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GENERAL STATUTES

OF THE
STATE OF MINNESOTA

As Amended by Subsequent Legislation, with which are Incorporated
All General Laws of the State in Force December 31, 1894

COMPILED AND EDITED BY
HENRY B. WENZELL, Assisted by EUGENE F. LANE

WITH ANNOTATIONS BY
FRANCIS B. TIFFANY and Others

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CHAPTER 67.

COSTS.

§ 5497. Compensation of attorneys—"Costs" defined.

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.

(G. S. 1866, c. 67, § 1; G. S. 1878, c. 67, § 1.)

In looking through the statutes, where the term "costs" is used, in most instances, except in c. 67, it evidently includes disbursements. *Woolsey v. O'Brien*, 23 Minn. 71, 72.

An attorney has no lien except such as the statute gives. He can have a lien upon a judgment only for services in the action in which it is rendered. This lien cannot affect any one but his client, unless he give notice of the lien, specifying the amount. *Forbush v. Leonard*, 8 Minn. 303, (Gil. 267.) An attorney has no lien on a judgment unless there is a special agreement for his compensation. *Id.*

By contract between a plaintiff in an action and his attorney therein, the former agreed to pay the latter for his services a certain sum if he won the cause, and nothing if he failed to do so. The contract contained this further stipulation respecting the agreed compensation: "I hereby agree that he (the attorney) shall receive said money from the Minneapolis & St. Louis Railroad out of the amount due me from said railroad company for running through my land, to be paid when said suit is settled." Held, that the agreement was not champertous nor illegal. *Canty v. Lattener*, 31 Minn. 239, 17 N. W. Rep. 385.

An attorney and client may agree to an account rendered by the former for his services. *Beals v. Wagener*, 47 Minn. 489, 50 N. W. Rep. 535.

See *Crowley v. Le Duc*, 21 Minn. 412.

§ 5498. Costs allowed prevailing party in district court.

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.

(G. S. 1866, c. 67, § 2; G. S. 1878, c. 67, § 2.)

In an action in tort against several defendants, upon a verdict in favor of some of them, but against the others, those succeeding are entitled to costs. *Barry v. McGrade*, 14 Minn. 286, (Gil. 214.)

When several defendants who appear by the same attorney unite in the same answer, and there is one trial as to all, they are entitled jointly to statutory costs, and not severally. *Id.*

Where an action is dismissed at the trial for the plaintiff's failure to prove his case, the defendant is entitled only to five dollars costs. *Conrad v. Baldwin*, 44 Minn. 406, 46 N. W. Rep. 350.

See *Crowley v. Le Duc*, 21 Minn. 412.

**§ 5499. Costs in actions for price of labor or services—
Double costs in district or supreme court.**

If any person, partnership or corporation, having employed any person to perform any labor or render any services, shall neglect or refuse to pay the agreed price for such services or labor, if the price therefor has been agreed upon, or the reasonable value thereof, if the price has not been agreed upon, for thirty days after the same becomes due, and payment has been demanded, and the same shall be recovered by action, there shall be allowed and taxed

for the plaintiff and included in the judgment in addition to his disbursements as now allowed by law five dollars costs, if the judgment be recovered in a justice or municipal court; and double the costs heretofore provided by law, if the judgment be recovered in a district court or the supreme court of the state.

(1891, c. 41, § 1.)

The costs allowed on the recovery of the price and value of labor or services by this section may be recovered by the assignee of the person rendering the labor or services. *Clifford v. Northern Pac. R. Co.* (Minn.) 56 N. W. Rep. 590.

§ 5500. Disbursements—Taxation and allowance.

In every action commenced in the district courts of this state, or the court of common pleas for the county of Ramsey, the 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.

(G. S. 1866, c. 67, § 3, as amended 1868, c. 89, § 1; G. S. 1878, c. 67, § 3.)

Where the damages claimed in the district court exceed the jurisdiction of a justice of the peace, the plaintiff, recovering only fifty dollars, is entitled to costs and disbursements. *Greenman v. Smith*, 20 Minn. 418, (Gil. 370.)

Followed in *L. Kimball Printing Co. v. Southern Land Imp. Co.* (Minn.) 58 N. W. Rep. 868.

See, also, *Potter v. Mellen*, 36 Minn. 122, 30 N. W. Rep. 438.

A justice has no jurisdiction of an action for damages to real estate where the damages claimed exceed one hundred dollars. *Greggs v. Holleran*, 8 Minn. 451, (Gil. 401.) In such an action commenced in the district court, the damages claimed exceeding one hundred dollars, if the recovery by plaintiff be less than fifty dollars, the court may, in its discretion, allow costs. *Id.* The court exercises such discretion, when it affirms a taxation of the costs in favor of plaintiff, by the clerk. *Id.*

See *Robertson v. Davidson*, 14 Minn. 554, (Gil. 422.)

§ 5501. 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.

(G. S. 1866, c. 67, § 4; G. S. 1878, c. 67, § 4.)

§ 5502. Costs in equitable actions—Several defendants.

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 defences 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.

(G. S. 1866, c. 67, § 5; G. S. 1878, c. 67, § 5.)

The prevailing party in an equitable action is entitled, as a matter of right, to his disbursements, as distinguished from costs, which are in the discretion of the court. *Meter v. Knight*, 32 Minn. 205, 20 N. W. Rep. 142.

¹ An act to regulate the recovery of costs in action for price of labor or services Approved April 20, 1891.

§ 5503. Costs in action on judgment.

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.

(G. S. 1866, c. 67, § 6; G. S. 1878, c. 67, § 6.)

See Merchants' Nat. Bank v. Gaslin, 41 Minn. 552, 43 N. W. Rep. 483.

§ 5504. Interest on verdict, etc.

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.

(G. S. 1866, c. 67, § 7; G. S. 1878, c. 67, § 7.)

§ 5505. Taxation—Notice—Items of disbursement—Objections.

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; a copy of the items of the costs and disbursements, with the affidavit verifying the same, shall be served, with the notice of taxation. 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 objection so certified and none other.

(G. S. 1866, c. 67, § 8; G. S. 1878, c. 67, § 8; as amended 1885, c. 23.)

Under this section a party appealing from taxation of costs by the clerk can raise no objection not made before the clerk. Davidson v. Lamprey, 17 Minn. 32, (Gil. 16.)

The mode of stating objections to the taxation of costs is mere matter of practice, to be regulated by the court below. Id.

The taxation of costs by the clerk of the district court may be reviewed by the judge upon a motion in the nature of an appeal, and his decision may be reviewed by this court on writ of error upon the judgment. Andrews v. Cressy, 2 Minn. 67, (Gil. 55.)

An affidavit of costs must, in addition to showing that the costs have been paid or incurred, show *prima facie* that they were necessary. As to costs for witnesses, the affidavit should give the number of days, and dates of attendance of each witness. Id.

This court will not review errors in the taxation of costs, where no application to correct them has been made to the court below. Hurd v. Simonton, 10 Minn. 423, (Gil. 340.) The supreme court will not review the adjustment of costs, until it is passed on by the court below. Kent v. Bown, 3 Minn. 347, (Gil. 246.)

Allowance of disbursements in supreme court. Hart v. Marshall, 4 Minn. 552, (Gil. 434.)

See, as to affidavit of witnesses' fees, § 5547, note.

As respects the lien or validity of a judgment, the omission to tax and insert costs is a mere irregularity; but for the purpose of an appeal the judgment is not perfected till after taxation and insertion. Richardson v. Rogers, 37 Minn. 461, 35 N. W. Rep. 270.

An order affirming the clerk's refusal to tax and insert costs may be reviewed on appeal, though judgment had been entered without costs prior to the order. Fall v. Moore, 45 Minn. 517, 43 N. W. Rep. 404.

A judgment rendered in favor of the prevailing party for taxable costs, without notice, is not void, though subject to be corrected on application. Jakobsen v. Wigen, 52 Minn. 6, 53 N. W. Rep. 1016.

§ 5506. Costs on motions and demurrers.

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.

(G. S. 1866, c. 67, § 9; as amended 1867, c. 82, § 1; G. S. 1878, c. 67, § 9.)

The allowance of costs to the prevailing party, upon a motion for a new trial, rests in the discretion of the court. Siebert v. Mainzer, 26 Minn. 104, 1 N. W. Rep. 824.

§ 5507. Guardian of infant plaintiff 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.

(G. S. 1866, c. 67, § 10; G. S. 1878, c. 67, § 10.)

§ 5508. 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.

(G. S. 1866, c. 67, § 11; G. S. 1878, c. 67, § 11.)

§ 5509. 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.

(G. S. 1866, c. 67, § 12; G. S. 1878, c. 67, § 12.)

See *Lough v. Flaherty*, 29 Minn. 297, 13 N. W. Rep. 131.

§ 5510. Relator entitled to, and liable for, costs.

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.

(G. S. 1866, c. 67, § 13; G. S. 1878, c. 67, § 13.)

§ 5511. 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.

(G. S. 1866, c. 67, § 14; G. S. 1878, c. 67, § 14.)

If a defendant appeals to the district court from the judgment of a justice of the peace, and does not succeed in reducing the amount of the recovery before the justice one-half or more, the plaintiff is entitled to his costs and disbursements in the district court. *Watson v. Ward*, 27 Minn. 29, 6 N. W. Rep. 407.

A defendant who appeals from the judgment of a justice to the district court, and who, though he does not reduce the recovery against him one-half, succeeds on the only matter litigated in the action and appeal, is entitled to costs. *Foster v. Hausman* (Minn.) 56 N. W. Rep. 592.

See *Flaherty v. Rafferty*, 51 Minn. 341, 53 N. W. Rep. 644.

§ 5512. Same—Interest not to be considered.

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.

(G. S. 1866, c. 67, § 15; G. S. 1878, c. 67, § 15.)

§ 5513. Costs in criminal proceedings.

In all criminal actions, upon the conviction of the defendant, the court may, in its discretion, in addition to the punishment now or hereafter provided by law for such offense, and as a part of the sentence to be pronounced,

adjudge that the defendant shall pay the whole or any part of the costs and disbursements of the prosecution, and payment thereof may be enforced in the same manner as is or may be provided for enforcing such sentence, or by execution against his property.

(1881, c. 122, § 1; 2 G. S. 1878, v. 2, c. 67, § 15a.)

§ 5514. Same—Disposition.

The costs and disbursements, when collected, shall be paid into the treasury of the county where the conviction is had, for the use and benefit of such county: *provided*, the provisions of this act shall in no manner interfere with or change the payment of officers', witnesses', or jurors' fees, as now provided by law.

(1881, c. 122, § 2; G. S. 1878, v. 2, c. 67, § 15b.)

§ 5515. Supreme court—Allowance of costs 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.

(G. S. 1866, c. 67, § 16; G. S. 1878, c. 67, § 16.)

Where a new trial is ordered, nothing being said about the costs of the first trial, such costs are recoverable by the party who ultimately succeeds. *Walker v. Barron*, 6 Minn. 508, (Gil. 353.)

Costs, in discretion of court, must be allowed by its order. But a party waives his objection to their allowance by the clerk, where he does not appear and object. *Myers v. Irvine*, 4 Minn. 553, (Gil. 435.)

On appeal from an order refusing a new trial, if the order for judgment is modified, the appellant is the prevailing party. *Henry v. Meighen*, 46 Minn. 548, 49 N. W. Rep. 323, 646.

If the prevailing party neglects to have the costs taxed, the adverse party may cause judgment to be entered, under rule 30, without costs. *Osborne & Co. v. Paulson*, 37 Minn. 46, 33 N. W. Rep. 12.

The authority of the court to award costs is limited by the statute. *Atwater v. Russell*, 49 Minn. 57, 51 N. W. Rep. 629, and 52 N. W. Rep. 26.

Where several respondent lien claimants appear by one attorney, but one bill of costs can be allowed to all. *Menzel v. Tubbs*, 51 Minn. 364, 53 N. W. Rep. 653, 1017.

§ 5516. Same—Disbursements allowed in all cases.

In all cases the prevailing party shall be allowed his disbursements necessarily paid or incurred.

(G. S. 1866, c. 67, § 17; G. S. 1878, c. 67, § 17.)

The successful party is entitled to recover the expense of paper books in this court, only when they are printed. *Cooper v. Stinson*, 5 Minn. 522, (Gil. 416.)

Disbursements for printing irrelevant matter will not be allowed. *Henry v. Meighen*, 46 Minn. 548, 49 N. W. Rep. 323, 646; *Hefferen v. Northern Pac. R. Co.*, 45 Minn. 471, 476, 48 N. W. Rep. 1, 526.

As to disbursements where there are several respondents. *Menzel v. Tubbs*, 51 Minn. 364, 53 N. W. Rep. 653, 1017.

§ 5517. Same—Additional allowance—Costs to be paid before remand.

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 judgment in the district court; and in all cases, except where it is otherwise ordered by the court, the costs and disbursements provided for in this and the two preceding sections, together with the fees and charges of the clerk of said court, shall be paid before any *remittur* of the case shall be made or had, and as a condition precedent to any further proceedings in the cause by the adverse

² An act relating to costs and disbursements in criminal actions. Approved February 18, 1881. § 3 provides that "the provisions of this act shall not apply nor extend to any act done nor offense committed prior to the passage hereof."

or losing party in the district court or court below: *provided*, that whenever it appears, to the satisfaction of said court, that such party is unable to pay such costs in full, it shall be the duty of said court to remit the case to the court below upon payment of the clerk's fees only.

(G. S. 1866, c. 67, § 18; G. S. 1878, c. 67, § 18; as amended 1887, c. 188.)

See *West v. Eureka Imp. Co.*, 40 Minn. 394, 42 N. W. Rep. 87; *Burr v. Crichton*, 51 Minn. 343, 53 N. W. Rep. 645.

§ 5518. Security for costs required, when—Additional security.

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.

(G. S. 1866, c. 67, § 19; G. S. 1878, c. 67, § 19.)

§ 5519. Same—Neglect to file security—Stay of proceedings.

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 proceedings in such action, or a dismissal of such action at the cost of the attorney commencing the same.

(G. S. 1866, c. 67, § 20; G. S. 1878, c. 67, § 20.)

When a nonresident plaintiff fails to file security for costs, the objection must be taken by motion, not by answer. The court may allow the plaintiff to file security *nunc pro tunc*. *Henry v. Bruns*, 43 Minn. 295, 45 N. W. Rep. 444.

§ 5520. Same—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.

(G. S. 1866, c. 67, § 21; G. S. 1878, c. 67, § 21.)