

89022

GENERAL STATUTES OF MINNESOTA

SUPPLEMENT 1917

CONTAINING THE AMENDMENTS TO THE GENERAL STATUTES
AND OTHER LAWS OF A GENERAL AND PERMANENT
NATURE, ENACTED BY THE LEGISLATURE
IN 1915, 1916, AND 1917

WITH NOTES OF ALL APPLICABLE DECISIONS

COMPILED BY

FRANCIS B. TIFFANY



WEST PUBLISHING CO.

1918

7496. Proceedings in certain cases—Trial—

On appeal to the district court from an order of the probate court allowing a will, there is no constitutional or statutory right to a trial by jury of the issues of testamentary capacity and undue influence (131-439, 155+392). Jury, ~~§~~17(3).

Whether there shall be a jury trial of the issues of testamentary capacity and undue influence on appeal from an order of the probate court probating a will rests in the discretion of the district court. On appeal from an order of the probate court admitting a will to probate, the issues of testamentary capacity and undue influence, having been submitted to a jury, may be withdrawn before decision by the jury and decided by the court, though the evidence is such that the court would not have been justified in directing a verdict (131-439, 155+392). Wills, ~~§~~379, 380.

Where the issues of mental capacity and undue influence were submitted to the jury, and the jury found for proponent on the issue as to mental capacity, and for contestant on the other issue, and proponent filed a motion for new trial, which was the only motion filed, the court properly granted a new trial on the issue of undue influence alone (122-463, 142+729). Wills, ~~§~~337.

7497. When judgment affirmed—When reversed—

On appeal under this section the jurisdiction of the appellate court is limited to those matters of which the probate court had jurisdiction (161+392). Courts, ~~§~~202(5).

CHAPTER 75

COURTS OF JUSTICES OF THE PEACE

COMMENCEMENT OF ACTIONS

7521. Failure to appear—Offer of judgment—If either party fails to appear within one hour after the time specified for the return of the process, or to which the cause is adjourned, the justice shall dismiss the action, or proceed to hear the evidence of the party present, and render judgment thereon: provided that in an action upon contract for the payment of money only if the plaintiff shall, at the time of the issuance of the process, file with the justice a verified complaint and shall attach a copy thereof to the process and shall cause a copy of such complaint to be served upon the defendant in the manner prescribed by law for the service of the process in such action, if the defendant fails to appear within one hour after the time specified for the return of the process, or to which the cause is adjourned, the justice shall enter judgment against the defendant on such complaint without requiring proof of the cause of action therein pleaded: provided, further, that a defendant who has appeared may, before answering the complaint, offer to allow judgment to be taken against him for the sum or property in said offer specified, with costs. If the offer is accepted, the justice shall thereupon enter judgment accordingly. If refused, the same is to be deemed withdrawn, and cannot be given in evidence; and, if the plaintiff fails to obtain a more favorable judgment, he cannot recover costs made subsequent to such offer, but must pay the defendant's costs and disbursements made and expended subsequently thereto. (Amended '17 c. 309 § 1)

PLEADINGS AND TRIAL

7522. Time to plead—Adjournment on return day—

Where parties appear on the return day, and on plaintiff's application hearing is adjourned for one week, answer may be filed on the day to which hearing is adjourned. An answer cannot be filed more than one week after return day without consent (124-147, 144+449). Justices of the Peace, ~~§~~92.

Where defendant filed an answer after discontinuance caused by adjournment for more than one week, he waived objection to jurisdiction, though the answer was a nullity because not filed within the time allowed by law (124-147, 144+449). Justices of the Peace, ~~§~~60.

7530. Pleadings verified—

An unverified answer in justice court is a nullity, so far as regards admission of proof thereunder against proper objection; but such an answer is an appearance (124-147, 144+449). Justices of the Peace, ~~§~~84(1), 97.

JUDGMENTS

7554. For costs on dismissal—

Liability of intervener for statutory costs on dismissal of his complaint in intervention (see 131-193, 154+953). Costs, ☞98.

APPEALS

7601. May be taken, when—

Where, in an action on a note, in which a bank intervened, claiming to be a pledgee of the note, whereupon plaintiff withdrew from the action, and later the intervener withdrew, and defendant's motion to dismiss was granted, but his motion for statutory costs against both plaintiff and the intervener was denied as to the latter, defendant was entitled to appeal from the latter order, without appealing from the preliminary order (131-193, 154+953). Appeal and Error, ☞119, 151(5).

7602. Requisites—No appeal shall be allowed unless the following requisites are complied with within ten (10) days after judgment is rendered:

1. An affidavit shall be filed with the clerk of the district court of the county wherein the cause was tried, stating that the appeal is made in good faith and not for the purpose of delay.

2. A bond shall be executed by the party appealing, his agent or attorney, to the adverse party in a sum sufficient to secure such judgment and costs of appeal, with sufficient surety to be approved by the clerk of the district court, conditioned that the appellant shall prosecute his appeal with effect and abide by the order of the court therein.

3. The party appealing shall serve a notice upon the opposite party, his agent or attorney who appeared for him on the trial, specifying the ground of appeal generally as follows: That the appeal is taken upon questions of law alone or upon questions of both law and fact. Such notice shall be served by delivering a copy thereof to the person upon whom service is made, or by leaving a copy at his residence; provided that if any party has appeared by attorney, service upon such attorney may be made in the manner provided in section 7744, subdivision 1, General Statutes of Minnesota for 1913, and the original notice, with proof of service thereof, shall be filed with the clerk of the district court to which the appeal is taken, within ten (10) days after such service is made, and thereupon such clerk shall immediately give notice in writing by registered mail to the justice of the peace before whom the cause was tried.

4. The party appealing shall pay to the clerk of the district court, for the use of the justice before whom the cause was tried, the sum of two dollars, (\$2.00) which is hereby fixed as his fee for making the return, which sum shall be paid to the justice by said clerk upon filing the return of the justice in the office of the clerk, and thereupon it shall be the duty of the clerk to cause an entry of such appeal to be made upon the calendar of the next general term of the district court occurring more than twenty (20) days after the filing of such notice of appeal. (Amended '17 c. 283 § 1)

Where the cause is one of which the district court might take original jurisdiction, defects in the proceedings for appeal may be waived by general appearance (122-352, 142+709). Justices of the Peace, ☞160(7).

Under this section and the two following sections, where no bond was executed on appeal from a municipal court until long after ten days from the rendition of the judgment, and the judge did not allow the appeal, and no return was made, or could legally be made, within 20 days, a motion to docket the case in the district court was properly denied (134-475, 159+751). Courts, ☞190(4).

A proper notice of appeal is essential to confer jurisdiction on the district court (122-352, 142+709). Justices of the Peace, ☞160(1).

Leaving a copy of the notice of appeal at the office of the appellee is not sufficient service under this section (122-352, 142+709). Justices of the Peace, ☞160(4).

In an action on a note, in which a bank intervened, claiming the proceeds of the note as pledgee thereof, whereupon plaintiff withdrew from the case, and defendant thereafter appealed from an adverse judgment with respect to costs, notice of appeal need not be served on plaintiff (131-193, 154+953). Courts, ☞190(4).

7603. Allowance—Effect—

134-475, 159+751.

7604. Return—Evidence, when included—

134-475, 159+751.

7605. Appeals, how tried—Judgment—

On appeal to the district court on questions of law alone, the cause is tried on the evidence returned; and where such evidence does not support a verdict for plaintiff, but discloses a want of meritorious cause of action, it is proper to order judgment for defendant (125-300, 146+1100). Justices of the Peace, ~~§~~189(4).

7609. Defective bond—

This section does not apply, so as to require the granting of a motion to docket an appeal in the district court, where no bond was filed within the time required by § 7602, there being no motion to dismiss and no application to the district court to approve a bond (134-475, 159+751). Justices of the Peace, ~~§~~159(1).

CONTEMPTS

7615. Proceedings—Punishment—

The maximum sentence that can be imposed by the Minneapolis municipal court for a direct contempt is a fine of \$20 or two days' imprisonment in the county jail (125-304, 146+1102). Contempt, ~~§~~72.

CHAPTER 76

FORCIBLE ENTRY AND UNLAWFUL DETAINER

7657. Forcible entry or detainer—Restitution—When any person has made unlawful or forcible entry into lands or tenements, and detains the same, or, having peaceably entered, unlawfully detains the same, he shall be fined, and the person entitled to the premises may recover possession thereof in the manner hereinafter provided. (Amended '17 c. 227 § 1)

Unlawful detention, unaccompanied with force, where the original possession was taken peaceably and under claim of right, is not sufficient to authorize proceedings under this section; ejectment being the proper remedy (127-93, 148+893, Ann. Cas. 1916C, 493). Forcible Entry and Detainer, ~~§~~5.

7658. Tenant, etc., holding over—Removal—When any person holds over lands or tenements after a sale thereof on an execution or judgment, or on foreclosure of a mortgage and expiration of the time for redemption, or after termination of contract to convey the same, or after termination of the time for which they are demised or let to him or to the persons under whom he holds possession, or contrary to the conditions or covenants of the lease or agreement under which he holds, or after any rent becomes due according to the terms of such lease or agreement, or when any tenant at will holds over after the determination of any such estate by notice to quit, in all such cases the person entitled to the premises may recover possession thereof in the manner hereinafter provided. (Amended '17 c. 227 § 2)

128-534, 150+1102.

A lease of a farm not one for two seasons (123-377, 143+978). Landlord and Tenant, ~~§~~95.

Proceedings under this section cannot be maintained against a person who peaceably and under claim of right entered into possession and does not forcibly detain the same (127-93, 148+893, Ann. Cas. 1916C, 493, following and applying 19-174 [Gil. 137]). Forcible Entry and Detainer, ~~§~~4.

7666. Writ of restitution—Effect of appeal—

Cited (123-377, 143+978).

7667. Appeal—Stay—

Where defendants, in their answer, alleged that a writ of restitution was refused on the sole ground that this section did not apply, they cannot be heard to contend on appeal that the bond given by plaintiff was insufficient (123-377, 143+978). Mandamus, ~~§~~167, 187(4).