

1934 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1934)
(Superseding Mason's 1931 Supplement)

Containing the text of the acts of the 1929, 1931, 1933 and 1933-34 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state, federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota



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CHAPTER 79

Costs and Disbursements

9470. Agreement as to fees of attorney—Etc.

Costs were unknown at common law and depend upon statutory authority. *State v. Tift*, 185M103, 240NW354. See Dun. Dig. 2226.

10. Contract with attorney.

Burden was upon attorney to prove that his services were rendered under circumstances from which a promise to pay should be implied. *Ertsgaard v. B.*, 183M339, 237NW1. See Dun. Dig. 702(93).

9471. Costs in district court.**1. Who prevailing party.**

173M559, 218NW730.

6. In general.

A party who succeeds and is awarded and paid his taxable costs and disbursements has no further claim against his adversary for attorney's fees and expenses in excess of taxable costs. 181M322, 232NW515. See Dun. Dig. 2194(4).

Judgment creditor waived payment of dollar fee charged upon writs of execution by stipulation for satisfaction of judgments and discharging them of record. *Stebbins v. F.*, 185M336, 241NW315.

In action by state in its proprietary as distinguished from its sovereign capacity it is liable for costs the same as individuals, but it is not liable when sued, though in its proprietary capacity. *Op. Atty. Gen.*, March 3, 1933.

Plaintiff suing to recover in excess of \$100 but only recovering \$100 is entitled to \$10 costs in county where there is no municipal court. *Op. Atty. Gen.*, July 5, 1933.

7. State as party.

State is not liable for costs and disbursements in civil action, whether brought by or against it, in its sovereign capacity, but is liable in actions brought in its proprietary capacity. *Op. Atty. Gen.*, Mar. 3, 1933.

9473. Disbursements—Taxation and allowance.

173M559, 218NW730.

Costs were unknown at common law and depend upon statutory authority. *State v. Tift*, 185M103, 240NW354. See Dun. Dig. 2226.

½. In general.

Objectors to testamentary trustee's account were entitled to costs and disbursements as the prevailing party. *Rosenfeldt's Will*, 185M425, 241NW573. See Dun. Dig. 2206.

No costs or disbursements should be taxed against secretary of state unsuccessfully defending mandamus proceeding. *State v. Holm*, 186M331, 243NW133. See Dun. Dig. 2207.

9475. In equitable actions—Several defendants.

Attorney's fees and expenses were allowed unsuccessful

party in probate proceedings. *Butler v. B.*, 249NW38. See Dun. Dig. 699.

9478. Taxation—Objections and Appeal.**1. Time.**

Costs cannot be taxed and judgment entered where a verdict has been vacated and a new trial granted. 178M232, 226NW700.

2. Notice.

Costs and disbursements may be taxed after entry of judgment without notice. *Wilcox v. H.*, 186M220, 243NW709. See Dun. Dig. 2221.

9481. To defendant after tender.

Grill v. B., 249NW194; note under §9323.

9483. Relator entitled to, and liable for.

Prevailing defendant was entitled to costs and disbursements without specific directions by the court, and court did not err in denying motion to amend conclusions of law. 178M164, 226NW709.

9486. Supreme court—Costs and disbursements.

Prevailing party may collect the expense of the record and briefs only when they are printed. *State v. Tift*, 185M103, 240NW354. See Dun. Dig. 2239(8).

Whether taxation of costs and disbursements is opposed or not, it is the duty of the clerk to satisfy herself that the items are correct and taxable. *State v. Tift*, 185M103, 240NW354. See Dun. Dig. 2226.

4. Several prevailing parties.

Where there were three cases by different parties against same defendant, cost of printing evidence which was common to three cases was properly divided and allocated. *Larson v. T.*, 185M652, 242NW378. See Dun. Dig. 2229.

8. Discretionary—When not allowed.

Statutory costs denied a successful appellant because of excessive length of his brief. *Peterson v. P.*, 186M583, 244NW68. See Dun. Dig. 2238.

9. Disbursements allowable.

Only where transcript is prepared exclusively for use on appeal and is in fact so used can it be taxed or allowed in supreme court. *Larson v. T.*, 185M652, 242NW378. See Dun. Dig. 2239.

When transcript is obtained and necessarily used in lower court in motion for amended findings, matter of expense thereof being allowed as disbursement is before lower court and not before supreme court. *Larson v. T.*, 185M652, 242NW378. See Dun. Dig. 457a.

10. Liability of United States.

Where Director of United States Veterans' Bureau brought proceeding against guardian of incompetent veteran and unsuccessfully appealed from an adverse order, the guardian was not entitled to tax costs. *Hines v. T.*, 185M650, 241NW796. See Dun. Dig. 2207.

CHAPTER 80

Appeals in Civil Actions

9490. Appeal from district court.

An order permitting defendant to pay the amount into court and directing another claimant to be substituted as defendant does not finally determine any substantial right of plaintiff and is not appealable. 176M11, 222NW295.

The order must finally determine the action or some positive legal right of the appellant relating thereto. 176M11, 222NW295.

District court has no jurisdiction in civil cases to certify questions to the Supreme Court. *Newton v. M.*, 185M189, 240NW470. See Dun. Dig. 2493.

9492. Requisites of appeal.

Jurisdiction on appeal cannot be conferred by consent of counsel or litigants. The duty is on appellant to make jurisdiction appear plainly and affirmatively from the printed record. *Elliott v. R.*, 181M554, 233NW316. See Dun. Dig. 286.

Appellant must file with the clerk of the lower court the notice of appeal with proof of service thereof on the adverse party. *Costello v. D.*, 184M49, 237NW690. See Dun. Dig. 321(88).

9493. Return to Supreme Court.**1. In general.**

In reviewing orders pursuant to motions, and orders to show cause, and other orders based upon the rec-

ord, the rule of *Radel v. Radel*, 123M299, 143NW741, and prior cases, requiring a settled case, bill of exceptions, or a certificate of the trial court as to the papers considered, or a certificate of the clerk of the trial court that the return contains all the files and records in the case, is no longer the rule when all the original files are returned to this court. 181M392, 232NW740. See Dun. Dig. 344a.

A party moving for a certificate, now unnecessary, showing that order was based only upon records and files then in clerk's office, may withdraw such motion at any time before submission. *Wilcox v. H.*, 186M504, 243NW709. See Dun. Dig. 352.

It was not error to exclude certain exhibits which were insufficient to make a prima facie case in support of claim that respondents had made certain agreements, there being no evidence in case to support such claim. *Wilcox v. H.*, 186M500, 243NW711. See Dun. Dig. 3244.

3. Briefs.

Instructions assigned as erroneous will not be considered, where brief makes no effort to point out any error therein and no prejudicial error is obvious on mere inspection. *Nelson v. B.*, 248NW49. See Dun. Dig. 364, 366.

4. Settled case or bill of exceptions.

Upon an appeal from an order overruling a demurrer there is no place for a bill of exceptions. 174M66, 218NW234.