

## CHAPTER 603

## PROCURING EVIDENCE; INSPECTION

## 603.01 INSPECTION OF DOCUMENTS.

**HISTORY.** R.S. 1851 c. 82 s. 12; P.S. 1858 c. 72 s. 12; G.S. 1866 c. 73 s. 81; G.S. 1878 c. 73 s. 88; G.S. 1894 s. 5750; R.L. 1905 s. 4729; G.S. 1913 s. 9447; G.S. 1923 s. 9886; M.S. 1927 s. 9886.

As applied to an election contest. *O'Gorman v. Richter*, 31 M 28, 16 NW 417.

It is error in the district court to make an order requiring a party to answer written interrogatories prepared by the opposite party. *Leuthold v Fairchild*, 35 M 99, 27 NW 503, 28 NW 218.

The inspection must be directed to such evidence as may be used as evidence on the trial. If they contain hearsay, so that neither party could use them, such production or inspection is not called for. *Powell v Northern Pacific*, 46 M 249, 48 NW 907.

The jurisdiction of courts with equity powers to entertain bills of discovery has been abrogated by our civil code of procedure and the several statutes giving a party to an action the right to call his adversary as a witness, and compel the production of books and documents in his possession. *Turnbull v Crick*, 63 M 91, 65 NW 135.

An order granting or refusing an order for inspection based on this section is an appealable order. (See *Melgaard's Estate*, 187 M 632, 246 NW 478); *Harris v Richardson*, 92 M 353, 100 NW 92.

A defendant in a criminal action is not entitled to inspection of testimony furnished the county attorney by the state by the fire marshal. The purpose alleged criminal being to obtain evidence on which to base a motion to quash the indictment. *State ex rel v Steele*, 117 M 384, 135 NW 1128.

It is within the power of the court to require a party to a tax enforcement case to produce his books and papers, if they contain evidence material to the issues to be tried, but not to fish for evidence and not get information for the purpose of taxing others. *State v Minneapolis Cold Storage*, 150 M 308, 184 NW 854.

An order granting or refusing inspection of books and documents in the hands or under the control of an adverse party is not appealable (modifying *Harris v Richardson*, 92 M 353, 100 NW 92); but the order is reviewable on appeal from the judgment, or from an order denying a new trial. *Melgaard's Estate*, 187 M 632, 246 NW 478.

An order for inspection of books and papers is an intermediate order and so not reviewable by certiorari. *Asplund v Brown*, 203 M 571, 282 NW 473.

Since United States Revised Statutes, Section 724, authorizes federal courts to require production of books and papers "at the trial" of actions at law, such revision is exclusive in its application to the federal courts; and hence a federal court sitting in Minnesota could not order a production of books and papers before trial as authorized by Minnesota Revised Laws 1905, Section 4729 (section 603.01). *Kaiser v Chicago & St. Paul*, 192 F 1013.

Bill of discovery and bill of particulars. 18 MLR 889.

Power of court to allow inspection of premises before trial. 20 MLR 826.