

CHAPTER LXXI.

AN ACT TO AMEND CHAPTER FORTY-NINE OF THE GENERAL STATUTES OF MINNESOTA.

Be it enacted by the Legislature of the State of Minnesota :

SECTION 1. That chapter forty-nine of the general statutes of this state be amended by the addition to said chapter at the end thereof, of the following new sections, to wit :

SEC. 2. That section sixteen of said chapter forty-nine be amended by adding thereto the following :

The appellant shall cause an entry of such appeal to be made by the clerk of the district court on the register of actions and upon the calendar, on or before the first day of the next general term thereof.

Entry of appeal when.

Sec. 17. Immediately after an appeal is perfected, as provided in the preceding section of this chapter, the judge or clerk of the probate court shall, upon the request of either party to such appeal, and upon the payment or tender of ten cents per folio therefor, make a return to such appeal to the district court of the proper county ; and such return shall consist of a certified transcript of all of the papers and proceedings upon which the order, judgment or decree appealed from shall have been founded, including a copy of such order, judgment or decree ; and if such return is not filed in the office of the clerk of the proper district court within twenty days after the said appeal is perfected, such appeal may be dismissed upon motion of respondent therein, or such return may be compelled by order of the district court upon the motion of either party to such appeal.

Return of appeal when made, to consist of what, &c.

Sec. 18. When any appeal from a probate court to the district court is taken upon questions of law alone, the evidence, oral and documentary, upon which the judgment, order or decree is founded, shall be certified to the district court by the judge or clerk of the probate court, and the same shall thereupon form a portion of the records of the cause in which such appeal is taken, but when the appeal is taken upon questions of fact, or both law and

Evidence upon which decree is founded to be certified to district court, when.

fact, none of the evidence taken upon the trial of a cause need be transmitted to the district court.

Appeal perfected when.

Sec. 19. Upon filing of the return of the probate court in the office of the clerk of the district court, such appeal shall be presumed to have been duly perfected in the court below, and the district court shall be deemed to have acquired jurisdiction of the cause, and may thereafter compel a further or an amended return, or may allow any amendments to be made, or defects or mischances to be supplied or corrected, to the same extent as in civil actions in said court.

When appeal may be brought on for hearing—when jury trials allowed

Sec. 20. Upon the filing of a return to an appeal as hereinbefore provided, the same may be brought on for hearing before the district court by either party, upon eight days' notice to the adverse party, and either in term, time or vacation, but no jury trials shall be allowed in such cases, except as provided by section one hundred and ninety-nine of chapter sixty-six of the general statutes, and upon issues settled in accordance with the rules of the district court in such case provided. *Provided*, That the prevailing party shall be entitled to costs upon the final judgment of the district court, as in civil actions, unless otherwise ordered by the court.

Jury impanelled, how.

Sec. 21. In case of the settling and submitting of any issue or issues to a jury under the provisions of this chapter, at any other trial than in term time, such jury shall be selected, summoned and impanelled under the direction of the judge, in the same manner, as near as may be, to the provisions of sections fifty-four and fifty-five, of chapter sixty-five of the general statutes, and any verdict rendered by such jury shall be as valid and conclusive as if the same were rendered by a regular panel in term time.

When act to take effect.

Sec. 22. This act shall take effect and be in force from and after its passage, and shall apply to all proceedings now pending where the appeals have been taken, except that it shall not be so-construed as to affect any vested rights.

Approved February 23, 1874.