

GENERAL STATUTES

OF THE

STATE OF MINNESOTA

36

IN FORCE

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SUPPLEMENT, 1879-1888,

WITH

ANNOTATIONS AND GENERAL INDEX TO BOTH VOLUMES.

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§ 342. (Sec. 304.) Order for application of property upon judgment.

The scope and purpose of the proceedings is the discovery of the debtor's property, both that which is liable to execution, and equitable interests belonging to him not so liable; and to compel the application of both, if not exempt, to the satisfaction of the judgment. *Flint v. Webb*, 25 Minn. 263.

See *Towne v. Campbell*, 35 Minn. 231, 28 N. W. Rep. 254; *Knight v. Nash*, 22 Minn. 452, 455.

§ 343. (Sec. 305.) Appointment of receiver.

The appointment of a receiver in such proceedings is a matter resting in the sound discretion of the court before whom they are instituted. *Flint v. Webb*, 25 Minn. 263.

A receiver may be appointed though the only property disclosed is an interest in real estate situate in another state, and the debtor may be required to convey such interest to the receiver. *Towne v. Campbell*, 35 Minn. 231, 28 N. W. Rep. 254.

An order made upon a disclosure in proceedings supplementary to execution, directing the assignment of certain claims belonging to the judgment debtor, and appointing a receiver to collect the same, is an appealable order under Gen. St. c. 86, § 8. *Knight v. Nash*, 22 Minn. 453.

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 property in question to the receiver. *Dunham v. Byrnes*, 36 Minn. 106, 30 N. W. Rep. 402.

§ 344. (Sec. 306.) Adverse claims—Proceedings.

A debt due from a municipal corporation to a judgment debtor, even though denied by the corporation, may be reached by a final order upon disclosure, directing the transfer of the claim, and appointing a receiver to collect it for the benefit of the creditor. The rule that a debt due from a municipal corporation cannot be reached by process of garnishment has no application to an order of this character. *Knight v. Nash*, 22 Minn. 453.

§ 345. (Sec. 307.) Contempt.

See *State v. Becht*, 23 Minn. 411; *Towne v. Campbell*, 35 Minn. 231, 232, 28 N. W. Rep. 254.

***§ 347. Examination of third party.**

See *Menage v. Lustfield*, 30 Minn. 487, 16 N. W. Rep. 398.

CHAPTER 67.

COSTS.

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

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,

sale, will pass by his deed whereby he "grants, bargains, sells, releases, and quit-claims all right, title, interest, claim, or demand" in or to the land; and when the time to redeem expires without redemption, the title under the execution sale will vest in the grantee in the deed. *Lindley v. Crombie*, 31 Minn. 232, 17 N. W. Rep. 372.

See *Whitney v. Huntington*, 34 Minn. 458, 460, 26 N. W. Rep. 636.

§ 323. (Sec. 291.) Redemption—By whom.

SUBD. 1. The owner of real estate sold on execution may redeem, without paying other liens that may be held by the purchaser. *Warren v. Fish*, 7 Minn. 432, (Gil. 347.)

A redemption by the owner terminates the sale, and restores the estate to its condition before the sale, except as to the judgment under which the sale was made. *Id.*

SUBD. 2. A creditor of an estate gets no lien upon the real estate of the deceased, so as to be entitled to redeem from foreclosure of a mortgage executed by him in his life-time, merely by the allowance of such creditor's claim against the estate. *Whitney v. Burd*, 29 Minn. 203, 12 N. W. Rep. 530.

When, upon foreclosure by advertisement of a mortgage embracing two parcels of land, such parcels have been separately sold to the mortgagee, at a separate price for each, a junior mortgagee of one of the parcels can redeem from the sale that parcel only which is embraced in his mortgage. *Tinkcom v. Lewis*, 21 Minn. 132. The rule is the same when such junior mortgagee has foreclosed his mortgage by advertisement, and has purchased, at the foreclosure sale, the parcel embraced in his mortgage. *Id.*

Rule in *Pamperin v. Scanlan*, 28 Minn. 345, 9 N. W. Rep. 868, that a creditor redeeming need not pay liens held by the purchaser at an execution or mortgage sale subsequent to that on which the sale was had, and prior to that under which he redeems, if such purchaser has not, with respect to such subsequent liens, placed himself in the line of redemption by complying with the statute, followed and applied. *Parke v. Hush*, 29 Minn. 434, 13 N. W. Rep. 668.

§ 324. (Sec. 292.) Same—Order.

See *Parke v. Hush*, 29 Minn. 434, 436, 13 N. W. Rep. 668.

§ 325. (Sec. 293.) Manner of redeeming.

When a lien-holding creditor seeking to redeem from a foreclosure sale produces to the sheriff the original instrument evidencing his lien, with the certificate of record indorsed thereon, this is a sufficient compliance with the statute which requires the production of a certified copy of such instrument. *Tinkcom v. Lewis*, 21 Minn. 132.

A party who redeems and files with the sheriff the papers required by the statute need not give any other notice of his redemption. *Warren v. Fish*, 7 Minn. 432, (Gil. 347.)

See *Whitney v. Burd*, 29 Minn. 203, 204, 12 N. W. Rep. 530.

§ 328. (Sec. 296.) Restraining waste.

See *Whitney v. Huntington*, cited in note to § 277, *supra*.

§ 330. (Sec. 298.) Joint debtors and sureties—Subrogation, etc.

Subrogation of joint debtor, see *Ankeny v. Moffett*, 33 N. W. Rep. 820.

TITLE 24.

PROCEEDINGS SUPPLEMENTARY TO THE EXECUTION.

§ 337. (Sec. 299.) Order for examination of judgment debtor.

A judgment creditor, upon the return unsatisfied in whole or in part of an execution issued to the proper county, is, without any other fact, entitled to an order requiring the debtor to appear and answer concerning his property. *Kay v. Vischers*, 9 Minn. 270, (Gil. 254.)

Where the county in which a judgment debtor resides is attached to another for judicial purposes, under § 33, c. 64, Gen. St., the execution may, for the purpose of supplementary proceedings, be issued to the latter company. *Beebe v. Fridley*, 16 Minn. 518, (Gil. 467.)

See *Knight v. Nash*, 22 Minn. 452, 453.

that the agreement was not champertous nor illegal. *Canty v. Lattner*, 31 Minn. 239, 17 N. W. Rep. 835.

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

§ 2. Costs in district court.

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. 236, (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.*

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

§ 3. Disbursements—Taxation and allowance.

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.)

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.)

§ 5. Costs in equitable actions.

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.

§ 8. 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. (*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, c. 70, § 8, note, *post*.

§ 9. Costs on motions, etc.

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.

§ 12. Actions by or against executors, trustees, etc.

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

§ 14. Costs on appeal from justice's court.

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.

COSTS IN CRIMINAL PROCEEDINGS.*

***§ 15a. 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.)

***§ 15b. 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. (*Id.* § 2.)

COSTS IN THE SUPREME COURT.

§ 16. Discretionary—Amounts.

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.)

§ 17. Disbursements.

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.)

§ 18. 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 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. (*As amended* 1887, c. 188, *repealing Gen. Laws* 1885, c. 31, *and all inconsistent acts and parts of acts.*)

*"An act relating to costs and disbursements in criminal actions." Approved February 13, 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."