

States be received, and the same be disbursed; this act shall take effect and be in force from and after its approval by the governor.

Approved, with the exception of an item in section 3, March 9, 1891.

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## CHAPTER CXLVI.

[S. B. No. 74.]

### APPEALS TO THE SUPREME COURT.

AN ACT providing for appeals to the supreme court.

*Be it enacted by the Legislature of the State of Washington:*

SECTION 1. Except as otherwise provided in this section, any party aggrieved may appeal to the supreme court from the superior courts, in all actions and proceedings. No appeal shall be allowed in any civil action at law for the recovery of money or property when the original amount in controversy or the value of the property does not exceed Limit of value. the sum of two hundred dollars, unless the action involves the legality of tax, impost, assessment, toll, municipal fine, or the validity of a statute; nor shall an appeal be allowed to the state in any criminal action, except when the error complained of is in setting aside the indictment or information, or in arresting the judgment, on the ground that the facts stated in the indictment or information do not constitute a crime.

SEC. 2. In civil actions and proceedings, appeals shall be prosecuted within six months after the rendition of the de- Limit of time.cision, order or judgment complained of; appeals in criminal cases may be prosecuted at any time within one year after final judgment, and the notice of appeal in such cases may be given within the same time.

SEC. 3. The party appealing shall be designated as the appellant, and the adverse party as the respondent, but the title of the action shall in other respects remain unchanged.

Notice.

SEC. 4. A person desiring to appeal from any such decision, order or judgment may, by himself or attorney, give notice in open court, or before the judge if the decision, order or judgment appealed from be rendered or made at chambers, at the time said decision, order or judgment is made, that he appeals from such decision, order or judgment to the supreme court, and such notice shall, by order of the court or judge, be entered in the journal of the court. If the appeal be not taken at the time the decision, order or judgment is rendered or made, then the party desiring to appeal may, by himself or attorney, at any time within six months after the decision, order or judgment complained of was made, give notice in writing to the prevailing party or his attorney that he appeals from said decision, order or judgment to the supreme court, and shall file with the clerk of the superior court the original of such notice, with a return of service or acceptance of service thereon, and it shall then be the duty of the clerk of the superior court to enter said notice, with the return or acceptance of service thereon, in the journal of the court.

Notice; how served.

SEC. 5. When the notice of appeal is not given at the time the decision, order or judgment is rendered or made, it shall be served upon all parties who have appeared in the action or proceeding. Parties whose interests are affected in the same way by the decision, order or judgment appealed from may join in the notice of appeal, whether it be given at the time the decision, order or judgment is rendered or made, or be subsequently given; and any such party who has not joined in the notice may, at any time within ten days after the notice is given or served, join in the appeal by filing in the office of the clerk a notice that he joins therein. Any such party who does not join shall not derive any benefit from the appeal, unless from the necessity of the case, nor shall he thereafter take an appeal from such decision, order or judgment. All parties who join in after the notice is given shall be liable for expenses thereof, and costs and damages, to the same extent and upon the same conditions as if they had joined in the notice.

SEC. 6. Except as otherwise provided in this section an,

appeal in a civil action or proceeding is ineffectual for any purpose unless within five days after the notice of appeal is given or served a bond be filed or money be deposited <sup>Bond.</sup> as provided in the next section. No bond shall be required when the appeal is taken by the state, or a county, incorporated city or organized school district thereof.

SEC. 7. The bond for appeal must be executed on behalf of the appellant, by one or more sufficient sureties, to the effect that the appellant will pay all costs and damages that may be awarded against him on the appeal, or on the dismissal thereof, not exceeding three hundred dollars, or that sum of money must be deposited with the clerk to abide the event of the appeal. An appeal shall not stay proceedings on the judgment or order appealed from, or any part thereof, unless the bond for appeal, or a subsequent bond, be to the further effect that the appellant will satisfy and perform the judgment or order appealed from in case it shall be affirmed, and any judgment or order which the supreme court may render or make, or order to be rendered or made by the inferior court, and all rents or damages to property during the pendency of the appeal, out of the possession of which the respondent is kept by reason of the appeal. If the bond is intended to stay proceedings on only a part of the judgment or order, it shall be varied so as to secure the part stayed alone. When such bond has been filed, the clerk shall issue a written order commanding the respondent and all others to stay proceedings on such judgment or order, or on such part as is superseded, as the case may be. No appeal or stay shall vacate or affect any part of the judgment not appealed from. The bond for stay of proceedings shall be in such sum as the court from which the appeal is taken or a judge thereof shall order.

SEC. 8. In all cases where a final judgment or decree shall be rendered by any superior court of this state in a cause wherein a temporary injunction or restraining order has been granted, and the party at whose instance said restraining order or injunction was granted shall appeal from said judgment or decree to the supreme court of this state, such restraining order or injunction shall remain in force

until said appeal is finally determined, if said appellant shall cause to be executed and filed with the clerk of the court which rendered such judgment or decree a bond in a sum to be fixed by the court, with one or more sufficient sureties, to the effect that the appellant shall pay to the respondent all costs and damages that may be adjudged against the appellant on the appeal, and all damages and costs which may accrue by reason of said injunction or restraining order.

SEC. 9. In all cases where a final judgment or decree shall be rendered by the supreme court of this state in a cause wherein a temporary injunction or restraining order has been granted, and the party at whose instance said restraining order or injunction was granted shall appeal from said judgment or decree to the supreme court of the United States, such restraining order or injunction shall remain in force until said appeal is finally determined, if said appellant shall cause to be executed and filed with the clerk of the supreme court of the state a bond in a sum to be fixed by the court, with one or more sufficient sureties, to the effect that appellant shall pay to the respondent all costs and damages that may be adjudged against the appellant on the appeal, and all damages and costs which may occur by reason of said injunction or restraining order.

SEC. 10. If the judgment or order is for the payment of money, the penalty of the bond for stay of execution, or to keep in force an injunction or restraining order, shall be at least twice the amount of the judgment or order and costs. If not for the payment of money, the penalty shall be sufficient to save the respondent harmless from the consequences of taking the appeal. But it shall in no case be less than one hundred dollars.

Amount of  
bond.

Sureties.

SEC. 11. The sureties in every bond for appeal, for stay of proceedings, or to keep in force an injunction or restraining order, must possess the qualifications required for bail upon arrest in a civil action; their affidavits of qualifications must be attached to or filed with the bond, and they must, if required, justify in the same manner as bail upon arrest.

SEC. 12. If execution has issued prior to the filing of the

bond for stay of proceedings, the clerk shall countermand the same.

SEC. 13. Property levied upon, and not sold at the time such countermand is received by the sheriff, shall forthwith be delivered up to the judgment debtor.

SEC. 14. Upon the giving of the notice, or the filing of the written notice, as provided in section thirteen hundred and thirty-nine, it shall be the duty of the clerk of the superior court, as soon as may be in due course of business, to make and certify a full and complete transcript of the record in such cause or proceeding up to the time of giving notice of appeal, and to cause such transcript to be filed with the clerk of the supreme court within the time provided by law; but in civil actions and proceedings he shall, before making, certifying or filing such transcript, require payment by the appellant of the lawful charges therefor.

SEC. 15. The transcript is a copy, certified by the clerk, of the pleadings, orders, papers and journal entries constituting the judgment roll; of the bills of exceptions, if there be any; of the statement of facts, if there be one; of the notice of appeal; of all orders and notices concerning the appeal; of the bond of appeal; of the bond for stay of proceedings, if there be one; and of the bond to keep in force an injunction or restraining order, if there be one.

SEC. 16. In a criminal case, if the transcript shall not be filed within sixty days after the appeal is taken, the appeal shall be dismissed, unless it shall appear that the appellant was not in fault; and if it be shown that the transcript is incomplete, the court may order a new transcript or further record to be certified at any time.

SEC. 17. An appeal may be dismissed for insufficiency of the notice of appeal, or want of service of such notice in cases requiring service; but no appeal shall be dismissed for any informality or defect in the notice or the service thereof, if from the transcript it can be reasonably understood that the adverse party has had sufficient notice of the appeal describing the order or judgment complained of with such certainty that his substantial right would not be prejudiced by the hearing of the cause. And the supreme court shall, upon reasonable terms, allow all amendments

in matters of form curative of such defects, to the end that substantial justice be secured to the parties.

SEC. 18. In a civil action or proceeding, if the transcript be not filed within sixty days, as provided in the preceding section, the respondent may file a certified copy of the judgment or order appealed from, and of the notice served, or of the record of the notice of appeal in case no written notice was made, and may, on motion, have the appeal dismissed, or the judgment or order appealed from affirmed: *Provided*, That when the failure to file the transcript is owing to the fault or omission of the clerk of either the appellate or inferior court, or other circumstances over which the appellate [appellant] has no control, the court shall not dismiss the cause, but shall fix such time for hearing the same as will insure a fair trial.

SEC. 19. Within such time after the transcript is filed as the supreme court may prescribe by rule the respondent may move to dismiss the appeal upon the grounds, either that when the appeal was taken the appellant had no right to appeal, or that by reason of facts subsequent to the taking of the appeal the appellant has no right further to prosecute it. If the facts upon which the motion is based do not appear in the record they must be presented in a verified statement, and in such case the appellant may by verified answer controvert the facts and may also set forth any other facts showing that the motion ought not to be allowed; and the court shall determine the facts and make such order thereupon as the law and the ends of justice shall require.

SEC. 20. If the respondent believe the bond defective, or the sureties insufficient, he may move the supreme court, on ten days' written notice to the appellant, to discharge the bond; and if the court find the sureties insufficient, or the bond substantially defective, an order shall be made discharging such bond, unless a good and sufficient bond with sufficient sureties be executed before a day to be fixed and specified in the order. On the filing of a certified copy of the order in the office of the clerk of the court from which the appeal was taken, execution and other proceedings for enforcing the judgment or order may be taken, if a new

and good and sufficient bond is not filed therein by the day specified; but another order staying proceedings may be issued by the clerk upon execution before him of a new and lawful bond with sufficient sureties, as provided in section thirteen hundred and forty-one.

SEC. 21. In all cases and proceedings in which an appeal lies to the supreme court, any party feeling himself aggrieved may have any material fact or facts not already a part of the record made so by a statement of facts. Such facts shall be settled and agreed on in the following manner: The party desiring to settle a statement of facts shall prepare and file with the clerk of the superior court a statement of facts, complete and ready for signing, and shall, within thirty days after the decision, order, or judgment to be appealed from was made or rendered, give notice to the opposite party or his attorney that the said statement has been prepared and filed, and that, upon a day to be named in said notice, he will apply to the court or judge who tried the cause or made the decision, order, or judgment complained of, at a place to be named in said notice, to settle and certify said statement of facts. Said notice shall be given within thirty days after the decision, order, or judgment is made, and the day fixed for the settling and certifying of the statement shall be at least ten days and not more than thirty days after the day of service. The party upon whom such notice is served shall, within ten days thereafter, serve upon the opposite party a written notice in which shall be stated whether or not the correctness of said statement of facts is contested, and if contested, in what particular or particulars the said statement is deficient, incorrect or incomplete. Upon the day named in said notice the said parties, or their attorneys, may appear before the said court or judge, and it shall be the duty of said court or judge to settle between the parties what is the proper statement, and to certify the same. The settling of said statement may be adjourned to a later day by order of said court or judge.

SEC. 22. The certificate of the judge that said statement contains all the material facts in the cause or proceedings shall be sufficient. In causes of equitable cognizance,

Amending  
records.

where the appeal is from the final judgment, the said statement of facts shall contain all the testimony on which the cause was tried below, together with any objections or exceptions taken to reception or rejection of testimony. In cases at law the statement of facts need contain no more than was necessary or proper in a bill of exceptions.

Depositions.

SEC. 23. Copies of depositions and other written evidence used on the trial or hearing in the court from which the appeal is taken need not be embodied in the statement of facts, but if not so embodied, such depositions and written evidence, or copies thereof, referred to and identified with convenient certainty in the certificate of the judge, shall be attached to the statement of facts.

Review.

SEC. 24. When a review of an original paper in the action may be important to a correct decision of the appeal, the court may order the clerk of the court below to transmit the same, which he shall do in some safe mode, to the clerk of the supreme court who shall hold the same subject to the control of the court.

SEC. 25. In actions at law, and in special proceedings which are appealable, the appellant, instead of settling a statement of facts as provided by this act, may have his exceptions and such facts as are material to the same made a part of the record by bill of exceptions, as provided by chapter six of title seven of this code, relating to exceptions.

Bill of exceptions.

SEC. 26. *Statement or bill of exceptions, where settled.*— A statement of facts or bill of exceptions may be settled and certified by the judge trying the cause, or who rendered the decision, order or judgment to be appealed from, at any place in the state; but the time and place shall be stated in the notice given for the settling and certifying the same.

SEC. 27. An assignment of error, when required to be made, need follow no stated form, but must, in a way as specific as the case will allow, point out the very error objected to; among several points in a demurrer, or in a motion or instructions or rulings in an exception, it must designate which is relied on as an error; and the court will only regard errors which are assigned with the required exactness; but the court must decide on each error assigned.

SEC. 28. The supreme court may affirm, reverse or modify any judgment or order appealed from, and may direct the proper judgment or order to be entered, or direct a new trial or further proceedings to be had. The decision of the court shall be given in writing; and in giving its decision, if a new trial is granted, the court shall pass upon and determine all the questions of law involved in the case presented upon such appeal and necessary to the final determination of the case. Its judgments in appealed cases shall be remitted from [to] the court from which the appeal was taken. Power of supreme court.

SEC. 29. No cause is decided until the opinion, in writing, is filed with the clerk.

SEC. 30. Upon the affirmance of any [judgment] or order for the payment of money, the collection of which, in whole or in part, has been superseded by bond as hereinbefore provided, the court shall award to the respondent damages upon the amount superseded; and if satisfied by the record that the appeal was taken for delay only, must award such sum as damages, not exceeding fifteen per cent. thereon, as shall effectually tend to prevent the taking of appeals for delay only. Damages.

SEC. 31. The supreme court, when it affirms the judgment, shall also, if the respondent moves therefor, render judgment against the appellant and his sureties on the bond for the amount of the judgment, damages and costs referred to therein, in case such damages can be accurately known to the court without an issue and trial. Judgment.

SEC. 32. If the supreme court affirm or modify the judgment or order, it may remand the cause to the court below to have the same carried into effect, or it may itself issue the necessary process for this purpose, and direct such process to the sheriff of the proper county, as the party may require. Restitution.

SEC. 33. If remanded to the inferior court to be carried into effect, such decision and the order of the court thereon, being certified thereto and entered on the records of the court, shall have the same force and effect as if made and entered during the session of the court.

SEC. 34. If by the decision of the supreme court the

appellant becomes entitled to a restoration of any part of the money or property that was taken from him by means of such judgment or order, either the supreme court or the court below, may direct execution or writ of restitution to issue for the purpose of restoring to such appellant his property or the value thereof.

Power of  
mandate.

SEC. 35. The supreme court shall have power to enforce its mandates upon inferior courts and officers by fine and imprisonment, which imprisonment may be continued until obeyed.

Rehearing.

SEC. 36. If a petition for rehearing be filed, the same shall suspend the decisions of the court, on its presentation, until the application shall be determined.

SEC. 37. The petition for rehearing shall be the argument of the applicant therefor; and if the court think that such argument requires a reply, it shall so indicate to the other party, and he may make reply within such time as said court shall allow.

SEC. 38. The death of one or all of the parties shall not cause the proceedings to abate, but the names of the proper persons shall be substituted, as is provided in such cases in the superior court, and the case may proceed.

Continuance.

The court may also, in such case, grant a continuance when such a course will be calculated to promote the ends of justice.

SEC. 39. The services of notices of appeal, and of all notices and orders and process connected with appeals, or with proceedings on appeal, shall, except as otherwise directed by the supreme court by general rule or special order, be made in the way provided for the services of like notices in the superior court, and they may be served by the same person and returned in the same manner. The original notice of appeal must be returned immediately after service to the office of the clerk of the superior court from which the appeal is taken.

SEC. 40. An appeal by a defendant in a criminal action shall stay the execution of the judgment of conviction.

Criminal  
actions.

SEC. 41. In all criminal actions, except capital cases in which the proof of guilt is clear or the presumption great, upon an appeal being taken from a judgment of conviction,

the court in which the judgment was rendered, or a judge thereof, must, by an order entered in the journal or filed with the clerk, fix and determine the amount of bail to be required of the appellant; and the appellant shall be committed until a bond to the State of Washington in the sum so fixed be executed on his behalf by at least two sureties possessing the qualifications required for bail upon arrest in civil actions, such bond to be conditioned that the appellant shall appear whenever required and stand to and abide by the judgment or orders of the appellate court, and any judgment and order of the superior court that may be rendered or made in pursuance thereof. If the appellant be already at large on bail, his sureties shall be liable to the amount of their bond in the same manner and upon the same conditions as if they had executed the bond prescribed by this section; but the court may, by order, require a new bond in a larger amount or with new sureties, and may commit the appellant until the order be complied with.

SEC. 42. Personal appearance of any party in the supreme court shall not be necessary on appeal in either civil or criminal actions. In criminal actions the defendant shall be entitled to close the argument.

SEC. 43. When in a criminal action the judgment against the defendant is reversed, and it appears that no offense whatever has been committed, the supreme court must direct that the defendant be discharged; but if it appear that the defendant is guilty of an offense, although defectively charged in the indictment or information, the supreme court, if the defendant is imprisoned, must direct the keeper of the place of confinement to cause the prisoner to be returned to the sheriff of the proper county, there to abide the order of the superior court thereof; and such keeper shall be entitled to the usual fees therefor.

SEC. 44. A transcript of any order or judgment, or both, of the supreme court, certified under the seal of the court, shall be sufficient authority to any court, or to any officer on whom it may be served, to proceed according to its mandate.

SEC. 45. If a defendant who has been imprisoned during the pendency of an appeal, upon a new trial ordered by the

supreme court, shall be again convicted, the period of his former imprisonment shall be deducted by the superior court from the period of imprisonment to be fixed on the last verdict of conviction.

SEC. 46. The supreme court shall hear and determine all causes removed thereto, in the manner hereinbefore provided, upon the merits thereof, disregarding all technicalities, and shall, upon the hearing, consider all amendments which could have been made as made.

Executions.

SEC. 47. Executions issued from the supreme court shall be the same as those from the superior court and attended with the same consequences, and shall be returnable in the same time.

Rules.

SEC. 48. The supreme court is hereby authorized to make all needful rules and regulations not inconsistent with law concerning practice and procedure in the supreme court in causes appealed thereto, and concerning the settlement of bills of exceptions and statement of facts and concerning the time and manner of filing transcripts and briefs.

SEC. 49. The method provided by this chapter for removing causes to the supreme court and for securing a revision of the same, shall be exclusive and supersede all other methods heretofore provided.

Effect of this law.

SEC. 50. No rights acquired under statutes which are abrogated by this act shall be lost by reason of the passage of this act, but all appeals pending when this act takes effect may be prosecuted to their determination, as if this act had not been passed.

Approved March 9, 1891.