

Fees and Costs.

CHAPTER 55.

AN ACT to Amend Section Three Hundred and Seventy-seven and Three Hundred and Eighty-one and Three Hundred and Eighty-two of the Code of Civil Procedure.

Be it Enacted by the Legislative Assembly of the Territory of Dakota :

§ 1. COSTS ALLOWED PREVAILING PARTY.] That section three hundred and seventy-seven of the Code of Civil Procedure be and the same is hereby amended to read as follows :

Section three hundred and seventy-seven (377). The amount of fees of attorneys, solicitors and counsel in civil and criminal actions must be left to the agreement, express or implied, of the parties. But in civil actions there may be allowed to the prevailing party upon the judgment certain sums by way of indemnity for his expenses in the action in addition to the disbursements now allowed by law, which allowances are termed costs.

§ 2. WHEN COSTS ALLOWED PLAINTIFF, UPON RECOVERY.] That section three hundred and eighty-one of the Code of Civil Procedure be and the same is hereby amended to read as follows :

Section three hundred and eighty-one. Costs shall be allowed of course to the plaintiff upon a recovery in the following cases :

1st. 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.

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

3d. In the actions of which a court of justice of the peace has no jurisdiction.

4th. In an action for the recovery of money where the plaintiff shall recover fifty dollars. 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 shall recover no more costs and disbursements than damages. And in an action to recover the possession of personal property, if the plaintiff recover less than fifty dollars damages, he shall recover no more costs and disbursements than damages, unless he recovers also property, the value of which, with the damages, amounts to fifty dollars or the possession of

property be adjudged to him, 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. When several actions shall be brought on one bond, recognizance, promissory note, bill of exchange or other 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 other than the disbursements heretofore allowed by law shall be allowed to the plaintiff in more than one of such actions, which must be at his election.

Provided, That the party or parties proceeded against in such action or actions, shall at the time of the commencement of the previous action or actions, have been openly within this Territory, and not secreted. Costs shall be allowed of course to the defendant in the actions mentioned in this section unless the plaintiff be entitled to costs therein.

§ 3. COSTS IN DISCRETION OF THE COURT.] That section three hundred and eighty-two of the Code of Civil Procedure be and the same is hereby amended to read as follows:

Section three hundred and eighty-two (382): In actions other than those specified in section three hundred and eighty-one (381) of the Code of Civil Procedure, costs may be allowed or not, in the discretion of the court. In all actions where there are several defendants, not united in interests, and making separate defenses 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.

§ 4. That all acts or parts of acts in conflict with this are hereby repealed.

§ 5. That this act shall take effect and be in force from and after its passage and approval by the Governor.

Approved, March 2, 1883.