

1936 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1936)
(Superseding Mason's 1931 and 1934 Supplements)

Containing the text of the acts of the 1929, 1931, 1933 and 1935 General Sessions, and the 1933-34 and 1935-36 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.



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Statute contemplates the striking of the names drawn without regard to actual service. *Op. Atty. Gen.*, April 30, 1931.

9469-1. Juries in certain cities.—In all counties of this state now or hereafter having a population of more than 400,000 the jury in civil actions shall consist of six persons; provided, that any party may have the right to increase the number of jurors to twelve by paying to the clerk a jury fee of two dollars at any time before the trial commences. Failure to pay such jury fee shall be deemed a waiver of a jury of twelve.

(‘27, c. 345, §1, eff. May 1, 1927; Apr. 18, 1929, c. 236, §1.)

9469-2. Same—Jury of six.

The text of this and the next succeeding section is reenacted by Laws 1929, c. 236, but the title of the act purports to amend "section 1, chapter 345, Laws of 1927," set forth ante as §9469-1. Inasmuch as no change is made in sections 2 and 3, except that the closing words of section 2 are "the jury," instead of "a jury," the insufficiency of the title is probably immaterial.

9469-3. Same—Challenges.

See note under §9469-2.

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.

3. Several parties.

Interveners appearing separately, each represented by his own attorneys, plaintiff having joined issue on each complaint in intervention, held severally entitled to tax statutory costs. *Pesis v. B.*, 190M563, 252NW454. See *Dun. Dig.* 4007.

When a principal employs competent attorneys to defend an action brought by a third party against agent and principal for alleged false representations in a business deal, transacted by agent for principal, agent is not entitled to reimbursement for amounts paid or incurred to additional attorneys hired by agent to protect him in litigation; there being no showing of antagonistic defenses or of a failure of attorneys employed by principal to make a proper defense for agent. *Adams v. N.*, 191M55, 253NW3. See *Dun. Dig.* 207.

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.

9485. In criminal proceedings.

Amount paid attorney appointed by court to represent a defendant in justice court in a criminal case should not be included as part of costs in action. *Op. Atty. Gen.* (121b-17), Jan. 28, 1935.

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.

2. No costs to defeated party.

An appellant may not dismiss his appeal and tax costs and disbursements against a respondent. *Ridgway v. M.*, 192M618, 256NW521. See *Dun. Dig.* 2227.

3. Who is prevailing party.

Where supreme court reduced verdict because of error in instruction on damages, defendant should not be allowed statutory costs of \$25 where no exception was taken at trial to the instruction nor in motion for new trial was amount of excessive damages pointed out. *Hackenjoes v. K.*, 193M37, 258NW433. See *Dun. Dig.* 2228.

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.

A proceeding to vacate public grounds against a town is a special proceeding, but costs and disbursements may be taxed against unsuccessful plaintiff. *Schaller v. T.*, 193M604, 259NW826. See *Dun. Dig.* 2198, 2239.

Statutory costs denied because of deliberate and extended reference in brief for respondents to facts outside record, said to have occurred since hearing. *Whaling v. I.*, 194M302, 260NW299. See *Dun. Dig.* 2226.

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.

Costs should not be taxed for two appeal bonds where there was no need for two bonds and supersedeas should have been given in first place. *Hackenjoes v. K.*, 193M37, 258NW433. See *Dun. Dig.* 2239.

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.