

Statutes
1878

THE
GENERAL STATUTES
OF THE
STATE OF MINNESOTA,

As Amended by Subsequent Legislation.

PREPARED BY
GEORGE B. YOUNG.

EDITED AND PUBLISHED UNDER THE AUTHORITY OF CHAPTER 67 OF THE LAWS
OF 1878, AND CHAPTER 67 OF THE LAWS OF 1879.

FOURTH EDITION.

WITH SUPPLEMENTS,
CONTAINING ALL THE GENERAL LAWS IN FORCE UP TO THE END OF
THE LEGISLATIVE SESSION OF 1883.

SAINT PAUL:
WEST PUBLISHING COMPANY.
1883.

CHAPTER LXXXV.

ACTIONS BY PERSONS HOLDING CLAIMS ON UNITED STATES LANDS.

SECTION.

1. Settler may maintain action for possession or for injuries thereto.
2. Plaintiff's claim defined.

SECTION.

3. Claim shall be marked—action must be by actual settler.
4. Claim considered abandoned, when.

§ 1. Settler may maintain action for possession, or for injuries thereto. Any person settled upon any of the public lands belonging to the United States, on which settlement is not expressly prohibited by congress or some department of the general government, may maintain an action for injuries done to the possession thereof, or to recover the possession thereof.

§ 2. Plaintiff's claim defined. On the trial of any such cause, the possession or possessory right of the plaintiff shall be considered as extending to the boundaries embraced by the claim of such plaintiff, so as to enable him to have and maintain either of the aforesaid actions, without being compelled to prove a natural inclosure: *provided*, that such claim shall not exceed in any case one hundred and sixty acres; and the same may be located in two different parcels, to suit the convenience of the holder.

§ 3. Claim shall be marked—action must be by actual settler. Every such claim, to entitle the holder to maintain either of the aforesaid actions, shall be marked out so that the boundaries thereof may be easily traced, and the extent of such claim easily known; and no person shall be entitled to maintain either of said actions for possession of, or any injury done to, any claim, unless he is an actual settler, or causes the land to be constantly occupied, and has improvements, made thereon, to the amount of fifty dollars.

§ 4. Abandonment of claim. A neglect to occupy or cultivate such claim, for the period of six months, shall be considered such an abandonment as to preclude the claimant from maintaining either of the aforesaid actions.

CHAPTER LXXXVI.

APPEALS IN CIVIL ACTIONS.

SECTION.

- 1-5. To supreme court—title of appeal—notice—service and effect thereof—return—powers of appellate court.
- 6-7. Within what time to be taken—papers to be furnished by appellant.
- 8-9. Appeals to supreme court, in what cases—bond for costs—deposit.
- 10-16. Stay on appeal from order—from money judgment—from judgment for delivery of chattels, etc.—directing execution of deed—directing sale or delivery of real property

SECTION.

- extent of stay—bond to vacate stay on money judgment on contract.
- 17-18. Bonds may be in one instrument—service of copy—justification of sureties.
19. Stay in other cases—sale of perishable property, pending appeal.
20. Second appeal, on dismissal of first.
21. Death of respondent—appellant to cause substitution to be made.
22. Death of party after submission of case on appeal.

§ 1. **Appeal from judgment or order of district 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.

1 M. 231 (301); 3 M. 123 (191); 4 M. 273 (364); 11 M. 132 (203); 17 M. 61; 21 M. 1.

§ 2. **Title of action, on 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.

§ 3. **Notice of appeal—service—effect.** 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.

9 M. 217 (232).

§ 4. **Return to supreme court.** 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.

1 M. 231 (297); 2 M. 93 (113); 11 M. 302 (410); 21 M. 331.

§ 5. **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 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.

3 M. 86 (141), 92 (147); 6 M. 372 (535).

§ 6. **Within what time to be taken.** 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. (*As amended 1869, c. 70, § 1.*)

5 M. 10 (23); 9 M. 301 (318); 14 M. 526; 22 M. 559.

§ 7. **Papers to be furnished by appellant.** 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.

21 M. 351.

§ 8. **Appeal to supreme court in what cases.** An appeal may be taken to the supreme court, by the aggrieved party, in the following cases:

11 M. 132 (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. 249 (352), 252 (359); 6 M. 155 (235); 8 M. 417 (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. 190 (239); 11 M. 262 (364); 12 M. 351; 14 M. 125; 21 M. 39.

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

2 M. 95 (118); 4 M. 236 (320); 5 M. 279 (347); 6 M. 82 (136), 394 (558); 8 M. 417 (467); 10 M. 136 (168), 155 (192), 224 (285); 12 M. 60, 349, 357, 515; 13 M. 66; 14 M. 333, 513; 15 M. 43, 185; 18 M. 316; 19 M. 132; 21 M. 336; 22 M. 539.

Fourth. From an order granting or refusing a new trial, or from an order sustaining or overruling a demurrer. (*As amended 1867, c. 63, § 1.*)

1 M. 234 (301); 2 M. 25 (34), 187 (224); 3 M. 249 (352); 9 M. 141 (151); 12 M. 388; 13 M. 260.

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

2 M. 37 (50); 3 M. 252 (359); 5 M. 14 (27); 16 M. 177.

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. 97 (121), 157 (183); 4 M. 163 (224), 236 (320); 5 M. 47 (65); 6 M. 386 (550), 394 (558); 7 M. 254 (325), 399 (493); 8 M. 185 (214); 9 M. 153 (166); 10 M. 46 (63); 11 M. 168 (263), 276 (381); 15 M. 230; 16 M. 13, 451; 18 M. 384; 22 M. 452, 542.

§ 9. **Bond for costs—deposit.** 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.

§ 10. **Appeal from order—supersedeas bond.** 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.

11 M. 184 (271); 12 M. 161.

§ 11. **Appeal from money judgment—supersedeas bond.** 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.

13 M. 407.

§ 12. **From judgments for delivery of chattels, etc.—stay.** 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.

§ 13. **From judgment directing conveyance—stay.** 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.

§ 14. **From judgment directing sale, etc., of real estate—supersedeas bond.** 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.

§ 15. **Stay of proceedings—extent thereof.** Whenever an appeal is perfected, as provided by sections 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.

12 M. 122, 213; 13 M. 407; 14 M. 554; 17 M. 113.

§ 16. **Bond to vacate stay on money judgment on contract.** 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.

§ 17. **Bonds may be in one instrument—how served.** The bonds prescribed by sections 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.

§ 18. **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.

§ 19. **Stay in other cases—sale of perishable property.** In the cases not specified in sections 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.

§ 20. **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.

*§ 21. **Death of respondent—appellant to cause substitution to be made.** 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 cause 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 en-

ter 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, c. 47, § 1.)

*§ 22. Death of party after submission of case to appellate court. 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. (Id. § 2.)

CHAPTER LXXXVII.

CONTEMPTS.

SECTION.

1. Different kinds of contempts.
2. Power to punish—how exercised.
3. Contempts summarily punished.
- 4-8. Arrest of person charged—bringing up person imprisoned—letting to bail—custody of person arrested—bail, how given.
- 9-10. Return of warrant—penalty for failure—proceedings against officer in such case.
- 11-14. Proceedings at hearing—punishment of

SECTION.

- person found guilty—indemnity to person injured—imprisonment of person until he performs act required.
15. Indictment and punishment of person in contempt.
16. Issue of second warrant—action on recognizance—damages.
17. Officers excused from producing party, when.

§ 1. What acts and omissions are contempts. The following acts or omissions, in respect to a court of justice, or proceedings therein, are contempts of the authority of the court:

First. Disorderly, contemptuous or insolent behavior toward the judge, while holding the court, tending to interrupt the due course of a trial, or other judicial proceeding;

Second. A breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the due course of a trial, or other judicial proceeding;

Third. Misbehavior in office, or other wilful neglect or violation of duty, by an attorney, counsel, clerk, sheriff, coroner, or other person appointed or elected to perform a judicial or ministerial service;

Fourth. Deceit or abuse of the process or proceedings of the court, by a party to an action or special proceeding;

Fifth. Disobedience of any lawful judgment, order or process of the court;

Sixth. Assuming to be an officer, attorney, counsel of a court, and acting as such without authority;

Seventh. Rescuing any person or property, in the custody of an officer by virtue of an order or process of such court;

*§ 23. See 1881 Sup't, p. 107.