

Nineteen Hundred Thirty-One  
Supplement

to

# Mason's Minnesota Statutes

(1927 thru 1931)

Containing the text of the acts of the 1929 and 1931 Sessions of the  
Legislature, both new and amendatory, and notes showing repeals,  
together with annotations from the various courts, state  
and federal, construing the constitution, statutes,  
charters and court rules of Minnesota



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## CHAPTER 92

## Witnesses and Evidence

## WITNESSES

## §9808. Definition.

Testimony on former trial admissible where witness absent from state. 171M216, 213NW902.

Whether collateral matters may be proved to discredit a witness is within the discretion of the trial court. 171M515, 213NW923.

The foundation for expert testimony is largely a matter within the discretion of the trial court. *Dumbeck v. C.*, 225NW111.

Where a witness is able to testify to the material facts from his own recollection, it is not prejudicial error to refuse to permit him to refer to a memorandum in order to refresh his memory. *Bullock v. N.*, 233NW858. See *Dun. State v. Novak*, 233NW309. See *Dun. Dig.* 10344a.

There was no violation of the parol evidence rule in admitting testimony to identify the party with whom defendant contracted, the written contract being ambiguous and uncertain. *Drabeck v. W.*, 234NW6. See *Dun. Dig.* 3368.

After prima facie proof that the person who negotiated the contract the defendant signed was the agent of plaintiff, evidence of such person's declarations or statements during the negotiation was admissible. *Drabeck v. W.*, 234NW6. See *Dun. Dig.* 3393.

**§9814. Examination of clergyman restricted in certain cases.**—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:

\* \* \* \*

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. Nor shall a clergyman or other minister of any religion be examined as to any communication made to him by any person seeking religious or spiritual advice, aid or comfort or his advice given thereon in the course of his professional character, without the consent of such person. (Act Apr. 18, 1931, c. 206, §1.)

\* \* \* \*

**½. In general.**

A justified disbelief in the testimony of a witness does not justify a finding of a fact to the contrary without evidence in its support. *State v. Novak*, 233NW309. See *Dun. Dig.* 10344a.

The court did not err in excluding the opinion of plaintiff's expert as to values. *Carl Lindquist & Carlson, Inc. v. J.*, 235NW267. See *Dun. Dig.* 3322.

Owner's opinion of the value of his house as it would have been if plaintiff's work had been properly done, was admissible. *Carl Lindquist & Carlson, Inc. v. J.*, 235NW267. See *Dun. Dig.* 3322(4).

**3. Subdivision 1.**

Not applicable in action by wife to set aside conveyance obtained by fraud of husband. 173M51, 216NW311.

Prohibition of this subdivision applies in actions for alienation of affections. 175M414, 221NW639.

Plaintiff in action for alienation or criminal conversation could not testify to admissions made to him by his deceased wife concerning meretricious relations with defendant, though defendant requested him to ask his wife about the matter. 177M577, 226NW195.

Husband and wife are competent to give evidence that the former is not the father of a child of the wife conceived before the dissolution of the marriage by divorce. *State v. Soyka*, 233NW300. See *Dun. Dig.* 10312.

**4. Subdivision 2.**

Volunteering information on the witness stand. 171M492, 214NW666.

On application to share in grandfather's estate on ground of unintentional omission from will, communications between testator and attorney who drew will were not privileged. 177M169, 225NW109.

**5. Subdivision 4.**

180M205, 230NW648.

**6. Subdivision 5.**

*Commercial Union Ins. Co. v. C.*, 235NW634. See *Dun. Dig.* 10315(20).

Court properly sustained objection to question asked prosecuting attorney with respect to a disclosure made to him by an accomplice of accused who testified against defendant, though proper foundation was laid for impeachment. 172M106, 214NW782.

## §9815. Accused.

**2. Cross-examination of accused.**

Statement of defendant in cross-examination that he never robbed anybody does not put his general character in issue. 181M566, 233NW307. See *Dun. Dig.* 2458.

## §9816. Examination by adverse party.

**1. Object and effect of statute.**

The record does not show that appellant had any ground for complaint because of the ruling of court denying him the right to cross-examine his co-defendant while the latter was still on the stand after cross-examination under the statute by respondent's attorney. *Lund v. O.*, 234NW310. See *Dun. Dig.* 10327.

**2. Who may be called.**

In action against railroad there was no error in permitting a district master car builder to be called by plaintiff for cross-examination, even though not occupying the same position as at the time the cause of action arose. 175M197, 220NW602.

In a proceeding for discipline and disbarment of an attorney, he may be called for cross-examination under the statute. In re *Halvorson*, 221NW907.

Defendant in default of an answer could be called under the statute. 176M108, 222NW576.

A railway section foreman held properly called for cross-examination in action against railroad. 223NW605.

Attorney involved in transaction, but not a party, held improperly called under this section. 180M104, 230NW277.

**3. In what actions or proceedings.**

Defendant in bastardy proceeding may be called and examined. *Op. Atty. Gen.*, Aug. 30, 1929.

**5. Contradiction and impeachment of witness.**

A party calling the adverse party under this section, and failing to obtain the proof sought, held not entitled to favorable decision on assumption that the testimony given was false. 178M568, 227NW896.

## §9817. Conversation with deceased or insane person.

**1. Who incompetent.**

175M549, 221NW908.

In action to enjoin barring of right of way claimed by prescription, defendant and her children had such an interest in the subject-matter that they could not testify as to conversations between plaintiff and their deceased husband and

father regarding the right of way. 171M358, 214NW49.

Plaintiff in action for alienation or criminal conversation could not testify to admissions made to him by his deceased wife concerning meretricious relations with defendant, though defendant requested him to ask his wife about the matter. 177M577, 226NW195.

In action by wife alone to enjoin foreclosure of mortgage executed by husband and wife and cancel note and mortgage for fraud, husband could testify as to a conversation with a person since deceased. 178M452, 227NW501.

New debtor arising by novation was competent to testify to conversation with deceased creditor. 180M75, 230NW468.

#### 1b. Heirs.

A beneficiary under a will may give conversations with the testator for the purpose of laying foundation to testify as to the testator's mental condition. 177M226, 225NW102.

#### 1c. Conversations between deceased and third persons.

Does not exclude testimony of husband of granddaughter and heir as to conversations with decedent. 181M217, 232NW1. See Dun. Dig. 10316.

#### 5. Waiving objection by cross-examination.

Question to plaintiff by defendant's counsel, held not to open the door so as to permit him to testify generally as to conversations with deceased. 175M27, 220NW154.

#### 7. Waiver.

Objection to competency of witness or evidence cannot be first raised on motion for new trial or on appeal. 178M452, 227NW501.

### DEPOSITIONS

#### §9832. Informalities and defects—Motion to suppress.

Suppression of deposition, held not prejudicial error. 181M217, 232NW1. See Dun. Dig. 422.

### PERPETUATION OF TESTIMONY

Act to provide for perpetuation of evidence of sales of pledged property. Laws 1931, c. 329, ante, §8359-1.

### JUDICIAL RECORDS—STATUTES, ETC.

#### §9851. Records of foreign courts.

Authenticated copy of defendant's record of conviction in another state, if under the same name, is prima facie evidence of identity. Op. Atty. Gen., Apr. 28, 1929.

#### §9853. Printed copies of statutes, etc.

Mason's Minnesota Statutes 1927 were made prima facie evidence of the laws therein contained by Laws 1929, c. 6.

When a bill has passed both houses, is enrolled twice, and the enrolled bills are directly contradictory, in one particular, and it is necessary to determine which of the two acts the legislature intended to enact, the court may examine the legislative journals to ascertain the facts. 172M306, 215NW221.

### DOCUMENTARY EVIDENCE

#### §9859. Affidavit of publication.

In action by administrator to recover purchase price of land, oral testimony offered to show that in the verbal negotiations for the sale the land was described differently from the description in the deed, was properly rejected. Kehrner v. S., 235NW386. See Dun. Dig. 3368(48).

### LOST INSTRUMENTS

#### §9871. Proof of loss.

Evidence to establish lost deed must be clear and convincing. 181M45, 231NW414.

### MISCELLANEOUS PROVISIONS

#### §9876. Account books—Loose-leaf system, etc.

Entries or memoranda made by third parties in the regular course of business under circumstances calculated to insure accurate and precluding any motive of misrepresentation, are admissible as prima facie evidence of the facts stated. It is no longer an essential of admissibility "that the witness should be somehow unavailable." 174M558, 219NW905.

A hospital chart was properly admitted as an exhibit. Lund v. O., 234NW310. See Dun. Dig. 3357(95).

Corporate minute books held sufficiently identified by the testimony of one who was the auditor and a director of the corporation. Johnson v. B., 234NW590. See Dun. Dig. 3345(16).

A letter written by one party to a contract, in confirmation of it, in performance of an undisputed term calling for such a letter, accepted without question and retained by the other party, held such an integration of the agreement as to exclude parol evidence varying or contradicting the writing. Rast v. B., 235NW372. See Dun. Dig. 3368.

#### §9877. Entries by a person deceased, admissible when.

This section adds nothing to admissibility but declares only what foundation shall be laid. 174M558, 219NW905.

#### §9887. Bills and notes.—Indorsement, etc.

Promissory note could be introduced in evidence without proof of signature. 176M254, 223NW142.

Verified general denial is insufficient to require other proof than the note itself. 180M279, 230NW785.

#### §9903. Uncorroborated evidence of accomplice.

Testimony of accomplices was sufficiently corroborated. 173M598, 218NW117.

Sufficiency of corroboration of accomplice. 176M175, 222NW906.

Where it is in fact present, it is not error to instruct that there is evidence to corroborate an accomplice. 176M175, 222NW906.

A witness is an accomplice if he himself could be convicted as a principal or accessory. One who gives a bribe is not an accomplice to the crime of receiving a bribe. 180M450, 231NW225.

Evidence held not to show that a witness was an accomplice and the court properly refused to charge as to corroboration. 181M303, 232NW335. See Dun. Dig. 2457.

Submitting to the jury as a question of fact the question whether two witnesses for the state were accomplices held not error. State v. Leuzinger, 234NW308. See Dun. Dig. 2457(9).

Evidence corroborating testimony of accomplices held sufficient to support the conviction of bank officer for larceny. State v. Leuzinger, 234NW308. See Dun. Dig. 2457(1).

#### §9905 ½.

### DECISIONS RELATING TO WITNESSES AND EVIDENCE IN GENERAL

#### Judicial notice.

It is common knowledge that standard automobiles are held for sale by dealers for schedule prices, even when old or used cars are traded in. Baltrusch v. B., 236NW924. See Dun. Dig. 3451.

#### Presumptions and burden of proof.

In action against city for flooding of basement, court properly charged that burden of proving that storm or cloud burst was an act of God or vis major was upon the defendant. National Weeklies v. J., 235NW905. See Dun. Dig. 7043.

Consumer of bread discovering a dead larva in a slice, which she did not put in her mouth,