

## CHAPTER 549

## COSTS AND DISBURSEMENTS

**549.01 AGREEMENT AS TO FEES OF ATTORNEY.**

The contract of employment between an attorney and client may be canceled by the client at will, with or without cause; but the attorney has the right to recover the reasonable value of the services theretofore rendered. *Pye v Diebold*, 204 M 319, 283 NW 487.

Expert testimony as to the value of a lawyer's services is not in ordinary cases conclusive; and in the instant case the amount allowed a representative of an estate for professional services rendered by his attorney is not, upon this record, so inadequate as to require the appellate court to set aside the findings made by the trial court. *Fearon v Fitzgerald*, 205 M 57, 285 NW 285.

Plaintiff and defendants in good faith, but without knowledge or consent of plaintiff's attorney, settled their differences upon a basis whereby plaintiff waived all of her claims for damages arising out of an automobile collision on condition that defendants' insurers pay a given sum to settle five other personal injury actions arising out of the same accident. Payment was duly made pursuant to agreement. Intervener, plaintiff's attorney, claimed an attorney's lien under the terms of an express contract with plaintiff whereby he was to receive 25 per cent "of any sums received in settlement" of the cause. The court found the value of plaintiff's cause of action to be \$5,000 as of date of settlement and awarded intervener \$1,250 plus interest and costs. *Krippner v Matz*, 205 M 498, 287 NW 19.

An attorney, who as Dictator of Duluth Lodge of the Loyal order of Moose, with approval of and in response to solicitation of national organization, undertook and over a three-year period successfully completed the job of liquidating financial distress of the local organization, was, under the circumstances, entitled to proceed against the national organization upon an implied contract to recover the reasonable value of his services. *High v Supreme Lodge*, 210 M 471, 298 NW 723.

In an unsuccessful intervention by a part of the bondholders in an endeavor to exclude the original obligor from participation as a bondholder in the proceeds of the sale of the property, the interveners are not entitled to an allowance for attorneys' fees, since the services of their attorney were rendered in behalf of a group of beneficiaries in an endeavor to exclude another beneficiary from sharing in the trust estate and would neither have preserved the trust estate from dissipation nor have increased the corpus thereof. *Olmsted Co. Bank & Trust v Pesch*, 218 M 425, 16 NW(2d) 470.

Right of an attorney appearing in his own behalf to recover attorney's fees as part of costs. 12 MLR 751.

Counsel fees and other expenses of litigation as an element of damages. 15 MLR 619.

Amount of recovery where the contract between attorney and client was entered into during the existence of the relationship. 20 MLR 429.

Attorneys acting jointly for client, division of fees. 23 MLR 213.

**549.02 COSTS IN DISTRICT COURT.**

In a suit by stockholders appearing through their representative against a corporation and the officers thereof to recover excessive salaries paid to the officers in which case the stockholders prevailed, the costs and disbursements should have been taxed against the corporation. *Keough v St. Paul Milk Co.* 205 M 128, 285 NW 809.

An assignee subrogated to part of plaintiff's claim of alleged cost of action is not liable for costs and disbursements in a suit brought in the name of the assignor. *Dryer v Otter Tail Power*, 205 M 286, 287 NW 13.

The school board having refused resident child of proper age admission to its school is a proper party to mandamus proceedings to enforce the rights of such child to free education. But the board having acted in behalf of the district in the discharge of its governmental functions is not liable for costs and disbursements. *State ex rel v School Board*, 206 M 63, 287 NW 625.

Where defendant tendered the sum of \$125 and costs accrued in settlement of a tort action and was prepared to comply with the offer, but plaintiffs refused to accept less than \$250 in settlement of the action, plaintiffs are in no position to assert that the tender of costs was ineffectual because the amount of the costs and disbursements was not tendered. *Wangensteen v Northern Pacific*, 218 M 318, 16 NW(2d) 50.

Counsel fees and other expenses of litigation as an element of damages. 15 MLR 619.

#### 549.03 IN ACTIONS FOR SERVICES; DOUBLE COSTS.

Suit by the government for the wages and hospital expenses of injured soldier. 30 MLR 649.

#### 549.04 DISBURSEMENTS; TAXATION AND ALLOWANCE.

That the prevailing party did not include the names of and the amounts paid to expert witnesses in her verified bill of costs and disbursements does not prevent such items from being included in her taxable disbursement on the order of the trial court pursuant to motion. *Kundiger v Met. Life Ins. Co.* 218 M 273, 15 NW(2d) 487.

Taxation of disbursements as provided by statute is allowable to the prevailing party in an action on a domestic judgment. OAG April 16, 1947 (199-A-2).

All successful litigants to recover costs. 16 MLR 103.

Effect of L. 1943, c. 508. 31 MLR 45.

#### 549.08 IN ACTION ON JUDGMENT.

In an action upon a foreign judgment the plaintiff prevailed but the trial court was in error in including \$28 for costs taxed in the Alabama action. *Patterson v Consumers Roofing Co.* 209 M 50, 295 NW 401.

In suit on a domestic judgment the word "costs" as used in section 549.08 means statutory costs as defined in section 549.02, and the prevailing party may tax costs as provided in section 549.04. OAG April 16, 1947 (199-A-2).

Full faith and credit. 20 MLR 149.

Merger by judgment. 28 MLR 436.

#### 549.11 COSTS ALLOWED ON MOTION OR DEMURRER.

Where an order denying a new trial has been affirmed on appeal all questions that might have been raised thereon are set at rest and cannot be raised on a subsequent appeal from the judgment; and under section 549.11 the allowance of costs to the prevailing party on denial of a motion rests on the sound discretion of the trial court. *Skog v Pomush*, 221 M 11, 20 NW(2d) 530.

#### 549.13 TO DEFENDANT AFTER TENDER.

Where a bona fide dispute arose between the fee owners and the mortgagee as to the amount necessary to satisfy the mortgage, a tender kept good by the fee owners of the amount actually due would have stopped the running of interest and entitled the fee owners to equitable relief. *Gandrud v Bremer*, 220 M 10, 18 NW(2d) 687.