

COSTS: Jury costs, under Section 8774, after a mistrial and a compromise between the parties in which each agrees to pay half, should be six dollars for each party

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April 22, 1937

Honorable W. E. Waters
Circuit Clerk
Maries County
Vienna, Missouri



Dear Sir:

This Department is in receipt of your request for an opinion which reads as follows:

"I am writing you for information in a case that had its origin in a Justice's Court, was tried and a mistrial resulted and a change of venue taken to another J. P. Court and a mistrial resulted there and later the case was taken to the Circuit Court and a mistrial resulted then, and a compro. was agreed on as follows: Each party agreeing to pay one-half of all J. P. and Circuit Court costs, and each party taking care of his witnesses.

"The point that I am not clear on is, what is the actual legal costs in this case. My contention is that the case was a draw and section 8774 which governs costs of jury will not apply to this case,

"I have charged up the entire cost of Jury in circuit Court, One party has paid one-half of the cost, the other party has refused to pay but one-half of \$12.00, which the Statutes provides for cases which

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reach a verdict, and no verdict was rendered in this case by the jury. I will appreciate an opinion from you at an early date.

"Thanking you in advance for the favor,"

Section 8774, Revised Statutes Missouri 1929, reads as follows:

"Whenever any jury provided for in this article shall serve in the trial of any case, other than criminal, there shall be taxed against the unsuccessful party and collected as costs, the sum of twelve dollars as jury fees, which, when collected, shall be paid into the county treasury to the credit of the county revenue fund; and the person paying the same into the county treasury shall take duplicate receipts therefor, one of which shall be filed with the county clerk, and such clerk shall charge the treasurer therewith."

In determining costs, the rule in Missouri as stated in *Ex parte Wilder*, 253 Mo. 627, 162 S.W. 167, is as follows:

"At the common law no costs were recoverable. Costs in Missouri being, therefore, purely, creatures of the statute, enactments in relation thereto must be strictly construed."

It will be noted that in the statute above the costs are taxed "against the unsuccessful party." When

a party files a suit, tries it and there is a mistrial and he then enters into a compromise and so dismisses the suit, the case is not a "draw" as contended in your letter but the party who files the suit is the unsuccessful party and is liable for the costs in absence of an agreement as to that matter.

A similar set of facts arose in Thompson v. The Union Elevator Co., 77 Mo. 520, in which there was a mistrial and a compromise with an agreement as to costs. The court said:

"If he had voluntarily dismissed his suit, as he should have done, the court could not have adjudged the costs against the defendant, * * * *
If a party would have the costs adjudged against his adversary, who prevails in the suit by reason of a compromise, under which the suit cannot be further prosecuted, he should so stipulate in his compromise agreement."

As was further said in Murphy v. Smith, 86 Mo. 333, 1. c. 339:

"When a court assumes to carry out a compromise requiring a special judgment for costs it would be in pursuance of a stipulation to that effect filed of record, or should be with the consent of the parties in open court."

It is, therefore, the opinion of this department where after a mistrial in a civil case the parties compromise and agree that each shall pay one half of the costs, that each is liable for six dollars (\$6.00) for jury costs

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which is one half of the twelve dollars (\$12.00) jury costs as taxed by Section 8774, Revised Statutes Missouri 1929.

Respectfully submitted,

OLLIVER W. NOLEN
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

AO'K;LC