

# REVISED LAWS

# MINNESOTA

## 1905

ENACTED APRIL 18, 1905 TO TAKE EFFECT MARCH 1, 1906

EDITED AND ANNOTATED BY  
MARK B. DUNNELL

PUBLISHED UNDER CHAPTER 185, LAWS 1905

ST. PAUL  
PUBLISHED BY THE STATE  
1906

The court is not required to make an order for its application to the judgment. Ordinarily the creditor should be left to his simple remedy of another execution (9-270, 254). To justify an order under this section the evidence must be direct, clear and convincing (81-368, 84+123). The debtor may be ordered to convey to a receiver an interest in real property situated in another state (35-231, 28+254; 34 Fed. 380). He may be ordered to assign to a receiver a claim against a municipal corporation although the latter denies the indebtedness (22-452). In an early case since overruled by statute an order directing a judgment debtor to turn over his watch was sustained (18-361, 331). It has been held that officer of a municipal corporation cannot be compelled to assign to a receiver his salary (33-132, 22+177. See § 4237). Where a judgment creditor let a portion of a building occupied by him as a homestead it was held that he could not be ordered to assign the lease to a receiver (26-286, 3+341). The judgment debtor cannot be ordered to pay over a specific sum of money received by him after the service of the order for examination, but paid out by him before the disclosure (51-230, 53+461. See 52-433, 54+482). It has been held that a city treasurer cannot be compelled to pay over the salary of a city fireman (66-110, 68+606. See § 4237).

**2. Appointment of receiver**—The appointment of a receiver is a matter of discretion with the trial court to be cautiously exercised (76-109, 78+964; 25-263; 65-64, 67+805; 35-231, 28+254; 70-346, 73+175; 66-66, 68+771; 22-452; 52-433, 54+482; 36-106, 30+402; 27-353, 7+364). A receiver should not be appointed where the creditor has a mortgage amply sufficient to satisfy the whole debt (65-64, 67+805). A receiver may be appointed although the only property disclosed is an interest in real estate situated in another state, and the debtor may be required to convey such interest to the receiver (35-231, 28+254). A receiver may be appointed immediately after granting an order for the examination of the debtor (25-263). The receiver may maintain an action to avoid a fraudulent conveyance of real estate by the judgment debtor, although there has been no transfer of the title to him (36-106, 30+402; 35-543, 29+340). In bringing an action the receiver must allege his appointment with sufficient fullness to show that he has authority (67-24, 69+475; 39-527, 40+331; 73-198, 75+1053).

**4324. Adverse claimants, etc.**—If it appears that any person alleged to have property of, or to be indebted to, the judgment debtor, claims an adverse interest therein, or denies the debt, such interest or debt may be recovered only in an action against such person by the receiver; but the judge may by order forbid a transfer or other disposition of such property or interest until a sufficient opportunity is given to the receiver to prosecute the action to judgment and execution, and may vacate or modify such order at any time on such security as he may direct. (5493)

22-452.

**4325. Person indebted may be examined**—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, upon proof, by affidavit or otherwise, to the satisfaction of the judge, that any person has property of the judgment debtor, or is indebted to him in an amount exceeding ten dollars, the judge may require such person, or any officer thereof if a corporation, upon such notice to any party as may seem proper, to appear and answer concerning the same. (5496)

30-487, 16+398; 66-66, 68+771.

## CHAPTER 78

### JURIES

**4326. Petit jury defined**—A petit jury is a body of twelve men, impaneled and sworn in the district court to try and determine, by a true and unanimous verdict, any question or issue of fact in a civil or criminal action or proceeding, according to law and the evidence as given them in court. (5597)

65-196, 68+53.

**4327. Number to be drawn**—Except as hereinafter provided, a number of petit jurors, not less than twenty-four, shall be drawn for each general term of the district court; but in his discretion the judge, by order filed with the clerk at least thirty days before any term, may direct that a greater number

4326-4336  
09 - - 200

4327  
07 - - 2  
07 - - 35

be drawn, not exceeding thirty-six in all, or that no petit jury be drawn for such term. (5598, 5601)

**4328. Qualifications, disabilities, and exemptions**—The qualifications, disabilities, and exemptions of petit jurors shall be the same as those prescribed by law in the case of grand jurors. (5599)

40-65, 41+459.

4329  
07 - 2  
07 - 35  
07 - 196

**4329. How drawn and summoned**—Petit jurors shall be drawn and summoned at the same time and in the same manner as is provided by law in the case of grand jurors. They shall be summoned to appear on the second day of the term, unless the judge or judges, by an order filed with the clerk at least fifteen days before the term, fix a different day in the term for their appearance, in which case they shall be summoned for the day so fixed. And the court in any district may fix such day, for any or all counties therein, by orders which shall remain in force until altered or annulled. (5600; '01 c. 80)

16-282, 249.

**4330. Ballots**—At the opening of the court the clerk shall prepare separate ballots, containing the names of the persons summoned as petit jurors, which shall be folded as nearly alike as possible, and so that the name cannot be seen, and be deposited in a sufficient box. (5602)

**4331. Trial of indictments—Proceedings**—When an indictment is called for trial, and before the jury is drawn, either party may require the names of all the jurors in the panel to be called, and that an attachment issue against those who are absent; but the court, in its discretion, may wait or not for the return of the attachment. (5603)

**4332. Ballots, how drawn**—Before the name of any person is drawn the box shall be closed and so shaken as to intermingle the ballots therein. The clerk shall then, without looking at the ballots, draw them from the box through a hole in the lid so large only as conveniently to admit the hand. (5604)

**4333. Ballots, how kept**—When a jury is completed the ballots containing the names of the jurors sworn shall be kept apart from the ballots containing the names of the other jurors until the jury so sworn is discharged, when the ballots containing their names shall be again folded and return to the box, and so on as often as a trial is had. (5605, 5606)

**4334. Juror absent or excused**—If a juror is absent when his name is drawn, or is set aside or excused from serving on the trial, the ballot containing his name shall be folded and returned to the box as soon as the jury is sworn. (5607)

4335  
07 - 2  
07 - 35

**4335. Talesmen**—When, by reason of challenge or other cause, a sufficient number of jurors, drawn and summoned, cannot be obtained for the trial of any cause, the court shall cause jurors to be returned from the bystanders, or from the county at large, to complete the panel. Such persons shall be qualified to serve as jurors, and shall be returned by the sheriff or his deputy, or by the coroner, or by any disinterested person appointed by the court. (5608-5610)

16-282, 249.

4336  
07 - 2  
07 - 35

**4336. Jurors, when and how selected**—The county board, at its annual session in January, shall select, from the qualified voters of the county, seventy-two persons to serve as grand jurors, and seventy-two persons to serve as petit jurors, and make separate lists thereof, which shall be certified and signed by the chairman, attested by the auditor, and forthwith delivered to the clerk of the district court. If in any county the board is unable to select the required number, the highest practicable number shall be sufficient. In counties whose population exceeds ten thousand no person shall be included in two successive annual lists, and in counties having two or more terms of court in one year, after the jurors have been drawn for any term of such court, the clerk shall strike from the original list the names of all persons who were drawn for such term, and notify the board thereof, which at

its next session shall likewise select and certify an equal number of new names, which shall be added by such clerk to the names in the original list. If such list is not made and delivered at the annual meeting in January, it may be so made and delivered at any regular or special meeting thereafter. (673, 675)

See § 5264 Note 1.

## CHAPTER 79

### COSTS AND DISBURSEMENTS

**4337. Agreement as to fees of attorney—Costs defined—**A party shall have an unrestricted right to agree with his attorney as to his compensation for services, and the measure and mode thereof; but certain sums may be allowed to the prevailing party for expenses in an action, which are termed costs. (5497)

1. **Definition—**The term "costs" as used in our statutes generally includes disbursements (23-71; 16-249, 221; 84-267, 87+846). The costs of the statute are commonly termed statutory costs (32-205, 20+142).

2. **Right to costs statutory—**46-162, 48+770; 23-372; 16-249, 221; 34-1, 24+458.

3. **An incident of the judgment—**Costs are a mere incident of the judgment and go as a matter of course with every judgment in an action of a legal nature without special directions and regardless of the regularity or correctness of the judgment (66-74, 68+770). A judgment is not affected by the taxation of costs until they are entered in it (16-38, 24).

4. **Legislative control—**29-425, 13+673; 34-216, 25+347; 63-384, 65+652.

5. **Application to special proceedings—**16-249, 221; 23-372; 46-162, 48+770.

6. **When court without jurisdiction—**17-41, 23; 30-206, 14+897; 66-74, 68+770.

7. **Stipulation as to costs—**18-26, 10; 30-156, 14+794.

8. **Belong to party not attorney—**78-408, 80+953, 81+210.

9. **When nominal damages recovered—**36-122, 30+438; 37-537, 35+379; 43-459, 45+866; 65-540, 68+181.

10. **Contract with attorney—**21-412.

11. **Liability of state—**The state is liable for costs and disbursements in civil actions brought by it, but not in criminal prosecutions (104+289). It is not liable in actions brought against it (104+816).

**4338. Costs in district court—**In actions commenced in the district court, costs shall be allowed as follows:

To plaintiff: (1) 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 issue is joined, ten dollars. (2) In all other actions, except as otherwise specially provided, ten dollars.

To defendant: (1) Upon discontinuance or dismissal, five dollars. (2) When judgment is rendered in his favor on the merits, ten dollars. (5498)

1. **Who prevailing party—**No general rule can be laid down as to who is the prevailing party (See 18-26, 10; 14-286, 214; 63-238, 65+457; 79-377, 82+669; 86-168, 90+376).

2. **On dismissal—**On dismissal for failure to prove a cause of action defendant is entitled to only five dollars costs (44-406, 46+850. See 51-153, 53+199). Where there is a regular trial and findings of fact and conclusions of law are made on which a judgment of dismissal is entered for defendant he is entitled to ten dollars costs (61-373, 63+1024).

3. **Several parties—**In an action for tort against several defendants on a verdict in favor of some of them but against others those succeeding are entitled to costs. Where 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 (14-286, 214). Where several defendants in good faith appear by separate attorneys and interpose separate defences by separate answers each is entitled, on a recovery in his favor, to separate costs, whether the action is on contract or for tort (57-167, 58+989; 59-258, 61+139).

4. **On new trial—**When 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 (6-508, 353; 4-553, 435. See 66-74, 68+770). Neither statute nor rule of court requires the payment of costs as a condition of granting a new trial (75-349, 77+988). The failure of plaintiff to pay costs awarded against him in a former action is ground for a stay of proceedings (6-53, 14).

5. **Two actions tried together—**76-48, 78+881.