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THE

PUBLIC STATUTES

OF THE

STATE OF MINNESOTA.

(1849—1858.)

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Judge may by order forbid a transfer of property in certain cases.

(131.) SEC. CXXX. If it appear that a person or corporation alleged to have property of the judgment debtor, or indebted to him, claims an interest in the property, adverse to him, or denies the debt, such interest or debt is recoverable only in an action against such person or corporation, by the receiver; but the judge may, by order, forbid a transfer or other deposition of such property or interest, till a sufficient opportunity be given to the receiver to commence the action, and prosecute the same to judgment and execution; such order may be modified or vacated by the judge granting the same, at any time, on such security as he may direct.

Judge may order a reference.

(132.) SEC. CXXXI. The judge may, in his discretion, order a reference to a referee, agreed upon or appointed by him, to report the evidence or the facts.

Charges and costs allowed.

(133.) SEC. CXXXII. The judge may allow to the judgment creditor, or to any person so examined, whether a party to the action or not, his charges, and a fixed sum in addition, not exceeding ten dollars as costs.

Persons who disobey judge or referee, liable for contempt.

(134.) SEC. CXXXIII. If any person, party, or witness, disobey an order of the judge or referee, duly served, such person, party, or witness, may be punished by the judge, as for a contempt; the proceedings therefor are prescribed in chapter ninety-two of this statute, respecting the punishment of contempt.

Foregoing provisions to apply to justice of the peace.

(135.) SEC. CXXXIV. The provisions hereinbefore, in relation to proceedings supplementary to the execution, shall apply to executions issued by a justice of the peace.

CHAPTER 62.

COSTS IN CIVIL ACTIONS.

see chap 67 in 246 1860

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Judgment, such court or judge may, by an order, require the judgment debtor to appear, at a specified time and place, to answer concerning the same; and such proceedings may thereupon be had for the application of the property of the judgment debtor toward the satisfaction of the judgment, as are provided upon the return of an execution.

(124.) SEC. CXXIII. Instead of the order requiring the attendance of the judgment debtor, as provided in the last two sections, the judge may upon proof, by affidavit or otherwise, to his satisfaction, that there is danger of the debtor leaving the territory, or concealing himself, issue a warrant requiring the sheriff of any county where such debtor may be, to arrest him and bring him before such judge; upon being brought before the judge, he may be examined on oath, and ordered to enter into an undertaking with one or more sureties, that he will attend from time to time, before the judge, or referee, as he shall direct, during the pendency of the proceeding, and until the final determination thereof, and will not in the mean time dispose of any portion of his property, not exempt from execution; in default of entering into such undertaking, he may be committed to prison by warrant of the judge.

Judge may issue a warrant to arrest debtor.

(125.) SEC. CXXIV. After the issuing of execution against property, any person indebted to the judgment debtor may pay to the sheriff the amount of his debt, or so much thereof as may be necessary to satisfy the execution, and the sheriff's receipt shall be a sufficient discharge for the amount so paid.

Sheriff's receipt discharge for judgment.

(126.) SEC. CXXV. After the issuing or return of an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, and upon proof by affidavit or otherwise, to the satisfaction of the judge, that any person or corporation has property of the judgment debtor, or is indebted to him in an amount exceeding ten dollars, the judge may by an order require such person or corporation, or any officer or member thereof, to appear at a specified time and place, and answer concerning the same; the judge may also, in his discretion, require notice of such proceedings to be given to any party in the action, in such manner as may seem to him proper.

When garnishee may be summoned to appear before the judge.

(127.) SEC. CXXVI. Witnesses may be required to appear and testify upon any proceeding under this chapter, in the same manner as upon the trial of an issue.

Witness may be required to appear as in other cases.

(128.) SEC. CXXVII. The party or witness may be required to attend before the judge, or before a referee appointed by the court or judge; if before the referee, the examination must be taken by the referee, and certified by the judge; all examinations and answers before a judge or referee under this chapter, must be on oath, except that when a corporation answers, the answer must be on the oath of an officer thereof.

Proceedings when matter is referred to referee.

(129.) SEC. CXXVIII. The judge may order any property of the judgment debtor, not exempt from execution, in the hands either of himself or any other person, or due to the judgment debtor, to be applied toward the satisfaction of the judgment, except that the earnings of the debtor for his personal services, at any time within thirty days next preceding the order, cannot be so applied when it is made to appear by the debtor's affidavit, or otherwise, that such earnings are necessary for the use of a family supported wholly or partly by his labor.

Judge may order property to be applied to satisfaction of judgment.

(130.) SEC. CXXIX. The judge may also by order appoint a receiver of the property of the judgment debtor in the same manner, and with the like authority as if the appointment were made by the court; the judge may also by order, forbid a transfer or other disposition of the property of the judgment debtor, not exempt from execution, and any interference therewith.

Judge may appoint a receiver to take the property.

✓ [Chapter 72, Revised Statutes.]

(1.) SEC. I. There are no statutes establishing or regulating the costs or fees of attorneys and counsel in civil actions, and there are established no rules or provision of law restricting or controlling the right of a party to agree with an attorney or counsel for his compensation, and hereafter the measure and mode of such compensation must be left to the agreement, express or implied, of the parties; but there may be allowed to the prevailing party, certain sums by way of indemnity, for his expenses in the action, which allowances are termed costs.

Fee bill abolished, allowance given termed costs.

(2.) SEC. II. Costs are allowed, of course, to the plaintiff upon a judgment in his favor, in the following cases:

When allowed, of course, to plaintiff.

1. In an action for the recovery of real property, or when a claim of title to real property arises on the pleadings, or is certified by the court to have come in question at the trial;

2. In an action to recover the possession of personal property;

3. In the actions of which a justice's court has not jurisdiction;

4. In an action for the recovery of money, where the plaintiff recovers one hundred dollars or more; but in an action for assault, battery, false imprisonment, libel, slander, malicious prosecution, criminal conversation, or seduction, if the plaintiff recover less than fifty dollars damages, he can recover no more costs and charges than damages. And in an action to recover the possession of personal property, if the plaintiff recover less than fifty dollars damages, he can recover no more costs and charges than damages, unless he recover also property, the value of which, with the damages, amounts to fifty dollars; such value must be determined by the jury, court, or referee by whom the action is tried.

(3.) SEC. III. When several actions are brought on one bond, undertaking, promissory note, bill of exchange, or other instrument in writing, or in any other case for the same cause in action against several parties who might have been joined as defendants in the same action, no costs may be allowed to the plaintiff in more than one of such actions, which may be at his election, if the parties proceeded against in the other actions were at the commencement of the previous action openly within this territory; but the disbursements of the plaintiff may be allowed to him as hereinafter provided.

In several actions on same instrument but one bill of costs

(4.) SEC. IV. [As amended on page 12 of the amendments of 1852 to the revised statutes.] Costs are allowed, of course, to the defendant upon a judgment in his favor, in an action for the recovery of money only, or where the plaintiff recovers less than fifty dollars in such action; and also upon a judgment in his favor in the other actions mentioned in section two.

Costs when allowed and how

(5.) SEC. V. In other actions, costs may be allowed, or not; and if allowed, may be apportioned between the parties in the same or adverse sides, in the discretion of the court. When there are several defendants not united in interest, and making separate defenses by separate answers, and the plaintiff fails to recover judgment against all, the court may award costs to such of the defendants as have judgment in their favor, or any of them; and in the following cases, the costs of an appeal are in the discretion of the court:

When allowed to either party in discretion of court.

1. Where a new trial is ordered;

2. Where a judgment is modified.

(6.) SEC. VI. Costs cannot be allowed to the plaintiff in an action upon a judgment of a court of this territory, between the same parties, unless such action was brought with previous leave of the court, for cause

Costs not allowed in actions on judgment except on leave granted.

shown; but this prohibition does not apply to an action upon the judgment of a justice's court brought in another county, or brought in the same county, in case of the summons not having been served on all the defendants, or the death of a party, or the death, resignation, incapacity to act, or removal from the county of the justice, or the loss of his docket.

(7.) SEC. VII. [*Subdivisions 1 and 6 as amended on page 11 of the laws of 1856.*] When allowed, costs are as follows:

1. To the plaintiff for all proceedings before notice of trial (including judgment when entered) in an action arising on obligations for the recovery of money only, seven dollars; in other actions and in all cases where an application to the court for judgment is necessary, twelve dollars;

2. To the defendant, for all proceedings before notice of trial, five dollars; for all subsequent proceedings before trial, seven dollars;

3. For the trial of issues of law, if separate from the trial of issues of fact, to the plaintiff, fifteen dollars; to the defendant, twelve dollars;

4. For the trial of the issues of fact, if separate from the trial of the issues of law, to the plaintiff, fifteen dollars; to the defendant, twelve dollars;

5. For the trial of the issues of fact and of law, when tried at the same time, to the plaintiff, fifteen dollars; to the defendant, fifteen dollars;

6. To either party, when any action has been removed to the supreme court before argument, twenty dollars; for argument, thirty dollars;

7. To either party for every term, not exceeding three, at which the cause necessarily remains on the calendar, not reached, or postponed, excluding that at which it is tried or heard, ten dollars.

(8.) SEC. VIII. When the judgment is for the recovery of money, interest from the time of the verdict or report, until the judgment be finally entered, must be computed by the clerk, and added thereto.

(9.) SEC. IX. The clerk must insert in the entry of judgment, on the application of the prevailing party, upon two days' notice to the other, the sum of the allowances for costs, as above provided, and the necessary disbursements, including the fees of officers allowed by law, the fees of witnesses, the necessary expenses of commissions, the compensation of referees, and the expense of printing the papers upon an appeal, which disbursements are in the statute, also termed charges. The disbursements must be stated in detail, and verified by affidavit, which must be filed. Whenever costs are allowed by statute, the charges are also allowed; and when costs are not allowed, the charges are not allowed, except where express provision is made therefor.

(10.) SEC. X. The fees of referees are three dollars to each, for every day spent in the business of the referees, but the parties may agree in writing upon any other rate of compensation, and thereupon such rate must be allowed.

(11.) SEC. XI. When an application is made to a court or referees to postpone a trial, the payment to the adverse party of a sum not exceeding ten dollars, besides the fees of witnesses, may be imposed as the condition of granting the postponement.

(12.) SEC. XII. Costs may be allowed on an original motion, or on an appeal from an order, in the discretion of the court, not exceeding ten dollars; and when costs are ordered against a party upon a motion, proceedings on his part may be stayed until payment thereof.

(13.) SEC. XIII. When costs are adjudged against an infant plaintiff, the guardian by whom he appears in the action is responsible for them,

Interest on verdict and report when allowed.

Costs how to be inserted in judgment.

The fees of referees.

Costs on postponement of trial.

Costs on motion.

Costs against infant plaintiff.

and judgment therefor may be entered against both the guardian and the infant.

(14.) SEC. XIV. When in an action for the recovery of money only, the defendant alleges in his answer, that before the commencement of the action, he tendered to the plaintiff the full amount to which he was entitled, and thereupon deposits in court for the plaintiff the amount so tendered, and the allegation be found true, the plaintiff cannot recover costs, but must pay costs to the defendant.

Costs not allowed when tender has been made.

(15.) SEC. XV. In an action prosecuted or defended by an executor, administrator, trustee of an express trust, or a person expressly authorized by statute, costs may be recovered, as in an action by and against a person prosecuting or defending in his own right, but such costs must, by the judgment, be made chargeable only upon the estate, fund, or party represented, unless the court direct the same to be paid by the plaintiff or defendant personally, for mismanagement or bad faith in the action or defense; but no costs are recoverable in such action if brought without leave of the judge of probate, against an executor or administrator within one year after the death of the person whom he represents, nor after that time, unless it appear that the demand was first presented to the executor or administrator, verified by oath, and payment demanded.

Costs in action by or against executors, &c.

(16.) SEC. XVI. [*As amended on page 12 of the amendments of 1852 to the revised statutes.*] When the decision of a court of inferior jurisdiction in a special proceeding, is brought before the supreme court or a district court for review, such proceeding is for purposes of costs, to be deemed an action at issue on a question of law, from the time the same is brought into the supreme court or district court, and costs thereon may be awarded and collected in such manner as the court may direct, according to the nature of the case.

Certain proceedings deemed an issue of law.

(17.) SEC. XVII. In all civil actions prosecuted in the name and for the use of the territory, or in the name and for the use of any county, the territory or county shall be liable for costs in the same cases and to the same extent as private parties.

Costs in actions by the territory or county.

(18.) SEC. XVIII. In an action in which the cause of action, after the commencement of the action, by assignment or any other manner, becomes the property of a person not a party to the action, and the prosecution or defense is thereafter continued, such person is liable for the costs in the same manner as if he were a party, and payment thereof may be enforced by order.

Costs against assignee of cause of action after action brought.

(19.) SEC. XIX. Upon the settlement before judgment of any action, no greater sum can be demanded from the defendant as costs, than at the rates prescribed by this chapter.

Costs on settlement.

(20.) SEC. XX. [*As amended on page 12 of the amendments of 1852 to the revised statutes.*] The attorney of a foreign corporation, against whom costs are awarded to a defendant, is responsible to such defendant therefor, to an amount not exceeding two hundred dollars; and the attorney neglecting to pay the same, after due proceedings against him, may be removed by the court; but he may relieve himself from responsibility at any time before judgment, by filing an undertaking for the payment to the defendant, of the costs and charges, executed by a sufficient surety.

Attorneys when responsible for costs.

(21.) SEC. XXI. In all civil actions and proceedings by or in the name of the United States, for the benefit of any county, instituted by any officer duly authorized for that purpose, and not brought on the relation or for the use of any citizen, or upon any penal statute, the county to be benefited shall be liable for costs in the same cases and to the same extent as if such suit or proceeding was instituted by an individual.

Costs in action by county, to be paid by county benefited.

(22.) SEC. XXII. When a suit or proceeding shall be instituted in

Costs in actions

by United States on relation of individual.

the name of the United States, on the relation of any citizen, such relation shall be entitled to and liable for costs, in the same cases and to the same extent as if such suit or proceeding had been instituted in his own name.

Court may award costs in proceedings on writs of mandamus.

(23.) SEC. XXIII. [As amended on page 12 of the amendments of 1852 to the revised statutes.] For actions and proceedings upon writs of mandamus, the supreme court or a district court may, in its discretion, award or refuse costs to any party therein, and upon refusing an alternative or peremptory mandamus, the court may award costs to be paid by the party applying for such mandamus.

Costs in actions, brought in name of another by assignee.

(24.) SEC. XXIV. When any action shall be brought in the name of another, by an assignee of any right of action, or by any person beneficially interested in the recovery in such action, such assignee or person shall be liable for costs in the same cases and to the same extent in which a plaintiff would be liable, and the payment of such costs may be enforced by attachment in all cases where judgment is not by law required to be rendered therefor, against such assignee or person interested.

Defendant entitled to costs on appeal.

(25.) SEC. XXV. [As amended on page 13 of the amendments of 1852 to the revised statutes.] In all civil actions tried before a justice of the peace, if the plaintiff shall appeal from a judgment in his favor, and shall not recover in the district court, a greater sum for debt or damages than he recovered by the first judgment, the defendant shall be entitled to costs; if the defendant appeal, and the amount of the plaintiff's recovery before the justice be reduced one-half or more in the district court, the defendant shall be entitled to costs; in all other cases of appeal from the judgment of a justice of the peace in such actions, the successful party shall be entitled to costs.

Interest accruing after first judgment not to be allowed in certain cases.

(26.) SEC. XXVI. In comparing the sums recovered by the two judgments, for the purposes specified in the preceding section, the sum, if any, allowed for interest accrued on the plaintiff's demand, after the first verdict, or judgment, shall not be included, and he shall not be considered as having recovered more on the appeal than on the first trial, merely on account of the addition of interest accrued between the two trials.

Where money is brought into court by defendant, costs may be recovered by plaintiff.

(27.) SEC. XXVII. When a defendant shall bring money into court and offer the same in satisfaction of the damages demanded by the plaintiff, the plaintiff shall in all cases be entitled to the costs which had previously accrued, though he may not recover a larger sum of damages than is so brought into court.

This chapter not to apply to justices' courts.

(28.) SEC. XXVIII. The foregoing provisions do not apply to justices' courts.

FILING SECURITY FOR COSTS.

When plaintiff required to file security for costs.

(29.) SEC. XXIX. When a suit shall be commenced in any court:

1. For, or in the name of the trustees of any debtor;
2. For, or in the name of any person being insolvent, who shall have been discharged from his debts pursuant to law, brought for the collection of any debt, contracted before the assignment of his estate; or,
3. For, or in the name of any person committed in execution for a crime; or,
4. In the name of any infant, whose next friend has not given security for costs; or,
5. For a plaintiff not residing within the jurisdiction of such court, or for several plaintiffs who are all non-residents; the defendant may require such plaintiff to file security for the payment of the costs that may be incurred by the defendant in such suit.

When plaintiff required to file security for costs.

- (30.) SEC. XXX. If after the commencement of a suit, all the plaintiffs shall become insolvent or non-resident, and be discharged as aforesaid, or be sentenced to imprisonment in the penitentiary for any term less than life, the defendant may also require such security to be filed. When plaintiff required to file security for costs.
- (31.) SEC. XXXI. The order shall be to file such security, and that all proceedings on the part of the plaintiff, be stayed until such security be filed, and the sureties shall justify if excepted to. Such order may be made by the court in which the action is pending, or by any judge thereof, in vacation, upon due proof by affidavit, of the facts entitling the defendant thereto. Order to file security for costs, what to contain.
- (32.) SEC. XXXII. Such security shall be given in the form of a bond in the penalty of at least one hundred dollars, with one or more sufficient sureties, to the defendant, conditioned to pay, on demand, all costs that may be awarded to the defendant in such action. Bond for security for costs.
- (33.) SEC. XXXIII. Such bond shall be filed with the clerk of the court in which the action is pending, and notice thereof be given to the defendant or his attorney. Bond how to be filed.
- (34.) SEC. XXXIV. Within twenty days after the service of such notice the defendant may except to the sufficiency of the sureties by giving notice of such exception to the plaintiff's attorney. Defendant may except to sufficiency of surety.
- (35.) SEC. XXXV. Within twenty days after such notice of exception the sureties shall justify by affidavit, that they are worth double the penalty of such bond over and above all debts, of which affidavit a copy shall be served on the defendant or his attorney, and such justification shall operate to discharge the order to stay proceedings. When sureties may justify.
- (36.) SEC. XXXVI. In the cases in which, according to the provisions of this chapter, a defendant at the commencement of an action, shall be entitled to require security for costs, the attorney for the plaintiff shall be liable for such costs, to an amount not exceeding one hundred dollars, until security therefor be filed as herein provided, whether such security shall have been required by the defendant or not. Attorneys when liable for costs.
- (37.) SEC. XXXVII. Such attorney may relieve himself from such liability by filing security as herein provided without being required to do so by the defendant, and by giving notice thereof to such defendant, or his attorney. How attorney may relieve himself from liability.

CHAPTER 63.

FEEs OF CERTAIN OFFICERS AND OTHER PERSONS.

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