Chapter 13

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DESIGNATION

13.010 Parties, how designated. In an action, suit or special proceeding the party complaining shall be known as the plaintiff, and the adverse party as the defendant.

13.020 Designating defendant by fictitious name; substitution of true name. In an action or suit when the plaintiff is ignorant of the name of a defendant, such defendant may be designated in any pleading or proceeding by any name; and when his true name is discovered, the pleading or proceeding may be amended accordingly.

13.030 Real party in interest; except fiduciary. Every action or suit shall be prosecuted in the name of the real party in interest, except that an executor or an administrator, a trustee of an express trust, or a person expressly authorized to sue by statute, may sue without joining with him the person for whose benefit the action or suit is prosecuted. A person with whom, or in whose name a contract is made for the benefit of another, is a trustee of an express trust within the meaning of this section. This section does not authorize the assignment of a thing in action not arising out of contract.

13.040 Infant shall appear by guardian. When an infant is a party, he shall appear by guardian, who may be appointed by the court in which the action or suit is brought, or by a judge thereof, or a judge having guardianship jurisdiction. The guardian shall be appointed as follows:

(1) When the infant is plaintiff, upon the application of the infant, if he be of the age of 14 years; or if under that age, upon the application of a relative or friend of the infant.

(2) When the infant is defendant, upon an application of the infant, if he be of the age of 14 years, and apply within 15 days after the service of the summons; if he be under the age of 14, or neglect so to apply, then upon the application of any other party to the action or suit, or of a relative or friend of the infant.

13.050 Insane or idiotic person shall appear by guardian. When an insane or idiotic person is a party to any action, suit or proceeding he shall appear by guardian; if he has no guardian, or in the opinion of the court the guardian is an improper or incompetent person, the court shall appoint some suitable person to act as guardian ad litem, such appointment to be made as follows:

(1) When the insane or idiotic person is plaintiff, upon application of a relative or friend of such person.

(2) When the insane or idiotic person is defendant, upon the application of a relative or friend of such person. Such application shall be made within 20 days after the service of summons, if served within the state, and if served out of the state, or service is made by publication, then such application shall be made within 60 days after the first publication of summons, or within 60 days after service out of the state. If no such application is made within the time limited, application may be made by any party.

13.060 Designation of unknown heirs in actions and suits relating to real property. When the heirs of any deceased person are proper parties defendant to any suit or action relating to real property in this state, and the names and residences of such heirs are unknown, they may be proceeded against under the name and title of "the unknown heirs" of the deceased.

13.070 When unknown claimants are proper parties. In any suit or action to determine any adverse claim, estate, lien or interest in real property, or to quiet title to real property, the plaintiff may include as a defendant in such suit or action, and insert in the title thereof, in addition to the names of such persons or parties as appear of record to have, and other persons or parties who are known to have, some title, claim, estate, lien or interest in the real property in controversy, the following: "Also all other persons or parties unknown claiming any right, title, estate, lien or interest in the real property described in the complaint herein."

13.080 Nonabatement of action or suit by death, disability or transfer; continuing proceedings. No action or suit shall abate by the death or disability of a party, or by the transfer of any interest therein, if the cause of action survives or continues. In case of the death or disability of a party, the court may, at any time within one year thereafter, on motion, allow the action or suit to be continued by or against his personal representatives or successors in interest.

13.090 Death of party after verdict does not abate action for wrong. An action for a wrong shall not abate by the death of any party, after a verdict has been given therein, but the action shall proceed thereafter in the same manner as in cases where the cause of action survives.

13.100 [Reserved for expansion]

JOINDER

13.110 When new parties must be brought in. In actions or suits the court may determine any controversy between parties before it, when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy can not be had without the presence of other parties, the court shall cause them to be brought in.

13.120 Interpleader. In any action or suit for the recovery of specific personal property, if a third person demands of the defendant the same property, the court in its discretion, on motion of the defendant, and notice to such person and the adverse party, may, before answer, make an order discharging the defendant from liability to either party, and substitute such person in his place as defendant. The order shall not be made except on the condition that the defendant deliver the property or its value to such person as the court may direct, and unless it appears from the affidavit of the defendant, filed with the clerk by the day he is otherwise required to answer, that such person makes such demand without collusion with the defendant. The affidavit of such third person as to whether he makes such demand of the defendant may be read on the hearing of the motion.

13.130 Intervention. At any time before trial any person who has an interest in the matter in litigation may, by leave of court, intervene. Intervention takes place when a third person is permitted to become a party to a suit, action or proceeding between other persons, either by joining the plaintiff in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and defendant. Intervention is made by complaint, setting forth the grounds upon which the intervention rests, filed by leave of the court and served upon the parties who have not appeared, and upon the attorneys of the parties who have appeared, who may answer or demur to it within 10 days from the service thereof, if served within the county wherein the suit, action or proceeding is pending, or within 20 days if served elsewhere.

13.140 Joinder of persons severally liable. Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, may, all or any of them, be included in the same action or suit, at the option of the plaintiff.

13.150 Joinder of owners in actions or suits relating to real property; owners of separate parcels. In suits and actions relating to the title to real property or the right to the possession thereof, owners in common taking their titles directly by the same written instrument or by inheritance directly from the same common ancestor may be joined as plaintiff or defendant, as the case may be. In case a defect in, or cloud on, the title to real property affects more than one parcel thereof separately owned, the owners may be joined as parties plaintiff or defendant in any suit to quiet title to the parcel owned by each. This section shall not cut off any right of joinder of parties which otherwise existed heretofore.

13.160 Permissive joinder as plaintiffs or defendants. All persons having an interest in the subject of a suit, and in obtaining the relief demanded, may be joined as plaintiffs, except as otherwise provided by statute. Any person may be made a defendant to a suit who has or claims an interest in the controversy adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the questions involved.

13.170 Compulsory joinder; representative suits. Parties to a suit who are united in interest must be joined as plaintiffs or defendants; but if the consent of anyone who should have been joined as plaintiff can not be obtained, he may be made a defendant, the reason being stated in the complaint. When the question is one of a common or general interest of many persons, or when the parties are very numerous, and it may be impractical to bring them all before the court, one or more may sue or defend for the benefit of the whole.