

*James C. Child*  
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THE

PUBLIC STATUTES

OF THE

STATE OF MINNESOTA.

(1849—1858.)

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COMPILED BY  
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of usurping or intruding into, or unlawfully holding or exercising any office, franchise, or privilege, judgment must be rendered, that such defendant be excluded from the office, franchise, or privilege, and also that the plaintiff recover costs against such defendant; the court may also, in its discretion, impose upon the defendant a fine not exceeding one thousand dollars, which fine, when collected, must be paid into the treasury of the territory.

Corporation may be dissolved.

(15.) SEC. XV. If it be adjudged that a corporation against which an action shall have been brought, pursuant to this chapter, has by neglect, abuse, or surrender, forfeited its corporate rights, privileges, and franchises, judgment must be rendered that the corporation be excluded from such corporate rights, privileges, and franchises, and that the corporation be dissolved.

Costs may be ordered.

(16.) SEC. XVI. If judgment be rendered in such action, against a corporation, or against persons claiming to be a corporation, the court may cause the costs therein to be collected by execution against the persons claiming to be a corporation, or by process against the directors or other officers of such corporation.

Injunction, and receiver appointed.

(17.) SEC. XVII. When such judgment is rendered against a corporation, the court has the same power to restrain the corporation, to appoint a receiver of its property, and take an account and make distribution thereof among its creditors, as is given in the chapter upon actions respecting corporations, and in the chapter upon the voluntary dissolution of corporations, to the court of chancery; and it is the duty of the attorney general, immediately after the rendition of such judgment, to institute proceedings for that purpose.

Record when filed with secretary.

(18.) SEC. XVIII. 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.

CHAPTER 71.

REMOVAL OF ACTIONS TO THE SUPREME COURT.

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as to appeals see chap 21 / 131. 1861

✓ [Chapter 81, Revised Statutes.]

- (1.) SEC. I. 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
- (2.) SEC. II. 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.
- (3.) SEC. III. Any party aggrieved, may appeal in the cases prescribed in this chapter. Appeals how taken.
- (4.) SEC. IV. 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.
- (5.) SEC. V. 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 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. Appeal how made.
- (6.) SEC. VI. 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. Clerk to transmit papers to appellate court.
- (7.) SEC. VII. Upon an appeal from a judgment, the court may review any intermediate order, involving the merits, and necessarily affecting the judgment. Intermediate orders when reviewed on appeal.
- (8.) SEC. VIII. 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. What judgment may be given on appeal.
- (9.) SEC. IX. 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. Appeal when to be taken.
- (10.) SEC. X. 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. Appellant must furnish papers to the court.
- (11.) SEC. XI. [As amended on pages 12 and 13 of the laws of 1856:] Appeals. Appeals.

An appeal may be taken to the supreme court, or brought there from another court, and upon the appeal from such judgment the court may review any intermediate order involving the merits or necessarily affecting the judgment.

  2. From an order granting or refusing a provisional remedy, or which grants, refuses or dissolves an injunction;
  3. From an order involving the merits of the action or some parts thereof;

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- 4. From an order granting or refusing a new trial ;
- 5. From an order which in effect, determines the action and prevents a judgment from which an appeal might be taken ;
- 6. From a final order affecting a substantial right made in a special proceeding, or upon a summary application in an action after judgment ;

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

(12.) SEC. XII. 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.

(13.) SEC. XIII. 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.

(14.) SEC. XIV. 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.

If to execute conveyance if must be deposited.

(15.) SEC. XV. 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 deliver property, security for.

(16.) SEC. XVI. 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.

Appeal perfected, proceedings stayed.

(17.) SEC. XVII. 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.

When respond-

(18.) SEC. XVIII. [As amended on page 13 of the laws of 1856:]

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In an action arising on contract for the recovery of money only, notwithstanding an appeal and security given for a stay of proceedings therein, if the respondent gives adequate security to make restitution in case the judgment is reversed or modified, he may, upon leave obtained in the manner hereinafter provided 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. Such leave shall only be granted upon motion, and notice to the adverse party, and in case when it shall satisfactorily appear to the court that the appeal has been taken for the purpose of delay.

ent gives adequate security.

(19.) SEC. XIX. 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.

(20.) SEC. XX. 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.

*See section 19*  
*Security to be approved and to justify.*  
*5 days after*  
*6 J. J. Higgins Esq.*  
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(21.) SEC. XXI. 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 the property to be sold, and the proceeds thereof to be deposited or invested, to abide the judgment of the appellate court.

Perishable property may be sold

(22.) SEC. XXII. [As amended on page 13 of the amendments of 1852 to the revised statutes:] 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; but no writ of error shall be issued after the expiration of one year from the time of the rendition of the judgment to which it refers.

Writs of error may issue out of supreme court.

(23.) SEC. XXIII. No writ of error, shall operate to stay or supersede 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.

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

(24.) SEC. XXIV. 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.

Sufficiency of security to be determined by judge or clerk.

(25.) SEC. XXV. 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 cer-

Bond when to be filed.

tificate to the officer holding the execution, all further proceedings thereon shall be stayed.

In writ of error prevailing party entitled to costs.

(26.) SEC. XXVI. [*As amended on page 13 of the amendments of 1852 to the revised statutes.*] The party prevailing on a writ of error, shall in all cases be entitled to his costs against the adverse party; and if the judgment is affirmed, the court may, in its discretion, award double costs to the defendant.

Writ of error in capital case must be allowed by judge.

(27.) SEC. XXVII. No writ of error upon a judgment for any capital offense, 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 case writs of error may issue of course.

(28.) SEC. XXVIII. 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.

(29.) SEC. XXIX. 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.

(30.) SEC. XXX. In all cases where the judgment of the court below has been superseded 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.

(31.) SEC. XXXI. No discontinuance, nonsuit, 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.

(32.) SEC. XXXII. 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.

CHAPTER 72.

MISCELLANEOUS PROCEEDINGS IN CIVIL ACTIONS.

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1. Parties not summoned in an action may be summoned after judgment.
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12. Party may demand inspection and copy of paper.
13. An order defined.
14. Motion defined.
15. Motion how made.
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