

THE
STATUTES AT LARGE
OF THE
STATE OF MINNESOTA

COMPRISING
THE GENERAL STATUTES OF 1866
As amended by subsequent Legislation to the close of the Session of 1873
TOGETHER WITH
ALL LAWS OF A GENERAL NATURE IN FORCE, MARCH 7, A.D. 1873

WITH REFERENCES TO
JUDICIAL DECISIONS OF THE STATE OF MINNESOTA, AND OF OTHER
STATES WHOSE STATUTES ARE SIMILAR

TO WHICH ARE PREFIXED
THE CONSTITUTION OF THE UNITED STATES, THE ORGANIC ACT,
THE ACT AUTHORIZING A STATE GOVERNMENT, AND THE
CONSTITUTION OF THE STATE OF MINNESOTA

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CHAPTER LI.

OF COSTS.*

(This Chapter is Chapter LXVII. of the Statutes of 1866.)

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SECTION 1. *Compensation of attorneys left to agreement.*—The right of a party to agree with an attorney or counsel for his compensation is unrestricted, and the measure and mode of such compensation is 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.

Attorney has no lien for costs in absence of agreement for compensation, *Forbush v. Leonard et al.*, 8 Minn. 303.

SEC. 2. *Costs in district court allowed prevailing party.*—Costs are allowed to the prevailing party in actions commenced in the district court as follows:

First. To the plaintiff upon a judgment in his favor of one hundred dollars or more in an action for the recovery of money only, when no issue of fact or law is joined, five dollars. When an issue is joined, ten dollars.

Second. In all other actions except as hereinafter otherwise provided, ten dollars.

Third. To the defendant upon discontinuance or dismissal, five dollars.

Fourth. When judgment is rendered in his favor on the merits, ten dollars.

In an action to determine adverse claim to real property, answer denied that defendant claimed any estate except, etc.; held, it being found true, plaintiff not entitled to costs, *Brackett v. Gilmore*, 15 Minn. 245.

SEC. 3 (AS AMENDED BY ACT OF FEBRUARY 5, 1868). *Disbursements allowed in all cases in district courts, etc.*—In every action commenced in the district courts of this state or the court of common pleas for the county of Ramsey, the

* By what statute determined, *Coit v. Waples*, 1 Minn. 134. *Of costs in particular cases.*—In an action for injuries to real estate, *Turner et al. v. Holleran*, 8 Minn. 451. In trespass plaintiff's title may be drawn in question so as to entitle him to costs, *Booth v. Sherwood et al.*, 12 Minn. 246. Costs by stipulation, when court cannot control it, *Dow v. Steichen et al.*, 18 Minn. 26.

prevailing party shall be allowed his disbursements necessarily paid or incurred : *provided*, that in all actions for the recovery of money only, of which a justice of the peace has jurisdiction, the plaintiff, if he recover no more than fifty dollars, shall recover no disbursements, and if he recover less than fifty dollars, he shall pay the defendant's costs and disbursements, as allowed by law when judgment is rendered in favor of the defendant on the merits, which said costs and disbursements shall be taxed and allowed by the clerk upon notice the same as in other cases, and shall be deducted by the clerk from the amount recovered by the plaintiff, and in case the amount of such costs and disbursements exceed the amount recovered by the plaintiff, the clerk shall enter judgment against the plaintiff and in favor of the defendant for the amount of such excess, and the defendant may have execution thereon.

S. L. 1868, 131 ; *vide* also S. L. 1867, 129.

SEC. 4. *When there are several actions, costs allowed in one only, when.*—When several actions are brought on any instrument in writing, or in any other case for the same cause of action against several parties who might have been joined as defendants in the same action, no costs can 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 state ; but the disbursements of the plaintiff may be allowed to him as provided in the preceding section.

SEC. 5. *Costs in equitable actions rest in discretion of the court.*—In equitable actions, costs may be allowed, or not ; and if allowed, may be apportioned between the parties on 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.

SEC. 6. *Costs in action on judgment of a court of this state.*—Costs cannot be allowed to the plaintiff in an action upon a judgment of a court of this state, between the same parties, unless such action was brought with previous leave of the court, for cause shown ; but this prohibition does not apply to an action upon the judgment of a justice 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.

SEC. 7. *Interest allowed, when.*—When the judgment is for the recovery of money, interest from the time of the verdict or report, until the judgment is finally entered, shall be computed by the clerk, and added thereto.

SEC. 8. *Costs and disbursements, how taxed—objections—appeal.*—Costs and disbursements shall be taxed and allowed, in the first instance, by the clerk, upon two days' notice by either party, and inserted in the entry of judgment ; the disbursements shall be stated in detail and verified by affidavit which shall be filed ; the party objecting to any item shall specify in writing the grounds of objection, and the same, in case of appeal, shall be certified to the court by the clerk, and the appeal shall be heard and determined upon the objections so certified, and none other.

What may be taxed as costs.—Fees of witnesses—where trial is delayed after witness appears, when, *Andrews v. Cressy*, 2 Minn. 67. When fees will be allowed to defendant as witness,

Barry *v.* McGrade *et al.*, 14 Minn. 286. Printing papers not necessary, not taxable, Hart *et al. v.* Marshall, 4 Minn. 552. Papers must be printed to recover costs, Cooper *v.* Stenson, 5 Minn. 522. Party suffering erroneous costs to be taxed without objection, cannot object on appeal, Myers *et al. v.* Irvine *et al.*, 4 Minn. 553. After entry of judgment, remedy must be sought by correcting the judgment, Piper *v.* Branham, 14 Minn. 552. As to alleged errors in taxation of costs, Hurd *v.* Simonton, 10 Minn. 423; *vide* also Forbush *v.* Leonard *et al.*, 8 Minn. 303; also 2 Minn. 552.

SEC. 9 (AS AMENDED BY ACT OF MARCH 7, 1867). *Court may impose terms, when.*—Costs may be allowed on a motion or demurrer in the discretion of the court or judge not exceeding ten dollars, and may be absolute or directed to abide the event of the action.

S. L. 1867, 129.

SEC. 10. *Guardian ad litem of infant responsible for costs.*—When costs are adjudged against an infant plaintiff, the guardian by whom he appears in the action is responsible for them, and judgment therefor may be entered against both the guardian and the infant.

SEC. 11. *Defendant entitled to costs after tender, when.*—When in an action on contract, express or implied, 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 is found true, the defendant is entitled to costs and disbursements.

SEC. 12. *Costs chargeable on estate or fund, when.*—In an action prosecuted or defended by an executor, administrator, trustee of an express trust, or a person expressly authorized by statute, costs and disbursements may be recovered as in an action by and against a person prosecuting or defending in his own right, but the same shall by the judgment be made chargeable only upon the estate, fund, or party represented, unless the court directs the same to be paid by the plaintiff or defendant personally for mismanagement or bad faith in the action; but no costs or disbursements are recoverable in such action, unless it appears that the demand was first presented to the executor or administrator, verified by oath, and payment demanded.

SEC. 13. *Relator liable for costs, how.*—When an action or proceeding is instituted in the name of the state, on the relation of any citizen, such relator is entitled to and liable for costs and disbursements in the same cases, and to the same extent, as if such action or proceeding had been instituted in his own name.

SEC. 14. *Costs on appeal from justice of the peace.*—In civil actions tried before a justice of the peace, if the plaintiff appeals from a judgment in his favor, and does not recover in the district court a greater sum as damages than he recovered by the first judgment, the defendant is entitled to costs and disbursements; if the defendant appeals and the amount of the plaintiff's recovery before the justice is reduced one-half or more in the district court, the defendant is entitled to costs and disbursements; in all other cases of appeal from the judgment of a justice of the peace in such actions, the successful party is entitled to costs and disbursements.

SEC. 15. *Interest not considered in cases under preceding section.*—In comparing the sums recovered by the two judgments, for the purposes specified in the preceding section, the interest accrued on the plaintiff's demand, after the first judgment, shall not be considered.

COSTS IN THE SUPREME COURT.*

SEC. 16. *Costs in supreme court discretionary.*—Costs in the supreme court may be allowed in the discretion of said court, as follows :

First. To the prevailing party upon a judgment in his favor on the merits, not exceeding twenty-five dollars.

Second. Upon dismissal, not exceeding ten dollars.

Prevailing party entitled, *Sanborn v. Webster*, 2 Minn. 328; *Allen v. Jones*, 8 Minn. 202.
When not entitled, *Tillman et al. v. Jackson*, 1 Minn. 190.

SEC. 17. *Disbursements allowed in all cases.*—In all cases the prevailing party shall be allowed his disbursements necessarily paid or incurred.

SEC. 18. *Court may allow per centage, when.* In an action for the recovery of money only, said court may, if of opinion that the appeal was taken for delay merely, allow the plaintiff, in addition to costs and disbursements, a sum not exceeding three per cent. on the amount of the judgment recovered in the district court.

SECURITY FOR COSTS.

SEC. 19. *Security for costs required, when.*—When an action is commenced in the district court in the name of any plaintiff who is committed and in execution for a crime, or wherein the plaintiff is a non-resident of this state, or wherein all of several plaintiffs are non-residents of this state, or in the name and behalf of any foreign corporation, such plaintiff shall file with the clerk of the court wherein such action is brought, before the service of the summons therein, a bond in the penal sum of seventy-five dollars, executed by one or more sureties, payable to the clerk of such court, for the benefit of parties who may become entitled to disbursements or costs in such action, and conditioned for the payment of all disbursements and costs that may be adjudged against the plaintiff in the action. If, after the commencement of the action, all the parties plaintiff therein, become non-residents of this state, or the sureties in the bond above provided for remove from this state or become insolvent, the defendant may, on motion by order of the court, require an additional bond to be filed, payable and conditioned as herein provided.

SEC. 20. *Party neglecting to file security, proceedings may be stayed.*—If any party commences an action without filing a bond, or fails to provide an additional one, as above required, the court, on motion of the defendant, may order a stay of all proceeding in such action, or a dismissal of such action at the cost of the attorney commencing the same.

SEC. 21. *Bond may be put in suit, when.*—When judgment is entered against any party who has given security as above provided, and the disbursements and costs so adjudged against such party remain in whole or in part unpaid for ten days after the entry of judgment, such bond may be put in suit and prosecuted to final judgment and execution.

* Double costs when allowable, *St Martin v. Desnoyer*, 1 Minn. 156.