases, the
 20 judgment debtor shall have the entire period of 1 year from
 21 the date of the sale to redeem the property."

22 Section 51. Section 25-13-811, MCA, is amended to
 23 read:

24 "25-13-811. Who to execute conveyance. ~~in--all--cases~~
 25 ~~when--under--the--provisions--of--this--chapter,~~ Whenever a

1 purchaser ~~of property at execution sale shall be~~ or person
 2 who has redeemed is entitled to a conveyance ~~of the same,~~
 3 such conveyance shall be executed to him by the officer who
 4 ~~made conducted~~ the sale or, if he ~~still be in office,~~ but in
 5 ~~the case the~~ such officer who ~~made such sale~~ is not no
 6 longer in office ~~at the time the purchaser may be entitled~~
 7 ~~to such conveyance, then the conveyance shall be executed by~~
 8 his successor in office."

9 Section 52. Section 25-13-821, MCA, is amended to
 10 read:

11 "25-13-821. Possession of ~~lands~~ property during
 12 redemption period. The purchaser of ~~lands~~ real property at
 13 an execution sales sale of a person who redeems such
 14 property is not entitled to the possession thereof as
 15 against the execution judgment debtor during the period of
 16 redemption ~~allowed by law~~ while ~~said~~ execution the judgment
 17 debtor personally occupies the ~~land~~ property as a home for
 18 himself and his family. The intention hereof being of this
 19 section is to insure ensure to such debtor the possession of
 20 his ~~land~~ property during the year of redemption."

21 Section 53. Section 25-13-822, MCA, is amended to
 22 read:

23 "25-13-822. Rents and profits during redemption
 24 periods == accounting. (1) The purchaser, from the time of
 25 the sale until a redemption or the expiration of the

1 redemption period, and a redemptioner person who redeems,
 2 from the time of his redemption until another redemption or
 3 the expiration of the redemption period, are entitled to
 4 receive from the tenant in possession the rents of rent for
 5 the property ~~sold~~ or the value of the use and occupation
 6 thereof. ~~But when~~ Whenever any rents or profits have been
 7 received by the judgment creditor₁ or the purchaser₂ or his
 8 ~~or their assigns from the property thus sold preceding such~~
 9 redemption a person who has redeemed, the amount of such
 10 rents and profits ~~shall be~~ is a credit upon against the
 11 redemption ~~money to be paid~~ amount which must be paid to
 12 affect a redemption.

13 (2) If ~~the redemptioner or judgment debtor~~ a person
 14 with the right of redemption, before the expiration of the
 15 time allowed for such redemption, demands in writing of such
 16 purchaser₂ or creditor₁ or his ~~assigns~~ person who has
 17 redeemed a written and verified statement of the amount of
 18 such ~~the~~ rents and profits ~~thus~~ received, the period for
 19 redemption is extended 5 days after such sworn statement is
 20 given by ~~such purchaser or his assigns to such redemptioner~~
 21 ~~or debtor.~~ If such purchaser₂, creditor₁ or his ~~assigns~~
 22 ~~shall for a period of 1 month from and after such demand,~~
 23 ~~fail~~ person who has redeemed fails or refuse refuses to give
 24 such ~~the~~ statement for 1 month following the demand, such
 25 redemptioner ~~or debtor~~ the person with the right of

1 ~~redemption~~ may bring an action in any court of competent
 2 jurisdiction to compel an accounting and disclosure of such
 3 rents and profits, and ~~until 15 days from and~~ after the
 4 final determination of such ~~the~~ action, the right of
 5 redemption of such person is extended to ~~such redeptoner~~
 6 ~~or-debtor."~~

7 Section 54. Section 25-13-823, MCA, is amended to
 8 read:

9 "25-13-823. Restraint of waste during redemption
 10 period. Until the expiration of the time allowed for
 11 redemption, the court may restrain the commission of waste
 12 on the property, by order granted with or without notice, on
 13 the application of the purchaser, a person who redeems, or
 14 the judgment creditor. ~~But However,~~ it is not waste for the
 15 person in possession of the property at the time of ~~the~~ sale
 16 or entitled to possession afterward, during the period
 17 allowed for redemption, to continue to use it in the same
 18 manner in which it was previously used, to use it in the
 19 ordinary course of husbandry, to ~~make the necessary repairs~~
 20 of buildings thereon, or to use wood or timber on the
 21 property therefor or for the repair of fences or for fuel
 22 for his family while he occupies the property."

23 Section 55. Section 25-14-101, MCA, is amended to
 24 read:

25 "25-14-101. Debtor to answer concerning his property

1 when execution unsatisfied. ~~When Whenever~~ an execution
 2 against property of the judgment debtor or of any one of
 3 several debtors in the same judgment, issued to the sheriff
 4 of the county ~~where he~~ in which such debtor resides or, if
 5 he does not reside in this state, to the sheriff of the
 6 county ~~where~~ in which the judgment ~~rott~~ is filed docketed,
 7 is returned unsatisfied in whole or in part, the judgment
 8 creditor, at any time after such ~~the~~ return is made, is
 9 entitled to an order from a judge of the court requiring
 10 such judgment debtor to appear and answer concerning his
 11 property before such judge or a referee appointed by him at
 12 a time and place specified in the order; but no judgment
 13 debtor ~~must~~ who is a resident may be required to attend
 14 before a judge or referee out of the county in which he
 15 resides."

16 Section 56. Section 25-14-202, MCA, is amended to
 17 read:

18 "25-14-202. Order appointing receiver to be filed. An
 19 order appointing a receiver ~~must~~ be filed in the office of
 20 the clerk of the court ~~where in which~~ the judgment ~~rott~~ is
 21 ~~filed,~~ docketed or a transcript of the judgment original
 22 docket is filed."

23 Section 57. Section 25-14-205, MCA, is amended to
 24 read:

25 "25-14-205. Relation back of receiver's title. (1)

1 ~~where~~ when the receiver's title to personal property has
 2 become vested, as prescribed in 25-14-204, it also extends
 3 back by relation for the benefit of the judgment creditor in
 4 whose behalf the proceedings were instituted, as follows:

5 (a) ~~Where~~ If an order requiring the judgment debtor to
 6 attend and be examined has been served before the
 7 appointment of ~~a~~ the receiver or the judgment debtor has
 8 been brought before the judge on arrest, the receiver's
 9 title extends back ~~so-as~~ to include the personal property of
 10 the judgment debtor at the time of the service of the order
 11 or his arrest.

12 (b) ~~Where--an~~ if no order described in subsection
 13 (1)(a) has not been served or and no arrest--as specified in
 14 subsection (1)(c), has been made but an order has been made
 15 requiring ~~a~~ another person to attend and be examined
 16 concerning property belonging or a debt due to the judgment
 17 debtor, the receiver's title extends back to the personal
 18 property belonging to the judgment debtor which was in the
 19 hands or under the control of the person ~~or corporation--thus~~
 20 required to attend at the time of the service of the order
 21 and to ~~e-debt~~ debts then due ~~him~~ the judgment debtor from
 22 that person ~~or corporation~~.

23 (c) In every other case, where if notice of the
 24 application for the appointment of the receiver was given to
 25 the judgment debtor, the receiver's title extends back to

1 include the personal property of the judgment debtor at the
 2 time when the notice was served, either personally or by
 3 complying with the requirements of an order prescribing a
 4 substitute for personal service.

5 (2) ~~Where--the~~ Whenever a case is within two or more of
 6 subsections (1)(a) through (1)(c) of this section, the rule
 7 most favorable to the judgment creditor must be adopted.

8 (3) ~~But--this~~ This section does not affect the title of
 9 a purchaser in good faith, without notice, and for a
 10 valuable consideration or the payment of a debt in good
 11 faith and without notice."

12 Section 58. Section 25-14-305, MCA, is amended to
 13 read:

14 "25-14-305. Interrogatories directed to prisoner by
 15 plaintiff. ~~The~~ Upon such examination, the plaintiff in the
 16 action may ~~upon such examination,~~ propose to the prisoner
 17 any such interrogatories pertinent to the inquiry, ~~and they~~
 18 The interrogatories must, if required by ~~him~~ the plaintiff,
 19 be proposed and answered in writing, and the ~~answer~~ answers
 20 must be signed and sworn to by the prisoner."

21 Section 59. Section 25-15-103, MCA, is amended to
 22 read:

23 "25-15-103. Affidavit to accompany summons -- new
 24 complaint unnecessary. The summons must be accompanied by an
 25 affidavit of the plaintiff or his agent, representative, or

1 attorney ~~stating~~ that the judgment or some part thereof
2 remains unsatisfied and ~~must specify~~ specifying the amount
3 due thereon. It is not necessary to file a new complaint."

4 Section 60. Section 25-30-101, MCA, is amended to
5 read:

6 "25-30-101. Applicability of district court and
7 justice's court rules. (1) The provisions of 3-10-222,
8 3-10-231 through 3-10-234, 3-10-305, 3-10-306, and 3-10-704
9 through 3-10-706, ~~25-31-111, 25-31-114 through 25-31-116,~~
10 25-31-304, 25-31-402(2), 25-31-405, parts 7 through 11 of
11 chapter 31 of this title (except ~~25-31-701, 25-31-915,~~
12 25-31-1002, 25-31-1004, and 25-31-1005), and chapter 33 of
13 this title, and chapter 9, part 10 of chapter 16, ~~and part~~
14 ~~of~~ chapter 17 ~~of Title 27, 27-17-401,~~ and part 15 of
15 chapter 18 of Title 27 are applicable to municipal courts
16 except when they are inconsistent with the provisions of
17 this chapter and chapter 6 of Title 3, the words "municipal
18 court" being substituted for justice's court and "judge" for
19 justice of the peace.

20 (2) Except as otherwise provided by this chapter, ~~and~~
21 chapter 6 of Title 3, and the supreme court's rules on
22 disqualification of judges, the proceedings and practice in
23 municipal court shall be the same as in district court."

24 Section 61. Section 25-31-101, MCA, is amended to
25 read:

1 "25-31-101. Issues which cannot be presented in
2 justice's court. The parties to an action in a justice's
3 court cannot give evidence upon any question which involves
4 the title to or possession of real property or the legality
5 of a tax, impost, assessment, toll, or municipal fine,
6 nor can any issue presenting such a question be tried by
7 such court; ~~provided except~~ that, in cases of forcible entry
8 and unlawful detainer of which justices' courts have
9 jurisdiction, any evidence otherwise competent may be given,
10 and any question properly involved therein may be
11 determined."

12 Section 62. Section 25-31-102, MCA, is amended to
13 read:

14 "25-31-102. Transfer to district court. If it ~~appear~~
15 appears from the answer of the defendant, verified by his
16 oath, that the determination of the action will necessarily
17 involve the a question of ~~title or possession to real~~
18 ~~property or the legality of any tax, impost, assessment,~~
19 ~~toll, or municipal fine~~ excluded from justice's court by
20 25-31-101, the justice ~~must~~ shall suspend all further
21 proceedings in the action and certify the pleadings and, if
22 any of the pleadings are oral, a transcript of the same from
23 his docket to the clerk of the district court of the
24 county, ~~and from~~ From the time of ~~fitting the~~ certification
25 of such pleadings or transcript with to the clerk, the

1 district court ~~shall have over the action~~ has the same
 2 jurisdiction over the action as if it had been commenced
 3 therein. When the action is certified to the district court
 4 upon ~~the answer of the defendant~~, he the defendant must file
 5 an undertaking, to be approved by the justice, to the effect
 6 that he will pay all costs that may be awarded against him
 7 on the trial in the district court."

8 Section 63. Section 25-31-111, MCA, is amended to
 9 read:

10 "25-31-111. What provisions of code applicable to
 11 justices' courts. Because justices' courts are courts of
 12 peculiar and limited jurisdiction, only those provisions of
 13 this code which are, in their nature, applicable to the
 14 organization, powers, and course of proceedings in justices'
 15 courts or which have been made applicable by special
 16 provisions in this chapter, ~~chapter 10 of title~~ and Titles
 17 ~~3, 27-9-101, 27-17-102, 27-17-401, and part 10 of chapter 16~~
 18 ~~and part 15 of chapter 10 of title~~ and 27 are applicable to
 19 justices' courts and the proceedings therein."

20 Section 64. Section 25-31-115, MCA, is amended to
 21 read:

22 "25-31-115. Deposit of money in lieu of undertaking.
 23 In civil cases arising in justices' courts ~~wherein~~ in which
 24 an undertaking is required ~~as prescribed in this code~~ by
 25 this chapter, the plaintiff or defendant may deposit with

1 ~~said the~~ justice a sum of money equal to the amount required
 2 by ~~said the~~ undertaking, which ~~said sum of money shall~~ must
 3 be taken as security in place of ~~said the~~ undertaking."

4 Section 65. Section 25-31-301, MCA, is amended to
 5 read:

6 "25-31-301. When change of venue permitted. The court
 7 may, at any time before trial, on motion, change the place
 8 of trial in the following cases:

9 (1) when it appears to the satisfaction of the justice
 10 before whom the action is pending, by affidavit of either
 11 party, that such justice is a material witness for either
 12 party;

13 (2) when a jury has been demanded and either party
 14 makes and files an affidavit that he cannot have a fair and
 15 impartial trial on account of the bias or prejudice of the
 16 citizens of the county, town, or city against him;

17 (3) when, from any cause, the justice is disqualified
 18 from acting, except when supreme court rule prohibits the
 19 justice from acting to change the place of trial;

20 (4) when the justice is sick or unable to act."

21 Section 66. Section 25-31-305, MCA, is amended to
 22 read:

23 "25-31-305. Where action to be transferred. When
 24 Whenever the court orders the place of trial to be changed,
 25 the action must be transferred for trial to a whatever

1 ~~justice's~~ court the parties may agree upon and ~~or~~, if they
2 ~~do not so cannot~~ agree, to another justice's court in the
3 same county ~~or, if there is no other court, in an adjoining~~
4 ~~county."~~

5 Section 67. Section 25-31-308, MCA, is amended to
6 read:

7 "25-31-308. Notice of the time and place of trial --
8 pleading. Upon the receipt by him of such ~~the~~ papers
9 ~~mentioned in 25-31-306~~, the justice of the court to which
10 the case is transferred ~~must shall~~ issue a notice stating
11 when and where the trial will take place, ~~which the~~ notice
12 must be served upon the parties at least a day before the
13 time fixed for trial. If no answer ~~or demurrer~~ has been made
14 by the defendant, he must be allowed to plead."

15 Section 68. Section 25-31-408, MCA, is amended to
16 read:

17 "25-31-408. Who may serve summons -- method of
18 service, return. (1) The summons may be served by a sheriff
19 or constable of any ~~of the counties~~ county of this state or
20 by any person resident in ~~the this~~ state, 18 years of age or
21 older, ~~and~~ not a party to the suit.

22 (2) The summons must be served and returned as
23 provided in M.R.Civ.P., Rule 4D (2), ~~(3)~~ (4), (8), and (9),
24 or ~~it may be served~~ by publication ~~as~~ provided in
25 M.R.Civ.P., Rule 4D (5) and (8) ~~and (8)~~, Rule 4D(5) and (8), so far

1 as they relate to publication of summons, are ~~made~~
2 applicable to justices' courts, the word "justice" being
3 substituted for the word "clerk" whenever ~~the latter word~~
4 occurs.

5 (3) Sections 25-3-201(2), 25-3-202~~25-3-204~~ through
6 25-3-206, 25-3-301(2), 25-3-302, and 25-10-206 and part 6 of
7 chapter 3 apply to service and return of process in
8 justice's court."

9 Section 69. Section 25-31-501, MCA, is amended to
10 read:

11 "25-31-501. Form of pleadings. Pleadings in justices'
12 courts:

13 (1) are not required to be in any particular form but
14 must be such as to enable a person of common understanding
15 to know what is intended;

16 (2) ~~may~~ except the complaint, ~~may~~ be oral or in
17 writing;

18 (3) ~~must need~~ not be verified unless otherwise
19 provided in this chapter, ~~or Title 27 chapter 16 part 10~~
20 ~~or Title 27 chapter 9, 17, or 18~~;

21 (4) if in writing, must be filed with the justice;

22 (5) if oral, ~~on entry of their~~ must be entered in
23 substance, ~~must be made~~ in the docket;

24 (6) in cases of forcible entry and unlawful detainer,
25 must be verified."

1 Section 70. Section 25-31-506, MCA, is amended to
2 read:

3 "25-31-506. Compulsory counterclaim. If the defendant
4 ~~omits~~ fails to set up a counterclaim ~~in the cases mentioned~~
5 ~~described~~ in 25-31-505, neither he nor his assignee ~~can~~ may
6 afterward maintain an action against the plaintiff therefor.
7 ~~if~~ However, if the counterclaim exceeds ~~\$300~~ \$1,500, he need
8 not set it up."

9 Section 71. Section 25-31-521, MCA, is amended to
10 read:

11 "25-31-521. Amendment of pleadings. Either party may,
12 at any time before the conclusion of the trial, amend any
13 pleading; but if the amendment is made after the issue is
14 raised at trial and it appears to the satisfaction of the
15 court, by upon hearing the argument of the adverse party
16 under oath, that an adjournment is necessary to the adverse
17 party ~~in consequence~~ because of such ~~the~~ amendment, an
18 adjournment must be granted. ~~When~~ Whenever an adjournment
19 ~~will be rendered~~ is necessary by the ~~because of an~~
20 amendment, the court may also, in its discretion, require as
21 a condition to ~~of~~ the allowance of such amendment ~~made~~
22 ~~after issue joined~~, the payment of costs to the adverse
23 party in an amount to be fixed by the court and not
24 exceeding \$20."

25 Section 72. Section 25-31-602, MCA, is amended to

1 read:

2 "25-31-602. When guardian necessary -- how appointed.
3 ~~When an infant is sane~~ Whenever a minor or seriously
4 mentally ill or incompetent person is a party, he must
5 appear either by his general guardian, if he ~~have~~ has one,
6 or by a guardian ad litem appointed by the justice. ~~When a~~ A
7 guardian ad litem ~~is appointed by the justice~~ he must be
8 appointed as follows:

9 (1) If the ~~infant is sane~~ minor or seriously mentally
10 ill or incompetent person be is a plaintiff, the appointment
11 must be made before the summons is issued:

12 (a) in the case of a minor who is 14 or more years
13 old upon the application of the ~~infant~~ if he be of the age
14 of 14 years minor;

15 (b) ~~if under that age~~ in the case of a minor who is
16 less than 14 years old or ~~if insane or a seriously mentally~~
17 ill or incompetent person, upon the application of a
18 relative or friend;

19 (c) in any case described in subsection (1)(a) or
20 (1)(b) in which no application is made, upon the justice's
21 own motion.

22 (2) If the ~~infant is sane~~ minor or seriously mentally
23 ill or incompetent person be is a defendant, the appointment
24 must be made at the time the summons is returned or before
25 the answer:

1 (a) ~~upon the application of the infant, if he be of~~
 2 ~~the age of~~ in the case of a minor who is 14 or more years
 3 old and apply at the time or who applies before the summons
 4 is returned or at the time of the return, upon the
 5 application of the minor;

6 (b) ~~if he be under the age of~~ in the case of a minor
 7 who is less than 14 years old or be insane a seriously
 8 mentally ill or incompetent person or neglect so to apply,
 9 then upon the application of a relative or friend or any
 10 other party to the action ~~or by the justice on his own~~
 11 ~~motion;~~

12 (c) in any case described in subsection (2)(a) or
 13 (2)(b) in which no application is made, upon the justice's
 14 own motion."

15 Section 73. Section 25-31-707, MCA, is amended to
 16 read:

17 "25-31-707. Procedure when defendant under arrest. (1)
 18 If the application is on the part of the plaintiff and the
 19 defendant is under arrest, a postponement for more than 3
 20 hours discharges the defendant from custody, ~~but however,~~
 21 the action ~~may proceed notwithstanding,~~ and the defendant
 22 is subject to arrest on execution in the same manner as if
 23 he had not been discharged.

24 (2) If the application is on the part of a defendant
 25 who is under arrest, before it ~~can~~ may be granted he such

1 defendant must execute an undertaking, with two or more
 2 sufficient sureties to be approved by and in a sum to be
 3 fixed by the justice, to the effect that he will render make
 4 himself ~~amenable~~ available to the process of the court
 5 issued during the pendency of the action and to ~~such as may~~
 6 be any process issued to enforce the judgment therein ~~or~~
 7 and that, if he fails to make himself so available, the
 8 sureties will pay to the plaintiff the amount of any
 9 judgment which he the plaintiff may recover in the action,
 10 not exceeding the amount specified in the undertaking. On
 11 ~~the filing of the undertaking specified in this subsection~~
 12 the justice may order the defendant discharged from
 13 custody."

14 Section 74. Section 25-31-709, MCA, is amended to
 15 read:

16 "25-31-709. Time limit on adjournment -- undertaking.
 17 No adjournment ~~must, unless by consent,~~ may be granted upon
 18 the application of either party for a period longer than 10
 19 days ~~upon the application of either party except upon~~
 20 ~~condition that such~~ unless the opposite party consents or
 21 the party file applying files an undertaking, in an amount
 22 fixed by the justice, with two sureties to be approved by
 23 the justice, to the effect that they such sureties will pay
 24 to the opposite party the amount of any judgment which may
 25 be recovered against the party applying, not exceeding the

1 sum specified in the undertaking."

2 Section 75. Section 25-31-802, MCA, is amended to
3 read:

4 "25-31-802. How when issues of fact arise. An issue of
5 fact arises:

6 (1) upon whenever a material allegation in the
7 complaint is controverted by the answer; and

8 (2) upon whenever the answer contains new matter in
9 the answer except which raises questions of fact and not
10 merely an issue of law is-joined-thereon."

11 Section 76. Section 25-31-812, MCA, is amended to
12 read:

13 "25-31-812. Challenges to jurors. ~~The---challenges~~
14 Challenges to jurors are either peremptory or for cause:

15 (1) Each party is entitled to two peremptory
16 challenges. They shall be exercised by the plaintiff first
17 striking one and the defendant then striking one and so on
18 until each side has exhausted or waived his its rights.

19 (2) Either party may challenge for cause on any of the
20 grounds set forth in 25-7-223. Challenges for cause must be
21 tried by the justice."

22 Section 77. Section 25-31-901, MCA, is amended to
23 read:

24 "25-31-901. Procedure upon default. If the defendant
25 fails to appear or answer or demur within the time

1 specified in the summons, ~~then the defendant shall be~~ he is
2 in default and his default ~~shall~~ must be entered accordingly
3 by the court. Evidence may then be submitted and judgment
4 rendered and entered in accordance with the statement in the
5 summons or as prayed for in the complaint at any time within
6 90 days from the date of the entry of such the default of
7 the defendant."

8 Section 78. Section 25-31-902, MCA, is amended to
9 read:

10 "25-31-902. Cases treated as a default. ~~In---the~~
11 ~~following cases the some proceedings must be had and~~
12 ~~judgment must be rendered in like manner as if the defendant~~
13 ~~had failed to appear and answer or demur:~~

14 (1) ~~if~~ whenever the complaint has been amended and the
15 defendant fails to answer it as amended within the time
16 allowed by the court, the same procedure must be followed
17 as when the defendant is in default.

18 (2) ~~if the demurrer to the complaint is overruled and~~
19 ~~the defendant fails to answer at once;~~

20 (3) ~~if the demurrer to the answer is sustained and the~~
21 ~~defendant fails to amend the answer within the time allowed~~
22 ~~by the courts."~~

23 Section 79. Section 25-31-903, MCA, is amended to
24 read:

25 "25-31-903. Judgment of dismissal without prejudice.

1 Judgment that the action be dismissed without prejudice to a
2 new action may be entered with costs in the following cases:

3 (1) when the plaintiff voluntarily dismisses the
4 action, at or before the close of his evidence, when and
5 there is no counterclaim;

6 (2) when ~~he~~ the plaintiff fails to appear ~~at any time~~
7 within 5 days after default has been entered or at the time
8 to which the action has been postponed;

9 ~~(3) when, after a demurrer to the complaint has been~~
10 ~~sustained, the plaintiff fails to amend it within the time~~
11 ~~allowed by the court;~~

12 ~~(4) [3]~~ when it is objected at the trial and appears by
13 the evidence that the action is brought in the wrong
14 county."

15 Section 80. Section 25-31-1101, MCA, is amended to
16 read:

17 "25-31-1101. When justice may issue execution.
18 Execution for the enforcement of a judgment of a justice's
19 court may be issued by the justice who entered the judgment
20 or his successor in office, on the application of the party
21 entitled thereto, at any time within 5 & years from the
22 entry of judgment."

23 Section 81. Section 25-31-1105, MCA, is amended to
24 read:

25 "25-31-1105. Proceedings in aid of execution. Section

1 25-13-502 and part 1 of chapter 14, ~~except 25-14-106~~ are
2 applicable to justices' courts, the word "constable" being
3 substituted ~~to that end~~ for the word "sheriff" and the
4 word "justice" for the word "judge."

5 Section 82. Section 25-32-102, MCA, is amended to
6 read:

7 "25-32-102. Commencement of action -- complaint. ~~Every~~
8 A civil action in city courts ~~is~~ is commenced
9 by filing a written complaint ~~setting forth the violation of~~
10 ~~the ordinance complained of, with such particulars of time,~~
11 ~~place and manner of violation as to enable the defendant to~~
12 ~~understand distinctly the character of the violation~~
13 ~~complained of and to answer the complaint. The ordinance may~~
14 ~~be referred to by its title and section and the number~~
15 ~~thereof that concisely states the facts constituting the~~
16 plaintiff's cause of action."

17 Section 83. Section 25-33-101, MCA, is amended to
18 read:

19 "25-33-101. Exclusive method of review. A judgment or
20 order in a civil action in a city or justice's court, except
21 when expressly made final by this code, may be reviewed as
22 prescribed in this chapter and not otherwise. A party
23 aggrieved may appeal in the cases prescribed in this
24 chapter."

25 Section 84. Section 25-33-104, MCA, is amended to

1 read:

2 "25-33-104. Papers to be transmitted. Upon receiving
3 the filing of the notice of appeal and ~~filing--on the~~
4 undertaking ~~es~~ required ~~in--25-33-201--25-33-203--and~~
5 25-33-205 by part 2 of this chapter, the justice or judge
6 ~~must shall~~, within 10 days, upon the payment of the fees
7 therefor, transmit to the clerk of the district court a
8 certified copy of his docket, the pleadings, all notices,
9 motions, and other papers filed in the cause, the notice of
10 appeal, and the undertaking ~~filed~~, and ~~the~~ the justice or
11 judge may be compelled by the district court to transmit
12 such papers, by an order entered upon motion, ~~to transmit~~
13 ~~such papers~~ and may be fined for neglect or refusal to
14 transmit the same. A certified copy of such order may be
15 served on the justice or judge by the party who is appealing
16 or his attorney."

17 Section 85. Section 25-33-201, MCA, is amended to
18 read:

19 "25-33-201. Undertaking on appeal. (1) An appeal from
20 a justice's or city court is not ~~effectual~~ effective for any
21 purpose unless on a written undertaking be is filed, with
22 two or more sureties,

23 (2) If the judgment is for the payment of money, the
24 undertaking must be in a sum equal to twice the amount of
25 the judgment, including costs, ~~when the judgment is for the~~

1 ~~payment of money. The undertaking and~~ must be conditioned,
2 ~~when the action is for the recovery of money, to the effect~~
3 that the appellant will pay the amount of the judgment
4 appealed from and all costs if the appeal be is withdrawn or
5 dismissed or the amount of any judgment and all costs that
6 may be recovered against him ~~in the action~~ in the district
7 court.

8 ~~(2)(3) An appeal from a justice's or city court is not~~
9 ~~effectual for any purpose unless an undertaking be filed,~~
10 ~~with two or more sureties. If the judgment is for the~~
11 ~~recovery of specific personal property, the undertaking must~~
12 ~~be~~ in a sum equal to twice the value of the property,
13 including costs, ~~when the judgment is for the recovery of~~
14 ~~specific personal property, when the action is for the~~
15 ~~recovery of specific personal property, the undertaking and~~
16 ~~must be conditioned to the effect~~ that the appellant will
17 pay the judgment and costs appealed from and obey the order
18 of the court made therein if the appeal be is withdrawn or
19 dismissed or he will pay any judgment and costs that may be
20 recovered against him ~~in said action~~ in the district court
21 and obey any order made by the district court therein.

22 ~~(3)(4) When~~ if the judgment appealed from directs the
23 delivery of possession of real property, the execution of
24 the same cannot be stayed unless ~~a written~~ the undertaking
25 ~~be executed on the part of~~ required by subsection (1) is

1 filed by the appellant, ~~with two or more sureties. It must~~
2 ~~be~~ to the effect that:

3 (a) during the possession of such property by the
4 appellant, he will not commit or suffer allow to be
5 committed any waste thereon; and

6 (b) if the appeal be is dismissed or withdrawn, or the
7 judgment is affirmed, or judgment be is recovered against
8 him ~~in the action~~ in the district court, he will pay the
9 value of the use and occupation of the property from the
10 time of the appeal until the delivery of possession thereof
11 or he will pay any judgment and costs that may be recovered
12 against him ~~in said action~~ in the district court, not
13 exceeding a sum to be fixed by the justice or judge of the
14 court from which the appeal is ~~to be~~ taken, which sum must
15 be specified in the undertaking."

16 Section 86. Section 25-33-205, MCA, is amended to
17 read:

18 "25-33-205. Deposit of money in lieu of undertaking.
19 ~~(1) A deposit of the amount of the judgment, including all~~
20 ~~costs, appealed from or of the value of the property,~~
21 ~~including all costs, in actions for the recovery of specific~~
22 ~~personal property, with the justice or judge is equivalent~~
23 ~~to the filing of the undertaking, and in such cases, the~~
24 ~~justice or judge must transmit the money to the clerk of the~~
25 ~~district court to be by him paid out on the order of the~~

1 courts

2 ~~(2) in all cases where~~ Whenever an undertaking is
3 required on appeal by the provisions of this chapter, a
4 deposit in the court below of the amount of the judgment
5 appealed from and plus \$300 or, if the judgment is for the
6 recovery of specific personal property, the value of the
7 property plus \$300 or, if the party in whose favor the
8 judgment is rendered appeals, \$100 in addition shall be is
9 equivalent to filing the undertaking. The justice or judge
10 shall transmit the money to the clerk of the district court,
11 who shall pay it out on the order of the court."

12 Section 87. Section 25-34-203, MCA, is amended to
13 read:

14 "25-34-203. Order of court directing defendant to pay
15 or answer claim. (1) Upon the filing of the affidavit and
16 the payment of the required fee hereinafter provided, the
17 clerk of court shall cause to be delivered to the sheriff of
18 the county of the defendant's residence:

19 (a) a copy of the affidavit; together with

20 (b) the original ~~and a copy~~ of an order issued by the
21 court, directed to the defendant, and directing the
22 defendant to pay the claim set forth in the affidavit or
23 deliver up the property described or, in the alternative, to
24 appear and answer the claim set forth in the affidavit; and

25 (c) a copy of such order.

1 (2) The order ~~shall~~ **must**:

2 (a) specify the time, date, and place set for hearing
3 the claim;

4 (b) state that, if the defendant fails to appear at
5 the hearing and has not satisfied the claim, judgment will
6 be entered against him in the amount or for the relief
7 claimed ~~for plus~~ costs; and

8 (c) be signed by the clerk of court and bear the seal
9 of the court."

10 Section 88. Section 25-34-204, MCA, is amended to
11 read:

12 "25-34-204. Hearing date. The date for the appearance
13 of the defendant ~~to be~~ set forth in the order ~~shall~~ **must** be
14 determined by the clerk of court in accordance with rules
15 adopted by the small claims judge and ~~shall~~ **may** not be more
16 than 30 or less than 10 days from the date of the order.
17 Service of a copy of the order and a copy of the affidavit
18 ~~shall~~ **must** be made upon the defendant not less than 7 days
19 prior to the date set for his appearance by the order. If
20 the order is not timely served, ~~the~~ plaintiff may have a new
21 appearance date set by the clerk and a new order issued and
22 delivered to the sheriff, ~~and~~ ~~if~~ **if** necessary, repeated
23 orders may be issued at any time within 1 year after the
24 commencement of the action."

25 Section 89. Section 25-34-403, MCA, is amended to

1 read:

2 "25-34-403. Appeals. (1) If either party is
3 dissatisfied with the judgment of the small claims court, he
4 may appeal to the district court of the county where in
5 ~~which~~ the judgment was rendered in the ~~same~~ ~~fashion~~ ~~as~~
6 ~~appeals in other civil actions~~ accordance with the procedure
7 prescribed in chapter 33. Any such appeal ~~shall~~ **must** be
8 tried de novo.

9 (2) ~~in the event that~~ **if** the parties are represented
10 by counsel on appeal, the judge may grant the prevailing
11 party, in addition to costs, reasonable attorney fees."

12 Section 90. Section 25-35-203, MCA, is amended to
13 read:

14 "25-35-203. Hearing date. The date for the appearance
15 of the defendant ~~to be~~ set forth in the order ~~shall~~ **must** be
16 determined by the justice of the peace or by his clerk in
17 accordance with rules adopted by the justice of the peace
18 and may not be more than 20 or less than 10 days from the
19 date of the order. Service of a copy of the order and a
20 copy of the sworn complaint ~~shall~~ **must** be made upon the
21 defendant not less than 5 days prior to the date set for his
22 appearance by the order. If the order is not timely served,
23 the plaintiff may have a new appearance date set by the
24 justice of the peace or his clerk and a new order issued and
25 delivered to the sheriff, constable, or other process

1 server. If necessary, repeated orders may be issued at any
2 time within 1 year after the commencement of the action."

3 Section 91. Repealer. Sections 93-1811, 93-2806,
4 93-7202, and 93-8802, R.C.M. 1947, are repealed.

5 Section 92. Repealer. Sections 16-809, 93-901,
6 93-2906(4), 93-2907, 93-3002, 93-3008, 93-3011, 93-3012,
7 93-5302, 93-5305 through 93-5307, 93-5501, 93-5503 through
8 93-5509, 93-5606 through 93-5608, 93-5702, 93-5707,
9 93-6602(2), 93-8003 through 93-8006, 93-8011, 93-8012,
10 93-8014 through 93-8025, 95-1709, and 95-2010, R.C.M. 1947,
11 are repealed.

-End-