MASON'S

MINNESOTA STATUTES

1927

PUBLISHED UNDER THE TERMS OF THE CONTRACT MADE BY THE STATUTE COMPILATION COMMISSION FOR THE PUBLICATION OF THE GENERAL STATUTES OF 1923

EMBRACING THE ORGANIC LAWS, THE CONSTITUTION, AND THE STATUTES CONTAINED IN THE GENERAL STATUTES OF 1923, EXCEPT THOSE WHICH HAVE BEEN REPEALED OR SUPERSEDED BY THE SUBSEQUENT LEGISLATION OF 1925 AND 1927

AND ALSO EMBRACING LAWS OMITTED FROM THE GENERAL STATUTES 1923, AND THE LAWS OF THE 1925 AND 1927 SESSIONS OF THE LEGISLATURE UNDER APPROPRIATE CLASSIFICATION.

COMPILED AND EDITED BY THE EDITORIAL STAFF OF THE CITER-DIGEST COMPANY

WILLIAM H. MASON,
Editor in Chief.

MARTIN S. CHANDLER,
RICHARD O. MASON,
Assistant Editors.

Citer-Digest Company
St. Paul
1927

person guilty of the contempt to pay the party aggrieved a sum of money sufficient to indemnify him and satisfy his costs and expenses, which order, and the acceptance of money thereunder, shall be a bar to an action for such loss and injury. (4649) [8364]

May award reasonable attorney's fee (113–304, 129+583).

9804. Imprisonment until performance—Whenever the contempt consists in the omission to perform an act which is yet in the power of the person to perform, he may be imprisoned until he performs it, and in such case the act shall be specified in the warrant of commitment. (4650) [8365]

23–411, 56+397; 57+940; 63–443, 65+728.

Defendant, having admitted default, had the burden of excusing, and it is held, that he made such a showing of prsent inability to pay the amount of arrears that the court was not warranted in committing him. 161–122, 200+936.

9805. Proceedings by indictment—Persons proceeded against under this chapter are also liable to indictment for the same misconduct, if it is an indictable offense; but the court before which a conviction is had on the indictment, in passing sentence, shall take into consideration the punishment before inflicted. (4651) [8366]

23–411; 52–283, 53+1157.

9806. Second warrant—Action on recognizance—Damages—When a warrant of arrest has been returned served, if the person arrested does not appear on the return day, the court or officer may issue another warrant, or may order the recognizance prosecuted, or both. If the recognizance is prosecuted, the measure of damages shall be the amount of the loss or injury sustained by the aggrieved party by reason of the misconduct for which the warrant was issued and the costs of the proceeding. (4652) [8367]

9807. Officer excused from producing party, when—Whenever, under this chapter, an officer is required to keep a person arrested in actual custody and to bring him before a court or officer, the inability, from illness or other cause, of the person to attend, shall be a sufficient excuse for not producing him in court. (4653) [8368]

CHAPTER 92

WITNESSES AND EVIDENCE

WITNESSES

9808. Definition—A witness is a person whose declaration under oath is received as evidence for any purpose, whether such declaration is made on oral examination, or by deposition or affidavit. (4654) [8369]

56–33, 57+219.

9809. Subpœna, by whom issued—Every clerk of a court of record, and every justice of the peace, may issue subpœnas for witnesses in all civil cases pending before the court or justice, or before any magistrate, arbitrator, board, committee, or other person authorized to examine witnesses, and in all contests concerning lands before the register and receiver of any land office in this state. (4655) [8370]

30–140, 14+581; 50–239, 52+655. Cited (109–360, 123+1074). 131–116, 154+750.

9810. How served—Such subpœna may be served by any person, by exhibiting and reading it to the witness, or by giving him a copy thereof, or by leaving such copy with a person of suitable age and discretion at the place of his abode. (4656) [8371]

9811. Failure to attend—Damages—If any person duly subpœnaed to attend as a witness fails to do so, without reasonable excuse, he shall be liable to the aggrieved party, in a civil action, for all damages occasioned by such failure. (4657) [8372]

9812. Contempt—Such failure to attend as a witness is a contempt of court, and, if the subpœna issues out of a court of record, may be punished by a fine not exceeding two hundred and fifty dollars, or by imprisonment in jail not exceeding six months, or both. (4658) [8373]

131–120, 154+750; 144–111, 174+618.

9813. Attachment—The court in such case may issue an attachment to bring such witness before it to answer for the contempt, and also to testify as a witness in the action or proceeding in which he was subpœnaed. (4659) [8374]

2–37, 26; 62–318, 64+821.

9814. Competency of witnesses—Every person of sufficient understanding, including a party, may testify in any action or proceeding, civil or criminal, in court or before any person who has authority to receive evidence, except as follows:

1. A husband cannot be examined for or against his wife without her consent, nor a wife for or against her husband without his consent, nor can either, during the marriage or afterwards, without the consent of the other, be examined as to any communication made by one to the other during the marriage. But this exception does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other, nor to an action or proceeding for abandonment and neglect of the wife or children by the husband.

2. An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him or his advice given thereon in the course of professional duty; nor can any employee of such attorney be examined as to such communication or advice, without the client's consent.

3. A clergyman or other minister of any religion shall not, without the consent of the party making the confession, be allowed to disclose a confession made to him in his professional character, in the course of discipline enjoined by the rules or practice of the religious body to which he belongs.

4. A licensed physician or surgeon shall not, without the consent of his patient, be allowed to disclose any information or any opinion based thereon which he acquired in attending the patient in a professional capacity and which was necessary to enable him to act in that capacity.

Provided that after the decease of such patient, in an action to recover insurance benefits, where the insurance has been in existence two years or more the beneficiaries shall be deemed to be the personal representatives of such deceased person for the purpose of waiving the privilege hereinbefore created, and that no oral or written waiver of the privilege hereinbefore created shall have any binding force or effect except that the same be made upon the trial of examination where the evidence is offered or received.

5. A public officer shall not be allowed to disclose communications made to him in official confidence when the public interest would suffer by the disclosure.

6. Persons of unsound mind; persons intoxicated at the time of their production for examination, and children under ten years of age, who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly, are not competent witnesses. (R. L. '05 § 4660, G. S. '13 § 8375, amended as to subd. 4 by '19 c. 513 § 1)

See 153–39, 189+406.

½. In general.

Qualification of expert. 165–475, 194+14.

The mental impairment of a witness is for the consideration of the jury. 210+75.

The record sufficiently discloses the facts upon which a physician based his expert opinion. 210+996.

1. All persons not excepted competent—19–523, 454.

2. Parties competent—21–108.

3. Subd. 1—Statute excludes evidence of all private conversations between husband and wife though not confidential (35–310, 29+127; 61–78, 63+253). Fact that husband is dead does not alter rule (61–78, 63+253; 67–298, 69+923). Fact that wife refuses to allow adverse party to examine husband against her does not preclude her from subsequently calling him in her behalf (44–159, 46+295). When one spouse calls the other as witness the adverse party has right to cross-examination and such cross-examination is not limited to matters touched on in direct examination. Declarations of husband and wife subject to same rules of exclusion as those which govern their testimony as witnesses. The mere fact that one spouse does not call other as witness does not authorize court to instruct jury that they may take that fact into consideration as tending to raise a presumption that the testimony, if given, would not be favorable (77–282, 79+1016, 80+363; 91–204, 97+976). Wife not competent witness for state in prosecution against husband for crime against her committed before their marriage (76–526, 79+518). Wife cannot be witness against husband without his consent although action is one against person for enticing her away and defence is based on alleged illtreatment of wife by husband (27–68, 6+425). Wife cannot testify against husband on prosecution against him for adultery (4–335, 251), but on prosecution against third party for having committed adultery with one of the spouses the other is competent to testify as to facts within his or her knowledge not gained through marital communications (57–225, 58+878). In actions against husband and wife under statute to have trust declared on fraudulent conveyance to wife husband is incompetent (30–496, 16+399; 77–282, 79+1016, 80+363; 88–253, 92+951). One spouse not incompetent witness to will simply because other spouse is a beneficiary under the will (56–33, 57+219, 22 L. R. A. 481). Dying declarations of wife admissible although husband was an accomplice (56–226, 57+652, 1065). Wife held not incompetent in action for alienation of her husband's affections, her testimony not relating to conversations between herself and her husband (67–476, 70+784). Error in examining husband against wife held

waived by wife subsequently calling him as witness and examining him in relation to same matter (90–237, 95+903). Admissions against interest are admissible against *the one making them, although the spouse of such person* is a party to the action (119–265, 138+25). Error, if any, not prejudicial (101–451, 112+627; 111–339, 126+1089). Sufficiency of objection (118–255, 136+871). See also, 128–187, 150+793; 128–422, 151+190; 131–97, 154+735; 139–46, 165+864; 193+39; 293 Fed. 905.

4. Subd. 2—Privilege belongs to client and not to attorney. Witness who has testified to given fact on direct examination may be compelled on cross-examination to state whether he has communicated the fact to his attorney (43–273, 45+449). Only communications made because of, and in the course of, confidential relation privileged. Mere request by one to an attorney to become and act as his attorney may be proved (29–124, 12+347). Conversation between parties to mortgage in hearing of attorney employed to draft mortgage, not embracing communications made to him as an attorney or for the purpose of obtaining his advice or legal opinion, not privileged (51–546, 53+871). Communications from client to attorney obviously designed for communication to adverse party or another not privileged (70–248, 73+644; 85–29, 88+254, 88+412). Attorney not obliged to produce writing intrusted to him by client, or to disclose its contents, without client's consent, but for purpose of authorizing adverse party to give oral evidence of its contents may be required to state whether he has it in his possession or not (40–545, 42+482; 70–37, 72+823). Privilege does not extend to facts or writings obtained by attorney from other sources than his client or from third parties, whether strangers or opponents (70–37, 72+823). If client attacks attorney he waives the privilege so far as to authorize the attorney to make a defence (66–10, 68+179). For certain purposes the legal adviser of a testator may disclose communications with his client on business matters (40–371, 42+286; 82–460, 85+217). Termination of relation of attorney and client does not authorize attorney to disclose communications made during existence of relation (75–366, 77+987). Relation of attorney and client does not exist between county attorney and one making complaint for purpose of criminal prosecution (74–93, 76+962). Communications made in furtherance of a criminal purpose not privileged (94–496, 103+497). Whether person waives privilege as to communications made to attorney in relation to a crime by subsequently confessing and testifying in relation to the crime is an open question (91–143, 97+652). Communications to clerk of attorney privileged, if in course of professional duties (104–432, 116+933).

The privilege from disclosing communications to an attorney is that of the client, and cannot be asserted by the state calling the client as its witness. 161–132, 201+297.

Testimony as to a statement made by a witness to an attorney was properly excluded as a communication between client and attorney. *167–53, 208+805.*

5. Subd. 4—19–523, 454; 66–91, 68+731; 90–264, 95+1118; 94–496, 103+497. Is for protection of patient, and he may waive it, and as a rule those who represent him after his death may (100–117, 110+374; 103–290, 115+651, 946). What constitutes waiver (*101–122, 111+951; 104–432, 116+933*; 105–1, 116+917). See 123–173, 143+322; 123–468, 143+1133; 124–466, 145+385; 126–275, 148+117; 128–360, 150+1091; 131–209, 154+960.

It is plain that what she disclosed to her physician *when she consulted him for treatment for some ailment* and what he learned by a physical examination of her was privileged. But a request that the doctor perform a criminal operation was not. 156–52, 194+752.

The statute forbids a physician from disclosing, *without the consent of his patient, information acquired in* his professional capacity and necessary to enable him to act in that capacity. 159–410, 199+87.

Plaintiff did not waive this privilege by bringing an action to recover for injuries, and testifying at the trial *as to the injuries and that a broken bone in his leg had* been set and the leg placed in a cast by the physician. 159–410, 199+87.

The plaintiff received medical attention from a physician. Another physician was present, and at the *request of the attending physician participated in the* examination of the plaintiff. It is held that the information acquired by the latter physician was privileged within the statute. 161–304, 201+551.

6. Subd. 5—74–93, 76+962; 139–47, 165+864.

7. Subd. 6—27–435, 8+164; 152–89, 187+972.

9815. Accused—The defendant in the trial of an indictment, complaint, or other criminal proceeding shall, at his own request and not otherwise, be allowed to testify; but his failure to testify shall not create any presumption against him, nor shall it be alluded to by the prosecuting attorney or by the court. (4661) [8376]

1. In general.

When defendant neglects or refuses to testify in his own behalf the court has no right to allude to or comment on the subject before the jury or to instruct them as to whether they shall consider such neglect or refusal in any manner whatever. In other words, the court must maintain absolute silence on the subject (56–226, 57+652, 57+1065), and so must county attorney (*65–230, 68+11; 89–205, 94+675. See 95–467, 104+*295). Error in this regard held not fatal where guilt of accused conclusively proved (54–195, 55+959). If defendant takes the stand his failure to explain or contradict evidence of conduct or admissions tending to criminate him may be properly commented on before the jury and may be considered by them with reference to his credibility (14–105, 75, 34–361, 25+793). While the court should not single out the defendant and charge particularly as to his credibility it has been held permissible to charge the jury that they may take into *consideration the interest of the defendant in the result* of the action (41–60, 42+697; 69–508, 72+799; 83–286, 86+98; 90–183, 96+330). Not applicable to bastardy proceedings (29–132, 12+347), or proceedings against officer of court for contempt (87–161, 91+297). Cited (14–35, 27). See 126–45, 147+822; 128–422, 151+190; 129–402, 152+769; 130–84, 153+271; 135–159, 160+677; 143–314, 173+718; 149–309, 181+947.

167–216, 208+761.

2. Cross-examination of accused.

A *defendant taking the witness stand may be asked*, on cross-examination, if he has been previously convicted of crime. 159–455, 199+99.

By referring in his testimony to other fires about which he had been questioned by the officers, defendant *gave the state the privilege of cross-examining him on* that subject, and the privilege was not abused to defendant's prejudice. 164–110, 204+564.

Where a defendant in a criminal prosecution is a witness in his own behalf, he thereby waives his privilege, and may be cross-examined concerning any matters pertinent to the issue, even if tending to show the commission of another crime. 211+305.

3. Unsworn statements in court.

The defendant in a criminal case who, though not sworn as a witness, vouches openly and with testimonial effect for the authenticity of a document admitted in evidence, cannot complain if the prosecutor, in discussing such evidence, suggests that the defendant in question was not sworn at any time during the trial. 163–109, 203+596.

4. Property taken without search warrant.

The fact that articles offered in evidence in a criminal prosecution against the owner thereof were taken by officers of the law, without a search warrant, from the house where the accused had resided but which he had abandoned when he fled to another state to avoid the consequences of the crime with which he was charged, does not render such articles inadmissible as evidence. 156–186, 194+396.

5. Search on lawful arrest.

A person lawfully arrested may, as an incident thereto, be searched, and incriminating articles found in his possession may be seized. 157–145, 195+789.

9816. Examination by adverse party—A party to the record of any civil action or proceeding, or a person for whose immediate benefit such action or proceeding is prosecuted or defended, or the directors, officers, superintendent, or managing agents of any corporation which is a party to the record, may be examined by the adverse party as if under cross-examination, subject to the rules applicable to the examination of other witnesses. The party calling such adverse witness shall not be bound by his testimony, and the testimony given by such witness may be rebutted by the party calling him for such examination by other evidence. Such witness, when so called, may be examined by his own counsel, but only as to the matters testified to on such examination. (4662) [8377]

1. Object and effect of statute—The object of the statute is to permit a party to call his adversary at the trial, without making him his own witness, and elicit from him, if possible, material facts within his knowledge by a cross-examination precisely as if he had already been examined on his own behalf in chief (38–112, 35+726; 64–444, 67+67). It was not intended to permit a plaintiff to make one of his own witnesses a nominal *party to the record and then call and cross-examine* him, not as an adverse party, but as a witness against

the actual adverse party (64–444, 67+67). It was not designed to affect the competency of witnesses (44–159, 46+295; 77–282, 79+1016, 80+363; 90–237, 95+903), or the order of trial, or the rule which forbids a party to make out his case by cross-examining the witnesses of the adverse party (47–451, 50+598). Cited (103–176, 114+750).

164–466, 206+380.

Statute is applicable to procedure in federal court. 15 F (2d) 306.

The proponent of the second will, who was named as executrix, and was a beneficiary, and who actively engaged in sustaining it and opposing the 1911 will, in which she was also named executrix and was a beneficiary, was subject to cross-examination under the statute, Gen. St. 1913, § 8377, as an adverse party. 156–144, 194+330.

There was no error in calling the defendant Jansen for cross-examination under the statute, the effect of his admission was properly limited, and there were no reversible rulings on evidence. 163–187, 203+782.

There is no right to call a witness for cross-examination simply because he was an officer of the adverse party at the time of the transaction. 211+163.

2. Who may be called—A mere nominal party cannot be called. There must be a real issue to be tried between the party calling and the party called. A party cannot make one of his own witnesses a nominal party and then call him under the statute (50–525, 52+926; 64–444, 67+67; 69–472, 72+710; 81–263, 83+991; 83–346, 86+344; 87–362, 92+1). A person for whose immediate benefit the action is brought or defended may be called (81–263, 83+991; 82–416, 85+159). Whether an agent may be called after the termination of his agency is an open question (88–401, 93+307). Any officer, superintendent or agent of a corporation having supervision or control of the work or act of the corporation involved in the case may be called whether he is a general or subordinate officer (77–198, 79+682). See 94–331, 102+728). A stockholder of a corporation held properly called under the pleadings (94–331, 102+728). Master of vessel owned by corporation, with authority to direct its movements between ports, may be called in suit against corporation growing out of navigation of vessel (142 Fed. 315, 73 C. C. A. 425). Ruling allowing plaintiff to examine defendant in default, held error without prejudice (107–9, 119+247). Whether officer of municipality which is a party is within section, not decided (110–340, 125+507).

3. In what actions or proceedings—38–112, 35+726; 81–346, 84+46.

4. Scope of examination—The widest and freest scope is to be given the examination. Leading questions may be put and any admissible evidence which would tend to weaken the case of the witness or strengthen that of the party calling him may be drawn out. The whole case in all its phases may be thoroughly and minutely investigated. Objections on the ground of materiality are disfavored (38–112, 35+726; 63–504, 65+946; 66–223, 68+1072).

5. Contradiction and impeachment of witness—50–96, 52+277; 66–223, 68+1072; 87–362, 92+1.

6. Order of examination—The time when a party examined under the statute shall be examined by his own counsel is discretionary with the trial court (79–396, 82+651; 92–312, 99+1128; 95–179, 103+877).

7. Deposition—Whether the statute is applicable to the deposition of a party is an open question (63–504, 65+946).

8. Construction of statute—64–444, 67+67; 77–198, 79+682; 81–346, 84+46.

9. Error without prejudice—Where court incorrectly rules witness to be subject to cross-examination as adverse party, it is necessary to predicate reversible error, to show that one has been thereby prejudiced in the subsequent events of the trial (107–9, 119+247; 110–82, 124+637; 110–340, 125+507). See generally, 122–23, 141+810; 123–476, 144+154; 124–284, 144+956; 126–298, 148+276; 126–239, 148+102, 128–324, 156+263; 131–157, 154+954; 132–404, 157+643; 136–316, 162+298; 136–408, 162+515; 137–252, 163+297; 144–326, 175+908; 147–310, 180+218, 194+330.

9817. Conversation with deceased or insane person—It shall not be competent for any party to an action, or any person interested in the event thereof, to give evidence therein of or concerning any conversation with, or admission of, a deceased or insane party or person relative to any matter at issue between the parties, unless the testimony of such deceased or insane person concerning such conversation or admission, given before his death or insanity, has been preserved, and can be produced in evidence by the opposite party, and then only in respect to the conversation or admission to which such testimony relates. (4663) [8378]

1. Who incompetent—Every party to the action is incompetent, however remote or contingent his interest may be (70–312, 73+180). On the other hand to render a person not a party incompetent on the ground that he is interested in the event of the action he must have some pecuniary, legal, certain and immediate interest in the event of the cause itself, or in the record as an instrument of evidence for or against himself, and the burden is on the party objecting to the witness to make his incompetency appear clearly (22–397; 26–391, 4+685; 36–200, 30+671; 37–256, 33+785; 39–546, 40+842; 40–152, 41+547; 45–64, 47+314; 48–82, 50+1022; 54–99, 55+817; 60–457, 62+815; 66–483, 69+619; 67–298, 69+923; 69–37, 71+824; 70–312, 73+180; 71–276, 73+962; 73–21, 75+732; 87–417, 92+337; 116–358, 133+977). The disqualification does not extend to all parties to the record but only to such as are parties to the specific issue to which the testimony relates (54–99, 55+817; 64–444, 67+67). The disqualification does not apply to an agent of a party to the action if such agent is not himself a party and not interested in the event of the action (45–64, 47+314). A party or interested person is disqualified although he took no part in the conversation (76–396, 79+300). Applicable where representative of deceased person relies on conversation (96–499, 105+673). On garnishee's disclosure judgment debtor is person interested and prohibited from testifying on behalf of executor for benefit of estate concerning conversations of debtor with testator (96–499, 105+673. Cf. 100–117, 110+374). Executor is competent, though he petitions for probate, to testify as to execution of will, including what testator said relevant thereto (103–286, 114+838. See, also, 117–247, 135+980). Legatee held not prohibited from testifying in support of gift, where it was not only against her interest so to testify, but she had no direct interest in result of controversy adverse to estate (108–109, 121+609). Evidence held not inadmissible, as relating to transactions with decedent (107–29, 119+385). Court did not err in permitting plaintiff to testify to conversations with deceased defendant, who had testified as to them on former trial and whose testimony had been preserved (99–457, 109+995). Competency of stockholder acting as manager to testify to conversations with deceased employe in suit against corporation for wrongfully causing employe's death (111–105, 126+534).

Employee of defendant bank could testify to conversation with deceased attorney in fact for plaintiff. 15 F (2d) 306.

1a. Officer of corporation.

An officer of plaintiff, a congregation owning a cemetery, had not such an interest in the result of this suit, involving the removal of a corpse buried in the cemetery, that he is precluded from testifying therein as to conversations with a deceased person upon an issue in the suit. 159–331, 199+81.

1b. Heirs.

This statute does not prevent an heir interested in the estate from giving evidence of family history and reputation or tradition, or of declarations of a deceased member of the family, tending to show illegitimacy of one claiming to be an heir. 160–463, 200+742.

1c. Conversations between deceased and third persons.

Under the statute the plaintiff could not testify as to conversations with or admissions of her deceased father. The statute cannot be evaded by indirection. It was error to permit her to testify that she heard the conversation between her husband and the deceased to which he had testified. In doing so she in effect testified that such conversations were had 161–396, 202+55.

1d. Testimony of payment to deceased.

Testimony that a payment was made to a person since deceased does not violate the rule barring testimony as to conversations with such person. 166–153, 207+311.

1e. Effect of deposition of deceased.

The father being dead the statute prohibited plaintiff from testifying to an oral contract, and the fact that the father's deposition had been taken, but at a time when he was not competent to testify, did not remove the bar of the statute. 210+284.

2. Effect of conversation—The statute cannot be evaded by allowing a witness to testify as to the effect of a conversation with a deceased person or as to an inference from such conversation (42–163, 44+525; 69–37, 71+824; 80–419, 83+379; 84–263, 87+781; 69–199, 71+913; 88–218, 92+962; 88–257, 92+965; 109–372, 123+1070). Nor is it permissible for a witness to testify as to what was not said in such a conversation (44–355, 46+563).

3. Written admissions and acts—The statute does not forbid evidence of written admissions or acts, either of the deceased or the surviving party (26–28, 1+55). Thus a survivor has been allowed to testify as to the fact of a payment (26–28, 1+55; 80–419, 83+379; 84–263, 87+781); the consideration of a note and mortgage (51–523, 53+754); the angry exclamation of a testator, his sanity being at issue (38–112, 35+726); the fact that the surviving witness got a letter from the postoffice, read it to the deceased and gave it to him (47–85, 49+524); as to an indebtedness of the witness to the deceased person at

the time of making a payment to him (95–315, 104+135). Evidence may be given as to letters of a deceased person (35–55, 27+74; 46–33, 48+450; 66–327, 69+31). The statute does not forbid evidence of a fact within the knowledge of the witness irrespective of any conversation with the deceased (95–315, 104+135 and see 118–307, 136+850). Held "conversations" and not "acts" (91–137, 97+580).

4. Conversations with whom—The word "person" as used in the statute is not limited to parties, but includes all persons whatsoever (32–436, 21+475; 40–152, 41+547; 83–206, 86+11). Prohibition extends to conversations or admissions of deceased party with or to third person in presence of party testifying (97–491, 106+958).

5. Waiving objection by cross-examination—45–483, 48+328; 57–282, 59+193; 60–457, 62+815; 75–396, 78+101.

6. Objection to evidence must be specific—42–212, 44+193.

7. Waiver—Proof by plaintiff, an executor, of an admission by defendant of a liability in favor of the estate does not waive the statute so as to enable defendant to testify as to conversations with or admissions by the deceased party (36–392, 32+86).

8. When witness called by adverse party—It is an open question whether the statute is applicable when the witness is called to give evidence against his interest (61–78, 63+253).

9. Statute strictly construed—26–28, 1+55; 38–112, 35+726; 73–21, 75+732.

10. Effect on competency of witness generally—The effect of the statute is not to render the surviving party an incompetent witness generally, but only as to conversations with or admissions of the deceased party (36–200, 30+671; 36–392, 32+86).

11. Applies only to issues—The statute has no application to conversations which do not bear on the issues (38–112, 35+726).

12. History of legislation—26–28, 1+55; 32–436, 21+475.

13. Cases under former statutes—8–351, 310; 12–407, 291; 18–527, 471; 21–108; 22–397. See, also, 121–354, 141+481; 124–386, 145+116; 126–58, 147+714; 127–215, 149+292; 128–21, 150+213; 128–281, 150+914; 132–255, 156+263; 133–136, 157+1073; 136–409, 162+515; 137–92, 162+1070; 137–420, 163+771; 138–6, 163+756; 138–62, 163+985; 139–46, 165+864; 141–255, 169+797; 141–332, 170+210; 142–1, 170+699; 143–328, 173+665; 144–111, 174+617; 147–190, 179+895; 148–109, 180+1006; 191+430, 193+39.

9818. Peculiar modes of swearing—Whenever the court before which any person is offered as a witness is satisfied that such person has a peculiar mode of swearing which is more solemn and obligatory, in the opinion of such person, than the usual mode, the court in its discretion may adopt such mode; and every person believing in any other than the Christian religion shall be sworn according to the peculiar ceremonies of his religion, if any there are. (4664) [8379]

Adoption of form of oath administered under laws of foreign country (108–441, 122+321). 146–374, 178+895. 167–216, 208+761.

9819. Capacity of witness, etc.—When an infant, or a person apparently of weak intellect, is produced as a witness, the court may examine him to ascertain his capacity, and whether he understands the nature and obligations of an oath, and the court may inquire of any person what peculiar ceremonies he deems most obligatory in taking an oath. (4665) [8380]

23–104, 27–435, 8+164; 76–351, 79+310.

DEPOSITIONS

9820. On notice to adverse party—The deposition of a witness whose testimony is wanted in any civil cause pending in this state before a court, magistrate, or other person authorized to examine witnesses, or in a controversy submitted to arbitrators, may be taken, upon notice to the adverse party of the time and place of such taking, by or before any officer authorized to administer an oath in the state or territory in which the same may be taken, when the witness:

1. Is within the state and lives more than thirty miles from the place of trial or hearing; or is about to go out of the state, not intending to return in time for the trial or hearing; or is so sick, infirm, or aged as to make it probable that he will not be able to attend at the trial or hearing;

2. Is without this state, and within any state or territory of the United States. (4666) [8381]

Party offering deposition must prove existence of statutory grounds (43–375, 45+713; 56–472, 58+39; 57–355, 59+316; 75–391, 77–952). Cited (109–113, 122+1117).

There was no error in the instructions or in the rulings on the admission of evidence. 165–186, 206+162.

9821. Service—Order—Defendant in default—Such notice shall be in writing, shall state the reason for taking the deposition, and shall be served in the same manner as other notices in civil actions, and so as to allow the adverse party sufficient time, at the rate of one day for every one hundred miles of distance by the usual route of travel between the place of service and the place of taking the deposition, and one day for preparation, exclusive of Sundays and the day of service: Provided, that a justice of the peace before whom, or a judge of the court before which, or a court commissioner of the county in which, the action is pending, on motion, may, by order, designate the time and place of taking the testimony and the time within which a copy of the order shall be served on the adverse party; but no notice or order need be served upon a defendant who is in default for want of an answer or other defense. (4667) [8382]

9822. Examination of witness—The examination shall commence at the time and place specified in the notice or order, or within one hour thereafter, and, if so stated in the notice, may be adjourned from day to day until closed. Either party may appear in person, or by his agent or attorney, and take part in the examination. (4668) [8383]

9823. Under commission—The deposition of a witness without the state may be taken under a commission issued by a court of record to any competent person in any state or country in the following cases:

1. When an issue of fact has been joined in an action pending in such court, or when a controversy has been submitted to arbitrators and the award is required to be filed in such court, on the application of either party made upon eight days' notice, if it appears that the testimony of such witness is material.

2. When the time for answering the complaint in an action pending in such court has expired, and the defendant has not answered or demurred, on application of the plaintiff without notice to the other party, if it appears that the testimony of such witness is necessary to establish the cause of action alleged. (4669) [8384]

Neither party has a right to be present or to have anyone present for him, unless by consent, at the execution of the commission (4–253, 178). The testimony of a party to the action may be taken (1–298, 231; 3–287, 197; 7–74, 50). When a commission names several commissioners the return must show that all were present or notified of the time and place of executing it (4–239, 169). The certificate should state directly that the witnesses were sworn before the commissioner, but this may be inferred from the whole certificate (5–201, 160). Where the same commissioner takes several depositions under one commission it is not necessary to attach a certificate to each deposition (14–273, 203). When, in a commission to take testimony, an interrogatory is to be put if a previous question is answered in a particular way, and the question is not answered in that way, the interrogatory ought not to be put, and if put the answer ought not to be admitted (3–166, 108). Rules of court respecting the taking and return of depositions must be followed (4–239, 169; 11–331, 234), but a substantial compliance is generally sufficient (3–287, 197; 5–201, 160). Interrogatories and cross-interrogatories cannot be added to or diminished at the time of taking the deposition (4–253, 178). Holding case open to enable party to obtain evidence of a witness in a foreign country under a commission (81–245, 83+986).

9824. Interrogatories—When such application is by the plaintiff, and there has been no appearance by the

defendant, the deposition may be taken upon interrogatories filed by the plaintiff and annexed to the commission. In all other cases such depositions shall be taken upon written interrogatories, served upon the adverse party or his attorney, and cross-interrogatories to be served and filed by him if he desires. (4670) [8385]

34–436, 26+234.

9825. **By stipulation**—The parties to any action or proceeding, by stipulation in writing, may agree upon any other mode of taking depositions, either within or without the state, and, when taken pursuant to such stipulation, they may be used upon a trial with like force and effect in all respects as if taken upon notice or under commission. (4671) [8386]

9826. **Deposition, how written**—In all cases the deposition shall be written by the officer, or by some disinterested person in his presence and under his direction. The officer must carefully read over to the witness his testimony, and he may thereupon add thereto or qualify the same as he may desire. (4672) [8387]

9827. **Signing and certifying**—When the deposition is completed, the witness shall sign his name or make his mark at the end thereof, as well as upon each piece of paper upon which any portion of his testimony is written. Thereupon the officer shall annex to such deposition the notice, order, or the commission, and a certificate, under his hand and his official seal, if he have one, which certificate shall be prima facie evidence of the matters therein stated, and shall be substantially in the following form:

State of .....)
County of .....) ss.

Be it known that I took the annexed depositions pursuant to the annexed notice (or order or commission); that I was then and there (state title of officer); that I exercised the power of that office in taking such deposition; that by virtue thereof I was then and there authorized to administer an oath; that each witness, before testifying, was duly sworn to testify to the whole truth and nothing but the truth relative to the cause specified in said notice (or order or commission); that the testimony of each witness was carefully read over to him by me before he signed the same (if the examination was oral); that the examination was conducted on behalf of the plaintiff by ....., and on behalf of the defendant by .....; and (if the deposition was taken within the state) that the reason for taking said deposition was (here state the reason).

Witness my hand (and seal) this ..... day of ....., 19....
(4673) [8388]

9828. **Return of deposition**—The officer shall inclose and seal the deposition, and shall deliver or mail it to the court before which the cause is pending or from which the commission issued, or, if the deposition was taken upon notice in a controversy submitted to arbitrators, to one of them; and it shall remain sealed until opened by the court or the clerk thereof, or by the arbitrators, and shall then be subject to the inspection of either party. (4674) [8389]

80–408, 83+393.

9829. **Person giving deposition to be sworn**—Every person whose testimony is taken by deposition, before being examined or giving his evidence, shall be sworn to testify the whole truth, and nothing but the truth, relative to the cause in or for which the deposition is taken. (4675) [8390]

9830. **Witness compelled to give deposition**—Any witness may be subpœnaed and compelled to give his deposition, at any place within twenty miles of his abode, in like manner and under the same penalties as in the case of a witness in court. (4676) [8391]

9831. **Deposition, how used—Objections**—Every deposition may be read in evidence at the trial of the action or proceeding; but, when offered in evidence, objection may be interposed to the competency of the witness, or to any question put to him, or to the whole or any part of his testimony, in like manner, on the same grounds, and with like effect as if the witness were present and testifying in open court, except that no objection to the form of any question or interrogatory can be made unless such objection was made before, and noted by, the officer taking such deposition, if the deposition was taken upon notice, or unless the objection was made when the interrogatory was exhibited or filed, if the deposition was taken under commission. (4677) [8392]

A party is not bound to introduce a deposition (10–350, 277). A deposition taken at the instance of one party and not used by him may be introduced by the adverse party (12–255, 166; 34–436, 26+234; 42–386, 44+129). Where the party at whose instance a deposition is taken has used the answers to the direct interrogatories, he may, if the opposite party declines to do so, use the answers to the cross-interrogatories (12–255, 166). A party offering evidence taken by deposition is not obliged to offer or to read the whole deposition (76–358, 79+308). A deposition taken at the instance of one of two interveners held admissible in favor of the other (42–323, 44+194). That an interrogatory and answer are excluded for any sufficient reason, is, as a general rule, no ground for excluding the whole deposition (12–255, 166; 20–277, 249). Where an answer in a deposition is in part proper and in part improper a party objecting must *limit his objection to the part* which is improper (14–273, 203). A party held precluded from raising certain objections (68–170, 70+979). Objection that a deed with reference to which the testimony was given was not exhibited to the witness at the time of giving his testimony (78–373, 81+11). Answers to interrogatories must be full, frank, explicit and responsive and if they are not their admission may be objected to on the trial (12–255, 166; 12–357, 232; 20–277, 249; 32–243, 20+149). At common law depositions could not be received in evidence and can only be admitted by virtue of the statute or of a stipulation when all the requirements of the same are complied with. Courts exercise caution in admitting them (4–253, 178; 10–350, 277; 75–391, 77+952). Objection to deposition, that necessity for taking it is not shown to exist when offered, if not made before read in evidence, is waived (98–261, 108+11).

9832. **Informalities and defects—Motion to suppress**—No informality, error, or defect in any proceeding shall be sufficient ground for excluding a deposition, unless the party making the objection thereto shall make it appear to the satisfaction of the court that the officer taking the same was not then and there authorized to administer an oath, or that such party was by such informality, error, or defect precluded from appearing and cross-examining the witness; and every objection to the sufficiency of the notice, order or commission, or to the manner of taking, certifying, or returning such deposition shall be deemed to have been waived, unless such objection is taken by motion to suppress the deposition, which motion shall be made within ten days after service of written notice of the return thereof. (4678) [8393]

Defects of a purely formal nature which could not have misled or prejudiced the adverse party are not a ground for suppressing a deposition or for excluding it at the trial (27–530, 8+765; 36–243, 31+211; 40–178, 41+939; 67–37, 69+622; 104–163, 116+356). The omission of the official seal to the certificate of the authentication of a deposition taken before a notary in another state is an informality merely and not sufficient ground to warrant the rejection of the deposition on the trial although no notice of the return was served (49–235, 51+920. See 29–264, 13+45). The effect of the failure to give notice of the return is not to render the deposition inadmissible but simply to leave the adverse party at liberty to make at the trial any objections that he could have made on a motion to suppress (35–476, 29+171; 36–243,

31+211; 40–148, 41+939). Where the time elapsing between notice of the filing of a deposition and the trial is less than ten days so that the adverse party has not the statutory time within which to move to suppress before trial the effect is not to render the deposition inadmissible, but to leave the adverse party in the same position as if no notice had been given; that is to say, he may make at the trial all objections that he could have made on a motion to suppress (35–476, 29+171). The following objections must be made by a motion to suppress if an opportunity is given and cannot be raised on the trial; that the depositions contain the testimony of witnesses not named in notice (45–13, 47+259); that the name of a witness was not properly given in the notice (33–87, 22+4); that the notice was not signed by the firm name of attorneys appearing for the party taking the deposition (36–243, 31+211); that the deposition was written out in the third person (81–91, 83+467). Where a party is represented at the taking of a deposition and cross-examines the witness without any objection to the manner of taking the deposition he waives the objection that it was taken in a narrative form (95–57, 103+621). See 128–525, 151+416.

Omission of notice to state that witness' residence was outside state as reason for taking deposition was defect of form and cured by Gen. St. 1913, § 8393, regardless of section 8395. 162–57, 202+54.

9833. Failure of party giving notice to appear—Expenses—Whenever any party serving notice of the taking of the testimony of any person fails to appear and proceed with the taking of such testimony at the time and place stated in the notice or order, and the adverse party shall appear in pursuance thereof, by himself or attorney, the court in which the cause is pending shall allow said adverse party such sum for expenses and attorney's fees incurred in so attending as it shall deem proper, which shall be collected in the same manner as other disbursements in the cause. (4679) [8394]

9834. Deposition, not used when — No deposition shall be used if it appears that the reason for taking it no longer exists; but, if the party producing the deposition in such case shows sufficient cause then existing for using the same, it may be admitted. (4680) [8395]

18–506, 455; 56–472, 58+39; 136–347, 162+449.

Omission of notice to state that witness residence was outside state as reason for taking deposition was defect of form and cured by Gen. St. 1913, § 8393, regardless of section 8395. 162–57, 202+54.

9835. Deposition used in second action—When an action is discontinued or dismissed, and another action for the same cause is afterward commenced between the same parties or their respective representatives, all depositions lawfully taken for the first action may be used in the second in the same manner and subject to the same conditions and objections as if originally taken therefor: Provided, that the deposition has been duly filed in the court where the first action was pending, and has ever since remained in its custody. (4681) [8396]

Admissibility on second trial depends on identity of matters in issue and opportunity of party against whom offered to cross-examine the witness rather than on mutuality between parties (42–323, 44+194; 76–358, 79+308. See 10–350, 277). Order of court unnecessary (2–118, 95). Deposition of a witness since deceased may be used on the second trial although after it was taken, and on the first trial, he was sworn and examined as a witness (18–506, 455). Statute followed in federal courts (16 Fed. 435).

9836. Deposition on appeal—When an action is appealed from one court to another, all depositions lawfully taken to be used in the court below may be used in the appellate court in the same manner and subject to the same objections as were made to such depositions in writing in the court below. (4682) [8397]

9837. Depositions for use in other states—Any witness may be compelled, in the manner and under the penalties prescribed in this chapter, to give his deposition in any case pending in a court of any other state or country, which deposition may be taken before any justice of the peace or notary public, or before any commissioner appointed under the authority of the state or country in which the action is pending; and the clerk of any district court of this state may issue subpœnas to such witnesses to appear before the person taking such deposition. (4683) [8398]

9838. Affidavits, etc., taken out of state—All oaths and affidavits taken out of the state before any officer authorized to administer oaths, and certified by the clerk of a court of record, may be used and read upon the argument of any motion, with the same effect as if taken within this state: Provided, that if such affidavit be taken before a notary public or commissioner for this state, the clerk's certificate shall not be required. (4684) [8399]

42–411, 44+308; 47–565, 50+918.

PERPETUATION OF TESTIMONY

9839. Within the state—Application, how made—Any person who desires to perpetuate the testimony of any witness within the state shall make a statement in writing, setting forth briefly and substantially his title, claim, or interest in the subject concerning which he desires to perpetuate the evidence, and the names of all other persons interested or supposed to be interested, their residences, if known, and, if unknown, it shall be so stated, and the name of the witness proposed to be examined, and shall deliver such statement to the judge of the district court, and request him to take the deposition of such witness. (4685) [8400]

75–391, 77+952.

9840. Order and notice—The judge shall make an order fixing the time and place of taking such deposition, which order shall be served upon all persons mentioned in the statement as being interested in the case, in the same manner as notices of the taking of other depositions within the state are required to be served, and so as to allow the same time for appearance. But if it appear that, by reason of the nonresidence of any such person or other cause, it is impossible to serve such order in the manner aforesaid, the judge may direct that three weeks' published notice thereof be given. (4686) [8401]

9841. Testimony, how taken—Certificate—The deponent shall be sworn and examined, and his deposition written, read, and signed, in the same manner as prescribed respecting other depositions hereinbefore mentioned; and the judge shall annex thereto a certificate under his hand showing the time and manner of taking the deposition, and that it was taken in perpetual remembrance of the thing, and he shall also insert therein the names of the persons at whose request it was taken, of all those who were notified to attend, and of all those who did attend, the taking thereof. (4687) [8402]

9842. Record of deposition — Within ninety days after such taking, upon payment of the record fees by any person interested, the judge shall file the deposition, with his certificate and the statement pursuant to which it was taken, for record with the register of deeds of the county where the land lies, if the deposition relates to land; otherwise, in the county where the applicant resides. (4688) [8403]

9843. When and how used—Such deposition, when so recorded, or the record thereof, or a certified copy of such record, may be used, in any action or proceeding wherein the title, claim, or interest set forth in the statement under which it was taken is brought

in question, by the applicant or any person notified of the taking thereof, or by any person claiming under either or any of them, in the same manner and subject to the same conditions as if it had been taken for such action. (4689) [8404]

9844. Witness compelled to testify—Any witness may be subpœnaed and compelled to give his deposition in such cases, in like manner, and under the same penalties, as are provided in respect to other depositions taken in this state. (4690) [8405]

9845. Witnesses without the state—Depositions to perpetuate the testimony of witnesses without the state may be taken in any state or foreign country upon a commission issued by any court of record, as hereinafter provided. (4691) [8406]

9846. Application, how and where made—The person desiring to take the deposition shall apply to the judge of such court in like manner as prescribed for perpetuating the testimony of witnesses within this state, and, if the subject of the proposed deposition relates to land within this state, the application shall be made in the county where the land, or some part thereof, lies; otherwise, in the county where the applicant resides. (4692) [8407]

9847. Notice of application—The judge shall order notice of such application and statement to be served on all the persons named therein at least fourteen days before the time appointed for hearing the parties: Provided, that if any of said persons reside out of the state, or if their residence is unknown to the applicant, the judge shall order such service to be made upon such persons by three weeks' published notice. (4693) [8408]

9848. Commission, when to issue—If, upon hearing the parties who appear, the court shall find that there is sufficient cause for taking the deposition, it shall issue a commission therefor in like manner as for taking a deposition to be used in a cause pending in such court. (4694) [8409]

9849. Deposition, how taken and returned—The deposition shall be taken upon written interrogatories filed by the applicant, and cross-interrogatories, if any are filed by any party adversely interested; and it shall be taken, certified, and returned substantially in the same manner as in the case of a deposition taken upon interrogatories to be used in a cause pending in the same court. (4695) [8410]

9850. Deposition, how recorded and used—Within ninety days after the return of such deposition, the judge or clerk shall file it for record with the register of deeds, and it may thereafter be used in evidence, as in the case of such deposition taken within the state. (4696) [8411]

JUDICIAL RECORDS—STATUTES, ETC.

9851. Records of foreign courts—The records and judicial proceedings of a court of any other state, or of the United States, or of any foreign country shall be admissible in evidence in all cases when authenticated by the attestation of the clerk or other officer having charge of the records of such court, under its seal. (4697) [8412]

19–239, 198; 20–234, 212; 55–401, 56+1056; 96–219, 104+955; 15 Fed. 689.

Judgment of municipal court of another state was properly proved by certified copy. 210+15.

In an action on a judgment rendered in another state, the evidence sustains the finding that the defendant here was the defendant there, and was served with process. 210+15.

The defendant's proffered proof did not show a right of counterclaim for the recovery of the amount of the note for the recovery of interest on which the judgment in suit was rendered 210+15.

9852. Laws of foreign countries—The existence and the tenor or effect of all foreign laws may be proved as facts by parol evidence; but, if it appears that the law in question is contained in a written statute or code, the court may, in its discretion, reject any evidence of such law which is not accompanied by a copy thereof. (4698) [8413]

4–335, 251.

A person who professes knowledge of the laws of a foriegn country may testify as to their tenor and effect, although not a lawyer or learned in the law of such country. 163–176, 203+778.

9853. Printed copies of statutes, etc.—Printed copies of all statutes, acts, and resolutions of this state published under its authority, whether of a public or private nature, the journals of the senate and house of representatives kept by the respective clerks thereof as provided by law, and deposited in the office of the secretary of state, and the printed journals of said houses, respectively, published by authority of law, shall be admitted as sufficient evidence thereof in all cases whatsoever. (4699) [8414]

See 130–424, 153+749.

9854. Municipal ordinances, etc.—Copies of the ordinances, by-laws, resolutions, and regulations of any city, village, or borough, certified by the mayor, or president of the council, and the clerk thereof, under its seal, and copies of the same printed in any newspaper, book, pamphlet, or other form, and which purport to be published by authority of the council of such city or village, shall be prima facie evidence thereof, and, after three years from the compilation and publication of any such book or pamphlet, shall be conclusive proof of the regularity of their adoption and publication. (4700) [8415]

68–341, 351, 71+257.

9855. Statutes of other states—Printed copies of the statute laws of any other state, or of a foreign country, which purport to be published under the authority of their respective governments, or if commonly admitted as evidence in their courts, are admissible as prima facie evidence of such laws in all cases whatsoever in this state. (4701) [8416]

4–335, 251; 86–33, 90+7.

9856. Common law of other states—The unwritten or common law of any other state may be proved as a fact by parol evidence, and the books of reports of cases adjudged in the courts of such states may also be admitted as evidence of such law. (4702) [8417]

9857. Records of surveys, evidence when—Records of surveys made by the engineering department of any municipality, including field notes, profiles, plats, plans, and other files and records of such department, shall be prima facie evidence in all courts of the correctness of the facts shown and statements made therein. (4703) [8418]

82–9, 84+458; 84–179, 87+606.

9858. Copies of decisions, etc., certified by librarian—Copies of judicial decisions contained in any of the law or equity reports in the state library, and of any other papers or documents contained in such library, certified by the state librarian, shall be received in evidence in like manner and with like effect as the originals. For making and certifying any such copy, the librarian shall be entitled to charge fifteen cents a folio. (4704) [8419]

DOCUMENTARY EVIDENCE

9859. Affidavit of publication—When notice of any application to a court or judicial officer is required by

law to be published in a newspaper, an affidavit by the printer of such paper, or his foreman or clerk, annexed to a printed copy of such notice taken from the paper in which it was published, specifying the times when, and the paper in which, such notice was published, may be filed with the proper officer of the court, or with the judicial officer before whom such proceeding is pending, at any time within six months after the last day of the publication of such notice, unless sooner specially required. And a like affidavit of such printer, foreman, or clerk, may within the same time be filed for record with the register of deeds of the county where any real estate affected by such notice is situated. (4705) [8420]

18–66, 51; 18–366, 335. See '17 c. 455 and '19 c. 155 Cur.

9860. Printer's affidavit, when evidence—The original affidavit of the printer of any newspaper, or of his foreman or clerk, of the publication of any summons, notice, order, resolution, or other advertisement which by law is required or authorized to be published in such newspaper, and copies of the same, or of the record thereof, certified by the officer in whose custody the same may be, shall be prima facie evidence of such publication and of the facts stated therein. And if any such publication relates to the sale of real estate, such affidavit may be filed for record with the register of deeds of the county in which the real estate lies. (4706) [8421]

See '21 c. 168 Cur.

9861. Affidavit of officer of Historical Society—When a legal notice appears in any newspaper, purporting to have been published in this state prior to the year 1900 and filed with the state historical society, the affidavit of any officer of such society, setting forth a copy of such notice, and stating that it is a true copy of the same as contained in said newspaper, and naming the place where it purports to have been published and the dates of the different issues thereof so on file containing such notice, may be recorded in the office of the register of deeds of any county in which there is real estate which may be affected by such notice; and such affidavit or record shall be prima facie evidence that the paper containing said notice was regularly published at the time and place so stated. (R. L. § 4707, amended '09 c. 19 § 1) [8422]

Explanatory note—Minnesota Historical Society as custodian of certain records and copies of such records as evidence see supra, §§ 8008–1, 8008–2.

9862. Official records prima facie evidence—Certified copies—Certified copies of decrees of probate courts—The original record made by any public officer in the performance of his official duty shall be prima facie evidence of the facts required or permitted by law to be by him recorded. A copy of such record, or of any document which is made evidence by law and is preserved in the office or place where the same was required or is permitted to be filed or kept, or a copy of any authorized record of such document so preserved, when certified by the person entitled to the official custody thereof to have been compared by him with the original and to be a correct transcript therefrom, shall be received in evidence in all cases, with the same force and effect given to such original document or record; but if such officer have, by law, an official seal, his certificate shall be authenticated thereby: Provided, that no part of this section relating to the form of certification shall apply to documents or records kept in the departments or offices of the United States government.

In all cases where a decree of Probate Court, assigning or distributing property of a decedent, embraces real estate or other property situated in more than one county, the Probate Court shall furnish upon request therefor, certified copies of parts of such decrees, excluding from such certified copy all descriptions of real or other property included in such decree excepting description of such real estate and other property as appears from the face of said decree to be situated in any one or more counties designated by the applicant for such certified copy. The Probate Court shall indicate the omission hereby permitted, in the certified copy, by the words "and other property situated in ..... county, or counties, Minnesota" inserted in the certified copy at the points where the omissions occur. Such certified copy shall be entitled to record in the office of the Register of Deeds and in the office of the Registrar of Titles of the County, or counties, in which the real estate or other property in said certified copy described or any part thereof is situated. Such certitfied copy, or a copy of any authorized record of such certified copy, certified by the person entitled to the official custody thereof to have been compared by him with the original or the record thereof and to be a correct transcription therefrom, shall be received in evidence in all cases with the same force and effect given to such original decree relative to the matter in said certified copy or the record thereof contained. If such officer have by law an official seal his certificate shall be authenticated thereby. (4708) [8428] (Amended '27, c. 365)

1. **Form of certificate**—Applicable to judgment roll of foreign court (86–33, 90+7). Not applicable to exemplification of judgment of justice court of foreign state (70–433, 73+155); nor to certification of copy of resolution designating newspaper for publishing delinquent tax list (59–82, 60+845). Clerk of probate court authorized to make certificate and use seal (86–140, 90+378). Cited (14–236, 173; 35–532, 29+347).

2. **Admissibility of certified copies**—13–46, 39; 20–234, 212; 36–156, 30+659; 74–325, 77+207; 85–35, 88+2; 86–140, 90+378; 96–219, 104+955, 957; 115–321, 132+208. See 129–464, 148+459.

9863. When seal not necessary—Section 9862 shall not be construed to require the affixing of the seal of the court to any certified copy of a rule or order made by such court, or to any paper filed therein, when such copy is used in the same court or before any officer thereof. (4709) [8424]

9864. Instruments acknowledged—Evidence—Every written instrument, except promissory notes, bills of exchange, and the last wills of deceased persons, may be acknowledged in the manner now provided by law for taking the acknowledgment of deeds, and the certificate of the proper officer indorsed thereon shall entitle such instrument to be read in evidence in all courts and elsewhere without other proof of execution. (4710) [8425]

34–262, 25+592; 36–156, 30+659; 50–414, 52+907; 53–171, 54+1052; 64–284, 67+5. As evidence of delivery (102–382, 113+912; 114–44, 130+14). See 146–96, 177+1019.

9865. Deposit of papers with register or clerk—Every register of deeds, and every clerk of a court of record, upon being paid the legal fees therefor, shall receive and deposit in his office any instruments or papers which shall be offered him for that purpose, and, if required, shall give to the person depositing the same a receipt therefor. (4711) [8426]

211+11, note under § 9215.

9866. To be indorsed and filed—Such instruments or papers shall be filed by the officer receiving the same, and so indorsed as to indicate their general

nature, the names of the parties thereto, and time when received, and shall be deposited and kept by him and his successors in office in the same manner as his official papers, but in a place separate therefrom. (4712) [8427]

9867. **How withdrawn**—Papers and instruments so deposited shall not be withdrawn from such office except upon the written order of the person depositing the same, or his executors or administrators, or on the order of some court for the purpose of being read in such court, and then to be returned to such office. When so deposited, they shall be open to the examination of any person desiring the same upon payment of the fees, if any, allowed by law. (4713) [8428]

9868. **Certificate of officer that paper cannot be found**—The certificate of any officer to whom the legal custody of any instrument belongs, stating that he has made diligent search for such instrument and that it cannot be found, shall be prima facie evidence of the fact so certified to in all cases, matters and proceedings. (4714) [8429]

67–197, 69+887.

9869. **Copies of government records, etc.**—Copies of any records or documents belonging to and being in any of the governmental departments of the United States, authenticated as such, so as to entitle the same to be received as evidence, in the courts of the United States, shall be received as evidence in the courts of this state. (4715) [8430]

67–197, 69+887.

9870. **Copies of record of death in certain cases**—That in all cases of joint tenancy in lands, and in all cases where any estate, title interest in, or lien upon, lands, has been or may be, created, which estate, title interest or lien was, or is, to continue only during the life of any person named or described in the instrument by which such estate, title, interest or lien was created, a copy of the record of the death of any such joint tenant, or of the person upon whose life such estate, title, interest or lien was or is limited, duly certified by any officer who is required by the law of the state or country in which such record is made, to keep a record of the death of persons occurring within the jurisdiction of such officer, may be recorded in the office of the register of deeds of the county in which such lands are situated, and such certified copy or such record thereof in said office or a duly certified copy of such last mentioned record shall be prima facie evidence of the death of such person and the termination of such joint tenancy and of all such estate, title, interest and lien as was or is limited upon the life of such person. ('13 c. 251 § 1) [8431]

LOST INSTRUMENTS

9871. **Proof of loss**—Whenever a party to an action is permitted to prove by his own oath the loss of any instrument, in order to admit other proof of the contents thereof, the adverse party, before the admission of such proof, may also be examined on oath to disprove such loss and to account for such instrument. (4716) [8432]

9872. **Evidence of contents of lost bill, etc.**—Whenever it appears on the trial of an action founded upon a negotiable promissory note, bill of exchange, bond, or other instrument for the payment of money, or in which any such instrument might be allowed as a set-off or counterclaim, that such instrument was lost while it belonged to the party claiming the amount due thereon in such action, parol or other evidence of the contents thereof may be given on such trial, and, notwithstanding the instrument was negotiable, such party shall be entitled to recover the amount due thereon as if it had been produced upon compliance with the provisions of § 9873. (4717) [8433]

Lost check (103–340, 114+1129; 114–85, 130+542).

9873. **Bond to be given, when**—To entitle a party to a recovery in such case, he shall execute a bond to the adverse party before judgment is entered, in a penalty at least double the amount of such instrument, approved by the court, or, in case no trial is had, by the clerk, conditioned to indemnify the adverse party, his heirs and personal representatives, against all claims by any other person on account of such instrument, and against all costs and expenses by reason of such claims: Provided, that if the statute of limitations has run against such instrument while the action is pending, and before a recovery is had thereon, the court, in its discretion, may reduce the amount of the penalty, or permit judgment to be entered without bond. (4718) [8434]

14–406, 308; 103–340, 114+1129.

9874. **Deed or court records destroyed, etc.—Abstract of title, etc., as evidence**—Whenever, upon the trial of any action or proceeding which is now, or hereafter may be, pending in any court in this state, any party to such action or proceeding, or his agent or attorney, shall make and file an affidavit in such cause, stating that the original of any deed or other instrument in writing or the records of any court relating to any lands, the title or any interest therein being in controversy or question in such action or proceeding, are lost or destroyed, and not within the power of such party to produce the same; and the record of such deed, instrument or other writing has been destroyed by fire or otherwise, it shall be lawful for the court to receive as evidence in such action or proceeding, any abstract of title to such lands made in the ordinary course of business before such loss or destruction. And it shall also be lawful for the court to receive as evidence any copy, extract or minutes from such destroyed records or from the original thereof, which were at the date of such destruction or loss, in the possession of any person then engaged in the business of making abstracts of title for others for hire. ('05 c. 193 § 1) [8435]

See '15 c. 283 admissibility of abstracts.

9875. **Copies as evidence**—A sworn copy of any writing admissible under section 1 [9874] of this act, made by the person having possession of such writing, shall be admissible in like manner and with like effect as such writing, provided that the party desiring to use such sworn copy as evidence shall have given the opposite party a reasonable opportunity to verify the correctness of such copy. ('05 c. 193 § 2) [8436]

MISCELLANEOUS PROVISIONS

9876. **Account books — Loose-leaf system, etc.** — Whenever a party in any cause or proceeding shall produce at the trial his account books, and prove that the same are his account books kept for that purpose, that they contain the original entries for moneys paid, goods or other articles delivered, services performed or material furnished; that such entries were made at the time of the transactions therein entered; that they are in his handwriting or that of a person authorized to make charges in said books, and are just and true to the best knowledge and belief of the person making the proof, such books, subject to all just exceptions as to their credibility, shall be received as prima facie

evidence of the charges therein contained. If any book has marks which show that the items have been transferred to a ledger, it shall not be received unless the ledger is produced. Provided, that the entry of charges or credits, involving money, goods, chattels or services furnished or received, when the furnishing or receipt thereof constitutes a part of the usual course of business of the person on whose behalf such entry is made, shall be received as evidence tending to prove the fact of the furnishing or receiving of such moneys, goods, chattels or services, whether the same be contained in an account book, or in a so-called loose-leaf, card or similar system of keeping accounts, and whether the same be made by handwriting, typewriting or other similar means, if it shall appear that such entry was made by a duly authorized person contemporaneously with the transaction therein referred to, as a part of the general system of accounts of the person on whose behalf the entry is made, and that the same is made in the usual and ordinary course of said business. (R. L. § 4719, amended '09 c. 251 § 1) [8437]

Not limited to cases where the charges made and accounts kept are between both parties or between all parties to the action (77–31, 79+588; 90–370, 96+917. See 73–401, 76+215). Facts entered must be within personal knowledge of party making entries (90–370, 96+917). Sufficiency of foundation (66–138, 68+855; 76–227, 79+99; 86–133, 90+307; 87–402, 92+228; 139+609). It is not necessary, as at common law, that the books be authenticated by the oath of the clerk who made the entries. They may be verified by the party whose account books they are and if they are the books of a partnership they may be verified by any partner though the entries were not made by him (32–48, 19+82; 36–193, 30+545). It is not necessary that the books be kept in a formal manner or *that the entry be explicitly a "charge," but they must be* original entries substantially contemporaneous with the transaction. Entries made in a cash book every night in the usual course of business from slips made at the time of the transaction are original entries, but entries made in a journal from the stubs of a check book several days after the giving of the checks are not (21–225; 32–48, 19+82; 41–235, 42+1022; 66–138, 68+855). The statute does not exclude the common law mode of proving accounts by the party's clerk (21–225; 22–19). Whether business entries other than accounts are admissible when authenticated as provided by this statute is an open question (66–138, 68+855). Whether entries admissible lies in discretion of court (113–16, 128+1014). Cited (73–401, 76+215; 83–232, 86+85; 106–20, 118+153). See 124–189, 144+770; 126–464, 148+459; 127–535, 149+647; 128–422, 151+190; 140–362, 168+98.

The books of the defendant, sought to be introduced by the plaintiff a proof that he had not made a profit in a drug store business, as represented by him when he sold to the plaintiff, were properly rejected upon the ground that they failed to show that the representation was untrue 159–131, 198+664.

The sufficiency of the showing for the admission of books of account is, in a measure, addressed to the discretion of the trial court, whose decision thereon will not be reversed if there be any proofs fairly tending to support it. 161–278, 201+421.

Probative effect of books of account. 161–353, 201+548.

A grain commission merchant had its employe, who made trades upon the floor of the Chamber of Commerce, make memoranda on trading cards. At the close of the day's session these cards were immediately taken to the office, and from them entries were made in the day book. The cards were made as a mere temporary means of securing accuracy. The entries in the books are the original entries, and the books are admissible in evidence without the production of such memoranda. 162–334, 202+740.

Telegrams, no more than any other documents, can be admitted in evidence without authentication. But a telegram is sufficiently authenticated, prima facie, when, from its contents and other circumstances in evidence, it can be reasonably inferred that the author of the message is the person sought to be charged or another lawfully acting for him. 213+553.

9877. Entries by a person deceased, admissible when—Entries made in any book by a person authorized to make the same, he being dead, may be received as evidence in a case proper for the admission of such book as evidence on proof that the same are in his handwriting and in a book kept for such entries, without further verification. (4720) [8438]

9878. Books proved by deposition—When such books or entries therein are proved by deposition, the production of the books before the officer taking the deposition shall be equivalent to producing the same at the trial, and copies of the entries therein contained desired to be introduced in evidence may be attached to the deposition as exhibits, and shall be evidence of like force and effect as the books. (4721) [8439]

9879. Letterpress copies—The production of a letterpress copy of any letter, before the officer taking the deposition, shall be equivalent to producing the same at the trial, and, when so produced, a copy thereof may be attached to the deposition as an exhibit, and shall be evidence of like force and effect as the letterpress copy itself; but such copies shall not be used if the original letters are produced at the trial. (4722) [8440]

Carbon copies (101–263, 112+252).

9880. Minutes of conviction and judgment—A copy of the minutes of any conviction and judgment, with a copy of the indictment on which the conviction was had, duly certified by the clerk in whose custody they are, shall be evidence of such conviction and judgment, without the production of the judgment roll. (4723) [8441]

See 123–413, 144+142.

9881. Transcript from justice's docket—A transcript from the docket of any justice of the peace of a judgment had before him, of the proceedings in the case previous to such judgment, of the execution issued thereon, and of the return of such execution, when certified by such justice, or his successor in office, shall be evidence to prove the facts contained in such transcript in any court of the county where the judgment was rendered. (4724) [8442]

9882. Same, for use in different county—To entitle such transcript to be read in evidence in another county, there shall be attached thereto a certificate of the clerk of the district court of the county in which the judgment was rendered, specifying that the person subscribing such transcript was at the date of such judgment a justice of the peace of such county. (4725) [8443]

32–544, 21+836.

9883. Proceedings before justice not written—The proceedings in any case had before a justice, not reduced to writing by him, nor being the contents of any paper produced before him, unless such paper be lost or destroyed, may be proved by the oath of such justice, or, in case of his death or absence, by producing the original minutes entered in a book kept by him, with proof of his handwriting; or they may be proved by producing copies of such minutes, sworn by a competent witness to have been compared by him with the original entries, with proof that such entries were in the handwriting of the justice. (4726) [8444]

An order to show cause why a previous order of the court denying a motion to vacate a judgment and permit the defendant to answer should not be vacated, the default removed, and the defendant permitted to answer, is equivalent to leave by the court to renew the first motion. 156–231, 194+376.

Whether a judgment shall be vacated and the defendant permitted to answer is within the sound discretion of the trial court. 156–231, 194+376.

9884. Certificate of conviction—Every certificate of conviction made and filed by a justice under the provisions of law, or a duly certified copy thereof, shall be evidence of the facts therein contained. (4727) [8445]

9885. Exemplification of judgment in another state—An exemplification of a judgment rendered by any justice of the peace in any state, certified by such justice or his successor in office to be a full and correct copy from his docket of all the proceedings in that case, with a certificate of magistracy thereon, signed by a clerk of a court of record in the county where such judgment was rendered, and authenticated by the seal of such court, shall be evidence in any court of this state of the facts contained in such exemplification. (4728) [8446]

19–239, 198; 70–433, 73+155.

Judgment of municipal court of another state was properly proved by certified copy. 210+15.

9886. Inspection of documents—The court before which an action is pending may order either party to give to the other, within a specified time, an inspection and copy, or permission to take a copy, of any book, document, or paper in his possession or under his control, containing evidence relating to the merits of the case. If compliance is refused, the court may exclude the book, document, or paper, or, if wanted as evidence by the party applying, may direct the jury to presume it to be as alleged by him. The court may also punish the party refusing as for a contempt. *This section shall not be construed to prevent a party* from compelling another to produce books, papers, and documents when he is examined as a witness. (4729) [8447]

Denied when evidence sought inadmissible (46–249, 48+907). Ordered before issue joined (92–353, 100+92). Federal court cannot order production of books and papers before trial (192 Fed. 1013). Does not apply to criminal cases (117–384, 135+1128). Abrogates bills of discovery (63–91, 65+135). Cited (31–28, 16+417; 35–99, 27+503, 28+218). This section does not apply to criminal cases (117–384, 135+1128).

150–209, 184+855.

9887. Bills and notes—Indorsement—Signature to instruments presumed—In actions brought on promissory notes or bills of exchange by the indorsee, the possession of the note or bill shall be prima facie evidence that the same was indorsed by the person by whom it purports to be indorsed. Every written instrument purporting to have been signed or executed by any person shall be proof that it was so signed or executed until such person shall deny the signature or execution of the same by his oath or affidavit; but this shall not extend to instruments purporting to have been signed or executed by a person who has died before the requirement of such proof. (4730) [8448]

Effect of possession in action on promissory note (28–396, 10+421; 31–62, 16+466; 37–404, 34+901; 51–343, 53+645; 65–154, 67+1147; 68–166, 70+1083; 84–144, 86+872; 91–244, 97+971; 102–72, 112+1048). Checks are within the statute (59–504, 61+674). The second provision of the statute applies only to an instrument on which an action is brought against the maker thereof, or to an instrument on which a counterclaim or defense against the maker thereof is founded; an indorsement or assignment being an instrument within the meaning of the statute (30–441, 16+155; 45–277, 47+967; 73–266, 76+27). Not applicable where the signer is dead (73–266, 76+27). Applies only to instruments which purport on their face to have been signed or executed by the party or his agent (29–173, 12+515; 68–108, 70+872; 68–393, 71+399; 74–259, 77+141). Does not affect force of an acknowledgment (53–171, 54+1052; 118–350, 136+1041). A rule of evidence; not a rule of pleading. The only effect of a failure to comply with the statute is on the burden of proof (68–108, 70+872; 78–210, 80+965; 110–82, 124+637). A denial of execution *in a pleading to be effectual under the statute* must be specific and the pleading must be personally verified. A general denial is insufficient. The verification must be positive and not on information and belief (21–215; 30–308, 15+252; 36–130, 30+461; 47–377, 50+496; 51–343, 53+645; 61–40, 63+95; 68–108, 70+872). Applicable to instruments executed by corporations (28–396, 10+421; 37–404, 34+901; 61–274, 63+731; 102–93, 112+889). When instrument purports to be executed by an agent authority of agent need not be proved (31–62, 16+466; 61–274, 63+731; 68–108, 70+872; 74–259, 77+141). Does not qualify effect of acknowledgment under section 8425 as prima facie evidence of execution (102–382, 113+912; 118–350, 136+1041). Accident policy found with papers of insured after his death (110–291, 125+264). See 131–387, 155+214; 132–211, 156+265; 134+455.

212+25.

Where a guaranty purports to be executed by a corporation, the statute makes the instrument proof of its due execution, unless its execution is denied under oath. 159–94, 198+304.

A corporation cannot become a mere accommodation surety for others, unless expressly authorized to do so; but a corporation which is a large stockholder in another corporation has such an interest therein that it may become a surety on its obligations. 159–94, 198+304.

The president of plaintiff sold and indorsed a draft payable to its order, and, in payment, received defendants' check payable to his order and a Liberty bond transferred to him. In this action against defendants for money had and received and for conversion of the draft it is held, the proof establishes prima facie authority in the president to indorse and transfer the draft to defendants. 159–153, 198+422.

Notes signed for a corporation, "Security Elevator Company, by E. L. Welch, Pres.," are, prima facie evidence of their due execution, in the absence of the denial thereof by "oath or affidavit," referred to in the statute. 161–30, 200+851.

Where indorsement purports to have been made by authority of the payee, there is no presumption of want of such authority, where it is alleged in the complaint that the indorsement was duly made by the indorser. 167–394, 209+311.

The latter part of section, making signed written instruments automatic proof of their execution, applies only to an instrument on which the action, or a defense or counterclaim therein, is based. 209+879.

Inapplicable to telegrams. 213+553.

9888. Indorsement of money received—An indorsement of money received, on any promissory note, which appears to have been made when it was against the interest of the holder to make it, is prima facie evidence of the facts therein stated. (4731) [8449]

18–66, 51; 29–173, 12+515. May be contradicted or explained by parol (97–1, 105+971). Cited (97–214, 106+310). See 133–289, 158+391.

9889. Land office receipts, etc., evidence of title—The receipt or certificate, signed by the register or receiver of any United States land office, of the entry or purchase of any tract of land, or the location of any tract by a land warrant, shall be prima facie evidence of title to the lands described in such receipt or certificate in the person named therein. Such receipt or certificate may be filed for record with the register of deeds of the county where the land is located, with like force and effect as a conveyance of real estate. (4732) [8450]

8–127, 99; 26–201, 2+497; 29–283, 13+127; 42–312, 44+201; 67–197, 69+887; 84–505, 88+12. See 130–456, 153+871.

9890. Land office certificate evidence of title, when—The certificate of the register or receiver of any United States land office, showing when, how, and by whom any lands within this state were entered under the homestead, pre-emption, or timber-culture laws of the United States, shall be prima facie evidence that the person named therein was at the date of such entry the owner in fee of such lands. (4733) [8451]

29–283, 13+127; 39–191, 39+97; 67–197, 69+887; 92–341, 100+88; 94–289, 102+712.

9891. Certificate of department officer—The certificate of any officer of any department of the United States government to any fact appearing of record in his department, authenticated by his official seal if he has one, shall be prima facie evidence of such fact. (4734) [8452]

9892. Federal census—Population—That the governor of the state of Minnesota shall obtain from the director of the federal census, such certified copies

thereof as will show the population of the several political divisions of this state, which said certified copies shall be filed in the office of the secretary of state, and thereafter the several political divisions of the state for all purposes, unless otherwise provided, shall be deemed to have the population thereby disclosed. Copies thereof, duly certified to by the secretary of state, shall be prima facie evidence of the facts therein disclosed in all the courts of this state. ('11 c. 200 § 1) [8453]

9893. Patents and duplicates—Patents of land issued by the United States, or duplicates thereof from the records in the general land office, certified by the commissioner of such land office, may be filed for record with the register of deeds of the county in which such land lies. Such records, or certified copies thereof, shall be evidence in like manner and to the same extent as the records or copies of other conveyances. (4735) [8454]

189 Fed. 276.

9894. Plats of surveys from land office—Certificate of county surveyor—Any plat of a survey of public lands, certified by the register of the United States land office of the district in which such land is situated to be a true copy of the certified copy of the original on file in his office, and any certificate by such register of the surveys or entry and location of, or other facts in relation to, such lands, taken from the books of such land office, or from the certificate indorsed on the copy of the original plat on file therein, are prima facie evidence of the facts therein stated. The certificate of any county surveyor or deputy shall be evidence of the facts therein stated, but may be explained or rebutted by other testimony. (4736) [8455]

12–451, 347; 21–332; 26–201, 2+497; 62–388, 64+922; 151–295, 186+712.

9895. Instruments, records thereof, and copies—All original instruments and certified copies thereof authorized by law to be recorded, and, if recorded, the record thereof, or a duly certified transcript of such record, shall be received in evidence without further proof, subject to rebuttal. (4737) [8456]

6–25, 1; 9–230, 215; 16–457, 411; 33–271, 22+614; 42–371, 44+130; 45–277, 47+967; 53–171, 54+1052; 66–400, 69+321.

9896. Abstracts of title to be received in evidence—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)

9897. Evidence of corporation or copartnership—In actions brought by a corporation or by any persons as copartners, or by the indorsees of any such corporation or copartners, upon any written instrument for the payment of money only, executed by the defendant to such corporation by its corporate name, or to such copartners by their firm name, the production in evidence of the instrument upon which the action is brought shall be prima facie evidence of the existence of such corporation, or that the persons named as payees in such instrument are, and at the time of its execution were, such copartners. (4738) [8457]

30–308, 15+252.

9898. Marriage certificate and record—The original certificate and record of marriage, made by the person solemnizing such marriage as prescribed by law, and the record thereof or a duly certified copy of such record, shall be prima facie evidence of such marriage. (4739) [8458]

41–50, 42+602.

9899. Fact of marriage, how proved—When the fact of marriage is required or offered to be proved before any court, evidence of the admission of such fact by the party against whom the proceeding is instituted, or of general repute, or of cohabitation as married persons, or any other circumstantial or presumptive evidence from which the fact may be inferred, shall be competent. (4740) [8459]

12–476, 378; 16–243, 214; 25–29; 58–268, 59+1013; 122–407, 142+593.

9900. In prosecutions for forgery, etc., of treasury notes, etc.—In prosecutions for forging or counterfeiting any note, certificate, bill of credit, or security issued on behalf of the United States or of any state, or for uttering, publishing, or tendering in payment as true any such forged or counterfeit note, certificate, bill of credit, or security, or for being possessed thereof with intent to utter and pass the same as true, the certificate, under oath, of the secretary of the treasury or of the treasurer of the United States, or of the secretary or treasurer of any state in whose behalf such note, certificate, bill of credit, or security purports to have been issued, shall be admitted as evidence for the purpose of proving the same to be forged or counterfeit. (4741) [8460]

9901. Bank notes, etc.—In prosecutions for forging or counterfeiting any notes or bills of a banking company or corporation, or for uttering, publishing, or tendering in payment as true any such forged or counterfeit bills or notes, or for being possessed thereof with the intent to utter and pass them as true, the testimony of any person acquainted with the signature of the president or cashier of such bank, or who has knowledge of the difference in appearance of the true and counterfeit bills or notes thereof shall be competent to prove that any such bill or note is counterfeit, without calling such president or cashier. (4742) [8461]

9902. Confession, inadmissible when—A confession of the defendant shall not be sufficient to warrant his conviction without evidence that the offense charged has been committed; nor can it be given in evidence against him whether made in the course of judicial proceedings or to a private person, when made under the influence of fear produced by threats. (4743) [8462]

4–368, 277; 22–76; 29–221, 13+140; 128–163, 150+787; 146–35, 177+779; 146–136, 178+164; 146–189, 178+491; 151–379, 186+708; 196+279.

Not applicable to prosecution under city ordinance. 157–506, 196+279.

9903. Uncorroborated evidence of accomplice—A conviction cannot be had upon the testimony of an accomplice, unless it is corroborated by such other evidence as tends to convict the defendant of the commission of the offense, and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof. (4744) [8463]

While the corroborating evidence must be such as tends to show some connection of the defendant with the acts constituting the crime charged, yet it is not necessary that there should be corroboration as to every probative fact. The statute does not require a case to be made out against the accused sufficient for his conviction before the testimony of an accomplice can be considered. The corroborating evidence must, independently of the testimony of the accomplice, tend in some degree to establish the guilt of the accused, but need not be sufficiently weighty or full, as, standing alone, to justify a conviction (28–216, 9+698; 30–522, 16+

406; 40–77, 41+463; 73–282, 76+34; 82–434, 85+234; 86–249, 90+390). Need not be sufficient, standing alone, to make out prima facie case (103–92, 114+363). Whether a witness is an accomplice is for the jury (28–216, 9+698). When evidence has a reasonable tendency to corroborate the testimony of an accomplice its weight is for the jury (82–434, 85+234). The test as to whether a witness is an accomplice is, could he himself have been indicted for the offense, either as principal or accessory? (73–150, 75+1127; 105–217, 117–483). The following persons have been held not to be accomplices: a person purchasing beer on Sunday (37–212, 34+24); a person paying money for the suppression of evidence of a crime (40–55, 41+299); a woman submitting to an abortion (22–238; 56–226, 57+652, 57+1065); a person giving or offering a bribe (71–28, 73+626; 73–150, 75+1127). Corroboration is not necessary in a prosecution for rape (57–482, 59+479), or under the bastardy act (29–357, 13+153). Necessity of corroboration in prosecution for subornation of perjury (85–19, 88+22). See 122–493, 142+823; 124–408, 145+39; 131–276, 154+1095; 135–159, 160+677; 144–351, 175+689; 147–383, 181+570; 149–41, 182+721; 151–318, 186+580; 193+680, 196+279.

The state's principal witness, an accomplice of the defendant if the defendant was guilty, was sufficiently corroborated, and the evidence sustains the conviction. 157–168, 195+776.

Not applicable to prosecution under city ordinance. 157–506, 196+279.

One who purchases intoxicating liquor from another unlawfully in possession of such liquor, with intent to sell the same, does not thereby become an accomplice. 160–314, 200+93.

The testimony, aside from that of the accomplice, sufficiently connected defendant with the crime charged. 161–1, 200+815.

There was no error in the instructions excepted to. 161–1, 200+815.

Evidence to corroborate an accomplice must rest on other than his credit, but it need not be of itself sufficient to prove guilt. 210+10.

The testimony of an accomplice that he set the fire is corroborated, and it is not necessary to determine whether or not the testimony of an accomplice alone is sufficient to prove the corpus delicti. 210+883.

9904. In prosecutions for libel—Right of jury—In all criminal prosecutions for libel, the truth may be given in evidence, and if it appears to the jury that the matter charged as libelous is true, and was published with good motives and justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact. (4745) [8464]

82–452, 85+217.

Even though the jury in a criminal libel prosecution, under our statute, has the right to determine the law and the facts, the function of the court is to instruct them as to the law applicable to the issues, including the right given them by said statute. 166–279, 207+648.

9905. Divorce—Testimony of parties—Divorces shall not be granted on the sole confessions, admissions, or testimony of the parties, either in or out of court. (4746) [8465]

6–458, 315; 81–242, 83+988; 86–249, 90+390; 126–65, 147+825; 152–242, 188+317.