

THE  
GENERAL STATUTES

OF THE  
STATE OF MINNESOTA

As Amended by Subsequent Legislation, with which are Incorporated  
All General Laws of the State in Force December 31, 1894

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CHAPTER 117.

APPEALS AND WRITS OF ERROR IN CRIMINAL CASES.

§ 7385. Removal to supreme court, how and when made.

Criminal cases may be removed by the defendant to the supreme court, by appeal or writ of error, at any time within six months after judgment, or after the decision of a motion denying a new trial; but if the order denying a new trial is affirmed upon hearing upon the merits, no appeal shall be allowed from the judgment.

(G. S. 1866, c. 117, § 1, as amended 1870, c. 76, § 2; G. S. 1878, c. 117, § 1.)

The state cannot take an appeal or writ of error in a criminal case. *State v. McGrorty*, 2 Minn. 225, (Gil. 187.)

A criminal case cannot be removed from a district court to the supreme court by an appeal taken from the verdict of a jury therein. *State v. Ehrig*, 21 Minn. 463.

A criminal cause may be brought to this court upon writ of error, or upon the report of the judge who tried the cause. *Bonfanti v. State*, 2 Minn. 124, (Gil. 99.)

See cases cited in note to § 6140.

An order overruling a demurrer is not appealable. *State v. Abrisch*, 42 Minn. 202, 43 N. W. Rep. 1115.

§ 7386. Stay of proceedings, how obtained.

When an appeal is taken, it shall not stay the execution of the judgment, unless an order to that effect is made by the judge who tried the cause, or a judge of the supreme court. Notice of the appeal and the order staying proceedings, if any, shall be filed with the clerk of the court where the judgment is entered, and served on the attorney general.

(G. S. 1866, c. 117, § 2; G. S. 1878, c. 117, § 2.)

In a prosecution for violation of a city ordinance, the notice of appeal should be served on the city attorney. *State v. Sexton*, 42 Minn. 154, 43 N. W. Rep. 845.

Cited, *State v. Noonan*, 24 Minn. 174, 175.

§ 7387. Writ of error, by whom allowed.

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.

(G. S. 1866, c. 117, § 3; G. S. 1878, c. 117, § 3.)

§ 7388. Writ of error not a stay unless ordered.

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 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.

(G. S. 1866, c. 117, § 4; G. S. 1878, c. 117, § 4.)

Cited, *State v. Noonan*, 24 Minn. 174, 175.

§ 7389. Return to supreme court.

Upon an appeal being perfected, or a writ of error filed with him, the clerk shall transmit to the supreme court a copy of the judgment roll, and of the bill of exceptions, if any.

(G. S. 1866, c. 117, § 5; G. S. 1878, c. 117, § 5.)

See *State v. Lessing*, 16 Minn. 75, (Gil. 64.)

§ 7390. Bill of exceptions—Allowance, etc.

Any person who is convicted of a crime before the district court or court of common pleas aforesaid, being aggrieved by any opinion, direction or judgment of the court in any matter of law, may allege exceptions to such opinion, direction or judgment; which exceptions, being reduced to writing in a summary manner, and presented to the court any time before the end of the term, or at any special term thereafter which the court

§§ 7390-7393 APPEAL AND ERROR, IN CRIMINAL CASES. [Ch. 117

may designate for such purpose, and being found conformable to the truth of the case, shall be allowed and signed by the judge, and may be used on a motion for a new trial, and, when judgment is rendered, shall be attached to and become a part of the judgment-roll.

(G. S. 1866, c. 117, § 6, as amended 1870, c. 76, § 3; G. S. 1878, c. 117, § 6.)

The statutes give the defendant an appeal in a criminal case only from a final judgment or an order denying a new trial; all other decisions, directions, or judgments must be incorporated in a bill of exceptions, and reviewed on such appeal or a writ of error. *State v. Noonan*, 24 Minn. 174.

After a bill of exceptions has been settled by the judge, he cannot correct mistakes in it without calling in the parties, and allowing them to be heard. *State v. Laliver*, 4 Minn. 379, (Gil. 286.)

Where the record contains no exceptions taken, settled, or allowed, as provided by this section, the only question that can be considered is the sufficiency of the indictment to support the judgment. *State v. Miller*, 23 Minn. 352; *State v. Wyman*, 42 Minn. 182, 43 N. W. Rep. 1116.

§ 7391. Proceedings in appellate court.

No assignment of errors or joinder in error is necessary upon any writ of error issued in a criminal case; but the court shall proceed on the return thereto, and render judgment upon the record before them. If the court affirms the judgment, it shall direct the sentence pronounced to be executed, and the same shall be executed accordingly. If it reverses the judgment rendered, it shall either direct a new trial, or that the defendant be absolutely discharged, as the case may require.

(G. S. 1866, c. 117, § 7; G. S. 1878, c. 117, § 7.)

Where, in a criminal case, there has been heard in this court, on the merits, an appeal from an order denying a new trial, upon a subsequent writ of error upon the judgment, no error prior to the order denying a new trial can be considered. *Mims v. State*, 26 Minn. 494, 5 N. W. Rep. 369.

The record must show that defendant was arraigned on the indictment. *Hanson v. State*, (Ohio,) 1 N. E. Rep. 136,

§ 7392. Recognizance on appeal, when allowed, etc.

If, upon appeal or writ of error, a party is admitted to bail, he may recognize to the state of Minnesota in such sum as the judge shall order, with sufficient sureties, for his personal appearance at the supreme court of the then next term thereof, and to enter and prosecute his exceptions with effect, and abide the sentence thereon, and in the meantime keep the peace, and be of good behavior; and the judge may, in his discretion, allow any person so to recognize, charged with an offence not punishable with death.

(G. S. 1866, c. 117, § 8; G. S. 1878, c. 117, § 8.)

The district court has authority in a criminal case, after verdict of conviction and before sentence, to take bail for the appearance of the defendant before it to receive sentence. *State v. Levy*, 24 Minn. 362.

§ 7393. Defendant committed, when—Copy of record to be filed, etc.

If any person, so appealing or taking a writ of error, does not so recognize, he shall be committed to prison to await the decision of the supreme court; and, in that case, the clerk of the court in which the conviction was had, shall file a certified copy of the record and proceedings in the case in the supreme court, and the court shall have cognizance thereof, and consider and decide the questions of law, and shall render judgment or make such order thereon as law and justice require; and if a new trial is ordered, the cause shall be remanded to the said district court for such new trial.

(G. S. 1866, c. 117, § 9; G. S. 1878, c. 117, § 9.)

Upon writ of error or appeal from a judgment in a criminal case, this court may, instead of reversing or affirming, modify the judgment so as to correct any errors of the court below in ordering or entering it. *Mims v. State*, 26 Minn. 494, 5 N. W. Rep. 369; *State v. Framness*, 43 Minn. 490, 45 N. W. Rep. 1098.

Section 223, p. 564, Rev. St., providing that, in criminal cases, the supreme court "shall consider and decide the questions of law, and shall render judgment, and award such sentence or make such order thereon as the law and justice shall require," is not imperative upon the court to pronounce sentence; it may remand the cause for sentence. *State v. Bilansky*, 3 Minn. 246, (Gil. 169.)

# MINNESOTA STATUTES 1894

Ch. 117] APPEAL AND ERROR IN CRIMINAL CASES. §§ 7394-7397

## § 7394. Dismissal of appeal—Not to preclude another.

If any of the provisions herein made requisite to the taking of an appeal or a writ of error are not complied with, the supreme court may dismiss the same; but no discontinuance or dismissal of an appeal or writ of error in the supreme court shall preclude the party from suing out another writ of error, or taking another appeal, in the same cause, within the time limited by law.

(G. S. 1866, c. 117, § 10; G. S. 1878, c. 117, § 10.)

## § 7395. Certifying proceedings to supreme court—Stay.

If upon the trial of any person who shall be convicted in any district court, or in the court of common pleas of Ramsey county, or if, upon any demurrer to an indictment, or to a special plea or pleas to an indictment, or upon any motion upon or relating to an indictment, any question of law shall arise, which, in the opinion of the judge of such court, shall be so important or so doubtful as to require the decision of the supreme court, he shall, if the defendant desire it or consent thereto, report the case, so far as may be necessary to present the question or questions of law arising therein, and certify the said report to the supreme court of the state; and thereupon all proceedings in said cause shall be stayed until the decision of said supreme court shall be made.

(1870, c. 76, § 1; G. S. 1878, c. 117, § 11.)

An order overruling a demurrer to an indictment cannot be brought before this court for review, under § 7395, after a trial and verdict upon an issue of not guilty. *State v. Loomis*, 27 Minn. 521, 8 N. W. Rep. 758.

In certifying a question of law arising in a criminal cause to the supreme court, under this section, the record must affirmatively show that the defendant was convicted, or that the question arose upon demurrer to an indictment, or to a special plea or pleas to an indictment, or upon a motion upon, or relating to, the indictment, or the supreme court will acquire no jurisdiction. *State v. Byrud*, 23 Minn. 29; *State v. Hoag*, *Id.* 31. The supreme court has no jurisdiction to pass upon any question arising in a criminal case, and certified up, that has not been passed upon and determined by the court below. *Id.*; *Id.*

The only way in which a decision on a demurrer or motion before final judgment can be reviewed is under this section. *State v. Abrisch*, 42 Minn. 202, 43 N. W. Rep. 1115. See *State v. Sweeney*, 33 Minn. 23, 25, 21 N. W. Rep. 847; *State v. Larson*, 40 Minn. 63, 64, 41 N. W. Rep. 363.

## § 7396. Same—To stay other cases, when.

Other criminal causes in said court involving or depending upon the same questions may, if the defendants desire or consent thereto, be stayed in like manner until the decision of the cause so-certified.

(1870, c. 76, § 1; G. S. 1878, c. 117, § 12.)

## § 7397. Same—Applicable to pending cases.

The two foregoing sections shall be construed to apply to any criminal causes now pending in the said courts.

(1870, c. 76, § 1; G. S. 1878, c. 117, § 13.)

(1927)