

## Appeals, Reviews; Civil Actions

## CHAPTER 605

## APPEALS FROM DISTRICT COURT

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**605.01 APPEAL TO SUPREME COURT.** A judgment or order in a civil action in a district court may be removed to the supreme court by appeal, as provided in this chapter, and not otherwise.

[R. L. s. 4357] (9490)

**605.02 TITLE ON APPEAL.** The party appealing shall be known as the appellant, and the adverse party as the respondent; but the title of the action shall not be changed in consequence of the appeal.

[R. L. s. 4358] (9491)

**605.03 REQUISITES OF APPEAL.** 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 specific part thereof. To render the appeal effective for any purpose the party appealing shall, within the time provided by law for taking such appeal, file the notice together with the bond on appeal with the clerk of the lower court, and at the time of filing the notice and bond the appellant shall deposit with the clerk the sum of \$15, of which \$10 shall be transmitted to the clerk of the supreme court, as provided in section 605.04, as and for the filing fee required in the supreme court by section 357.08, and the remainder retained by the clerk of the court below as and for the fee provided in section 357.02, subdivision 49. When a party, in good faith, gives 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.

[R. L. s. 4359; 1917 c. 66 s. 2] (9492)

**605.04 RETURN TO SUPREME COURT.** Upon an appeal being perfected, the clerk of the court appealed from shall immediately transmit to the clerk of the supreme court the ten-dollar fee prescribed by section 605.03, together with a certified copy of the notice and bond upon appeal, and the filing thereof shall vest in the supreme court jurisdiction of the cause. Upon the filing of the return the supreme court may fix the time within which the printed record and briefs shall be served and filed, and also set a date for the argument of the questions presented by the appeal. Upon request of either party, the clerk of the court appealed from shall, at the time required by the rules of the supreme court, transmit to the clerk of the supreme court the original record, judgment roll, settled case, or bill of exceptions, and such exhibits as may be on file in his office, the same to remain in the supreme court for its use until the case is disposed of and then returned to the clerk of the court appealed from.

[R. L. s. 4360; 1913 c. 55 s. 1; 1917 c. 66 s. 3] (9493)

**605.05 POWERS OF APPELLATE COURT.** 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, if necessary or proper, may order a new trial. When the judgment is reversed or modified, the appellate court may make complete restitution of all property and rights lost by the erroneous judgment.

[R. L. s. 4361] (9494)

**605.06 JUDGMENT NOTWITHSTANDING VERDICT.** When, at the close of the testimony, any party to the action moves the court to direct a verdict in his favor, and such motion is denied, upon a subsequent motion that judgment be entered notwithstanding the verdict, or notwithstanding the jury has disagreed and been discharged, the court shall grant the same if the moving party was entitled to such directed verdict. An order for judgment notwithstanding the verdict may also be made on a motion in the alternative form asking therefor, or, if the same be denied, for a new trial. If the motion for judgment notwithstanding the verdict be denied, the supreme court, on appeal from the judgment, may order judgment to be entered, when it appears from the testimony that a verdict should have been so directed at the trial; and it may also so order, on appeal from the whole order denying such motion when made in the alternative form, whether a new trial was granted or denied by such order.

[R. L. s. 4362; 1913 c. 245 s. 1; 1915 c. 31 s. 1; 1917 c. 24 s. 1] (9495)

NOTE: The first and second sentences superseded by Rules of Civil Procedure, Rules 50.02, 86.01 and 86.02.

**605.07 DISMISSAL OF APPEAL IN VACATION.** Any justice of the supreme court, during vacation, shall have the same power as the court in term to dismiss any appeal and remand the cause to the court below, upon the stipulation of the parties, consenting thereto, filed with the clerk of court.

[R. L. s. 4363] (9496)

**605.08 APPEAL, WHEN TAKEN.** An appeal from a judgment may be taken within six months after the entry thereof, and from an order within 30 days after written notice of the same from the adverse party.

[R. L. s. 4364] (9497)

**605.09 APPEAL TO SUPREME COURT.** An appeal may be taken to the supreme court by the aggrieved party in the following cases:

(1) From a judgment in an action commenced in the district court, or brought there from another court from any judgment rendered in such court; and upon such appeal the court may review any intermediate order involving the merits or necessarily affecting the judgment appealed from;

(2) 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;

(3) From an order involving the merits of the action or some part thereof;

(4) From an order sustaining a demurrer, or from an order overruling a demurrer if the court certifies that the question presented by the demurrer which it overrules by such order is important and doubtful and makes such certification a part of the order, or from an order refusing a new trial, or from an order granting a new trial if the court expressly states therein, or in a memorandum attached thereto, that the order is based exclusively upon errors of law occurring at the trial, and upon no other ground; and the court shall specify such errors in its order or memorandum, but upon appeal, such order granting a new trial may be sustained for errors of law prejudicial to respondent other than those specified by the trial court;

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

(6) From an order or judgment made or rendered in proceedings supplementary to execution;

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

When an appeal is perfected under clause (2) or (7) of this section, and notice and bond on appeal are filed with the clerk of the supreme court, the party appealing, or the respondent, may apply to the supreme court, upon ten days' notice, for an order fixing the time and manner of the hearing of the appeal; and the court may, in its discretion, if it be of opinion that the substantial interests of the parties involved, or of the public, require a speedy hearing, summarily fix the time of hearing, whether the court be then in session or in vacation, and may summarily determine the time for filing paper books and briefs, and the method of submission.

[R. L. s. 4365; 1913 c. 474 s. 1; 1931 c. 252; 1945 c. 463 s. 1] (9498)

**605.10 BOND OR DEPOSIT FOR COSTS.** To render an appeal effectual for any purpose, a bond shall be executed by the appellant, conditioned that the appellant shall 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 \$250.00; or that sum shall be deposited with the clerk with whom the judgment or order was entered, to abide the judgment of the appellate court, but such bond or deposit may be waived by the written consent of the respondent.

[R. L. s. 4366] (9499)

**605.11 APPEAL FROM ORDER; SUPERSEDEAS.** 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, give bond in such sum as the judge making the order, or, in case he cannot act, the court commissioner or clerk of the court where the order is filed, directs and approves, conditioned to pay the costs of the appeal, and the damages sustained by the respondent in consequence thereof, if the order, or any part thereof, shall be affirmed, or the appeal dismissed, and to abide and satisfy the judgment or order which the appellate court may give therein, which bond shall be filed in the office of the clerk.

[R. L. s. 4367] (9500)

**605.12 MONEY JUDGMENT; SUPERSEDEAS.** If the appeal be from a judgment directing the payment of money, it shall not stay the execution of the judgment unless a bond is executed by the appellant 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 thereof as to which it is affirmed, if it is affirmed only in part, and all damages awarded against appellant upon the appeal.

[R. L. s. 4368] (9501)

**605.13 CUSTODY OF CHATTELS PENDING STAY.** If the judgment appealed from directs the assignment or delivery of documents or personal property, its execution shall not be 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, 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.

[R. L. s. 4369] (9502)

**605.14 DIRECTING CONVEYANCE; STAY.** If the judgment appealed from directs the execution of a conveyance or other instrument, its execution shall not be stayed by the appeal until the instrument shall be executed and deposited with the clerk with whom the judgment is entered, to abide the judgment of the appellate court.

[R. L. s. 4370] (9503)

**605.15 SALE OF REAL PROPERTY; SUPERSEDEAS.** If the judgment appealed from directs the sale or delivery of possession of real property, its execution shall not be stayed unless a bond be executed on the part of the appellant conditioned that during the possession of such property by him 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.

[R. L. s. 4371] (9504)

**605.16 EXTENT OF STAY.** When an appeal is perfected, as provided by sections 605.12, 605.13, and 605.15, it shall stay all further proceedings in the court below upon the judgment appealed from or the matter embraced therein; but such court may proceed upon any other matter included in the action, and not affected by the judgment appealed from; and the court below may dispense with or limit the security required when the appellant is an executor, administrator, trustee, or other person acting in another's right.

[R. L. s. 4372] (9505)

**605.17 BOND TO VACATE STAY ON MONEY JUDGMENT.** Notwithstanding an appeal from a money judgment and security given for a stay of proceedings thereon, the court below, on motion and notice to the adverse party, may grant leave to the respondent to enforce the judgment upon his giving bond to the appellant as herein provided, if it be made to appear to the satisfaction of the

court that the appeal was taken for the purpose of delay. Such bond shall be executed by the respondent, or some one in his behalf, and shall be conditioned that if the judgment be reversed or modified the respondent will make such restitution as the appellate court shall direct.

[R. L. s. 4373] (9506)

**605.18 BONDS MAY BE IN ONE INSTRUMENT; HOW SERVED.** The bonds in the several cases of appeals provided for in sections 605.10 to 605.13, and 605.15, or such of them as may be required in any case, may be in one instrument or several, at the option of the appellant; and a copy, including the name and residence of each surety, shall be served on the adverse party with the notice of appeal, unless a deposit be made as provided in section 605.10 and notice thereof given.

[R. L. s. 4374] (9507)

**605.19 JUSTIFICATION OF SURETIES.** A bond upon an appeal is of no effect unless it is accompanied by the affidavit of the sureties that each is worth double the amount specified therein; the adverse party may except to the sufficiency of the sureties within ten days after notice of the appeal; and unless they or other sureties shall 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 bond had been given; the justification shall be upon not less than five days' notice.

[R. L. s. 4375] (9508)

**605.20 STAY IN OTHER CASES; PERISHABLE PROPERTY.** In cases not specified in sections 605.12 to 605.15, the perfecting of an appeal by giving the bond mentioned in section 605.10 shall stay proceedings in the court below upon the judgment appealed from, except that when it directs the sale of perishable property the court may order the property to be sold, and the proceeds thereof deposited or invested to abide the judgment of the appellate court.

[R. L. s. 4376] (9509)

**605.21 DISMISSAL NOT TO PRECLUDE ANOTHER APPEAL.** 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.

[R. L. s. 4377] (9510)

**605.22 DEATH OF RESPONDENT; SUBSTITUTION.** If the respondent dies, after notice of the appeal and before it has been heard, the appellant shall apply to the supreme court, if in session, otherwise to a justice thereof, to have the legal representative or successor in interest of such deceased respondent substituted as respondent. In case the appellant fails to cause substitution to be made within 60 days from such death, upon the filing of an affidavit, by his legal representative or successor in interest, with the clerk of the supreme court, showing the taking of the appeal, the death of the respondent, and that the appellant has failed to cause such substitution to be made, the appeal shall be deemed abandoned, and the clerk of the supreme court shall enter an order dismissing the same. Upon the filing of a certified copy of such order with the clerk of the court below, such court shall proceed in the action as if no appeal had been taken.

[R. L. s. 4378] (9511)

**605.23 DEATH OF PARTY AFTER SUBMISSION OF APPEAL.** When an appeal has been taken and submitted to the supreme court, and either party shall die before entry of judgment therein, and the surviving party, or the legal representative or successor in interest of the deceased party, shall file with the clerk of the supreme court an affidavit showing such death, the clerk shall substitute the name of such legal representative or successor in interest, and the action shall thereupon proceed and judgment be entered for or against such representative or successor in interest.

[R. L. s. 4379] (9512)