CHAPTER 600

DOCUMENTS AS EVIDENCE

600.01 BUSINESS.

HISTORY. 1939 c. 78 s. 1; M. Supp. s. 9870-1.

Sections 600.01 to 600.04 are cited as uniform business records as evidence act; and has been adopted by California, Hawaii, Idaho, Minnesota, Montana, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Vermont and Wyoming.

Defendant claims the legislature has indicated a policy which tends to admit records like those of the Mayo Clinic by the enactment of Laws 1939, Chapter 78. That act was approved two days after the verdicts herein were returned, so the argument falls. Ost v Ulring, 207 M 505, 292 NW 207.

Admissibility of records kept in the regular course of business. 24 MLR 958.

600.02 BUSINESS RECORDS AS EVIDENCE.

HISTORY. 1939 c. 78 s. 2; M. Supp. s. 9870-2.

600.03 INTERPRETATION.

HISTORY. 1939 c. 78 s. 3; M. Supp. s. 9870-3.

600.04 CITATION.

HISTORY. 1939 c. 78 s. 4; M. Supp. s. 9870-4.

600.05 ACCOUNT BOOKS; LOOSE-LEAF SYSTEM.

HISTORY. R.S. 1851 c. 95 ss. 76, 78; P.S. 1858 c. 84 ss. 76, 78; G.S. 1866 c. 73 ss. 70, 72; 1876 c. 52 s. 1; G.S. 1878 c. 73 ss. 78, 79; G.S. 1894 ss. 5738, 5739; R.L. 1905 s. 4719; 1909 c. 251 s. 1; G.S. 1913 s. 8437; G.S. 1923 s. 9876; M.S. 1927 s. 9876.

The statute does not exclude the common law mode of proving accounts by the party's clerk. Paine v Sherwood, 21 M 225.

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 transactions are original entries, but entries made in a journal from the stubs of a check book several days after the giving of the check, are not. Paine v Sherwood, 21 M 225; Webb v Michener, 32 M 48, 19 NW 82; Woolsey v Bohn, 41 M 235, 42 NW 1022; Levine v Lancashire, 66 M 138, 68 NW 855.

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, if the entries are not made by him. Webb v Michener, 32 M 48, 19 NW 82; Branch v Dawson, 36 M 193, 30 NW 545.

Whether business entries, other than accounts, are admissible when authenticated as provided by this statute is an open question. Levine v Lancashire Ins. Co. 66 M 138, 68 NW 855.

In laying a foundation for the introduction of the books in evidence, the statute must be substantially complied with. Levine v Lancashire, 66 M 138, 68 NW 855; Cumbey v Lovett, 76 M 227, 79 NW 99; Pickler v Caldwell, 86 M 133, 90

NW 307; Wimmer v Key, 87 M 402, 92 NW 228; Presley v Illinois Central, 120 M 295, 139 NW 609.

The loan agents in carrying out a new loan transaction charged one principal on their books with the amount of the new loan, and credited the holder of the old loan with the amount due on his mortgage. The trial court was warranted in finding that the agents had authority to make these entries which are competent evidence against the mortgagee. General Convention v Torkelson, 73 M 401, 76 NW 215.

Where accounts between a party to the action and third parties are material evidence, books containing such accounts are admissible in evidence when proved in the manner provided by statute. Coleman v Retail Lumbermen's, 77 M 31, 79 NW 588; Union Central v Priggee, 90 M 370, 96 NW 917.

Assuming that an entry or memorandum made in a book or in some other form, in the usual course of business, and at or about the time of the transaction, by a person not a party to the action, who is shown to have personal knowledge of the facts recorded, is competent evidence of the fact, the book memorandum offered in evidence in the instant case was not brought within the rule. Carlton v Carey, 83 M 232, 86 NW 85.

The facts entered must be within personal knowledge of party making the entries. Union Central v Priggee, 90 M 370, 96 NW 917.

Before any work had been done or any material furnished under a written contract for decorating a building, the wife of one party, at his request, but without the authority or consent of the other, made an entry in a book of an oral contract as of a later date, which modified the original agreement, which the other party denies.

The entry was inadmissible. Deatherage v Petruschke, 106 M 20, 118 NW 153.

No inflexible rule can be laid down for the determination of the question whether entries in account books were made substantially contemporaneous with the transactions which they record. Each case must be determined by the trial judge in the exercise of a practical discretion, in view of modern business methods; and his decision thereon will not be reversed if there be any evidence fairly tending to sustain it. American Bridge v Honstain, 113 M 16, 128 NW 1014; Young v Yeates, 161 M 280, 201 NW 421.

Plaintiff's books of account, the entries being made in the usual course of business, were admissible, although part of the entries were made from reports of persons not in plaintiff's employ, since these reports were verified on the witness stand. The fact that the entries were made after the suit was brought did not render them inadmissible. Itasca Cedar v McKinley, 124 M 183, 144 NW 768.

It was not error to receive in evidence a certain book of corporation as proof of who were its stockholders; and when one party offers in evidence the books of account of the other party as admissions, it is not necessary to lay the statutory foundation. Lindeke v Scott County Co. 126 M 464, 148 NW 459; Wentz v Guaranteed Sand Co. 205 M 611, 287 NW 113.

The loose-leaf ledger, containing entries for moneys received and merchandise sold, was properly received in evidence. Wyman v Henne, 127 M 535, 149 NW 647.

The books and records of a large mercantile establishment, situated outside the state, when properly identified as being kept in the usual course of business, may be received in evidence in a criminal trial without being verified by the clerks who actually made the entries. State v Virgens, 128 M 422, 151 NW 190.

Courts should not be captious in reception of evidence of account books. All businessmen do not keep their books of account in the same manner. Some keep them badly. If the books kept are intended as a true record of business transactions and are made in the usual course of business, contemporaneously with the transaction of which they purport to be a record, the court should be liberal in receiving them. Keller v Burg, 140 M 362, 168 NW 98.

The books of the defendant, sought to be introduced by the plaintiff as proof that defendant had not made a profit, as represented when he sold to plaintiff were properly rejected upon the ground that they failed to show that the representation was untrue. Kregel v Cirkler, 158 M 175, 198 NW 664.

The probative effect of plaintiff's books of account was not overcome by the evidence introduced by defendant. Rudd v Anderson, 161 M 356, 201 NW 548.

A grain firm's floor man kept card entries of his trades on cards, and turned them in at the end of the trading period, whereupon the card entries were noted on the day book. The entries in the books were the original entries and competent proof without producing the card memoranda. Banner Grain v Burr, 162 M 334, 202 NW 740.

Even if a proper foundation had not been laid for the introduction of the evidence, the deficiency, if any, was waived by the wife's admissions. Rotering v Hibbard, 168 M 503, 210 NW 395.

What is sufficient authentication of documentary evidence (such as telegrams) is largely a matter of discretion with the trial court. In the instant case, although the documents might have been considered authentic, prima facie, their evidential value is weakened because more convincing authentication was easily available. Lundgren v Union Indemnity, 171 M 122, 213 NW 553.

Independent of, and in addition to, the "shop book rule" which applies only to account books, in a strict sense of parties to the action, there is another rule, which admits in evidence entries made by a stranger to the action, in the regular course of business, for the purpose of recording facts of transactions as they occur and under circumstances making for accuracy. This rule applies in the instant case to registers of bills receivable and payable kept by the payee of the notes who endorsed them to plaintiff. Tiedt v Larson, 174 M 563, 219 NW 905.

A hospital chart was properly admitted as an exhibit. Lund v Olson, 182 M 204, 234 NW 310.

Corporate minute books were sufficiently identified by the testimony of one who was the auditor, and a director of the corporation. Johnson v Burmeister, 182 M 385, 234 NW 590.

It was agreed by the parties to the contract that plaintiffs would give a confirmatory letter which was done. This was such an integration of the agreement as to warrant the court in refusing to admit parol evidence varying the writing. Rast v Bergquist, 182 M 392, 235 NW 372.

Business necessity requires the maintenance of books of account as set forth in section 600.05. Their normal purpose is to record the facts. When properly identified and shown to contain entries made in the usual course of business, their normal import speaks for truthfulness and completeness. Meyers v Barrett, 196 M 276, 264 NW 769.

The account books here involved, even if considered the books of defendant G. W. Roth, and kept by his wife, do not conclusively impeach his testimony, or compel findings according to the recorded entries. Patterson v Roth, 199 M 157, 271 NW 336.

Although it is admitted the books of the bank as to defendant's account were not properly kept, yet the discrepancy was fully discoverable and accounted for, and, subject to that explanatory proof, the bank's ledger sheets have been admitted. Mendota Bank v Riley, 203 M 409, 281 NW 767.

The court was not bound to accept the testimony of an adjuster, employed by plaintiffs, as to the market value of the merchandise destroyed, since the inventory could not be made without the assistance of plaintiff not present at the trial. Foot v Yorkshire Fire, 205 M 478, 286 NW 400.

A letter constituting past recorded recollection may be received in evidence as an exception to the hearsay rule. Thomes v Atkins, 52 F. Supp. 406.

The uniform business records as evidence act is broader in scope than previous Minnesota statute on admission of books of account in that it is not limited to accounts, but applies to "a record of an act, condition, or event". 24 MLR 959.

600.06 BOOK ENTRIES BY A PERSON DECEASED.

HISTORY. R.S. 1851 c. 95 s. 79; 1852 amend. p. 21; P.S. 1858 c. 84 s. 79; G.S. 1866 c. 73 s. 73; G.S. 1878 c. 73 s. 80; G.S. 1894 s. 5740; R.L. 1905 s. 4720; G.S. 1913 s. 8438; G.S. 1923 s. 9877; M.S. 1927 s. 9877.

This section defines the foundation that must be laid to introduce entries made by a person since deceased. Tiedt v Larson, 174 M 558, 219 NW 905.

600.07 BOOKS PROVED BY DEPOSITION.

HISTORY. 1893 c. 56 s. 1; G.S. 1894 s. 5741; R.L. 1905 s. 4721; G.S. 1913 s. 8439; G.S. 1923 s. 9878; M.S. 1927 s. 9878.

600.08 LETTERPRESS COPIES.

HISTORY. 1893 c. 57 s. 2; G.S. 1894 s. 5742; R.L. 1905 s. 4722; G.S. 1913 s. 8440; G.S. 1923 s. 9879; M.S. 1927 s. 9879.

The different numbers or impressions of a writing produced by placing carbon paper between sheets of paper and writing upon the exposed surface are duplicate originals, and either may be introduced in evidence without accounting for the non-production of the other. International v Elfstrom, 101 M 263, 112 NW 252.

600.09 AFFIDAVITS, TAKEN OUT OF STATE.

HISTORY. G.S. 1866 c. 73 s. 35; G.S. 1878 c. 73 s. 35; G.S. 1894 s. 5687; R.L. 1905 s. 4684; G.S. 1913 s. 8399; G.S. 1923 s. 9838; M.S. 1927 s. 9838.

Whether the authority of notaries public to administer oaths be of statutory origin, or founded on customary law, it is now universal, and should be judicially recognized as one of their general powers, and affidavits, authenticated by the official seals of other states, placed on the same footing as their authentications of commercial documents. Wood v St. Paul City Railway, 42 M 411, 44 NW 308; Hickey v Callom, 47 M 565, 50 NW 918.

600.10 AFFIDAVIT OF PUBLICATION.

HISTORY. R.S. 1851 c. 95 ss. 60, 61; P.S. 1858 c. 84 ss. 60, 61; G.S. 1866 c. 73 ss. 54, 55; G.S. 1878 c. 73 ss. 61, 62; G.S. 1894 ss. 5720, 5721; R.L. 1905 s. 4705; G.S. 1913 s. 8420; G.S. 1923 s. 9859; M.S. 1927 s. 9859.

It is no objection to a printer's affidavit that it does not appear that the notice attached thereto was taken from the newspaper, in which it is stated to have been published. Goenen v Schroeder, 18 M 66 (51); Merrill v Nelson, 18 M 366 (335).

Oral testimony, offered to show that in verbal negotiations for sale the land was described differently from the description in the deed, was properly rejected. Kehrer v Seeman, 182 M 596, 235 NW 386.

600.11 PRINTER'S AFFIDAVIT.

HISTORY. R.S. 1851 c. 95 ss. 61 to 63; P.S. 1858 c. 84 ss. 61 to 63; G.S. 1866 c. 73 ss. 55 to 57; G.S. 1878 c. 73 ss. 62 to 64; G.S. 1894 ss. 5721 to 5723; R.L. 1905 s. 4706; G.S. 1913 s. 8421; G.S. 1923 s. 9860; M.S. 1927 s. 9860.

600.12 AFFIDAVIT OF OFFICER OF HISTORICAL SOCIETY AS TO PUBLICATION.

HISTORY. 1889 c. 270 s. 1; G.S. 1894 s. 5724; R.L. 1905 s. 4707; 1909 c. 19 s. 1; G.S. 1913 s. 8422; G.S. 1923 s. 9861; M.S. 1927 s. 9861.

600.13 OFFICIAL RECORDS PRIMA FACIE EVIDENCE; CERTIFIED COPIES; CERTIFIED COPIES OF DECREES OF PROBATE COURTS; WHEN SEAL NOT NECESSARY.

HISTORY. R.S. 1851 c. 95 ss. 64, 65; P.S. 1858 c. 84 ss. 64, 65; G.S. 1866 c. 73 ss. 58, 59, 66; 1876 c. 70 s. 1; G.S. 1878 c. 73 ss. 65, 66, 73; G.S. 1894 ss. 5725, 5726, 5733; R.L. 1905 ss. 4708, 4709; G.S. 1913 ss. 8423, 8424; G.S. 1923 ss. 9862, 9863; 1927 c. 365 s. 1; M.S. 1927 ss. 9862, 9863.

1. Form of certificate; applicability
2. Admissibility of certified copies

1. Form of certificate; applicability

A certified copy of a letter on file in the office of the commissioner of the general land office, if admissible to prove the contents of the original letter, must be authenticated in the manner prescribed by the statutes of this state. Kelley v Wallace, 14 M 236 (173).

A copy of an instrument is not admissible as secondary evidence unless it is shown to be a copy by having been compared with the original. In re Gazett, 35 M 532, 29 NW 347.

The statute does not apply to the form of the certification of copy of resolution designating the newspaper to publish delinquent tax list. It is not necessary the certificate state that the copy has been compared with the original, it otherwise appearing that the copy is a true one. Kipp v Dawson, 59 M 82, 60 NW 845.

The section is not applicable to exemplification of a judgment of justice court of a foreign state. Smith v Petrie, 70 M 433, 73 NW 155.

There was received over the objection of the plaintiff's counsel, an alleged copy of a judgment roll from a court of general jurisdiction in Iowa. As this copy was not certified to as required by our statute, its admission in evidence was reversible error. Merz v Chicago & Northwestern, 86 M 33, 90 NW 7.

The clerk of the probate court of Ramsey County is authorized to authenticate and certify copies of the records of such court, and the use of its seal upon the certificate in proper form for that purpose entitles the same to use as evidence. Fitzpatrick v Simonson, 86 M 140, 90 NW 378.

2. Admissibility of certified copies

Under our statute, a transcript of the judgment as entered in the judgment book is evidence of a domestic judgment of a superior court; and the docketing of the judgment may be proved by a transcript of the judgment docket; and upon such proof the presumption, prima facie, at least, will be that the docketing is regular and the roll duly filed. Williams v McGrade, 13 M 46 (39).

A copy of the organization certificate of a national bank, certified and sealed by the comptroller of the currency, is legal and sufficient evidence of the corporate existence of such bank. First National v Kidd, 20 M 234 (212).

Certain copies, authenticated in compliance with the act of congress, May 27, 1790; with General Statutes 1866, Chapter 73, Section 19; General Statutes 1866, Chapter 77, Section 6; General Statutes 1866, Chapter 73, Section 66; and Laws 1869, Chapter 63, were properly received in evidence. First National v Kidd, 20 M 234 (212).

When a chattel mortgage is acknowledged, the certificate of acknowledgment entitles it to be read in evidence "in all courts of justice". A copy of such mortgage, when certified by the proper filing officer to be a true copy of the original on file in his office, is receivable in evidence in like manner and with like effect as the original mortgage. Ellingboe v Brakken, 36 M 156, 30 NW 659.

In an action brought by a foreign corporation in a court of this state, it is not encumbent upon such corporation to show that it has complied with our statutes, and has obtained a certificate of authority to transact business within our borders. Langworthy & Garding, 74 M 325, 77 NW 207.

Certified copies of documents filed in the office of the town clerk were properly received in evidence. VanDervort v Vye, 85 M 35, 88 NW 2.

The clerk of the probate court of Ramsey County is authorized to authenticate and certify copies of the records of such court, and the use of the seal upon the certificate in proper form for that purpose entitles the same to use as evidence. Fitzpatrick v Simonson, 86 M 140, 90 NW 378.

Copies of the record of deeds and other similar private writings made in a sister state are admissible in evidence in the courts of this state, under the federal

act, when properly certified and authenticated. Wilcox v Bergman, 96 M 219, 104 NW 955.

A duly certified copy of an original death certificate on file in the office of the state board of health is competent evidence tending to show the cause of death. Healy v Hoy, 115 M 321, 132 NW 208.

A judgment or order in proceedings for the appointment of a guardian of an incompetent person and taking from such person the management of his property, is admissible in evidence in any litigation whatever, but not conclusive, to prove that person's mental condition at the time the order or judgment is made or at any time during which the judgment finds the person incompetent. Champ v Brown, 197 M 49, 266 NW 94.

In the instant case, in an action by a farmer against the city of Faribault for damages caused by deposit of untreated sewage in the Cannon river, the admission in evidence of a report of investigation of pollution of the river by the state board of health in collaboration with the director of game and fish was not reversible error. Krueger v City of Faribault, 220 M —, 18 NW(2d) 777.

Admissibility as evidence of the findings of an administrative board. 25 MLR 950.

600.14 INSTRUMENTS ACKNOWLEDGED; EVIDENCE.

HISTORY: R.S. 1851 c. 95 s. 66; P.S. 1858 c. 84 s. 66; G.S. 1866 c. 73 s. 60; G.S. 1878 c. 73 s. 67; G.S. 1894 s. 5727; R.L. 1905 s. 4710; G.S. 1913 s. 8425; G.S. 1923 s. 9864; M.S. 1927 s. 9864.

This section does not make the instrument competent as evidence for any purpose for which it would not be competent at common law. Ferris v Boxell, 34 M 262, 25 NW. 592.

When a chattel mortgage is acknowledged, the certificate of acknowledgment entitles it to be read in evidence "in all courts of justice". Ellingboe v Brakken, 36 M 156, 30 NW 659.

The acknowledgment of an instrument in the manner prescribed in General Statutes 1878, Chapter 73, Section 67 (section 600.14), dispenses with any other proof of its execution. McMillan v Edfast, 50 M 414, 52 NW 907.

An official certificate of acknowledgment of the execution of an indemnity bond constitutes prima facie proof of its execution. Romer v Conter, 53 M 171, 54 NW 1052.

The contract was separately executed, and separately acknowledged in the form of the statutory requirements, and was properly received as evidence. Conrad v Dobmeier, 64 M 284, 67 NW 5.

Revised Laws 1905, Section 4710 (section 600.14), construed and held that a duly acknowledged deed, with the certificate of the proper officer endorsed thereon in possession of and produced on the trial by a party claiming under it, is, if relevant to the issue, admissible in evidence without other proof, and is prima facie evidence, not only that it was signed by the grantor, but also that it was delivered. Tucker v Helgren, 102 M 382, 113 NW 912; Murray v Foskett, 114 M 44, 130 NW 14; Hedding v Schauble, 146 M 96, 177 NW 1019; Dempsey v Allen, 210 M 396, 298 NW 570.

A deed without the name of a grantee therein, although complete and properly executed in all other respects, is a nullity until the name of a grantee has been lawfully inserted. Hedding v Schauble, 146 M 95, 177 NW 1019.

A notary's certificate of acknowledgment without his official seal attached is a nullity. The trial court properly found that there was no notarial seal attached to the acknowledgments on three chattel mortgages. The filing of such mortgages in the office of the register of deeds was not constructive notice to plaintiff, who was a subsequent mortgagee in good faith. Hartkopf v First Bank, 191 M 595, 256 NW 169.

600.15 BILLS AND NOTES; ENDORSEMENT; SIGNATURE TO INSTRUMENTS PRESUMED.

HISTORY. R.S. 1851 c. 95 s. 85; P.S. 1858 c. 84 s. 85; G.S. 1866 c. 73 s. 82; 1875 c. 67 s. 1; G.S. 1878 c. 73 s. 89; G.S. 1894 s. 5751; R.L. 1905 s. 4730; G.S. 1913 s. 8448; G.S. 1923 s. 9887; M.S. 1927 s. 9887.

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. Schwartz v Germania Life, 21 M 215; Johnston v Clark, 30 M 308, 15 NW 252; Cowing v Peterson, 36 M 130, 30 NW 461; Bausman v Credit Guarantee Co. 47 M 377, 50 NW 496; Burr v Crichton, 51 M 343, 53 NW 645; McCormick v Doucette, 61 M 40, 63 NW 95; Moore v Holmes, 68 M 108, 70 NW 872; Fagerstrom v Rappaport, 176 M 256, 223 NW 142.

General Statutes 1878, Chapter 73, Section 89 (section 600.15), which provides that possession of a note shall be prima facie evidence that the note was endorsed by the person by whom it purports to have been endorsed, applies to endorsements purporting to be made by corporations, as well as to those purporting to have been made by natural persons. First National v Loyhed, 28 M 396, 10 NW 421; National Bank v Mallan, 37 M 404, 34 NW 901.

Possession of a note endorsed by the payee in blank is prima facie evidence of title in the plaintiff. Tarbox v Gorman, 31 M 62, 16 NW 466; London v St. P. Co. 84 M 144, 86 NW 872; Merchants Bank v Cross 65 M 154, 67 NW 1147; Huntley v Hutchinson, 91 M 244, 97 NW 971; Mullen v Jones, 102 M 72, 112 NW 1048.

The papers were found in the office of the register of deeds. Under the statute no further or other identification or authentication than that afforded by their production was necessary. Burr v Crichton, 51 M 343, 53 NW 645.

Plaintiff, as endorsee of a promissory note, brought suit thereon against the maker, who admitted its execution, but alleged usury as a defense. The plaintiff introduced the note and the endorsement and rested, and thereupon defendant also rested. Judgment should have been for the plaintiff. Thorson v Sanby, 68 M 166, 70 NW 1083.

This section is applicable to instruments executed or endorsed by corporations. First National Bank v Loyhed, 28 M 396, 10 NW 421; National Bank v Mallan, 37 M 404, 34 NW 901; First National Compo Board Co. 61 M 274, 63 NW 731; Mullen v Jones, 102 M 72, 112 NW 1048; LaPlant v Pratt, 102 M 93, 112 NW 889.

This section applies only to instruments which purport on their face to have been signed or executed by the party or his agent. Young v Perkins, 29 M 173, 12 NW 515; Moore v Holmes, 68 M 108, 70 NW 872; Massillon v Holdridge, 68 M 393, 71 NW 399; McGinty v St. Paul & Manitoba, 74 M 259, 77 NW 141.

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 counter-claim or defense against the maker thereof is founded; and endorsement or assignment being an instrument within the meaning of the statute. Mast v Matthews, 30 M 441, 16 NW 155; Lydiard v Chute, 45 M 277, 47 NW 967; Fitzgerald v English, 73 M 266, 76 NW 27.

Where the endorsement purports to be that of the payee, made by the hand of an agent, it is not necessary to prove the authority of the agent. Tarbox v Gorman; 31 M 62, 16 NW 466; First National v Compo Board Co. 61 M 274, 63 NW 731; Moore v Holmes, 68 M 108, 70 NW 892; McGinty v St. Paul & Manitoba, 74 M 259, 77 NW 141.

This section does not affect the force of an acknowledgment. Romer v Conter, 53 M 171, 54 NW 1052; Bayne v Greiner's Estate, 118 M 350, 136 NW 1041.

Checks are within the statute. Estes v Lovering, 59 M 504, 61 NW 674.

This section is in fact and in practice a rule of evidence. The only effect of a failure to comply with the statute is on the burden of proof. It is not a rule of pleading. Moore v Holmes, 68 M 108, 70 NW 872; Porter v Winona & Dakota, 78 M 210, 80 NW 865; Smith v Lydick, 110 M 82, 124 NW 637.

This section is not applicable when the signer is dead. Fitzgerald v English, 73 M 266, 76 NW 27.

Revised Laws 1905, Section 4730 (section 600.15), does not qualify the effect or force of an official acknowledgment under Revised Laws 1905, Section 4710 (section 600.14), as prima facie proof of the execution of instruments authorized to be acknowledged. Romer v Conter, 53 M 171, 54 NW 1052; Tucker v Helgren, 102 M 382, 113 NW 912; Bayne v Greiner's Estate, 118 M 350, 136 NW 1041.

An accident policy, fully signed, dated June 30, 1908, was found in the safe with other papers of the insured after his death, August 24. This creates a prima facie presumption that the policy contract was fully executed, and an instruction to the jury that under Revised Laws 1905, Section 4730 (section 600.15), the burden was on defendant to disprove by a preponderance of evidence the full execution of the contract was, at least, not prejudicial error. Gardner v United Surety Co. 110 M 291, 125 NW 264.

This section applies to an instrument purporting to be executed by a corporation, and applies to a written contract of employment, by which the coroporation agrees to pay a salary for services to be rendered and to other like contracts. Kelly v Southern Amusement Co. 131 M 386, 155 NW 214; National City Bank v Zimmer Co. 132 M 211, 156 NW 265.

Where a guaranty purports to be executed by a corporation, this section makes the instrument proof of its due execution unless its execution is denied under oath. First National v Pacific Elevator, 159 M 96, 198 NW 304.

The evidence, construed in connection with the provisions of this section, establishes prima facie authority in the president of the bank to endorse and transfer the draft to the defendant, or to execute a note. State Bank v Magraw, 159 M 153, 198 NW 422; Midland National v Security Elevator, 161 M 30, 200 NW 851.

An unqualified endorsement of a promissory note, by means of a rubber stamp, is sufficient and satisfies the requirements of the statute if made by someone having authority to do so; and possession of such a note, so endorsed, is prima facie evidence that the same was endorsed by the person purporting to have endorsed it, and shall be proof that it was so endorsed until such person shall deny the signature or execution by his oath or affidavit. Farmington Bank v Delaney, 167 M 394, 209 NW 311.

The latter part of the section applies only to an instrument on which the action, or a defense or counter-claim therein, is based. Brunetti v Duluth & Iron Range, 168 M 136, 209 NW 879.

As to warrants not receipted but endorsed by the payee purchased by funds of the bank and still shown on the books of the defendant as an outstanding obligation, the case for the plaintiff was complete and verdict should have been directed accordingly. Solway Bank v School District, 170 M 83, 212 NW 25.

Telegrams, no more than any other document, can be admitted 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. In the discretion of the trial court although the document might be considered authentic, he may require more convincing evidence of genuineness if easily available. Lundgren v Union Indemnity Co. 171 M 122, 213 NW 553.

In a suit on a promissory note a general denial in the answer, although verified, is not a sufficient denial by oath or affidavit, under this section, to require the plaintiff in the first instance to present other evidence to prove the execution of the note. Citizens Bank v Webster, 180 M 279, 230 NW 785; Christianson v Lindquist, 203 M 533, 282 NW 273.

Denial of execution of an instrument puts in issue its making, the genuineness of the signature, and delivery. O'Hara v Crawhall, 201 M 621, 277 NW 232.

Failure to deny execution of notes when sued upon. 12 MLR 85.

600.16 ENDORSEMENT OF MONEY RECEIVED.

HISTORY. G.S. 1866 c. 73 s. 83; G.S. 1878 c. 73 s. 90; G.S. 1894 s. 5752; R.L. 1905 s. 4731; G.S. 1913 s. 8449; G.S. 1923 s. 9888; M.S. 1927 s. 9888.

An endorsement at the time by S on the mortgage note, "Received on the within, interest to date," the giving of the $95.00 note, and S's testimony that "it

settled the interest to the date of the endorsement. It was the understanding between us that it settled the interest to date," were evidence to prove that the note was given and taken in payment of the interest. Goenen v Schroeder, 18 M 66 (51).

To make an endorsement upon a promissory note of a partial payment thereon under General Statutes 1878, Chapter 73, Section 90 (section 600.16), to prevent the bar of the statute of limitations, it must appear by evidence dehors the endorsement, that it was made at a time when it was against the interest of the holder of the note to make it. Young v Perkins, 29 M 173, 12 NW 515; Riley v Mankato Loan Co. 133 M 289, 158 NW 391.

An endorsement of payment on a negotiable instrument is in the nature of a receipt, not a contract. It may be contradicted or explained by parol. McCoffery v Burkhardt, 97 M 1, 105 NW 971.

A partial payment upon a promissory note by one of two joint makers will not prevent the running of the statute of limitations as to the other maker. Atwood v Lammers, 97 M 214, 106 NW 310.

The endorsement upon a promissory note of the proceeds of the sale of collateral securities which were deposited with the note at the time it was given, does not constitute a part-payment which will interrupt the running of the statute of limitations. Atwood v Lammers, 97 M 214, 106 NW 310.

Where a note shows on its face that it is more than six years past due, if the holder relies upon part-payment to avoid the bar of the statute of limitations, the burden is upon him to prove it. When endorsement of payment purporting to have been made within six years appears on the note, it is error to charge the jury that the burden is on the defendant to prove that the payment was not made at the date of the endorsement. Riley v Mankato Loan, 133 M 289, 158 NW 391.

600.17 COPIES OF GOVERNMENT RECORDS OR DOCUMENTS.

HISTORY. 1878 c. 52 s. 1; G.S. 1878 c. 73 s. 74; G.S. 1894 s. 5734; R.L. 1905 s. 4715; G.S. 1913 s. 8430; G.S. 1923 s. 9869; M.S. 1927 s. 9869; 1945 c. 405 s. 1.

Certain certificates and letters of the register of the local land office and the commissioner of the general land office held to be each the mere legal conclusion of the officer as to the legal effect of records in his office, and of no legal weight as evidence. Preiner v Meyer, 67 M 197, 69 NW 887.

600.18 FEDERAL CENSUS; POPULATION.

HISTORY. 1911 c. 200 s. 1; G.S. 1913 s. 8453; G.S. 1923 s. 9892; M.S. 1927 s. 9892.

The county board should accept the official returns of the federal or state census as the basis for determining whether or not redistricting is required. 1936 OAG 112, Oct. 15, 1935 (798d).

The population as shown by the certified copies filed with the secretary of state under Section 600.18 will control in determining the number of liquor stores that may be permitted in the village of Keewatin. 1940 OAG 159, May 17, 1939 (218g-13).

The population change became effective for the purposes of state laws on May 12, 1941, that being the date when the governor, pursuant to section 600.18 filed with the secretary of state a certified copy of the official 1940 census tables. 1942 OAG 332, Oct. 21, 1941 (454-E).

600.19 ABSTRACTS OF TITLE TO BE RECEIVED IN EVIDENCE.

HISTORY. 1915 c. 283 s. 1; G.S. 1923 s. 9896; M.S. 1927 s. 9896.

The decree was not recorded and does not appear on the abstract, but a lis pendens was filed for record after plaintiff was in actual possession. The defendants were not parties or privies to the decree nor did the decree in any manner affect the actual possession of plaintiff taken some months before the lis pendens was filed. Upon objection the decree was excluded. Mutual Trust v Berg, 187 M 503, 246 NW 9.

The introduction in evidence of an abstract under section 600.19 without incorporating in the settled case the instruments referred to in the abstract which are claimed to create a defect or break in the chain of title, is not effective to prove a breach of a covenant of seizin in a deed. Baker v Rodgers, 199 M 148, 271 NW 241.

600.20 MARRIAGE CERTIFICATE AND RECORD.

HISTORY. R.S. 1851 c. 66 s. 17; P.S. 1858 c. 53 s. 17; G.S. 1866 c. 73 s. 88; G.S. 1878 c. 73 s. 97; G.S. 1894 s. 5760; R.L. 1905 s. 4739; G.S. 1913 s. 8458; G.S. 1923 s. 9898; M.S. 1927 s. 9898.

Where certain evidence is, by statute, made presumptive, and there is no evidence to remove the presumption, it is not prejudicial error to decline to instruct the jury that it is only presumptive. State v Brecht, 41 M 50, 42 NW 502.

600.21 COPIES OF RECORD OF DEATH IN CERTAIN CASES.

HISTORY. 1913 c. 251 s. 1; G.S. 1913 s. 8431; G.S. 1923 s. 9870; M.S. 1927 s. 9870.

600.22 INSTRUMENTS, RECORDS THEREOF, AND COPIES.

HISTORY. R.S. 1851 c. 46 s. 26; P.S. 1858 c. 35 s. 26; G.S. 1866 c. 73 s. 87; G.S. 1878 c. 73 s. 96; G.S. 1894 s. 5759; R.L. 1905 s. 4737; G.S. 1913 s. 8456; G.S. 1923 s. 9895; M.S. 1927 s. 9895.

The certificate of acknowledgment of a deed is only prima facie evidence of the facts recited in it, and may be rebutted by parol. Dodge v Hollinshead, 6 M 25 (1).

A certified copy of the record of a deed in another state is not entitled to be recorded here. Lund v Rice, 9 M 230 (215).

Papers on record show claim of title by plaintiff sufficient to maintain action, but does not show the land to be vacant. Proof that the land is unoccupied is as necessary to maintain an action brought under the last clause, as proof of actual possession is to sustain an action brought under the first. Conklin v Hinds, 16 M 457 (411).

Where a deed of conveyance has been incorrectly recorded and the original has been lost, it is competent to prove, by parol or other competent evidence, the contents of the lost instrument, and that it was incorrectly recorded. Gaston v Merriam, 33 M 271, 22 NW 614.

The record of a deed of real estate, appearing on its face to have been properly executed and acknowledged, is evidence that the deed was in fact executed as it purports to have been done, notwithstanding the deed, by reason of extrinsic facts; be void or voidable. In the instant case evidence is sufficient to justify a finding that a husband consented to his wife's conveyance of real estate. Clague v Washburn, 42 M 371, 44 NW 130.

The deed was executed in a foreign country and acknowledged before a justice of the peace. No attempt was made in its execution or acknowledgment to comply with the statute. Although good as between the parties without these formalities, it should not, in the instant case, have been received in evidence without proof of its execution aliunde, in the absence of proper acknowledgment. Lydiard v Chute, 45 M 277, 47 NW 967.

An official certificate of acknowledgment of an indemnity bond constitutes prima facie proof of its execution. Romer v Conter, 53 M 171, 54 NW 1052.

The obligation to remove the encumbrance of the wife's contingent interest remains on the husband who has sold, and by deed with full covenants of warranty has conveyed, lands, without having his wife join in the execution of the instrument. Crowley v Nelson, 66 M 400, 69 NW 321.

600.23 REGISTERS AND CLERKS.

HISTORY. R.S. 1851 c. 95 ss. 67 to 71; P.S. 1858 c. 84 ss. 67 to 71; G.S. 1866 c. 73 ss. 61 to 65; G.S. 1878 c. 73 ss. 68 to 72; G.S. 1894 ss. 5728 to 5732; R.L. 1905

ss. 4711 to 4714; G.S. 1913 ss. 8426 to 8429; G.S. 1923 ss. 9865 to 9868; M.S. 1927 ss. 9865 to 9868.

An officer may certify that he has made diligent examination in his office, and that the entries and documents so certified by him are all the records that can be found; but no such certificate was obtained in the instant case. Preiner v Meyer, 67 M 200, 69 NW 887.

By retaining the answer in which the venue was laid in the county of the defendant's residence, and by serving a reply before the affidavit and demand were filed, the plaintiff did not waive the right to insist that a change of venue had not been effected. State ex rel v Ryberg, 169 M 260, 211 NW 11.