CHAPTER 607

SUPREME COURT; COSTS AND DISBURSEMENTS

607.01 COSTS AND DISBURSEMENTS.

HISTORY. R.S. 1851 c. 72 s. 7; P.S. 1858 c. 62 s. 7; G.S. 1866 c. 67 ss. 16, 17; G.S. 1878 c. 67 ss. 16, 17; G.S. 1894 ss. 5515, 5516; R.L. 1905 s. 4353; G.S. 1913 s. 7989; G.S. 1923 s. 9486; M.S. 1927 s. 9486.

1. Generally
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1. Generally

On an appeal on behalf of a county from the decision of the county commissioners allowing a claim against the county, if the claimant recover part of his claim, costs cannot be awarded to the county. Kroshus v County of Houston, 46 M 162, 48 NW 770.

On an appeal from judgment or order, after being affirmed, the respondent shall be allowed statutory costs only in the appeals from the orders amending the findings. State Sash & Door v Adams, 47 M 399, 50 NW 360.

The authority of the supreme court to award costs is regulated and limited by statute. The supreme court has no power to grant costs to the defeated party. Atwater v Russell, 49 M 87, 52 NW 26.

Costs are recoverable in suits for the violation of ordinances of the city of Minneapolis as in civil actions. State v Harris, 50 M 129, 52 NW 531.

In an action to fix paternity of an illegitimate child, the defendant is not entitled to tax costs and disbursements in the instant case against the county or the complaining witness. State v Spencer, 73 M 103, 75 NW 893.

The item of $170.00 for copying exhibits is disallowed. The order settling the case shows that a transcript of these exhibits was incorporated in the settled case. The expense was a disbursement in the trial court. Itasca Co. v McKinley, 124 M 191, 144 NW 768.

Where it is unnecessary on appeal to print the entire record in order to present the questions raised on appeal, taxation of disbursements for that item will be cut down to the proper amount. Raski v Great Northern, 128 M 130, 150 NW 618.

Costs in an action to determine whether plaintiff had a right to enforce a partition of real estate are not expenses of making the partition, within the meaning of General Statutes 1913, Section 8037 (section 558.10). Hence, a motion to vacate a levy of an execution upon a judgment for costs in such action must be denied. Hunt v Meeker Abstract Co. 128 M 539, 151 NW 1102.

Sums aggregating $61.63 are deducted from costs and disbursements as taxed, and as so modified the taxation is affirmed. Thwing v McDonald, 134 M 155, 158 NW 820.

Whether the taxation is opposed or not, it is the duty of the clerk to satisfy herself that the items proposed for taxation are correct and taxable; and if she finds they are not, she should disallow them. State ex rel v Tifft, 185 M 103, 240 NW 354.

Costs are not taxable against the director of the United States veterans' bureau in a proceeding brought by him in his governmental capacity. Hines v Taft, 185 M 650, 240 NW 890, 241 NW 796.

Where a judgment for costs against plaintiff in the supreme court includes the costs of the federal supreme court, reversing the decision, the Minnesota supreme court affirmed, the Minnesota supreme court under section 607.02 has the power to grant remittitur without requiring such judgment for costs first to be paid. Rambo v Chicago Great Western, 197 M 652, 268 NW 870.

The instant case does not fall under the provisions of section 549.14 and the prevailing party is entitled to costs. Malcolmson v Goodhue County Bank, 198 M 571, 272 NW 157.

Failure to make proper reference to folios or pages of the record in their statement of facts leads to denial of any costs in excess of $15.00. Farmers v Folmer, 217 M 513, 15 NW(2d) 13.

2. Discretion of the court

Costs are not a matter of right but rest in the discretion of the court. They are not allowed if the appeal was improper under the circumstances.

They have been withheld:

When there was no substantial error in the judgment. Coit v Waples, 1 M 134 (110);

Where the case went off on an important question of practice not only new but difficult. State ex rel v Probate Court, 28 M 381, 10 NW 209;

Where the amount involved was less than $10.00 and no important questions were involved. Dunn v Barton, 40 M 415, 42 NW 289; Nally v Maley, 62 M 372, 64 NW 927; Donahey v Pagett, 74 M 20, 76 NW 949;

Where the defeated party was justified in relying on a former decision of the court. State ex rel v Nelson, 41 M 25, 42 NW 548;

Where an order was affirmed on grounds not urged by respondent. Bugh v Warner, 47 M 250, 50 NW 77; Duxbury v Shanahan, 84 M 353, 87 NW 944;

Where the only question involved was the right to costs in the court below and each party improperly proceeded with the appeal instead of applying promptly to have it dismissed. Thomas v Craig, 60 M 501, 62 NW 1133;

Where the proper book and brief were not filed three days before the argument as required by Rule 9. Lehigh Coal v Scallen, 61 M 63, 63 NW 245; Flanagan v City of St. Paul, 65 M 347, 68 NW 47;

Where the amount involved was small and the prevailing party secured a reversal mainly by having induced the court to exclude competent evidence. Sauer v Flynt, 61 M 109, 63 NW 252;

Where an order sustaining a demurrer was reversed but there was little merit in the cause of action set up in the complaint. Plano v Hallberg, 61 M 528, 63 NW 1114; Reynolds v Bondhus, 153 M 239, 190 NW 55;

Where an order overruling a demurrer was reversed but it was considered that the demurrer was unnecessary for the protection of any of defendant's substantial rights. Topping v Clay, 62 M 3, 63 NW 1038;

Where an order overruling a demurrer was reversed but admissions were made at the argument showing a liability. Marine Bank v Humphreys, 62 M 141, 64 NW 148; Vaule v Steenerson, 63 M 110, 65 NW 257;

Where the court was of the opinion that the litigation was needless and would prove fruitless. Nally v Maley, 62 M 372, 64 NW 927;

Where a case was improperly set down for oral argument in violation to Rule 15. Vaule v Steenerson, 63 M 110, 65 NW 257; Dickerman v City of St. Paul, 72 M 332, 75 NW 591; Ramgren v McDermott, 73 M 368, 76 NW 47; Olson v Hanson, 74 M 337, 77 NW 231; Larson v Duekleth, 74 M 402, 77 NW 220; Thompson v Ferch, 78 M 520, 81 NW 520; Ford v Berg, 79 M 464, 82 NW 1118; Taylor v St. Paul Railway, 80 M 331, 83 NW 189; Powell v Luders, 84 M 372, 87 NW 940; Jenkinson v Koester, 86 M 155, 90 NW 382;

Where an order denying a new trial was affirmed but with directions to the trial court to allow the complaint to be amended to conform to the facts proved, there having been no application for leave to amend on the trial, although objec-

tion to the variance was made by the defendant. Adams v Castle, 64 M 505, 67 NW 637;

Where the appellant failed to call attention of the trial court to the fact that the damages assessed by the court were more than authorized by the complaint. Campbell v Loeb, 72 M 76, 74 NW 1024;

Where the only error in the judgment was the inclusion of certain trifling costs. Berryhill v Carney, 76 M 319, 79 NW 170;

Where the decision went off on a point not clearly made by the appellant and was probably not considered by the trial court. Jones v Chicago, St. Paul, Mpls. & Omaha Ry. Co. 80 M 488, 83 NW 446;

Where the appeal was on a trifling question of pleading. Cordill v Minnesota Elevator Co. 89 M 442, 95 NW 306; Lading v City of Duluth, 153 M 464, 190 NW 981;

Because of inclusion in the brief of improper matter. Martin's Estate, 166 M 269, 207 NW 618;

Because of unnecessary copying in the brief of pleadings, an exhibit, and the decision under review. Kewitsch v Beer, 168 M 165, 209 NW 871;

The same fire caused all the losses, and the same attorney appeared for plaintiff in all cases. Only one argument was made on appeal, and only one paper book printed. In the instant case the circumstances of the several cases require the court to allow costs of $25.00 each to each of three plaintiffs, and $10.00 to one on dismissal, or $85.00 in all. Babcock v Canadian Northern, 117 M 434, 136 NW 275.

The six actions were tried as one, and plaintiffs may be allowed only a total of $35.00 to the apportioned pro rata. Nelson v Canadian Northern, 117 M 528, 136 NW 280.

Statutory costs denied successful appellant because of excessive length of his brief. Peterson v Pete-Erickson Co. 186 M 583, 244 NW 68.

Failure to plead the affirmative defense of settlement and release until the trial was well advanced is disapproved, and statutory costs are denied to the successful respondent. Barrett v Shambeau, 187 M 430, 245 NW 830.

Defendant should not be allowed the statutory costs of $25.00, for no exception was taken at the trial to the instruction which permitted the jury to render an excessive verdict. A supersedeas bond should have been given in the first place. The expense of the prior bond cannot be taxed. Hackenjos v Kemper, 193 M 37, 257 NW 518, 258 NW 433.

Statutory costs denied because of deliberate and extended reference in brief for respondent to facts, outside of the record, said to have occurred since the hearing. Whaling v County of Itasca, 194 M 302, 260 NW 299.

Because of "useless repetition" in the record no statutory costs will be allowed the defendant. Lestico v Kuehner, 204 M 133, 283 NW 122; McDermott v Mpls. & Southern Ry. Co. 204 M 215, 283 NW 116.

Usually on this second appeal the appellate court would dismiss with cause, but under the circumstances in the instant case the dismissal is without costs to either party. Mitchell v Bazille, 216 M 378, 13 NW(2d) 20.

3. Prevailing party

When the court reverses, overrules or modifies the judgment or order from which the appeal is taken the appellant is the prevailing party and entitled to costs in the absence of special circumstances rendering the appeal improper. Coit v Waples, 1 M 134 (110); Moody v Stephenson, 1 M 401 (289); Sanborn v Webster, 2 M 323 (277); Allen v Jones, 8 M 202 (172); Nelson v Munch, 30 M 132, 14 NW 578; Henry v Meighen, 46 M 548, 49 NW 323; Atwater v Russell, 49 M 57, 52 NW 26.

Where several plaintiffs or defendants join in an appeal and the judgment or order is modified as to some of the appellants and affirmed as to others, the respondent is entitled to costs and disbursements against those as to whom it is affirmed, and those as to whom it is modified are entitled to costs and disbursements against the respondent. Nelson v Munch, 30 M 132, 14 NW 578.

Where the rights of several parties defendant, as related to the subject of the action are conflicting, and the judgment is in favor of some and against others, a

defeated party may serve his notice of appeal upon his codefendants as well as upon the plaintiff, and have the rights of the defendants, as between themselves, finally adjudicated in the supreme court. The authority of the supreme court to award costs is regulated and limited by the statute. Atwater v Russell, 49 M 57 (86), 52 NW 26.

Where there are several prevailing parties each is entitled to costs except where several appear by the same attorney or attorneys in which case but one bill can be allowed. Menzel v Tubbs, 51 M 365, 53 NW 1017.

In the instant case, (as in State v Buckman, 95 M 272, 104 NW 289) the action is not one by the state in its governmental capacity. Plaintiff proceeded upon the theory of an alleged property right. It differs from cases where the state authority is involved in penal actions; those to enforce the payment of taxes (State v Northwestern, 101 M 192, 112 NW 68); or to determine the legality of the organization of a municipal subdivision of the state. (State v Village of Dover, 113 M 452, 130 NW 539). This being an ordinary action for the recovery of money, the taxation in favor of the defendant is affirmed. State v Fullerton, 124 M 154, 144 NW 755.

Appeals in three actions between the same parties and involving identical questions of law, were by stipulation, presented together, with one record, one brief, one oral argument, and one attorney on each side. Only one allowance of statutory costs should be made. Hokanson v Western Empire Land Co. 132 M 74, 155 NW 1065.

Costs and disbursements in partition suits may, under General Statutes 1913, Section 8037 (section 558.10), be apportioned between the parties in the district court; and error was committed, in the instant case, against plaintiff by an equal apportionment here, since he was not the prevailing party upon the real issue tried. Hunt v Meeker County, 135 M 134, 160 NW 496.

In a proceeding to vacate certain public grounds at Frontenac the proceeding is special, and there is no provision for the recovery of costs. Petition of Schaller, 193 M 615, 259 NW 826.

The words in the opinion: "We therefore think the attorney's fees allowed should be eliminated and only the ordinary statutory cost and disbursements taxed against applicants", referred to the costs and disbursements in district court and not to those on appeal. On appeal the appellants are the prevailing party, while on the main proposition the holding was against them yet they succeeded in reducing the amount to be paid in a very substantial amount. Chicago & N. W. Ry. Co. v. Verschingel, 197 M 589, 268 NW 709.

4. Dismissal

Appeal by plaintiff from order of district court. Each party moved to dismiss the appeal as moot. Each moved for costs as to him and denied to the other party. Costs were awarded to defendant. Ridgway v Mirkovich, 192 M 618, 256 NW 521.

5. Disbursements allowable

The expense of printing unnecessary and immaterial matter will not be allowed. Hart v Marshall, 4 M 552 (434); Hefferen v Northern Pacific, 45 M 471, 48 NW 1; Henry v Meighen, 46 M 548, 49 NW 323; Winston v Hart, 65 M 439, 68 NW 72; Curry v Sandusky Fish, 88 M 485, 93 NW 896.

Unless papers are printed as required by rule of court, the cost of printing them cannot be recovered. Cooper v Stinson, 5 M 522 (416).

Where a bill of exceptions or case is prepared for and used on a motion for a new trial which is granted, with costs of motion, the expense of preparing the same is not taxable as a disbursement in the supreme court on an appeal from the order granting a new trial. But where a bill of exceptions or case is prepared exclusively for use on appeal and is in fact so used, the expenses incurred may be taxed in the supreme court. Pinney's Will, 27 M 280, 6 NW 791, 7 NW 144; Linne v Forrestal, 51 M 249, 63 NW 653; Wadleigh v Duluth Street Railway, 92 M 415, 100 NW 362.

Objection that an excessive price was paid for printing the paper book will not be considered in the absence of an affidavit. Hefferen v Northern Pacific, 45 M 471, 48 NW 526.

When several cases, involving precisely the same question, are briefed and argued together as one and by the same counsel, on records differing merely in names, dates and amounts, counsel for appellant is bound to ask the court to dispense with the paper book in each case and the expense of printing only one will be allowed. Fitzgerald v Hennepin Loan Co. 56 M 424, 59 NW 191; Clay County v Alcox, 88 M 4, 92 NW 464.

If a brief contains improper reflections on the trial court, the expense of printing will not be allowed. Wood v Chicago, St. Paul, 66 M 49, 68 NW 462.

The appellant, if the prevailing party, is entitled to tax disbursements for certifying and printing such matter as is reasonably necessary to present his assignments of error, although he does not prevail in all of them. Curry v Sandusky Fish Co. 88 M 485, 93 NW 896.

Laws 1903, Chapter 239, authorized the taxation by the prevailing appellant of such reasonable sum as may have been paid to a surety company for an appeal bond. Wadleigh v Duluth Street Railway, 92 M 415, 100 NW 362.

The matter of disbursements on appeals to the supreme court between adverse parties in action at law is purely statutory. The statutes provide that the losing party shall pay the disbursements necessarily incurred by the prevailing party. The court has no discretion either in the allowance, disallowance, or apportionment of the same, and the only question involved in the instant case is whether the items sought to be taxed were incurred by defendant in consequence of plaintiff's appeal. It is clear in this case they were not. Hess v Great Northern, 98 M 202, 108 NW 803; Krętz v Fireproof Storage, 127 M 312, 149 NW 955.

For printing paper book and brief costs may be taxed at 60 cents per page in large cities and 75 cents in smaller cities. Johnson v Young, 127 M 467, 149 NW 940.

In taxation of costs and disbursements, the general rule is that the prevailing party may collect the expense of the record and briefs only when they are printed. State ex rel v Tifft, 185 M 103, 240 NW 354.

Where three cases were consolidated into one, the cost of printing the evidence, common to all three cases, was properly pro rated among the three. Larson v Tweten, 185 M 652, 242 NW 378.

The disallowance of the costs of transcript in the appellant's taxation of costs was proper the transcript having been ordered for the purpose of a second motion for a new trial which was in effect a motion "to vacate an appealable order". Ross v Duluth, Missabe, 203 M 314, 281 NW 271.

Appellants only prevailed in part on their appeal. There must be an allocation of printing costs. Only 364 pages of the record, and 126 pages of the printed exhibits may be charged against the unsuccessful respondent at 90 cents per page, plus other items. Erickson v Wells, 217 M 384, 15 NW(2d) 459.

607.02 ADDITIONAL ALLOWANCE; COSTS, WHEN PAID.

HISTORY. R.S. 1851 c. 81 s. 30; P.S. 1858 c. 71 s. 30; G.S. 1866 c. 67 s. 18; G.S. 1878 c. 67 s. 18; 1887 c. 188; G.S. 1894 s. 5517; R.L. 1905 s. 4354; G.S. 1913 s. 7990; G.S. 1923 s. 9487; M.S. 1927 s. 9487.

As the appeal by the defendant was entirely for the purpose of delay, the percentage penalty provided by Laws 1887, Chapter 188, may be assessed. West v Eureka Improvement Co. 40 M 394, 42 NW 87; Burr v Crichton, 51 M 343, 53 NW 645; Maxwell v Schwartz, 55 M 414, 57 NW 141; Bardwell v Brown, 57 M 140, 58 NW 872.

Under General Statutes 1894, Section 5517 (section 607.02), this case reported in 71 M 438 was properly sent down without payment of costs. Fonda v St. Paul Railway, 72 M 1, 80 NW 366; Nason v Barrett, 141 M 223, 169 NW 804.

The record discloses no reason for questioning the good faith of the appeal or of the defense. The court declines to impose a penalty. Nichols v Rodgers, 112 M 250, 127 NW 923.

Plaintiff receiver does not come within the proviso of Revised Laws 1905, Section 4354 (section 607.02), unless it is shown that the creditors are unable to pay. Judgment for costs and disbursements should not be entered against a receiver personally under Revised Laws 1905, Section 4349 (section 549.14), unless mismanagement or bad faith is made to appear. Telford v Henrickson, 122 M 531, 142 NW 200.

Appellant cannot dismiss an appeal by merely serving a notice of dismissal on the respondent. Order and judgment affirmed under Rule 12 for failure to serve record and brief, and a three per cent penalty is assessed. Greenhut v Oreck, 134 M 464, 157 NW 327.

The district court had the power in this case to stay further proceedings on the part of the plaintiff until he paid the judgment for costs rendered in the federal supreme court. State ex rel v District Court, 139 M 468, 166 NW 1080.

It appearing to the satisfaction of the court that plaintiff is unable to pay the judgment for costs in full, the remittitur is granted without payment of the costs incurred in the federal supreme court. Rambo v Chicago Great Western, 197 M 653, 268 NW 870.