

CHAPTER 607

SUPREME COURT; COSTS AND DISBURSEMENTS

607.01 COSTS AND DISBURSEMENTS.

1. Generally
2. Discretion of the court
3. Prevailing party
4. Dismissal
5. Disbursements allowable

1. Generally

Where trial court's judgment specifically determined the true name of appellant, the use of another name by appellant did not destroy its existence as a legal entity so as to preclude it from receiving as the prevailing party costs and disbursements on appeal. Where the appellant in printing the record included irrelevant matter, certain costs are denied. *Trinity Church v First Spiritualist Church*, 221 M 15, 21 NW(2d) 611.

Where defendants unnecessarily included in the record certain photostatic copies and financial statements which could have been summarized, the added expense thereof cannot be allowed in taxing costs. *Hart v Bell*, 222 M 69, 24 NW(2d) 41.

Where counsel for his own use and convenience obtained a transcript of a portion of the trial proceedings, not requested by the court, the expense of same is not taxable as costs. *Republic Machine v Federal Cartridge*, 5 FRD 388.

Jurisprudence of Oliver Wendell Holmes. 31 MLR 355.

2. Discretion of the court

Under the statute, the supreme court has no discretion in the allowance, disallowance, or apportionment of necessary disbursements. Statutory costs, including the \$25 mentioned in the statute, are allowable in the discretion of the supreme court. *Collins v Collins*, 221 M 343, 23 NW(2d) 9.

4. Dismissal

Where a party has taken an appeal to the supreme court, he may not during its pendency take another appeal in the same cause from the same order or judgment. If the appeal in No. 33707 were only from the order of October 16, 1942, the supreme court should be bound under its rules to dismiss it with costs. But that appeal was also from other orders which the court does not reach for review because of the court's decision in No. 33453 holding that applicant is entitled to dismiss the proceedings below. In that situation, there is nothing to decide upon the second appeal, and there must be a dismissal, but the circumstances are such that costs will not be taxed to either party. *Mitchell v Bazille*, 216 M 368, 13 NW(2d) 20.

5. Disbursements allowable

Respondents moved to vacate a judgment for costs entered in the supreme court upon the ground that the plaintiff-relator, having brought the action in another county than the county of defendants' residence, was obligated to pay each \$10, and not having done so, could not properly enter a judgment for costs. The motion is denied. The motion should have been made to the trial court under the provisions of section 549.17. *Dahl v Stoffels*, 202 M 661, 279 NW 578.

MINNESOTA STATUTES 1947 ANNOTATIONS

607.02 SUPREME COURT; COSTS AND DISBURSEMENTS

1442

Appellant was defeated below and the trial court taxed costs. Had the appellant appealed on the single point of improper taxation, it clearly, as the prevailing party in the appeal, would have been entitled to costs and disbursements in the supreme court. That it raised other questions upon which it did not prevail does not preclude it from taxing costs and disbursements and the clerk's taxation is affirmed. *State ex rel v School Board*, 206 M 63, 287 NW 625.

Successful appellant, because of failure to bring in needed third party, is denied statutory costs. *Braman v Wall*, 210 M 548, 299 NW 243.

No statutory costs will be allowed appellant because of her failure to comply with the appellate court's admonition in re a plat or diagram. *Lee v Zaske*, 213 M 244, 6 NW(2d) 793.

Appellants only partially prevailed on their appeal, and they cannot be allowed disbursements in printing matter which was relevant only on the issues between them and the prevailing plaintiff-respondent. To allocate precisely all parts of the record to distinct issues is impracticable. The court determines that only 364 pages of the record, and 126 pages of the printed exhibits be taxed, together with statutory costs, postage, and bond premium. *Erickson v Wells*, 217 M 361, 15 NW(2d) 162, 459.

Appellant's award for actual costs upon appeal may be reduced where excessive expense is incurred in printing an unnecessarily voluminous record. *Koehler v Koehler*, 219 M 536, 18 NW(2d) 312.

On appeal, plaintiffs proceeded on the theory that the appellate court should sift and weigh the evidence for the purpose of making new findings of fact as a foundation for a determination of illegality. Although their theory was not adopted by the supreme court, they were justified in printing the supplemental record to present evidence which would have been necessary in rebuttal had plaintiffs' theory been adopted. With small modification the clerk's taxation is affirmed. *Hart v Bell*, 222 M 69, 24 NW(2d) 41.

607.02 ADDITIONAL ALLOWANCE; COSTS, WHEN PAID.

Where party prevailing on appeal made no objection to transmission of remittitur to the lower court for new trial before the day set for taxation of costs, as required by the supreme court Rule 14, remittitur was properly sent down, and trial court had jurisdiction to proceed with trial of case, notwithstanding losing party's nonpayment of costs of appeal. *Farmers Coop. v Kotz*, 222 M 153, 561, 25 NW(2d) 233.