

Manchester District Court,
No. 5648.

JOHN MEDICO

v.

ALBERT F. ALMASY.

Submitted September 8, 1967.

Decided October 31, 1967.



Harkaway, Barry & Gall for the plaintiff.

Albert F. Almasy, pro se, filed no brief.

PER CURIAM. RSA 525:1 provides that "Costs shall follow the event of every action or petition, unless otherwise directed by law or by the court." This section, together with RSA 525:3 gives the Superior Court discretion with respect to the allowance of costs. *Averill v. Mathes*, 55 N. H. 617; *Hatch v. Rideout*, 96 N. H. 122. RSA 502-A:30 provides with respect to civil actions in district courts that "Travel and attendance of parties and other costs and fees shall be allowed as in the superior court" This section by implication gives the district courts the

same discretion as the Superior Court has with respect to costs.

This discretion, however, is not unlimited. In *Clement v. Wheeler*, 25 N. H. 361, 368, it was said that the general rule is "that the prevailing party is *prima facie* entitled to costs The failing party must show the court that it would be contrary to the ordinary principles of justice that he should pay the costs of the proceeding." See also, *Preston v. Cutter*, 65 N. H. 85; *Lyford v. Bryant*, 38 N. H. 88; *Belknap v. Railroad*, 48 N. H. 388.

In the case before us the acting justice made an order of "No costs." "The question of justice presented by [plaintiff's] motion for costs, was a question of fact determinable [by the district court]. The decision of that question required a consideration of evidence that is not stated in the case." *Mudgett v. Melvin*, 66 N. H. 402, 403. We are unable to say, therefore, that the court below abused its discretion.

Exception overruled.

Grafton,
No. 5650.

SUTTON MUTUAL INSURANCE COMPANY

v.

DOROTHY O'BRIEN & a.

Argued September 8, 1967.

Decided October 31, 1967.