

THE *J. Rogers*
GENERAL STATUTES

OF THE

STATE OF MINNESOTA:

REVISED BY COMMISSIONERS APPOINTED UNDER AN ACT APPROVED FEBRUARY 17, 1868, AND
ACTS SUBSEQUENT THERETO, AMENDED BY THE LEGISLATURE,
AND PASSED AT THE SESSION OF 1866.

TO WHICH

THE CONSTITUTION OF THE UNITED STATES, THE ORGANIC ACT, THE
ACT AUTHORIZING A STATE GOVERNMENT, AND THE
CONSTITUTION OF THE STATE OF MINNESOTA,

ARE PREFIXED;

AND A LIST OF ACTS PREVIOUSLY REPEALED,

A GLOSSARY, AND INDEX, ARE ADDED.

Edited and Published under the authority of Chapters 15 and 16 of
the Laws of 1866.

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CHAPTER LXXXVI.

APPEALS IN CIVIL ACTIONS.

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Judgment or order may be removed to supreme court by appeal.

- 1 Min., 301.
- 3 Min., 191.
- 4 Min., 364.

Title of action.

- Appeal, how made.
- 9 Min., 232.

Clerk shall transmit papers to supreme court.

- 1 Min., 297.
- 2 Min., 113.

Judgment in appellate court.

- 3 Min., 141.
- 3 Min., 147.
- 6 Min., 542.

Time within which appeal can be taken.

- 5 Min., 23.
- 9 Min., 313.

Appellant to furnish papers—appeal dismissed, when.

In what cases appeal may be taken.

- 1 Min., 121.
- 1 Min., 183.
- 1 Min., 239.

SECTION 1. A judgment or order, in a civil action, in any of the district courts, may be removed to the supreme court, by appeal, as provided in this chapter, and not otherwise.

SEC. 2. 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.

SEC. 3. An appeal shall 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.

SEC. 4. Upon an appeal being perfected, the clerk shall transmit to the supreme court a certified copy of the judgment roll, or order appealed from, and the papers upon which the order was granted, at the expense of the appellant. When a case is made, or bill of exceptions allowed, it may, for the purpose of the appeal, stand in place of or be attached to the judgment roll, and certified to the appellate court as aforesaid.

SEC. 5. 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.

SEC. 6. The appeal from a judgment shall be taken within six months after entry thereof, and from an order within thirty days after written notice of the same.

SEC. 7. The appellant shall furnish the court with copies of the notice of appeal, and of the order or judgment roll. If he fails to do so the appeal may be dismissed.

SEC. 8. An appeal may be taken to the supreme court, by the aggrieved party in the following cases:

First. From a judgment in an action commenced in the district court, or brought there from another court, from any judgment rendered in such

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court, and upon the appeal from such judgment the court may review any intermediate order involving the merits or necessarily affecting the judgment.

Second. From an order granting or refusing a provisional remedy, or which grants, refuses, dissolves, or refuses to dissolve, an injunction, or an order vacating or sustaining an attachment;

Third. From an order involving the merits of the action, or some part thereof.

Fourth. From an order refusing a new trial; 1867-107

Fifth. From an order, which, in effect determines the action, and prevents a judgment from which an appeal might be taken;

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

SEC. 9. To render an appeal effectual for any purpose, a bond shall be executed by the appellant, with at least two sureties, conditioned that the appellant will pay all costs and charges, which may be awarded against him on the appeal, not exceeding the penalty of the bond, which shall be at least two hundred and fifty dollars, or that sum shall be deposited with the clerk with whom the judgment or order was entered, to abide the judgment of the court of appeal; but such bond or deposit may be waived by a written consent on the part of the respondent.

SEC. 10. Such appeal when taken from an order, shall stay all proceedings thereon, and save all rights affected thereby, if the appellant, or some one in his behalf, as principal, executes a bond in such sum, and with such sureties as the judge making the order, or in case he can not act, the court commissioner or clerk of the court where the order is filed, directs and approves, conditioned to pay the costs of said appeal and the damages sustained by the respondent in consequence thereof, if said order or any part thereof is affirmed or said appeal dismissed, and abide and satisfy the judgment or order which the appellate court may give therein, which bond shall be filed in the office of said clerk.

SEC. 11. If the appeal is from a judgment, directing the payment of money, it does not stay the execution of the judgment, unless a bond is executed by the appellant, with at least two sureties, conditioned that if the judgment appealed from, or any part thereof is 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 is affirmed, if it is affirmed only in part, and all damages which are awarded against the appellant upon the appeal.

SEC. 12. If the judgment appealed from, directs 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 are brought into court, or placed in the custody of such officer or receiver, as the court may appoint; or unless a bond is executed by the appellant, with at least two sureties, and in such amount as the court or judge thereof, may direct, conditioned that the appellant will obey the order of the appellate court, upon the appeal.

SEC. 13. If the judgment appealed from, directs 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.

SEC. 14. If the judgment appealed from directs the sale or delivery of possession of real property, the execution of the same is not stayed, unless a bond is executed on the part of the appellant, with two sureties,

- 1 Min., 301.
- 2 Min., 34.
- 2 Min., 50.
- 2 Min., 118.
- 2 Min., 224.
- 3 Min., 352.
- 3 Min., 359.
- 4 Min., 224.
- 4 Min., 320.
- 5 Min., 27.
- 5 Min., 65.
- 5 Min., 95.
- 5 Min., 347.
- 6 Min., 136.
- 6 Min., 235.
- 6 Min., 550.
- 6 Min., 558.
- 7 Min., 315.
- 7 Min., 493.
- 8 Min., 214.
- 8 Min., 467.
- 9 Min., 151.
- 9 Min., 166.
- 10 Min., 63.
- 10 Min., 168.
- 10 Min., 192.
- 10 Min., 285.

Bond on appeal.

Effect of appeal.

In what cases appeal is not a stay unless bond is executed.

In what cases appeal is not a stay unless documents, &c., are brought into court, or bond given.

Conveyance to be deposited with clerk, or appeal not a stay.

If real property is to be sold, &c., appeal not a stay unless bond is given.

conditioned 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 is 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.

When appeal is perfected it stays proceedings—court below may proceed, how—may dispense with or limit security

SEC. 15. Whenever an appeal is perfected, as provided by sections eleven, twelve and fourteen, 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 said sections, when the appellant is an executor, administrator, trustee, or other person acting in another's right.

Judgment may be enforced notwithstanding appeal and security for stay has been given, when

SEC. 16. 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 shall be a bond executed by the respondent or some one in his behalf, to the appellant, with at least two sufficient sureties, to the effect that if the judgment is reversed or modified, the respondent will make such restitution as the appellate court directs. Such leave shall only be granted upon motion and notice to the adverse party, and in case when it satisfactorily appears to the court that the appeal has been taken for the purpose of delay.

Bonds may be in one instrument—how served

SEC. 17. The bonds prescribed by sections nine, eleven, twelve and fourteen, may be in one instrument, or several, at the option of the appellant; and a copy including the names and residence of the sureties, shall be served on the adverse party, with the notice of appeal, unless a deposit is made as provided in section nine and notice thereof given.

Bond of no effect unless sureties justify.

SEC. 18. A bond upon an appeal, is of no effect, unless it is 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 shall be regarded as if no such bond had been given; the justification shall be upon a notice of not less than five days.

Court may order sale of perishable property, notwithstanding stay.

SEC. 19. In the cases not specified in sections eleven, twelve, thirteen and fourteen, the perfecting of an appeal by giving the bond mentioned in section nine, stays proceedings in the court below, upon the judgment appealed from, except that when it directs the sale of 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.

Dismissal of appeal not to preclude party from taking another.

SEC. 20. No discontinuance, or dismissal of an appeal in the supreme court, shall preclude the party from taking another appeal in the same cause within the time limited by law.