

REVISED LAWS OF MINNESOTA 94

SUPPLEMENT 1909

CONTAINING

THE AMENDMENTS TO THE REVISED LAWS,
AND OTHER LAWS OF A GENERAL AND
PERMANENT NATURE, ENACTED
BY THE LEGISLATURE IN
1905, 1907, AND 1909

WITH HISTORICAL AND EXPLANATORY NOTES TO PRIOR STATUTES
AND FULL AND COMPLETE NOTES OF ALL
APPLICABLE DECISIONS

COMPILED AND ANNOTATED BY
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judgment be recovered in a municipal court where no statutory costs are now allowed in such municipal court in such action, and double costs in all other actions wherein costs are recoverable or on appeal. (R. L. § 4339, as amended by Laws 1907, c. 200, § 1.)

4344. Interest on verdict, etc.—When the judgment is for the recovery of money, including a judgment for the recovery of taxes, interest from the time of the verdict or report until judgment is finally entered shall be computed by the clerk and added thereto. (R. L. § 4344, as amended by Laws 1909, c. 371, § 1.)

Operation in general.—This section does not apply to judgments for taxes. *State v. New England Furniture & Carpet Co.*, 119 N. W. 427.

4349. Chargeable on estate or fund.

G. S. 1894, § 5509, cited in *Conlon v. Holste*, 99 Minn. 493, 110 N. W. 2.

4352. In criminal proceedings.

Appeal—Costs for or against state.—There is no statute under which costs or disbursements can be taxed for or against the state in the Supreme Court on appeal in a criminal case. *State v. Tetu*, 98 Minn. 351, 108 N. W. 470.

4353. Supreme court—Costs and disbursements.

Disbursements—Apportionment.—Where there were cross-appeals, and the expense of printing the record and causing the return to be made was rendered necessary solely by reason of defendant's appeal, although plaintiff was permitted to submit his appeal on defendant's record, taxation of one-half the cost of printing to each was improper. *Hess v. Great Northern R. Co.*, 98 Minn. 198, 108 N. W. 7, 803.

4355. Security for costs.

G. S. 1894, § 5518, cited in *State Board of Examiners in Law v. Byrnes*, 100 Minn. 76, 110 N. W. 341.

CHAPTER 80.

APPEALS IN CIVIL ACTIONS.

4357. Appeal from district court.

Right of state to appeal.—In a proceeding by the state against a corporation and its officers, charging them with violation of the anti-trust statute, the state may appeal from a judgment in favor of defendants. *State v. Duluth Board of Trade*, 107 Minn. 506, 121 N. W. 395.

4359. Notice of appeal—Service—Effect.

Waiver of appeal.—Appeal from an order setting aside service of summons held not waived by subsequent personal service pending the appeal; nor did such subsequent service render the validity of the first a moot question. *Venner v. Great Northern R. Co.*, 121 N. W. 212.

4360. Return to supreme court.

Memorandum.—A memorandum, not made a part of an order granting a new trial, which in itself is clear and positive, may not be referred to on appeal to impeach the order or overcome its effect. *Alton v. Chicago, M. & St. P. R. Co.*, 120 N. W. 749.

4361. Powers of appellate court.

Mandate.—Where a new trial has been directed by the Supreme Court, the parties may waive the fact that a mandate has not been sent down to the trial court. *Courtney v. Minneapolis, St. P. & S. S. M. R. Co.*, 100 Minn. 434, 111 N. W. 399.

Law of case.—The decision of a former appeal, reviewing a former trial, is the law of the case on an appeal reviewing a second trial, if the evidence was substantially the same on both trials. *Brancht v. Graves-May Co.*, 96 Minn. 387, 104 N. W. 1089, 106 N. W. 112.

Right decision but wrong reason.—An order or decision, otherwise right as a matter of law, will not be reversed merely because the reasons assigned therefor by the court were wrong. *Kipp v. Clinger*, 97 Minn. 135, 106 N. W. 108.

4362. Judgment notwithstanding verdict.

When judgment should be ordered.—Judgment notwithstanding the verdict is not authorized, where there is a clear conflict in the evidence upon material issues. *Hess v. Great Northern R. Co.*, 98 Minn. 198, 108 N. W. 7, 803.

Judgment denied—Motion for new trial.—A motion for judgment notwithstanding the verdict, made at the conclusion of the trial and denied, does not bar a motion for a new trial upon a settled case, if seasonably made. *Sallden v. City of Little Falls*, 102 Minn. 358, 113 N. W. 884, 13 L. R. A. (N. S.) 790, 120 Am. St. Rep. 635.

Trial by court.—This section does not apply to a trial by the court without a jury. *Meshbesh v. Channellene Oil & Mfg. Co.*, 119 N. W. 428.

4364. Appeal, when taken.

Appeal from judgment—Pendency of appeal from taxation.—The time within which appeal may be taken from a judgment, complete and perfect on its face, expires six months from the date of its entry. Pendency of an appeal from the clerk's taxation of costs and disbursements, which are allowed and included in the judgment, does not suspend the operation of the statute fixing the time. *Kearney v. Chicago, St. P., M. & O. R. Co.*, 101 Minn. 65, 111 N. W. 923.

— Judgment for plaintiff as to part—Appeals by defendant and plaintiff.—Where plaintiff recovers judgment, but not for all the relief claimed, and defendant appeals from the judgment and assigns errors only as to the part unfavorable to him and the judgment is affirmed on his appeal, plaintiff, within the time limited, may appeal from that part of the judgment which is to his disadvantage. *State ex rel. City of Duluth v. Northern Pac. Ry. Co.*, 99 Minn. 280, 109 N. W. 238, 110 N. W. 975.

4365. Appeal to supreme court, in what cases.

Subd. 2.—An application for a temporary injunction to restrain a school district from issuing bonds rests in judicial discretion, and unless there has been an abuse thereof the court on appeal will not interfere. *Meagher v. Schussler*, 106 Minn. 539, 118 N. W. 664.

Subd. 3.—An order denying a motion to amend findings is not appealable. *Peterson v. Hutchinson*, 98 Minn. 452, 107 N. W. 1124.

Neither an order for judgment nor an order denying a motion to amend the findings and conclusions is appealable. *In re Nikannis Co.*, 121 N. W. 212.

An order denying plaintiff's motion to amend the findings, to set aside the conclusions, and for judgment, is not appealable. *Wolf v. State Board of Medical Examiners*, 121 N. W. 395.

Subd. 4.—Dismissing an appeal by the district court on the trial, is ground for a motion for new trial, and an order denying such motion is appealable. *Burkleo v. Town Board of Baytown*, 120 N. W. 526.

Subd. 6.—An order supplementary to execution, requiring the judgment debtor to appear for examination concerning his property, is not appealable. *West Pub. Co. v. De La Mott*, 104 Minn. 174, 116 N. W. 103.

Subd. 7.—An order removing a receiver appointed to wind up an insolvent corporation is not appealable, except when it goes beyond the fact of removal and adjudicates rights of the receiver. *Young v. Irish*, 104 Minn. 367, 116 N. W. 656.

4366. Bond or deposit for costs.

Cited in *Bock v. Sauk Center Grocery Co.*, 100 Minn. 71, 110 N. W. 257, 9 L. R. A. (N. S.) 1054.

Supersedeas.—A cost bond, such as authorized by this section, conditioned on the payment of costs and charges which may be awarded against appellant on the appeal, does not operate as a supersedeas. *Scofield v. Scheaffer*, 104 Minn. 127, 116 N. W. 211.

4367. Appeal from order—Supersedeas.

Insufficient bond.—The Supreme Court has jurisdiction, after appeal perfected, to direct appellant to give a new supersedeas bond, and, in case of his default, to vacate the stay, whenever it is made to appear that the original bond is clearly insufficient. *Bock v. Sauk Center Grocery Co.*, 100 Minn. 71, 110 N. W. 257, 9 L. R. A. (N. S.) 1054.