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GENERAL STATUTES

OF THE

STATE OF MINNESOTA.

PREPARED BY THE COMMISSIONERS APPOINTED TO REVISE
THE STATUTES OF THE STATE, BY ACT OF THE
LEGISLATURE, PASSED FEBRUARY 17, 1863.

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CHAPTER LXXXVI.

APPEALS IN CIVIL ACTIONS.

1 SECTION 1. A judgment or order, in a civil action, in
 2 any of the district courts, may be removed to the supreme
 3 court, by appeal, as provided in this chapter, and not other-
 4 wise. C. S. p. 621, Sect. 1. Amended. c 71

1 SECT. 2. The party appealing, is known as the appellant,
 2 and the adverse party, as the respondent; but the title of
 3 the action is not to be changed in consequence of the ap-
 4 peal. C. S. p. 621, Sect. 4.

1 SECT. 3. An appeal shall be made by the service of a
 2 notice in writing, on the adverse party, and on the clerk
 3 with whom the judgment or order appealed from, is enter-
 4 ed, stating the appeal from the same, or some specified part
 5 thereof. When a party gives in good faith, notice of ap-
 6 peal from a judgment or order, and omits, through mistake,
 7 to do any other act necessary to perfect the appeal, or to
 8 stay proceedings, the court may permit an amendment on
 9 such terms as may be just. C. S. p. 621, Sect. 5.

1 SECT. 4. Upon an appeal being perfected the clerk shall
 2 transmit to the supreme court a certified copy of the judg-
 3 ment roll, or order appealed from, and the papers upon
 4 which the order was granted, at the expense of the appellant.
 5 When a case is made, or bill of exceptions allowed, it may
 6 for the purpose of the appeal stand in place of or be attach-
 7 ed to the judgment roll, and certified to the appellate court
 8 as aforesaid. C. S. p. 621, Sect. 6. Amended.

1 SECT. 5. Upon an appeal from a judgment or order,
 2 the appellate court may reverse, affirm or modify the judg-
 3 ment or order appealed from, in the respect mentioned in
 4 the notice of appeal, and as to any or all of the parties, and
 5 may if necessary or proper, order a new trial. When the
 6 judgment is reversed or modified, the appellate court may
 7 make complete restitution of all the property and rights lost
 8 by the erroneous judgment. C. S. p. 621, Sect. 8.

1 SECT. 6. The appeal from a judgment shall be taken
 2 within six months after entry thereof, and from an order
 3 within thirty days after written notice of the same. C. S. p. 621, Sect. 9. Amended.

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C. S. p. 621, Sect. 10.

1 SECT. 7. The appellant shall furnish the court with
2 copies of the notice of appeal, and of the order or judgment
3 roll. If he fails to do so, the appeal may be dismissed.

c 22

1861—p. 133, Sect. 1.
Amended.

1 SECT. 8. An appeal may be taken to the supreme court,
2 by the aggrieved party in the following cases :
3 *First.*—From a judgment in an action commenced in the
4 district court, or brought there from another court, from
5 any judgment rendered in such court, and upon the appeal
6 from such judgment the court may review any intermediate
7 order involving the merits or necessarily affecting the judg-
8 ment.
9 *Second.*—From an order granting or refusing a provis-
10 ional remedy, or which grants, refuses, dissolves, or refu-
11 ses to dissolve, an injunction, or an order vacating or sus-
12 taining an attachment.
13 *Third.*—From an order involving the merits of the action,
14 or some part thereof.
15 *Fourth.*—From an order refusing a new trial.
16 *Fifth.*—From an order, which, in effect determines the
17 action, and prevents a judgemnt from which an appeal
18 might be taken.
19 *Sixth.*—From a final order affecting a substantial right
20 made in a special proceeding, or upon a summary applica-
21 tion in an action after judgment.

c 71

C. S. p. 622, Sect. 12.
Amended.

1 SECT. 9. To render an appeal effectual for any purpose,
2 a bond shall be executed by the appellant, with at least two
3 sureties, conditioned that the appellant will pay all dama-
4 ges, costs and charges, which may be awarded against him
5 on the appeal, not exceeding the penalty of the bond, which
6 shall be at least two hundred and fifty dollars, or that sum
7 shall be deposited with the clerk with whom the judgment
8 or order was entered, to abide the judgment of the court of
9 appeal; but such bond or deposit may be waived by a writ-
10 ten consent on the part of the respondent.

c 22

1861—ch. 22, Sect.
1, last clause,
amended.

1 SECT. 10. Such appeal, when taken from an order,
2 shall stay all proceedings thereon, and save all rights affect-
3 ed thereby, if the appellant, or some one in his behalf as
4 principal, executes a bond in such sum, and with such sure-
5 ties as the judge making the order, or in case he cannot act,
6 the court commissioner or clerk of the court where the or-
7 der is filed, directs and approves, conditioned to pay the
8 costs of said appeal and the damages sustained by the res-
9 pondent in consequence thereof, if said order or any part
10 thereof is affirmed or said appeal dismissed, and abide and
11 satisfy the judgment or order which the appellate court may
12 give therein, which bond shall be filed in the office of said
13 clerk.

1 SECT. 11. If the appeal is from a judgment, directing
 2 the payment of money, it does not stay the execution of the
 3 judgment, unless a bond is executed by the appellant, with C. S. p. 622, Sect. 13.
 4 at least two sureties, conditioned that if the judgment ap- Amended. c 7 /
 5 pealed from, or any part thereof is affirmed, the appellant
 6 will pay the amount directed to be paid by the judgment or
 7 the part of such amount as to which the judgment is affirm-
 8 ed, if it is affirmed only in part, and all damages which are
 9 awarded against the appellant, upon the appeal.

1 SECT. 12. If the judgment appealed from, directs the
 2 assignment or delivery of documents, or personal property, C. S. p. 622, Sect. 14.
 3 the execution of the judgment is not stayed by appeal, un- Amended.
 4 less the things required to be assigned or delivered are
 5 brought into court, or placed in the custody of such officer
 6 or receiver, as the court may appoint; or unless a bond is
 7 executed by the appellant with at least two sureties, and in
 8 such amount as the court or judge thereof, may direct, con-
 9 ditioned that the appellant will obey the order of the appel-
 10 late court, upon the appeal.

1 SECT. 13. If the judgment appealed from, directs the C. S. p. 622, Sect. 15.
 2 execution of a conveyance, or other instrument, the execu-
 3 tion of the judgment is not stayed by the appeal, until the
 4 instrument is executed and deposited with the clerk, with
 5 whom the judgment is entered, to abide the judgment of
 6 the appellate court.

1 SECT. 14. If the judgment appealed from directs the sale
 2 or delivery of possession of real property, the execution of the C. S. p. 622, Sect. 16.
 3 same is not stayed, unless a bond is executed on the part of Amended.
 4 the appellant, with two sureties, conditioned that during the
 5 possession of such property by the appellant, he will not
 6 commit or suffer to be committed, any waste thereon; and
 8 that if the judgment is affirmed, he will pay the value of
 9 the use and occupation of the property, from the time of
 10 the appeal, until the delivery of the possession thereof, pur-
 11 suant to the judgment.

1 SECT. 15. Whenever an appeal is perfected, as provid- C. S. p. 622, Sect. 17.
 2 ed by sections eleven, twelve and fourteen, it stays all Amended.
 3 further proceedings in the court below, upon the judgment
 4 appealed from, or upon the matter embraced therein; but
 5 the court below may proceed upon any other matter in-
 6 cluded in the action and not affected by the judgment ap-
 7 pealed from. And the court below may, in its discretion,
 8 dispense with or limit the security required by said sections,
 9 when the appellant is an executor, administrator, trustee,
 10 or other person acting in another's right.

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C. S. p. 622, Sect. 18.
Amended.

1 SECT. 16. In an action arising on contract for the re-
2 covery of money only, notwithstanding an appeal and secu-
3 rity given for a stay of proceedings therein, if the respond-
4 ent gives adequate security to make restitution in case the
5 judgment is reversed or modified, he may, upon leave ob-
6 tained in the manner hereinafter provided from the court
7 below, proceed to enforce the judgment. Such security
8 shall be a bond executed by the respondent or some one in
9 his behalf, to the appellant, with at least two sufficient su-
10 reties, to the effect that if the judgment is reversed or mod-
11 ified, the respondent will make such restitution as the ap-
12 pellate court directs. Such leave shall only be granted
13 upon motion and notice to the adverse party, and in case
14 when it satisfactorily appears to the court that the appeal
15 has been taken for the purpose of delay.

C. S. p. 623, Sect. 19.
Amended.

1 SECT. 17. The bonds prescribed by sections nine, elev-
2 en, twelve and fourteen, may be in one instrument, or sev-
3 eral, at the option of the appellant; and a copy including
4 the names and residence of the sureties, shall be served on
5 the adverse party, with the notice of appeal, unless a de-
6 posit is made as provided in section nine and notice thereof
7 given.

C. S. p. 623, Sect. 20.

1 SECT. 18. A bond upon an appeal, is of no effect, un-
2 less it is accompanied by the affidavit of the sureties, that
3 they are each worth double the amount specified therein;
4 the adverse party may however, except to the sufficiency of
5 the sureties, within ten days after notice of the appeal, and
6 unless they or other sureties justify before a judge of the
7 court below, as prescribed by law in other cases within ten
8 days thereafter, the appeal shall be regarded as if no such
9 bond had been given; the justification shall be upon a notice
10 of not less than five days,

C. S. p. 623, Sect. 21.

1 SECT. 19. In the cases not specified in sections eleven,
2 twelve, thirteen and fourteen, the perfecting of an appeal
3 by giving the bond mentioned in section nine, stays pro-
4 ceedings in the court below, upon the judgment appeal-
5 ed from, except that when it directs the sale of perish-
6 able property, the court below may order the property to be
7 sold, and the proceeds thereof to be deposited or invested,
8 to abide the judgment of the appellate court.

C. S. p. 624, Sect. 21.
Amended.

1 SECT. 20. No discontinuance, or dismissal of an appeal
2 in the supreme court, shall preclude the party from taking
3 another appeal in the same cause within the time limited
4 by law.