

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



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## CHAPTER 91

## CONTEMPTS

**8353. Direct contempts defined—**

128-153, 150+383.

**8355. Power to punish—Limitation—**

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

**8363. Punishment—**

The maximum sentence that may 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 92

## WITNESSES AND EVIDENCE

## WITNESSES

**8369. Definition—**

130-256, 153+324; 130-256, 153+593.

**8370. Subpœna, by whom issued—**

131-116, 154+750.

**8373. Contempt—**

131-116, 154+750.

**8375. Competency of witnesses—**

**Subd. 1—**Under this section a wife is not a competent witness against her husband in a prosecution for adultery (131-97, 154+735). Witnesses, Ⓒ58(1).

Where one accused of murder attempted to create the impression by his testimony that his wife was unduly intimate with a witness for the prosecution, and that the wife and the witness had plotted to secure defendant's conviction, it was not improper to ask defendant, on cross-examination, if he would consent to his wife testifying for the state (128-422, 151+190). Witnesses, Ⓒ76(3), 277(1).

Action of county attorney in calling wife as a witness against her husband was not misconduct requiring a new trial, though defendant notified the county attorney before the indictment that he would object to the evidence of the wife (128-187, 150+793, Ann. Cas. 1915D, 360). Criminal Law, Ⓒ700.

**Subd. 4—**A patient may waive his right to prevent his physician giving testimony which is privileged under this subdivision; and if he fails to object to a question which necessarily calls for testimony which is privileged, after a fair opportunity is given him to object, he waives the right to object (131-209, 154+960). Witnesses, Ⓒ221.

This subdivision merely prescribes a rule of evidence, and does not prevent action for money had and received to recover money paid by the patient to the physician in consideration of the latter's guaranty to cure him of a certain disease, which consideration fails (123-468, 143+1133). Money Received, Ⓒ6(6).

The physician is in no position to urge the statute as a bar to the action, where he has been allowed to testify fully in regard to the transactions involved (123-468, 143+1133). Witnesses, Ⓒ219(5).

Where waiver of the privilege under this subdivision was procured by fraud, it is error to allow the privilege to be claimed; and hence the trial court's finding that such waiver, executed by a juror whose sanity during the trial was challenged on a motion for a new trial, was procured by misrepresentation, should be sustained (123-173, 143+322). Witnesses, Ⓒ219(4).

The testimony of a physician as to the instructions given his patient, and as to whether the patient obeyed them, is within the privilege conferred by this section (124-466, 145+385). Witnesses, Ⓒ211(2).

A patient does not waive his privilege by bringing an action to recover for the injuries for which the physician treated him, unless the action is against the physician for malpractice. Neither does he waive such privilege by presenting evidence in support of his claim.

where such evidence is confined to matters outside his transaction with the physician (124-466, 145+385). Witnesses, [§ 219\(4, 5\)](#).

Where, in a will contest, the issue was as to the mental condition of testator, the exclusion of the evidence of a physician will not be disturbed on appeal, where there was no offer to show that the ailment which the doctor was treating had any relation to testator's mental condition (126-275, 148+117). Wills, [§ 322](#).

The testimony of physicians making an examination of plaintiff to ascertain his physical ability to work, their information not being obtained for the purpose of treating or acting for him, is not privileged (128-360, 150+1091). Witnesses, [§ 209](#).

### 8376. Accused—

The action of a court in calling the attention of the jury to the fact that accused had not been present in court during the trial was a violation of this section, though no direct reference was made to the failure of the defendant to testify (126-45, 147+822). Criminal Law, [§ 656\(1\)](#).

It was not prejudicial misconduct on the part of the county attorney to comment on the fact that defendant had refused his consent to the placing of defendant's wife on the stand as a witness for the state (128-422, 151+190). Criminal Law, [§ 721½\(1\)](#).

An alleged allusion by the county attorney to defendant's failure to testify is not ground for reversal, unless the record directly states that the allusion was made (129-402, 152+769). Criminal Law, [§ 1086\(11\)](#).

Extent of cross-examination of accused as witness in his own behalf (see 135-159, 160+677). Witnesses, [§ 277\(1, 2\)](#).

Charge as to interest of accused testifying in his own behalf, disapproved (see 130-84, 153+271). Criminal Law, [§ 822\(15\)](#).

### 8377. Examination by adverse party—

**In general**—Where a party is afforded ample opportunity at the trial to cross-examine a witness, error in denying him the right of examination under this section is not prejudicial (131-152, 154+954). Appeal and Error, [§ 1048\(6\)](#).

Where plaintiff fully cross-examined defendant when he appeared as a witness in his own behalf and dismissed him from the stand, there was no error in refusing to permit plaintiff to call defendant for cross-examination under this section (126-426, 148+457, L. R. A. 1915A, 104). Witnesses, [§ 283](#).

Examination as precluding claim of prejudice in instruction (122-20, 141+810).

**Who may be called**—The right to call an officer of an adverse party for cross-examination under this section is to be determined as the situation is at the time of trial; and there is no right to examine one not an officer at the time of trial, though he was an officer at the time of the transaction involved (132-404, 157+643). Witnesses, [§ 276](#).

The motorman of a street car is not a "managing agent" of the company within the meaning of this section (162+298). Witnesses, [§ 276](#).

Executor, also husband of a devisee, propounding a will for probate, is a mere nominal party, not so interested as to constitute him an adverse party to contestants, within this section, so as to give adversary right to examine him as if under cross-examination (162+515). Witnesses, [§ 276](#).

Where an election is contested on the ground that the contestees voted illegally, such contestees may be called as adverse parties for cross-examination (126-298, 148+276). Witnesses, [§ 276](#).

**Scope of examination**—Where a party is an unwilling witness, considerable latitude should be allowed in examining him (123-476, 144+154). Witnesses, [§ 275\(1\)](#).

**Contradiction and impeachment of witness**—The party calling his adversary under this section may impeach or contradict him, and the attention of a witness may be called to testimony given by an adverse witness, and he may be asked if such testimony is true (126-239, 148+102, Ann. Cas. 1915D, 888). Witnesses, [§ 276](#), 324, 400(2).

In a civil action for assault, the court did not abuse its discretion in permitting plaintiff to be interrogated as to a prior independent assault committed by her on a third person, to shake her credibility; but defendant was improperly permitted to subsequently introduce testimony contradicting the answers so elicited (124-284, 144+956). Witnesses, [§ 349](#), 405.

**In what actions or proceedings**—This section has no reference to proceedings for the appointment of a guardian for an incompetent person under §§ 7433-7435 (128-324, 151+130). Insane Persons, [§ 83\(1\)](#).

### 8378. Conversation with deceased or insane person—

**Who competent**—In an action to set aside a deed to defendant, executed by plaintiff's intestate, defendant's wife may testify as to conversations had with intestate (132-254, 156+263). Witnesses, [§ 159\(1\)](#).

Since the enactment of § 6814, giving the wife a right to convey her real estate by her separate deed, the husband, in an action involving real estate not the homestead, to which action the wife is a party, is not prohibited by this section from testifying to a conversation with a person since deceased (132-242, 156+260). Witnesses, [§ 159\(1\)](#).

Persons interested in administrator's action to set aside decedent's contract to sell realty may testify as to deceased's conversations and declarations to show loss of memory and delusions as bearing upon her competency; this section being strictly construed (162+1070). Witnesses, [§ 159\(14\)](#).

The agent of defendant insurance company, to whom the insured gave a note for the first premium, and to whom defendant sent the policy after its issue, held not interested in the event of the action, so as to prevent his testifying to conversations with the insured, now deceased (127-215, 149+292). Witnesses, [↪140\(16\)](#).

Heirs are not incompetent to give in evidence declarations or conversations of the deceased where neither they nor the estate can be made liable for the result of the action (126-58, 147+714, L. R. A. 1915E, 822). Witnesses, [↪140\(7\)](#).

In a will contest it was improper to permit a legatee to testify to statements made by the testator at the time he executed the will (128-17, 150+213, L. R. A. 1916C, 1214, Ann. Cas. 1916D, 1101). Wills, [↪297\(1\)](#).

Devisee, voluntarily entering upon a contest opposing probate of a will, asserts such an interest in the issue as to preclude his testimony as to conversations with testator as to his intention in disposing of his property (162+515). Witnesses, [↪140\(6\)](#).

Offer to show incompetency of witness under this section, on the ground of "interest in the event of the action," held insufficient, as importing merely a nudum pactum (124-386, 145+116, Ann. Cas. 1915B, 734). Witnesses, [↪140\(9\)](#), 182.

**Conclusions of witness**—Deductions or conclusions of witness from conversation with deceased party prohibited (121-352, 141+481). Witnesses, [↪144\(1\)](#).

**Waiving objections**—One entitled to object to evidence of conversations with a deceased person waives such right by calling the witness to such conversations and cross-examining him in reference thereto. Such waiver takes place, though the questions propounded to the witness are confined to the question as to what the witness said to deceased (128-277, 150+914). Witnesses, [↪181](#).

By cross-examining an interested party relative to conversations with a deceased person, the cross-examining party waives the right given by this section to exclude such testimony; and the party examined may give further testimony as to such conversations at any appropriate time in the trial, though not questioned relative thereto on redirect (133-136, 157+1073). Witnesses, [↪181](#).

## DEPOSITIONS

### 8393. Informalities and defects—Motion to suppress—

Motion to suppress for refusal of witness to answer material questions on cross-examination must be made within ten days from notice of return of the deposition (128-525, 151+416). Depositions, [↪83\(4\)](#).

### 8395. Deposition, not used when—

Where the deposition of a witness is taken outside of the state, and in it the witness testifies that he is a nonresident of this state, no further proof of cause for using the deposition is required (162+449). Depositions, [↪90](#).

## JUDICIAL RECORDS—STATUTES, ETC.

### 8414. Printed copies of statutes, etc.—

Both the daily printed journal and the permanent journal are made evidence of the legislative proceedings by this section (130-424, 153+749). Statutes, [↪285](#), 286. See notes under § 41, ante, and under Const. art. 4 § 21.

## DOCUMENTARY EVIDENCE

### 8423. Official records—Certified copies—

This section has no application to foreign records and documents, when authenticated and certified in accordance with the act of Congress (129-347, 152+729). Evidence, [↪348\(2\)](#).

## MISCELLANEOUS PROVISIONS

### 8437. Account books—Loose-leaf system, etc.—

In an action on account, a loose-leaf ledger page was admissible as evidence of payments entered thereon; there being no evidence that the moneys so received were entered in any other place than in such ledger (127-535, 149+647). Evidence, [↪354\(2\)](#).

When one party offers in evidence the books of account of the other party as admissions, it is not necessary to lay the foundation required by this section when the party offers his own books of account; but it is sufficient if it appears that the books offered are the books of account of the party regularly kept in his business (126-464, 148+459). Evidence, [↪376\(2\)](#).

Need not be verified by the clerks who made the entries (128-422, 151+190). Criminal Law, [↪444](#).

### 8441. Minutes of conviction and judgment—

Where the judgment roll, offered in evidence to show defendant's prior conviction, appears fair on its face, it will be presumed in full force and effect until the contrary is shown (123-413, 144+142). Criminal Law, [↪1202\(2\)](#).

**8448. Bills and notes—Indorsement—Signature to instruments presumed—**

The provision of this section that every written instrument purporting to have been executed shall be proof of execution until the person executing it shall deny his signature under oath applies to an instrument purporting to be executed by a corporation, and to a contract of employment by the corporation, and the fact that one of two corporate officers executing it has died before the trial does not render the statute inapplicable; the statute not being confined to promissory notes or bills of exchange (131-386, 155+214). Pleading, Ⓒ 291(2).

This section applies to instruments executed by corporations, and denial of execution must be by the oath of an officer or representative of the corporation who is shown to have sufficient knowledge of the facts to be able to state authoritatively that the corporation did not execute the instrument (132-211, 156+265). Pleading, Ⓒ 291(2).

Denial of execution of an instrument by a stockholder of the corporation executing it is insufficient under this section, where it is not shown that such stockholder possesses any knowledge concerning the corporate business transactions (132-211, 156+265). Pleading, Ⓒ 301(3).

Where a corporation denies the execution of notes, and one of its officers, shown to have authority, testifies that such notes were not executed by the corporation, this section does not make the fact that the notes purport to have been executed by the corporation evidence of such execution (134-445, 159+1078). Corporations, Ⓒ 519(3).

**8449. Indorsement of money received—**

To make this section applicable, the burden of proof is on the holder of a note containing an indorsement of payment to prove by evidence dehors the indorsement, that the payment was made at a time when it was against the interest of the holder to make it (133-289, 158+391). Bills and Notes, Ⓒ 496(3).

**8450. Land office receipts, etc., evidence of title—**

Section 6880 imposes upon the examiner under the Torrens act the duty to make his investigation full and thorough, and he is not justified in relying upon a receipt or certificate issued to an entryman by a local land office as establishing that the United States has parted with its proprietary title (130-456, 153+871). Records, Ⓒ 9(10).

**8453. Federal census—Population—**

123-48, 142+1042.

[8456—]1. Abstracts of title—In any action wherein the title to real property is in controversy, any abstract of title thereof, duly certified by any bonded abstractor or by any Register of Deeds of any county wherein said real property is situated, shall be received as prima facie evidence of all instruments therein referred to, together with the records thereof as recorded in the office of the Register of Deeds of such county. (15 c. 283 § 1)

**8459. Fact of marriage, how proved—**

Evidence held insufficient to establish a common-law marriage. Elements of such a marriage stated (122-407, 142+593). Marriage, Ⓒ 18, 40(4), 50(5).

**8462. Confession, inadmissible when—**

Evidence held insufficient to show that accused burned prosecutor's barn, so as to support his conviction, based solely on an alleged confession (128-163, 150+787). Arson, Ⓒ 37(1).

**8463. Uncorroborated evidence of accomplice—**

To make a witness an "accomplice," it must appear that a crime has been committed by the person on trial, either as principal or accessory, and that the witness co-operated with, aided, or assisted in the commission of the crime, either as principal or accessory (135-159, 160+677). Criminal Law, Ⓒ 507(1).

A woman to whom liquor is furnished, contrary to § 3148, is not an accomplice of the person selling the liquor (124-408, 145+39). Criminal Law, Ⓒ 507(1).

The corroborating evidence need not be sufficient in itself to support a conviction (122-493, 142+823). Criminal Law, Ⓒ 511(1).

The corroboration of an accomplice need not be sufficient, standing alone, to make out a prima facie case of guilt, nor is it necessary that it should cover every fact necessary to proof of the crime; but it is sufficient that the testimony, independent of that of the accomplice, tends in some reasonable degree to establish guilt of defendant. Evidence held sufficient to corroborate the testimony of an accomplice, so as to sustain a conviction (131-276, 154+1095). Criminal Law, Ⓒ 511(1).

A confession may be sufficient corroboration (131-276, 154+1095). Criminal Law, Ⓒ 511(7).

Rulings of trial court in giving and refusing instructions as to accomplice testimony held not erroneous or prejudicial (135-159, 160+677).

**8465. Divorce—Testimony of parties—**

Sufficiency of corroborative testimony (see 126-65, 147+825). Divorce, Ⓒ 127(4).