

CHAPTER 602

CONSTRUCTION STATUTES RELATING TO EVIDENCE

602.01 CERTAIN STATEMENTS PRESUMED TO BE FRAUDULENT.

HISTORY. 1929 c. 289 s. 4; M. Supp. s. 5687-8. 1945 s. 592 s. 1.

The effect of Laws 1929, Chapter 289, Section 4, is to create a presumption only. It does not create an issue of fact as against credible evidence. *Cosgrove v McGonagle*, 196 M 6, 264 NW 134; *Swanson v Swanson*, 196 M 293, 265 NW 39.

The court properly applied Laws 1929, Chapter 289, to a statement obtained from plaintiff the fourth day after the accident. *Vondrashek v Dignan*, 200 M 536, 274 NW 609.

The statute does not make inadmissible as evidence any statement to which it applies. All it does is to create an initial presumption of fraud. *Lestico v Kuehner*, 204 M 129, 283 NW 122.

Statement procured upon day of accident. *Aide v Taylor*, 214 M 219, 7 NW(2d) 757.

Laws 1929, Chapter 289, Section 4, does not violate Minnesota Constitution, Article 4, Section 27. *Blanton v Northern Pacific*, 215 M 443, 10 NW(2d) 382.

602.02 FACT OF MARRIAGE, HOW PROVED.

HISTORY. G.S. 1866 c. 73 s. 89; G.S. 1878 c. 73 s. 99; G.S. 1894 s. 5762; R.L. 1905 s. 4740; G.S. 1913 s. 8459; G.S. 1923 s. 9899; M.S. 1927 s. 9899.

Common law marriages prohibited Laws 1941, Chapter 459. General Statutes 1866, Chapter 73, Section 89, makes evidence of this indirect character admissible for the purpose of establishing the fact of marriage, and must, under the decisions of the Federal Supreme Court, be held to be *ex post facto* as to offenses committed prior to July 31, 1866. *State v Johnson*, 12 M 476 (378); *State v Armington*, 25 M 29.

The fact of marriage may be proved by oral testimony. *Leighton v Sheldon*, 16 M 243 (214).

It is a mutual, present consent, lawfully expressed, which constitutes a marriage. Cohabitation as husband and wife is evidence of marriage, but not conclusive. It may be rebutted by the conduct of the parties. The finding of the trial court that appellant was not the lawful wife of the decedent is sustained by the evidence. *LeSuer v LeSuer*, 122 M 407, 142 NW 593.

Where the claimant seeks to prove a common law marriage (abolished by Laws 1941, Chapter 459) by circumstantial evidence, the oral or written admissions of the other party to the alleged contract, that the marriage exists, are admissible in evidence. *Lust's Estate*, 186 M 409, 243 NW 443.

Mere cohabitation, not shown to be of matrimonial nature or intent, without more, there being no evidence of public matrimonial behavior or general matrimonial repute, is insufficient to establish fact of common law marriage. *Welkers Estate*, 196 M 450, 265 NW 273.

Common law marriage in Minnesota. 22 MLR 177, 195.

602.03 EVIDENCE OF CORPORATION OR COPARTNERSHIP.

HISTORY. 1876 c. 32 s. 3; G.S. 1878 c. 73 s. 98; G.S. 1894 s. 5761; R.L. 1905 s. 4738; G.S. 1913 s. 8457; G.S. 1923 s. 9897; M.S. 1927 s. 9897.

A contract embracing, in addition to the elements of a promissory note, contract stipulations respecting the title and possession of personal property, is not, within section 602.03, evidence of the incorporation of the plaintiff to whom such instrument was executed. *Johnston v Clark*, 30 M 308, 15 NW 252.