

GENERAL STATUTES

OF THE

STATE OF MINNESOTA,

IN FORCE JANUARY, 1891.

VOL. 2.

CONTAINING ALL THE LAW OF A GENERAL NATURE NOW IN FORCE AND NOT IN
VOL. 1, THE SAME BEING THE CODE OF CIVIL PROCEDURE AND ALL REME-
DIAL LAW, THE PROBATE CODE, THE PENAL CODE AND THE CRIM-
INAL PROCEDURE, THE CONSTITUTIONS AND ORGANIC ACTS.

COMPILED AND ANNOTATED

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SECOND EDITION.

ST. PAUL:

PUBLISHED BY THE AUTHOR.

1891.

CHAPTER 68 (G. S. ch. 86).

APPEALS IN CIVIL ACTIONS.

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SEC. 5066. To supreme court.— 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.

G. S. ch. 86, § 1. 1 M. 301; 3 M. 191; 4 M. 364; 11 M. 203; 17 M. 61; 21 M. 1; 24 M. 314.

SEC. 5067. When allowed.— An appeal may be taken to the supreme court, by the aggrieved party, in the following cases:

11 M. 203; 17 M. 61; 21 M. 1.

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

3 M. 352, 359; 6 M. 235; 8 M. 467; 20 M. 245.

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.

1 M. 239; 11 M. 364; 12 M. 351; 14 M. 125; 21 M. 39; 30 M. 478; 24 M. 314.

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

2 M. 118; 4 M. 320; 5 M. 347; 6 M. 136, 558; 8 M. 467; 10 M. 168, 192, 285; 12 M. 60, 349, 515; 13 M. 66; 14 M. 333, 513; 15 M. 43, 185; 18 M. 316; 19 M. 132; 21 M. 336; 22 M. 539; 34 M. 443; 25 M. 362.

Fourth. From an order granting or refusing a new trial, or from an order sustaining or overruling a demurrer.

1 M. 301; 2 M. 34, 224; 3 M. 352; 9 M. 151; 12 M. 388; 13 M. 260; 37 M. 382.

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

2 M. 50; 3 M. 259; 5 M. 27; 16 M. 177; 30 M. 207; 37 M. 445.

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

1 M. 121, 183; 4 M. 224, 320; 5 M. 65; 6 M. 550, 558; 7 M. 325, 493; 8 M. 214; 9 M. 166; 10 M. 63; 11 M. 253, 381; 15 M. 230; 16 M. 13, 451; 18 M. 384; 22 M. 452, 542; 30 M. 359; 25 M. 152, 295.

G. S. ch. 86, § 8, as amended 1867, ch. 63. Amendment struck out of fourth subdivision, "from an order refusing a new trial," and inserted as above. 33 M. 406; 31 M. 211; 29 M. 163, 271, 463; 27 M. 109, 144; 26 M. 10, 235; 26 M. 101, 163.

SEC. 5068. Time for appeal.— The appeal from a judgment hereafter rendered may be taken within six months after the entry thereof, and from an order within thirty days after written notice of the same.

G. S. ch. 86, § 6, as amended 1868, ch. 73; 1869, ch. 70. Same as before amendment. 5 M. 23; 9 M. 318; 14 M. 526; 22 M. 559; 24 M. 8; 36 M. 121.

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SECS. 5069-5075.]

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SEC. 5069. Notice 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 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.

G. S. ch. 86, § 3. 9 M. 232.

SEC. 5070. Title of appeal.— 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.

G. S. ch. 86, § 2. 24 M. 3.

SEC. 5071. Record.— 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.

G. S. ch. 86, § 4. 1 M. 297; 2 M. 113; 11 M. 410; 21 M. 331; 24 M. 3; 39 N. W. 70.

SEC. 5072. Same.— 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.

G. S. ch. 86, § 7. 21 M. 331.

SEC. 5073. Effect of appeal.— Whenever an appeal is perfected, as provided by sections¹ 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.

G. S. ch. 86, § 15. 12 M. 122, 213; 13 M. 407; 14 M. 554; 17 M. 113. ¹Secs. 5076, 5078, 5079, *post*.

BOND.

SEC. 5074. For costs.— 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.

G. S. ch. 86, § 9. 34 M. 371.

SEC. 5075. In appeal from an order.— 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 cannot 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.

G. S. ch. 86, § 10. 11 M. 271; 12 M. 161; 34 M. 370; 37 M. 183.

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[SECS. 5076-5081.]

SEC. 5076. In judgment directing payment of money.— 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.

G. S. ch. 86, § 11. 13 M. 407.

SEC. 5077. Same — When appeal for purpose of delay.— 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.

G. S. ch. 86, § 16.

SEC. 5078. In judgment directing delivery of personal property.— 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.

G. S. ch. 86, § 12.

SEC. 5079. In judgment directing sale or possession of realty.— 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, 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.

G. S. ch. 86, § 14.

SEC. 5080. In judgment directing conveyance.— 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.

G. S. ch. 86, § 13.

SEC. 5081. In other cases — Perishable property.— In the cases not specified in sections¹ 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.

G. S. ch. 86, § 19. ¹Secs. 5076, 5078, 5080, 5079, *ante*.

SEC. 5082. **One instrument.**—The bonds prescribed by sections¹ 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.

G. S. ch. 86, § 17. ¹Secs. 5074, 5076, 5078, 5079, *ante*.

SEC. 5083. **Justification of sureties.**—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.

G. S. ch. 86, § 18.

SEC. 5084. **Undertakings in lieu of bonds.**—That in all cases of appeal from the board of county commissioners to the district court upon the allowance or disallowance of any account of indebtedness, and in all actions brought before justices of the peace, and in all cases of an appeal from a justice court or a probate court to the district court, and in all actions commenced in the district court, and in all cases of appeal or writ of error to remove a cause or proceeding therein to the supreme court, and in all cases of special or equitable proceedings in either the district or supreme courts, the filing or service, or both, as may be required by law or the practice of the court, of an undertaking signed by a surety or sureties, as the law may require, containing a condition substantially the same as that required by law to be contained in the various bonds now required by law in such cases, with like sureties, qualifications and justifications, and without any acknowledgment and without the seal or signatures of the person or parties taking such proceeding, shall be deemed a sufficient compliance with the law to sustain any such action, appeal or proceeding; and every such undertaking shall be construed in any proceeding taken or had thereon, to save and secure all rights and liabilities to the same extent and in every particular as though a bond had been executed, acknowledged, filed and served in the manner now required by law; and the damages presumed to accrue to the party against which such proceeding is taken, shall be construed to be a sufficient consideration for such undertaking to support the same or any action thereon, though no consideration be mentioned therein: *provided*, that no undertaking or bond need be given or executed in any case before such appeal or other proceeding is instituted or taken in favor of the state of Minnesota, any county, town, city, school district therein, or any executor or administrator as such.

1868, ch. 80: "An act to provide for the filing or service of undertakings in lieu of bonds in certain cases." Approved March 5, 1868.

JURISDICTION OF APPELLATE COURT.

SEC. 5085. **To reverse, affirm or modify.**—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.

G. S. ch. 86, § 5. 3 M. 141, 147; 6 M. 535; 28 M. 320; 33 N. W. 487.

SEC. 5086. **Dismissal not final.**—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.

G. S. ch. 86, § 20.

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[SECS. 5087-5089.]

SEC. 5087. Dismissal during vacation.—That any judge of the supreme court shall, during vacation, have the same power as the court at term, to dismiss any appeal and remand the cause to the court below, upon the stipulation of the parties to such appeal consenting to such dismissal, to be filed with the clerk of said court.

1879, ch. 70: "An act to authorize appeals to be dismissed from supreme court during vacation upon stipulation of parties." Approved March 4, 1879.

DEATH OF PARTY PENDING APPEAL.

SEC. 5088. Proceedings on death of respondent.—In all cases where an appeal has been taken to the supreme court, and before such appeal has been perfected, or argued and submitted, the respondent to such appeal dies, it shall be and is the duty of the appellant to apply to the supreme court, if in session, to any judge thereof when not in session, to have the legal representative or successor in interest of such deceased respondent substituted as the party respondent in such appeal. In case such appellant fails or neglects to cause such substitution to be made within sixty days from the death of such respondent, or in case any such appeal has heretofore been taken and remains unperfected, and no substitution made, as herein provided, within sixty days from the passage of this act, upon the filing of an affidavit, by the legal representative or successor in interest of such deceased respondent, with the clerk of the supreme court, showing that such appeal has been taken, and the death of the respondent therein, and that the appellant has failed to make, or caused to be made, such substitution, such appeal shall be deemed abandoned, and it shall be the duty of the clerk of the supreme court to enter an order dismissing said appeal; and upon the filing of a certified copy of such order in the office of clerk of the court from which such appeal was taken, will be restored to and have full jurisdiction over the action in which such appeal was taken, in the same manner, and to all intents and purposes, and shall proceed thereon, as if no appeal had been taken.

1876, ch. 47, § 1: "An act to regulate proceedings in civil actions in case of death of party pending appeals thereon." Approved February 25, 1876. 28 M. 68.

SEC. 5089. Same — On death of either party.—In all cases where an appeal has been taken to the supreme court, and, after the case has been submitted to the supreme court, but before the entry of judgment thereon in such court, either party to such appeal dies, and the surviving parties to such action, or the legal representative or successor in interest of said deceased party or either of them, shows by affidavit filed therein that such death has occurred, it shall be the duty of the clerk of the supreme court to substitute the name of the person so shown to be the legal representative or successor in interest of such deceased party; and the action shall thereupon proceed, and all subsequent proceedings had, and judgment be entered therein, for or against such legal representative or successor in interest, or such jointly or alone, as the case may be.

1876, ch. 47, § 2.