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THE
REVISED STATUTES,
OF THE
TERRITORY OF MINNESOTA,

PASSED AT THE SECOND SESSION OF THE
LEGISLATIVE ASSEMBLY,

COMMENCING JANUARY 1, 1851.

PRINTED AND PUBLISHED PURSUANT TO LAW, UNDER THE SUPERVISION OF M. S. WILKINSON.

SAINT PAUL:

JAMES M. GOODHUE, TERRITORIAL PRINTER.

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1851

CHAPTER 72.

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Fee bill abolished, allowance given termed costs.

When allowed of course to plaintiff.

SEC. 1. There are no statutes establishing or regulating the costs or fees of attorneys and council in civil actions, and there are established no rules or provision of law, restricting or controlling the right of a party to agree with an attorney or council for his compensation, and hereafter the measure and mode of such compensation, must be left to the agreement, express or implied of the parties; but there may be allowed to the prevailing party, certain sums by way of indemnity, for his expenses in the action, which allowances are termed costs.

SEC. 2. Costs are allowed, of course, to the plaintiff upon a judgment in his favor, in the following cases:

1. In an action for the recovery of real property, or when a claim of title to real property arises on the pleadings, or is certified by the court to have come in question at the trial:

2. In an action to recover the possession of personal property:

3. In the actions of which a justice's court has not jurisdiction:

4. In an action for the recovery of money, where the plaintiff recovers one hundred dollars or more; but in an action for assault, battery, false imprisonment, libel, slander, malicious prosecution, criminal conversation, or seduction, if the plaintiff recover less than fifty dollars damages, he can recover no more costs and charges than damages. And in an action to recover the possession of personal property, if the plaintiff recover less than fifty dollars damages, he can recover no more costs and charges than damages, unless he recover also property, the value of which, with the damages, amounts to fifty dollars; such value must be

determined by the jury, court, or referee by whom the action is tried.

SEC. 3. When several actions are brought on one bond, undertaking, promissory note, bill of exchange, or other instrument in writing, or in any other case for the same cause in action against several parties who might have been joined as defendants in the same action, no costs can be allowed to the plaintiff, in more than one of such actions, which may be at his election, if the parties proceeded against in the other actions, were at the commencement of the previous action, openly within this territory; but the disbursements of the plaintiff may be allowed to him as hereinafter provided.

In several actions on same instrument but one bill of costs,

SEC. 4. Costs are allowed, of course, to the defendant upon a judgment in his favor in an action for the recovery of money, where the plaintiff recovers less than fifty dollars; and also in the other actions mentioned in section two.

When allowed to defendant.

SEC. 5. In other actions, costs may be allowed, or not, and if allowed, may be apportioned between the parties in the same or adverse sides, in the discretion of the court. When there are several defendants not united in interest, and making separate defences by separate answers, and the plaintiff fails to recover judgment against all, the court may award costs to such of the defendants as have judgment in their favor, or any of them; and in the following cases, the costs of an appeal are in the discretion of the court:

When allowed to either party in discretion of the court.

1. Where a new trial is ordered:

2. Where a judgment is modified.

SEC. 6. Costs can not be allowed to the plaintiff in an action upon a judgment of a court of this territory, between the same parties, unless such action was brought, with previous leave of the court, for cause shown; but this prohibition does not apply to an action upon the judgment of a justice's court, brought in another county, or brought in the same county, in case of the summons not having been served on all the defendants, or 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.

Costs not allowed in actions on judgment except on leave granted.

SEC. 7. When allowed, costs are as follows:

1. To the plaintiff; for all proceedings before notice of trial (including judgment when entered,) in an action arising on obligation for the recovery of money only, seven dollars; in another action, twelve dollars; for all subsequent proceedings before trial, seven dollars:

Amount of costs allowed in certain cases.

2. To the defendant; for all proceedings before notice of trial, five dollars; for all subsequent proceedings before trial, seven dollars:

3. For the trial of issues of law, if separate from the trial of issues of fact, to the plaintiff, fifteen dollars; to the defendant, twelve dollars:

4. For the trial of the issues of fact, if separate from the trial of the issues of law, to the plaintiff, fifteen dollars; to the defendant, twelve dollars:

5. For the trial of the issues of fact and of law, when tried at the same time, to the plaintiff, fifteen dollars; to the defendant, fifteen dollars:

6. To either party when any action has been removed to the supreme court, before argument, ten dollars; for argument, fifteen dollars:

7. To either party for every term, not exceeding three, at which the cause necessarily remains on the calendar, not reached, or postponed, excluding that at which it is tried or heard, ten dollars.

SEC. 8. When the judgment is for the recovery of money, interest from the time of the verdict or report, until the judgment be finally entered, must be computed by the clerk, and added thereto.

Interest on verdict and report when allowed.

SEC. 9. The clerk must insert in the entry of judgment, on the application of the prevailing party, upon two days notice to the other, the

Costs how to be inserted in judgment.

sum of the allowances for costs, as above provided, and the necessary disbursements, including the fees of officers allowed by law, the fees of witnesses, the necessary expenses of commissions, the compensation of referees, and the expense of printing the papers upon an appeal, which disbursements are in the statute, also termed charges. The disbursements must be stated in detail, and verified by affidavit, which must be filed. Whenever costs are allowed by statute, the charges are also allowed, and when costs are not allowed, the charges are not allowed, except where express provision is made therefor.

The fees of referees.

SEC. 10. The fees of referees are three dollars to each, for every day spent in the business of the referees, but the parties may agree in writing upon any other rate of compensation, and thereupon such rate must be allowed.

Costs on postponement of trial.

SEC. 11. When an application is made to a court or referees to postpone a trial, the payment to the adverse party of a sum, not exceeding ten dollars, besides the fees of witnesses, may be imposed as the condition of granting the postponement.

Costs on motion.

SEC. 12. Costs may be allowed on an original motion, or on an appeal from an order, in the discretion of the court, not exceeding ten dollars; and when costs are ordered against a party upon a motion, proceedings on his part may be stayed until payment thereof.

Costs against infant plaintiff.

SEC. 13. When costs are adjudged against an infant plaintiff, the guardian by whom he appears in the action is responsible for them, and judgment therefor may be entered against both the guardian and infant.

Costs not allowed when tender has been made.

SEC. 14. When in an action for the recovery of money only, 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 be found true, the plaintiff cannot recover costs, but must pay costs to the defendant.

Costs in action by or against executors, &c.

SEC. 15. In an action prosecuted or defended by an executor, administrator, trustee of an express trust, or a person expressly authorized by statute, costs may be recovered, as in an action by and against a person prosecuting or defending in his own right, but such costs must, by the judgment, be made chargeable only upon the estate, fund, or party represented, unless the court direct the same to be paid by the plaintiff or defendant personally, for mismanagement or bad faith in the action or defence; but no costs are recoverable in such action if brought without leave of the judge of probate, against an executor or administrator within one year after the death of the person whom he represents, nor after that time, unless it appear that the demand was first presented to the executor or administrator, verified by oath, and payment demanded.

Costs in supreme court on appeal in special proceedings.

SEC. 16. When the decision of a court of inferior jurisdiction in a special proceeding, is brought before the supreme court for review, such proceeding is, for all purposes of costs, to be deemed an action at issue on a question of law, from the time the same is brought into the supreme court; and costs thereon may be awarded and collected in such manner as the court may direct, according to the nature of the case.

Costs in actions by the territory or county.

SEC. 17. In all civil actions prosecuted in the name and for the use of the territory, or in the name and for the use of any county, the territory or county shall be liable for costs in the same cases and to the same extent as private parties.

Costs against assignee of cause of action after action brought.

SEC. 18. In an action in which the cause of action, after the commencement of the action, by assignment or any other manner, becomes the property of a person not a party to the action, and the prosecution or defence is thereafter continued, such person is liable for the costs in

the same manner as if he were a party, and payment thereof may be enforced by order.

SEC. 19. Upon the settlement before judgment of any action, no greater sum can be demanded from the defendant as costs, than at the rates prescribed by this chapter.

Costs on settlement.

SEC. 20. The attorney of a plaintiff who resides out of the territory, or is a foreign corporation, against whom costs are awarded to a defendant, is responsible to such defendant therefor to an amount not exceeding two hundred dollars; and the attorney neglecting to pay the same, after due proceedings against him, may be removed by the court; but he may relieve himself from responsibility, at any time before judgment, by filing an undertaking for the payment, to the defendant, of the costs and charges, executed by a sufficient surety.

Costs in actions by plaintiff residing out of the territory.

SEC. 21. In all civil actions and proceedings by or in the name of the United States, for the benefit of any county, instituted by any officer duly authorized for that purpose, and not brought on the relation or for the use of any citizen, or upon any penal statute, the county to be benefited shall be liable for costs in the same cases and to the same extent as if such suit or proceeding was instituted by an individual.

Costs in action by county, to be paid by county benefited.

SEC. 22. When a suit or proceeding shall be instituted in the name of the United States, on the relation of any citizen, such relation shall be entitled to and liable for costs, in the same cases and to the same extent as if such suit or proceeding had been instituted in his own name.

Costs in actions by United States on relation of individual.

SEC. 23. For actions and proceedings upon writs of mandamus, the supreme court may in its discretion, award or refuse costs to any party therein, and upon refusing an alternative or peremptory mandamus, the court may award costs to be paid by the party applying for such mandamus.

Costs in actions upon writ of mandamus.

SEC. 24. When any action shall be brought in the name of another, by an assignee of any right of action, or by any person beneficially interested in the recovery in such action, such assignee or person shall be liable for costs in the same cases and to the same extent, in which a plaintiff would be liable, and the payment of such costs may be enforced by attachment in all cases where judgment is not by law required to be rendered therefor, against such assignee or person interested.

Costs in actions, brought in name of another by assignee.

SEC. 25. In all civil actions tried before a justice of the peace, if the plaintiff shall appeal from a judgment in his favor, and shall not recover in a district court a greater sum for debt or damages, than he recovered by the first judgment, the defendant shall be entitled to costs.

When defendant shall be entitled to costs on appeal from justice of the peace.

SEC. 26. In comparing the sums recovered by the two judgments for the purposes specified in the preceding section, the sum, if any allowed for interest accrued on the plaintiff's demand, after the first verdict, or judgment, shall not be included, and he shall not be considered as having recovered more on the appeal than on the first trial, merely on account of the addition of interest accrued between the two trials.

Interest accruing after first judgment not to be allowed in certain cases.

SEC. 27. When a defendant shall bring money into court and offer the same in satisfaction of the damages, demanded by the plaintiff, the plaintiff shall in all cases be entitled to the costs which had previously accrued, though he may not recover a larger sum of damages than is so brought into court.

Where money is brought into court by defendant costs may be recovered by plaintiff.

SEC. 28. The foregoing provisions do not apply to justices, courts.

This chapter not to apply to justice's courts.

OF FILING SECURITY FOR COSTS.

SEC. 29. When a suit shall be commenced in any court;

1. For, or in the name of the trustees of any debtor;
2. For, or in the name of any person being insolvent who shall have

When plaintiff required to file security for costs.

been discharged from his debts pursuant to law, brought for the collection of any debt, contracted before the assignment of his estate; or,

3. For, or in the name of any person committed in execution for a crime; or,

4. In the name of any infant, whose next friend has not given security for costs; or,

5. For a plaintiff not residing within the jurisdiction of such court, or for several plaintiffs who are all non-residents; the defendant may require such plaintiff to file security for the payment of the costs that may be incurred by the defendant in such suit.

When plaintiff required to file security for costs.

SEC. 30. If after the commencement of a suit, all the plaintiffs shall become insolvent or non-resident, and be discharged as aforesaid, or be sentenced to imprisonment in the penitentiary for any term less than life, the defendant may also require such security to be filed.

Order to file security for costs what to contain.

SEC. 31. The order shall be to file such security, and that all proceedings on the part of the plaintiff, be stayed until such security be filed, and the sureties shall justify if excepted to. Such order may be made by the court in which the action is pending, or by any judge thereof, in vacation. upon due proof by affidavit, of the facts entitling the defendant thereto.

Bond for security for costs.

SEC. 32. Such security, shall be given in the form of a bond in the penalty of at least one hundred dollars, with one or more sufficient sureties, to the defendant, conditioned to pay, on demand, all costs that may be awarded to the defendant in such action.

Bond how to be filed.

SEC. 33. Such bond shall be filed with the clerk of the court in which the action is pending, and notice thereof be given to the defendant or his attorney.

Defendant may except to sufficiency of surety.

SEC. 34. Within twenty days after the service of such notice the defendant may except to the sufficiency of the sureties by giving notice of such exception to the plaintiff's attorney.

When sureties may justify.

SEC. 35. Within twenty days after such notice of exception the sureties shall justify by affidavit, that they are worth double the penalty of such bond over and above all debts, of which affidavit, a copy, shall be served on the defendant, or his attorney, and such justification shall operate to discharge the order to stay proceedings.

Attorneys when liable for costs.

SEC. 36. In the cases in which, according to the provisions of this chapter, a defendant at the commencement of an action, shall be entitled to require security for costs, the attorney for the plaintiff shall be liable for such costs, to an amount, not exceeding one hundred dollars, until security therefor be filed as herein provided, whether such security shall have been required by the defendant or not.

How attorney may relieve himself from liability.

SEC. 37. Such attorney may relieve himself from such liability by filing security as herein provided, without being required to do so by the defendant, and by giving notice thereof to such defendant, or his attorney.