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THE
REVISED STATUTES,
OF THE
TERRITORY OF MINNESOTA,

PASSED AT THE SECOND SESSION OF THE
LEGISLATIVE ASSEMBLY,

COMMENCING JANUARY 1, 1851.

PRINTED AND PUBLISHED PURSUANT TO LAW, UNDER THE SUPERVISION OF M. S. WILKINSON.

SAINT PAUL:

JAMES M. GOODHUE, TERRITORIAL PRINTER.

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1851

attorney general, immediately after the rendition of such judgment, to institute proceedings for that purpose.

Sec. 18. Upon the rendition of such judgment against a corporation, or for the vacating or annulling of letters patent, it is the duty of the attorney general to cause a copy of the judgment roll to be forthwith filed in the office of the secretary of the territory.

Record when filed with secretary.

CHAPTER 81.

OF THE REMOVAL OF ACTIONS TO THE SUPREME COURT.

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Sec. 1. A judgment or order, in a civil or criminal action, in any of the district courts, may be removed to the supreme court, as provided in this chapter.

Judgment &c., may be removed to supreme court.

Sec. 2. All penal judgments in the district courts, may be examined and affirmed, reversed or modified, by the supreme court, or if necessary, a new trial may be ordered; such examination may be had upon a writ of error or appeal, as hereinafter provided.

Judgment, &c., how examined in supreme court.

Sec. 3. Any party aggrieved, may appeal in the cases prescribed in this chapter.

Appeals how taken.

Sec. 4. The party appealing, is known as the appellant, and the adverse party, as the respondent; but the title of the action is not to be changed in consequence of the appeal.

Title of the action not to be changed by appeal.

Sec. 5. An appeal must be made by the service of a notice in writing, on the adverse party, and on the clerk with whom the judgment

Appeal how made.

or order appealed from, is entered, stating the appeal from the same, or some specified part thereof. When a party gives in good faith, notice of appeal from a judgment or order, and omits, through mistake, to do any other act necessary to perfect the appeal, or to stay proceedings, the court may permit an amendment on such terms as may be just.

Clerk to transmit papers to appellate court.

SEC. 6. Upon the appeal, allowed by the provisions of this chapter, being perfected, the clerk with whom the notice of appeal is filed, must, at the expense of the appellant, forthwith transmit to the appellate court, a certified copy of the notice of appeal, and of the judgment roll.

Intermediate orders when reviewed on appeal.

SEC. 7. Upon an appeal from a judgment, the court may review any intermediate order, involving the merits, and necessarily affecting the judgment.

What judgment may be given on appeal.

SEC. 8. Upon an appeal from a judgment or order, the appellate court may reverse, affirm, or modify the judgment or order appealed from, in the respect mentioned in the notice of appeal, and as to any or all of the parties, and may, if necessary or proper, order a new trial. When the judgment is reversed or modified, the appellate court may make complete restitution of all the property and rights lost by the erroneous judgment.

Appeal when to be taken.

SEC. 9. The appeal allowed by this chapter, must be taken within sixty days after notice of the judgment, if heretofore rendered, and within six months after a judgment shall be rendered.

Appellant must furnish papers to the court.

SEC. 10. The appellant must furnish the court with copies of the notice of appeal, and of the order or judgment roll. If he fail to do so, the appeal may be dismissed.

When and in what cases appeals lie.

SEC. 11. An appeal may be taken to the supreme court, in the following cases :

1. In a judgment in an action commenced in the district court, or brought there from another court; and upon the appeal from that judgment, to review any intermediate order, involving the merits, and necessarily affecting the judgment :

2. In an order affecting a substantial right, made in such action, when such order in effect determined the action, and presents a judgment from which an appeal might be taken :

3. In a final order affecting a substantial right, made in special proceeding, or upon a summary application in an action after judgment.

Security must be given to pay damages, costs and charges.

SEC. 12. To render an appeal effectual for any purpose, a written undertaking must be executed, on the part of the appellant, by at least two sureties, to the effect that the appellant will pay all damages, costs and charges, which may be awarded against him on the appeal, not exceeding two hundred and fifty dollars, or that sum must be deposited with the clerk, with whom the judgment or order was entered, to abide the judgment of the court of appeal; but such undertaking or deposit may be secured by a written consent, on the part of the respondent.

If judgment to pay money, security to stay execution.

SEC. 13. If the appeal be from a judgment, directing the payment of money, it does not stay the execution of the judgment, unless a written undertaking be executed on the part of the appellant, by at least two sureties, to the effect that if the judgment appealed from, or any part thereof be affirmed, the appellant will pay the amount directed to be paid by the judgment, or the part of such amount as to which the judgment shall be affirmed, if it be affirmed only in part, and all damages which shall be awarded against the appellant, upon the appeal.

If to deliver documents, they must be deposited.

SEC. 14. If the judgment appealed from, direct the assignment or delivery of documents, or personal property, the execution of the judgment is not stayed by appeal, unless the things required to be assigned or delivered, be brought into court, or placed in the custody of such officer or receiver, as the court may appoint; or unless an undertaking be entered into on the part of the appellant, by at least two sureties, and

in such amount as the court or judge thereof, may direct, to the effect that the appellant will obey the order of the appellate court, upon the appeal.

SEC. 15. If the judgment appealed from, direct the execution of a conveyance, or other instrument, the execution of the judgment is not stayed by the appeal, until the instrument is executed and deposited with the clerk, with whom the judgment is entered, to abide the judgment of the appellate court.

If to execute conveyance it must be deposited.

SEC. 16. If the judgment appealed from direct the sale or delivery of possession of real property, the execution of the same is not stayed, unless a written undertaking be executed on the part of the appellant, with two sureties, to the effect that during the possession of such property by the appellant, he will not commit or suffer to be committed, any waste thereon; and that if the judgment be affirmed, he will pay the value of the use and occupation of the property, from the time of the appeal, until the delivery of the possession thereof, pursuant to the judgment, not exceeding a sum to be fixed by a judge of the court, by which the judgment was rendered, and which must be specified in the undertaking.

If to deliver property, security for.

SEC. 17. Whenever an appeal is perfected, as provided by sections thirteen, fourteen, and sixteen, it stays all further proceedings in the court below, upon the judgment appealed from, or upon the matter embraced therein; but the court below, may proceed upon any other matter included in the action and not affected by the judgment appealed from. And the court below may, in its discretion, dispense with, or limit the security required by sections thirteen, fourteen, and sixteen, when the appellant is an executor, administrator, trustee, or other person acting in another's right, and may also, in all cases, limit such security to an amount not less than five thousand dollars.

Appeal perfected, proceedings stayed.

SEC. 18. In an action arising on contract, notwithstanding an appeal and security given for a stay of proceedings thereon, if the respondent give adequate security to make restitution, in case the judgment is reversed or modified, he may, upon leave obtained from the court below, proceed to enforce the judgment; such security must be an undertaking executed to the appellant, by at least two sufficient sureties, to the effect that if the judgment be reversed or modified, the respondent will make such restitution as the appellate court may direct.

Respondent may enforce judgment in certain cases by giving security.

SEC. 19. The undertakings prescribed by section twelve, thirteen, fourteen, and sixteen, may be in one instrument, or several, at the option of the appellant; and a copy including the names and residence of the sureties, must be served on the adverse party, with the notice of appeal, unless a deposit is made as provided in section twelve, and notice thereof given.

Undertakings in one instrument or several.

SEC. 20. An undertaking upon an appeal, is of no effect, unless it be accompanied by the affidavit of the sureties, that they are each worth double the amount specified therein; the adverse party may however, except to the sufficiency of the sureties, within ten days after notice of the appeal, and unless they or other sureties justify before a judge of the court below, as prescribed by law in other cases within ten days thereafter, the appeal must be regarded as if no such undertaking had been given; the justification must be upon a notice of not less than five days.

Security to be approved and to justify.

SEC. 21. In the cases not provided for in sections thirteen, fourteen, fifteen, sixteen, and seventeen, the perfecting of an appeal by giving the undertaking mentioned in section twelve, stays proceedings in the court below, upon the judgment appealed from, except that when it directs the sale of the perishable property, the court below may order

Perishable property may be sold.

the property to be sold, and the proceeds thereof to be deposited or invested, to abide the judgment of the appellate court.

Writs of error, may issue out of supreme court.

SEC. 22. Writs of error in civil and criminal cases, may issue of course out of the supreme court of this territory, in vacation as well as in term, and shall be returnable to the same court.

Writ of error when to operate as a stay of proceedings.

SEC. 23. No writ of error, shall operate to stay or supercede the execution in any civil action, unless the plaintiff in-error or some person in his behalf, shall give bond to the defendant, with one or more sufficient sureties, with conditions, that the plaintiff shall prosecute his suit to effect, and shall pay and satisfy such judgment as shall be rendered thereon.

Sufficiency of security to be determined by judge or clerk.

SEC. 24. The sufficiency of sureties, and the sum for which the bond shall be given, shall be determined in each case by any judge of the supreme court, or by the clerk from whose office the writ of error is issued, according to such general rules as the court may from time to time establish.

Bond when to be filed.

SEC. 25. The bond, if any is given, shall be filed in the office of the clerk of the supreme court, for the use of the defendant, and no execution shall be issued thereafter, upon the judgment complained of during the pending of the writ of error, and if execution shall have been already issued the clerk shall make and sign a certificate of the issuing of the writ of error, and the filing of the bond; and after notice of such certificate to the officer holding the execution, all further proceedings thereon shall be stayed.

Prevailing party entitled to costs.

SEC. 26. The party prevailing on a writ of error, in any civil action, shall in all cases be entitled to his costs, against the adverse party, and if the judgment is affirmed, the court shall adjudge to the defendant in error, damages for his delay, not less than seven per cent, and not exceeding twelve per cent a year, on the amount recovered by the former judgment; and in such case they may also in their discretion award to the defendant double costs.

Writ of error in capital case must be allowed by judge

SEC. 27. No writ of error upon a judgment for any capital offence, shall issue, unless allowed by one of the judges of the supreme court, after notice given to the attorney general of the territory.

In what cases writs of error may issue of course.

SEC. 28. Writs of error upon judgment in all other criminal cases shall issue of course, but they shall not stay or delay the execution of the judgment or sentence, unless they shall be allowed by one of the judges of the supreme court, with an express order thereon, for a stay of proceedings on the judgment or sentence.

Judge may make order for the custody of prisoner.

SEC. 29. When a stay of proceedings shall be ordered, as provided in the preceding section, the judge may at the same time make such order as the case may require, for the custody of the plaintiff, in error or for letting him to bail, or the party may, upon a writ of habeas corpus, procure his enlargement, upon giving bail, if entitled thereto.

Supreme court may allow ten per cent damages.

SEC. 30. In all cases where the judgment of the court below has been superceded by a writ of error, and the judgment shall be affirmed by the supreme court, the supreme court shall award ten per cent damages upon the amount of the judgment below, exclusive of interest and costs, and execution shall be issued therefor, in favor of the defendant in error.

Discontinuance does not preclude party from suing out another writ.

SEC. 31. No discontinuance, non-suit, or dismissal of a writ of error in the supreme court, shall preclude the party from suing out another writ of error, in the same cause within the time limited by law.

Bill of exceptions.

SEC. 32. If any person who is or shall be impleaded before any court in any civil action, where a writ of error lies, to a higher tribunal, shall allege an exception, such exception, being reduced to writing, shall be signed by the judge, allowing the same, and shall become a part of the record, if the party taking the same shall so elect.