

CHAPTER 549

COSTS, DISBURSEMENTS

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NOTE: For rules of civil procedure, district court, see Appendix 8.

549.01 AGREEMENT AS TO FEES OF ATTORNEY. 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.

[R. L. s. 4337] (9470)

549.02 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 \$100 or more in an action for the recovery of money only, when no issue of fact or law is joined, \$5; when issue is joined, \$10. (2) In all other actions, except as otherwise specially provided, \$10.

To defendant: (1) Upon discontinuance or dismissal, \$5. (2) When judgment is rendered in his favor on the merits, \$10.

[R. L. s. 4338] (9471)

549.03 ACTIONS FOR SERVICES; DOUBLE COSTS. When any person having employed another to perform any labor or service, shall neglect or refuse for 30 days after the same is due and payment demanded to pay the agreed price, or the reasonable value if there be no agreement, and the same shall be recovered by action, there shall be allowed to the plaintiff, and included in his judgment, in addition to his disbursements allowed by law, \$5 costs if the judgment be recovered in a justice court and a like sum if the judgment be recovered in a municipal court where no statutory costs are now allowed in such municipal court in such action, and double costs in all other actions wherein costs are recoverable or on appeal.

[R. L. s. 4339; 1907 c. 200 s. 1] (9472)

NOTE: See section 181.17.

549.04 DISBURSEMENTS; TAXATION AND ALLOWANCE. In every action in a district court, the prevailing party shall be allowed his disbursements necessarily paid or incurred. In actions for the recovery of money only, of which a municipal court has jurisdiction, the plaintiff, if he recover no more than \$50, shall not recover any disbursements.

[R. L. s. 4340; 1943 c. 508 s. 1] (9473)

549.05 COSTS IN CERTAIN CASES COMMENCED IN DISTRICT COURT OF FOURTH JUDICIAL DISTRICT COGNIZABLE BY MUNICIPAL COURT. In any action commenced in the district court of the fourth judicial district, no costs or disbursements shall be allowed the plaintiff where there is a municipal court in the district where such action is brought, having jurisdiction of the subject matter and in which jurisdiction of the defendant or defendants could be acquired, and in case the amount of recovery by the plaintiff in such an action is less than \$200, the plaintiff shall pay the defendant's costs and disbursements.

[1925 c. 326] (9473-1)

549.06 SEVERAL ACTIONS; COSTS, HOW ALLOWED. When several actions are brought on one instrument, or for the same cause of action, against several parties who might have been joined as defendants in the same action, costs shall be allowed to the plaintiff in but one of such actions, to be selected by him, if at

the commencement of such action the defendants in the other actions were openly within the state; but plaintiff's disbursements may be allowed as provided in section 549.05.

[R. L. s. 4341] (9474)

549.07 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 defenses by separate answers, and plaintiff fails to recover judgment against all, the court may award costs to such defendants as have judgment in their favor, or any of them.

[R. L. s. 4342] (9475)

549.08 ACTION ON JUDGMENT. Costs shall not be allowed to plaintiff in an action upon a domestic judgment between the same parties, unless such action was brought with previous leave of the court for cause shown; but this shall not apply to an action upon the judgment of a justice brought in another county or in the same county where the summons was not served upon all the defendants, or in case of 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.

[R. L. s. 4343] (9476)

549.09 INTEREST ON VERDICT. When the judgment is for the recovery of money, including a judgment for the recovery of taxes, interest from the time of the verdict or report until judgment is finally entered shall be computed by the clerk and added thereto.

[R. L. s. 4344; 1909 c. 371 s. 1] (9477)

549.10 [Superseded, Rules of Civil Procedure, Rules 54.04, 86.01 and 86.02]

549.11 COSTS ALLOWED ON MOTION OR DEMURRER. Costs may be allowed on motion, demurrer, or appeal from taxation of costs, in the discretion of the court or judge, not exceeding \$10, and may be absolute, or directed to abide the event of the action.

[R. L. s. 4346] (9479)

549.12 AGAINST GUARDIAN OF INFANT PLAINTIFF. When costs or disbursements are adjudged against an infant plaintiff, the guardian by whom he appears in the action shall be responsible for them, and judgment therefor may be entered against both infant and guardian.

[R. L. s. 4347] (9480)

549.13 DEFENDANT AFTER TENDER. 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 shall be entitled to costs and disbursements.

[R. L. s. 4348] (9481)

549.14 CHARGEABLE ON ESTATE OR FUND. In an action prosecuted or defended by an executor, administrator, trustee of an express trust, or 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. The same shall be made chargeable only upon the estate, fund, or party represented, unless the court shall direct 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 against an executor or administrator unless it appears that the demand was first presented to him, verified by oath, and payment demanded.

[R. L. s. 4349] (9482)

549.15 RELATOR ENTITLED TO, AND LIABLE FOR, COSTS. When an action or proceeding is instituted in the name of the state on the relation or petition of any citizen, such relator or petitioner 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.

[R. L. s. 4350] (9483)

549.16 APPEAL FROM JUSTICE. 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 appellate court a greater sum as damages than in the former trial the defendant shall be entitled to costs and disbursements; if the defendant appeals, and the amount of plaintiff's recovery before the justice is reduced one-half or more,

the defendant shall be entitled to costs and disbursements. In all other cases of appeal from the judgment of a justice in such actions, the successful party shall be entitled to costs and disbursements. In comparing the sums recovered by the two judgments, the interest accrued on plaintiff's demand after the first judgment shall not be considered.

[R. L. s. 4351] (9484)

549.17 ADDITIONAL COSTS ON CHANGE OF VENUE; AMOUNT; PAYMENT OR WAIVER OF; TAXATION. When service of summons is made upon a defendant within a county of which he is an actual resident at the time of such service, and the place of trial of such action is thereafter changed to such county in the manner provided by section 542.10, or when service of summons is made upon a defendant in a county of which he is not a resident, and the place of such trial is in like manner changed to a county of which the defendant has been an actual resident for more than one year immediately preceding such service, which fact shall be set forth in defendant's affidavit for change of venue, the plaintiff shall forthwith in either case, pay to each defendant demanding such change of venue the sum of \$10 as additional costs.

No judgment shall be entered by plaintiff in any cause, the venue of which has been changed as aforesaid, until the plaintiff shall have filed with the clerk of court a receipt for, or a waiver of, such sum by all of the defendants who demanded such change of venue, or their respective attorneys. Such sums if not paid by plaintiff, or waived by defendant, may be taxed against plaintiff by defendant as other costs if defendant prevails, or deducted from plaintiff's judgment, if plaintiff prevails. The provisions of this section shall not apply to causes where there are several defendants residing in different counties, or an even number of defendants, and the place or trial is determined by joinder of demands or nearness to the county-seat and not by actual residence of the defendants as of right.

[1925 c. 242 s. 1] (9487-1)

549.18 SECURITY FOR COSTS. When an action is begun in the district court by a plaintiff who is committed for a crime, or is a non-resident or a foreign corporation, or when such action is brought into the district court on appeal by defendant, such plaintiff shall file a bond to the clerk, before service of summons, or in case of appeal within five days after perfecting the same, in the sum of at least \$75, conditioned for the payment of all costs and disbursements that may be adjudged against him. If, after the commencement of the action or the taking of an appeal, all parties plaintiff therein become non-residents, or the sureties on the bond remove from the state or become insolvent, the court, on motion, may require such bond, or an additional bond, to be filed, conditioned as aforesaid. This section shall not apply to any action brought for the recovery of wages or claims for personal services.

[R. L. s. 4355] (9488)

549.19 NEGLECT TO FILE SECURITY; PROSECUTION OF BOND. When any party shall commence an action without filing a bond, or fail to provide an additional bond when so required, the court, on motion of defendant, may order a stay of all proceedings in such action, or a dismissal thereof at the cost of the attorney commencing the same. When judgment is entered against any party who has given security as required, and the costs and disbursements adjudged against him remain unpaid in whole or in part for ten days, such bond may be put in suit and prosecuted to final judgment.

[R. L. s. 4356] (9489)