

# GENERAL STATUTES

OF THE

STATE OF MINNESOTA,

IN FORCE JANUARY, 1891.

VOL. 2.

CONTAINING ALL THE LAW OF A GENERAL NATURE NOW IN FORCE AND NOT IN  
VOL. 1, THE SAME BEING THE CODE OF CIVIL PROCEDURE AND ALL REME-  
DIAL LAW, THE PROBATE CODE, THE PENAL CODE AND THE CRIM-  
INAL PROCEDURE, THE CONSTITUTIONS AND ORGANIC ACTS.

COMPILED AND ANNOTATED

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CHAPTER 70 (G. S. ch. 67).

COSTS.

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*Sections.*  
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ALLOWANCE.

SEC. 5201. **Defined — Compensation of attorneys.**— The right of a party to agree with an attorney or counsel for his compensation, is unrestricted, and the measure and mode of such compensation is 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.

G. S. ch. 67, § 1. 8 M. 303; 31 M. 241. This and the subsequent sections contain the principles embodied in 3 and 4 Will. IV. ch. 42, and 3 and 4 Vict. ch. 24, for which see Wilkinson v. Edwards, 1 Bing. N. C. 301; Southgate v. Crowley, id. 518.

SEC. 5202. **Amount.**— Costs are allowed to the prevailing party, in actions commenced in the district court, as follows:

First. To the plaintiff, upon a judgment in his favor of one hundred dollars or more, in an action for the recovery of money only, when no issue of fact or law is joined, five dollars. When an issue is joined, ten dollars;

Second. In all other actions, except as hereinafter otherwise provided, ten dollars;

Third. To the defendant, upon discontinuance or dismissal, five dollars;

Fourth. When judgment is rendered in his favor on the merits, ten dollars.

G. S. ch. 67, § 2. 14 M. 286.

SEC. 5203. **In several actions.**— When several actions are brought on any instrument in writing, or in any other case, for the same cause of 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 state; but the disbursements of the plaintiff may be allowed to him as provided in the preceding section.

G. S. ch. 67, § 4.

SEC. 5204. **In equitable actions.**— 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 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.

G. S. ch. 67, § 5. 8 M. 451; 32 M. 208.

SEC. 5205. **When chargeable on estate or fund.**— In an action prosecuted or defended by an executor, administrator, trustee of an express trust, or a 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; but the same shall, by the judgment, be made chargeable

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SECS. 5206-5212.]

COSTS.

only upon the estate, fund, or party represented, unless the court directs 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 in such action, unless it appears that the demand was first presented to the executor or administrator, verified by oath, and payment demanded.

G. S. ch. 67, § 12. 39 M. 296.

**SEC. 5206. In action on judgment.**—Costs cannot be allowed to the plaintiff in an action upon a judgment of a court of this state, 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, 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.

G. S. ch. 67, § 6.

**SEC. 5207. Against guardian of infant.**—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 the infant.

G. S. ch. 67, § 10.

**SEC. 5208. Relator in name of state.**—When an action or proceeding is instituted in the name of the state, on the relation of any citizen, such relator 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.

G. S. ch. 67, § 13.

**SEC. 5209. On motions and demurrers.**—Costs may be allowed on a motion or demurrer, in the discretion of the court or judge, not exceeding ten dollars, and may be absolute, or directed to abide the event of the action.

G. S. ch. 67, § 9, as amended 1867, ch. 82. Before amendment this section merely empowered the court to impose terms not exceeding ten dollars as a condition to opening defaults, granting continuances, amendments, leave to answer or demur, and other applications of a discretionary nature when justice requires it. 26 M. 105.

**SEC. 5210. On 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 district court, a greater sum as damages than he recovered by the first judgment, the defendant is entitled to costs and disbursements; if the defendant appeals, and the amount of the plaintiff's recovery before the justice is reduced one-half or more in the district court, the defendant is entitled to costs and disbursements; in all other cases of appeal from the judgment of a justice of the peace in such actions, the successful party is entitled to costs and disbursements.

G. S. ch. 67, § 14. 27 M. 30.

**SEC. 5211. Same — Interest not considered.**—In comparing the sums recovered by the two judgments, for the purposes specified in the preceding section, the interest accrued on the plaintiff's demand, after the first judgment, shall not be considered.

G. S. ch. 67, § 15.

**SEC. 5212. Disbursements.**—In every action commenced in the district courts of this state, the prevailing party shall be allowed his disbursements necessarily paid or incurred: *\*provided*, that in all actions for the recovery of money only, of which a justice of the peace has jurisdiction, the plaintiff, if he recover no more than fifty dollars, shall recover no disbursements; and if he recover less than fifty dollars, he shall pay the defendant's costs and disbursements, as allowed by law when judgment is rendered in favor of the de-

defendant on the merits; which said costs and disbursements shall be taxed and allowed by the clerk, upon notice, the same as in other cases, and shall be deducted by the clerk from the amount recovered by the plaintiff; and in case the amount of such costs and disbursements exceed the amount recovered by the plaintiff, the clerk shall enter judgment against the plaintiff, and in favor of the defendant, for the amount of such excess, and the defendant may have execution thereon.

G. S. ch. 67, § 3, as amended 1867, ch. 83; 1868, ch. 89. Amendment below \*. 8 M. 451; 20 M. 418.

**SEC. 5213. Taxation of.**—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.

G. S. ch. 67, § 8, as amended 1885, ch. 23. Approved March 9th. Amendment between \* \*. 35 M. 298; 2 M. 67; 3 M. 347; 4 M. 552; 5 M. 522; 8 M. 303; 10 M. 423; 17 M. 32.

#### TENDER.

**SEC. 5214. Entitled to costs 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 is entitled to costs and disbursements.

G. S. ch. 67, § 11.

**SEC. 5215. In actions for tort.**—When in an action to recover damages for the commission of a tort, the defendant shall at any time before the trial of such action, tender to the plaintiff a sum of money as damages or compensation for such tort, and if such tender be made after the commencement of the action, in addition to such tender for damages or compensation, he shall also tender the costs and disbursements of the plaintiff then accrued, and the plaintiff in such action shall not recover a greater sum than the amount so tendered; the plaintiff shall recover no costs or disbursements, but shall pay the defendant's costs and disbursements. The fact of such tender having been made shall not be pleaded nor given in evidence to the court or jury.

1877, ch. 119, § 1: "An act regulating costs and disbursements in certain civil actions." Approved March 6, 1877.

**SEC. 5216. Same—Judgment for excess.**—In all such actions, when such tender shall be made and the plaintiff fails to recover a greater sum than the amount of such tender, if the amount of such recovery and the costs and disbursements accrued and tendered exceed the amount of the defendant's costs and disbursements, the court shall enter judgment against the defendant for such excess. If the amount of the defendant's costs and disbursements exceed the amount recovered by the plaintiff, and his costs and disbursements accrued and tendered, the court shall enter judgment against the plaintiff for such excess.

1877, ch. 119, § 2.

#### INTEREST ON VERDICT.

**SEC. 5217. From time verdict rendered.**—When the judgment is for the recovery of money, interest, from the time of the verdict or report, until the judgment is finally entered, shall be computed by the clerk, and added thereto.

G. S. ch. 67, § 7.

## COSTS AND DISBURSEMENTS IN CRIMINAL ACTIONS.

SEC. 5218. **When.**—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, ch. 122, § 1: "An act relating to costs and disbursements in criminal actions." Approved February 18, 1881.

SEC. 5219. **Paid into county treasury.**—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.

1881, ch. 122, § 2.

SEC. 5220. **Not retroactive.**—The provisions of this act shall not apply nor extend to any act done nor offense committed prior to the passage hereof.

1881, ch. 122, § 3.

## COSTS IN SUPREME COURT.

SEC. 5221. **When.**—Costs in the supreme court may be allowed, in the discretion of said court, as follows:

First. To the prevailing party, upon a judgment in his favor on the merits, not exceeding twenty-five dollars;

Second. Upon dismissal, not exceeding ten dollars.

G. S. ch. 67, § 16. 4 M. 553; 6 M. 508; 37 M. 46.

SEC. 5222. **Disbursements.**—In all cases the prevailing party shall be allowed his disbursements necessarily paid or incurred.

G. S. ch. 67, § 17. 37 M. 46.

SEC. 5223. **When appeal taken for delay.**—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 remittitur 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.

G. S. ch. 67, § 18, as amended 1885, ch. 31; 1887, ch. 188 (February 22). Acts 1881 added matter between \*\*, and acts 1887 added the proviso.

## SECURITY FOR COSTS.

SEC. 5224. **When.**—When an action is commenced in the district court in the name of any plaintiff who is committed and in execution for a crime, or wherein the plaintiff is a non-resident of this state, or wherein all of several plaintiffs are non-residents of this state, or in the name and behalf of any foreign corporation, such plaintiff shall file with the clerk of the court wherein such action is brought, before the service of the summons therein, a bond in the penal sum of seventy-five dollars, executed by one or more sureties, payable to the clerk of such court, for the benefit of parties who may become

entitled to disbursements or costs in such action, and conditioned for the payment of all disbursements and costs that may be adjudged against the plaintiff in the action. If, after the commencement of the action, all the parties plaintiff therein become non-residents of this state, or the sureties in the bond above provided for remove from this state, or become insolvent, the defendant may, on motion, by order of the court, require an additional bond to be filed, payable and conditioned as herein provided.

G. S. ch. 67, § 19.

SEC. 5225. **Same — Failure to give — Result.**— If any party commences an action without filing a bond, or fails to provide an additional one, as above required, the court, on motion of the defendant, may order a stay of all proceedings in such action, or a dismissal of such action at the cost of the attorney commencing the same.

G. S. ch. 67, § 20.

SEC. 5226. **Suit on bond.**— When judgment is entered against any party who has given security as above provided, and the disbursements and costs so adjudged against such party remain in whole or in part unpaid, for ten days after the entry of judgment, such bond may be put in suit, and prosecuted to final judgment and execution.

G. S. ch. 67, § 21.