1941 Supplement

To

Mason's Minnesota Statutes

1927

1939 to 1941

(Supplementing Mason's 1940 Supplement)

Containing the text of the acts of the 1941 Session of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with Law Review Articles and digest of all common law decisions.

Edited by
the
Publisher's
Editorial Staff

MASON PUBLISHING CO.
SAINT PAUL, MINNESOTA
1941

CHAPTER 92

Witnesses and Evidence

WITNESSES

9814. Competency of witnesses.

½. In general.

The competency, as witness, of 14 year old girl with head injuries was for trial court, and rightly defendant's psychiatrist was denied an examination of girl as to competency before being placed on the witness stand, and court accorded defendant all he was entitled to when his expert was permitted to examine girl and, in defense, give an opinion as to her competency to remember what occurred at time of attack on her mother and herself. State v. Palmer, 288NW160. See Dun. Dig. 10303.

Practice of attorneys of furnishing from their own lips and on their own oaths controlling testimony for their client is one not be condoned by judicial silence, for a lawyer occupying attitude of both witness and attorney for his client subjects his testimony to criticism if not suspicion. Stephens' Estate, 293NW90. See Dun. Dig. 10306a.

5. Subdivision 4.

In motor vehicle collision case, history given by decedent several months prior to collision, when at clinic for examination, and records there made were rightly ruled inadmissible as privileged. Ost v. U., 292NW207. See Dun. Dig. 10314.

Plaintiff as administratrix did not waive statute by a personal letter authorizing clinic to exhibit its records to insurance company which had issued policies on life of her husband wherein she as his widow was sole beneficiary. Id. See Dun. Dig. 10314.

9815. Accused.

1. In general.

Statement of prosecuting attorney in argument to the jury, that nobody had denied portions of an extra-judicial confession of defendant, held not to transgress statutory rule that there shall be no allusion to defendant's failure to testify. State v. McClain, 292NW753. See Dun. Dig. 2478.

2. Cross-examination of accused.

Where defendant testified that he had been convicted of crime but had not served time because of his having kept his probation, cross-examination as to keeping probation was proper. State v. Palmer, 288NW160. See Dun. Dig. 10307.

County attorney held not given too wide range in cross-examining defendant in respect to other offenses, brought into the case by his direct examination. Id.

9817. Conversation with deceased or insane person.

1f. Acts and transactions in general.

Statements of deceased are not admissible simply because they happen to be part of res gestae and not hearsay. Scott v. P., 290NW431. See Dun. Dig. 10316.

Since statements relevant to the issue are explicitly barred, they are inadmissible to show mental condition of speaker at moment. Id. See Dun. Dig. 10316.

2. Effect of conversation.

Insofar as deceased insured's conversation with beneficiary may have shown plans which related to presence or absence of motive for or intention of suicide, they were barred in an action by beneficiary against insurer who claimed suicide. Scott v. P., 290NW431. See Dun. Dig. 10316.

9. Statute strictly construed.

Statute is not to be evaded or its intended effect limited by construction, and is not to be strictly construed, but on contrary is to have a fair construction which will effectuate its purpose. Scott v. P., 290NW431. See Dun. Dig. 10316.

JUDICIAL RECORDS

9851. Records of foreign courts.

Presumptively Jefferson county court of common claims, Alabama, being a court of record with a seal, had jurisdiction to render judgment as shown by certificate, in absence of evidence demonstrating otherwise in action on such judgment in Minnesota. Patterson v. C., 295NW401. See Dun. Dig. 5208.

Judgment entered only on docket of court of another state would be sufficient to support action in this state if such entry constituted a sufficient judgment under laws of the foreign state. Id. See Dun. Dig. 5209.

UNIFORM JUDICIAL NOTICE OF FOREIGN LAW ACT

9852-1. Courts to take judicial notice.

Adopted in Rhode Island.

There is no presumption that a person knows the law of another state, and even courts are not required to take notice of the laws of other states under the Uniform Judicial Notice of Foreign Law Act. Daniel's Estate, 294NW465. See Dun. Dig. 3453.

9852-4. Evidence.

Notice to adverse parties that judicial notice will be requested should be rather specifically stated in pleadings or otherwise to prevent surprise. Patterson v. C., 295NW401.

Court properly took judicial notice of New York law that married woman is liable on contract of guarantee or suretyship, where notice was served on her attorneys that court would be asked to take judicial notice of such law. United Factors Corp. v. M., 16Atl(2d)(Pa)735.

9855. Statutes of other states.

Foreign laws are regarded as facts the same as other facts affecting the rights of the parties. Daniel's Estate, 294NW465. See Dun. Dig. 3789.

DOCUMENTARY EVIDENCE

9865. Deposit of papers with register or clerk.

Register of deeds is not required to receive for filing a wage assignment, and filing of such an instrument has no legal effect. Op. Atty. Gen.(373B-3), June 10, 1940.

9870. Copies of record of death in certain cases.

A certified copy of a certificate of death should contain a certification pursuant to §5366 or §9862 when presented for registration or filing. Op. Atty. Gen., (225c-1), Nov. 3, 1939.

UNIFORM BUSINESS RECORDS AS EVIDENCE ACT

9870-1. Definitions.

This act had no application to clinic records in an action tried before it went into effect. Ost v. U., 292NW 207.

9870-2. Business records as evidence.

Hospital records as evidence. Laws 1941, c. 229.

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

MISCELLANEOUS PROVISIONS

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

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

9892. Federal census—Population.

Computation of population of cities or villages for purpose of determining number of liquor licenses is governed by last official state or federal census, and no effect may be given a private census. Op. Atty. Gen., (218g-1), Feb. 6, 1940.

County should be redistricted within a reasonable time after certified copies of census of several political divisions of states are filed in office of secretary of state, if change in population requires it. Op. Atty. Gen. (56-a), July 26, 1940.

Changes in salaries due to federal census do not become effective until this section has been complied with. Op. Atty. Gen. (347-L), July 26, 1940.

Change in population does not affect salaries of officers of sub-divisions of state until certified copies of population indicated by federal census have been filed with secretary of state, except as to cities of first class. Op. Atty. Gen. (124h), Dec. 19, 1940.

Once a certified copy of population figures of a particular county are filed by director of federal census with governor of state, such county is deemed to have population disclosed by such census for purposes of determining salaries of county officers. Op. Atty. Gen., (104a-9), Jan. 24, 1941.

Population of a village is to be determined from records of last preceding census, state or federal, notwithstanding that a new business has been set up and there is actually a large increase in population. Op. Atty. Gen., (487c-3), Mar. 5, 1941.

9902. Confession, inadmissible when.

Statutory requirement of something more than defendant's confession to support conviction is satisfied when extra-judicial written confession is corroborated by judicial admission by word and conduct. State v. McClain, 292NW753. See Dun. Dig. 2462.

Defendant's appearance and statement to municipal judge, made day after his confession to county attorney, characterizing and confirming the confession, is admissible. Id.

9903. Uncorroborated evidence of accomplice.

Testimony to corroborate that of an accomplice is sufficient if it tends in some degree to establish guilt of accused. State v. Lemke, 290NW307. See Dun. Dig. 2457.

Trial court erred in submitting to jury question whether witness was an accomplice whose testimony

must be corroborated where evidence showed as matter of law that he was an accomplice, and such error was prejudicial because jury might have concluded that witness was not an accomplice and needed no corroboration. State v. Elsberg, 295NW913. See Dun. Dig. 2457.

An accountant in finance division of highway department was an accomplice as a matter of law in false auditing and payment of claims on state where he assisted in having claims approved with full knowledge that they were irregular. Id.

General test to determine whether a witness is an accomplice is whether he himself could have been indicted for the offense. Id.

While an accomplice's testimony need only be corroborated on some material facts, nevertheless, if circumstances relied upon are as consistent with innocence as with guilt, they fail to satisfy rule. Id.

Fact that jury does not believe accused's denial of guilt and considers it false does not constitute sufficient evidence of fraudulent conduct on accused's part to support evidence of accomplice or constitute additional evidence against accused. Id.

Even if an accomplice be not corroborated as to any part of his story, evidence of fraudulent conduct on part of accused, such as attempted bribery of a witness or of a juror, sufficiently support accomplice's story to satisfy statute. Id.

At common law, desirability for corroboration assumed that interest of witness in shouldering blame onto somebody else tended to impeach his reliability as a witness and made desirable a rehabilitation by means of corroboration as to some part of his story. Id.

9905. Divorce—Testimony of parties.

Testimony of cruel and inhuman treatment was corroborated by testimony of witness that he had seen black and blue marks on plaintiff on several occasions. Locksted v. L., 295NW402. See Dun. Dig. 2795.

It is unnecessary that the plaintiff be corroborated as to each item of evidence, being sufficient if evidence tends in some degree to confirm allegations relied upon for a divorce. Id.

Since purpose of statute is to prevent collusion, greater liberality is justified where divorce is fervently contested. Id.

9905½.

COMMON LAW DECISIONS RELATING TO WITNESSES AND EVIDENCE IN GENERAL

1. Judicial notice.

Sig Ellingson & Co. v. M., 286NW713. Cert. den., 60 SCR130. Reh. den., 60SCR178.

It is a matter of common knowledge that in Minnesota beet sugar factories, except for relatively small maintenance crews employed year around, are engaged in a seasonal industry. Bielke v. A., 288NW584. See Dun. Dig. 3451.

It is common knowledge that it is proper for a fireman to take a position on rear step or platform of fire truck. Anderson v. G., 288NW704. See Dun. Dig. 3451.

It is common knowledge that extensive plants equipped with various machinery to remove dust from used bags are in existence. State v. Miller, 288NW713. See Dun. Dig. 3451.

Judicial notice may be taken of fact that borrowing conditions have greatly improved during past few years. Shumaker v. H., 288NW839. See Dun. Dig. 3451.

Judicial notice will not be taken that a county has adopted a local option dog regulation statute. Olson v. P., 288NW856. See Dun. Dig. 3452.

Judicial notice can be taken that Mississippi River at Minneapolis is a navigable stream, and that city cannot use public money to alter railroad bridges to make it possible for river traffic to ply the stream following improvements made by federal government, it being the legally enforceable and uncompensable duty of railroad to alter structure pursuant to command under the police power. Bybee v. C., 292NW617. See Dun. Dig. 3459.

It is common knowledge that large amounts of alcohol may cause death. Sworski v. C., 293NW297. See Dun. Dig. 3451.

It is a matter of common knowledge that smaller enterprises are located in rural districts. Eldred v. D., 295 NW412. See Dun. Dig. 3451.

Courts take notice of fact that whiskey is an intoxicating liquor. State v. Russell, 296NW575. See Dun. Dig. 3451.

2. Presumptions and burden of proof.

All persons are held to have a certain minimum of knowledge, including scientific facts commonly known in community, and danger of electricity is so widely known and appreciated that all persons are deemed by law to have knowledge of its deadly potentialities. Peterson v. M., 288NW588. See Dun. Dig. 3440.

Presumption against suicide does not shift burden of proof. It is but a rule of law dictating decision on unopposed facts and shifting burden of going forward with evidence. Ryan v. M., 289NW557. See Dun. Dig. 3442.

One essential prerequisite to application of res ipsa loquitur is that defendant must have exclusive control of the instrumentality causing harm. Peterson v. M., 291NW705. See Dun. Dig. 7044.

There is no presumption that a person knows the law of another state, and even courts are not required to take notice of the laws of other states under the Uniform Judicial Notice of Foreign Law Act. Daniel's Estate, 294NW465. See Dun. Dig. 3786.

Presumptions and burden of proof, instructions to jury, probative weight or presumption. 24MinnLawRev651.

3. ——Death from absence.

That insured was a fugitive from justice did not effect legal presumption of death from absence of seven years in absence of proof to the contrary. Stump v. N., (CCA4), 114F(2d)214.

4. ——Suppression of evidence.

There was no misconduct in plaintiff's attorney eliciting that at defendant's request plaintiff was on three different occasions examined by a doctor selected by defendant, but that only one of the three doctors was called in as a witness. Guin v. M., 288NW716. See Dun. Dig. 3444.

5. Admissibility in general.

Evidence of custom of railroads in general with respect to attempting to couple to moving cars was admissible. Ross v. D., 207Minn157, 290NW566; 207Minn648, 291NW610. Cert. den. 61SCR9. See Dun. Dig. 6025.

5½. Insurance of party.

Evidence that plaintiff had liability insurance but did not have collision insurance is clearly inadmissible in an action to recover for property damage to plaintiff's vehicle. Lee v. O., 289NW63. See Dun. Dig. 3241.

6. Admissions.

In action for injuries in collision suffered by motorcyclist and his ward who was riding with him, it was error, so far as guardian was concerned to exclude his pleading as to how accident happened where it was inconsistent with testimony on behalf of plaintiffs, but such exclusion was not erroneous as to ward, since guardian could not make admissions affecting substantial rights of minor. Stolte v. L., (CCA8), 110F(2d)226.

In action for damages for breach of contract to give certain sales rights wherein a specific contract was alleged and sought to be established it was prejudicial error to permit proof of a subsequent agreement which in nature closely parllels an offer to settle. Foster v. B., 291NW505. See Dun. Dig. 3425.

7. Declarations.

Walsh v. U. S., (DC-Minn), 24FSupp877. App. dism'd, (CCA8), 106F(2d)1021.

8. Collateral facts, occurrences, and transactions.

In action to recover damages for breach of contract to give plaintiff certain sales rights, wherein plaintiff pleaded a specific contract, it was error to admit evidence concerning an agreement entered into after the one pleaded, which by its nature gave a strong suggestion of liability upon the contract sued upon. Foster v. B., 291NW505. See Dun. Dig. 3230.

8¾. Value.

Ordinarily the cost of an article can be shown as an item of evidence on the market value unless it is too remote in time. Hafiz v. M., 287NW677. See Dun. Dig. 3247.

Admissibility of tax assessment on question of value of farm in an action for damages for fraud in sale. Rother v. H., 294NW644. See Dun. Dig. 3247.

10. Hearsay.

Theory that ex parte statements made when not under oath or subject to cross-examination are not hearsay when party making such statements is examined with reference thereto in court has been rejected in this state. State v. Lemke, 290NW307. See Dun. Dig. 3286.

12. Documentary evidence.

It is not error to receive a writing in evidence, contents of which have been shown by testimony previously given. Rice v. N., 290NW798. See Dun. Dig. 3237.

13. Parol evidence affecting writings.

Nat'l Sur. Corp. v. Wunderlich, (CCA8)111F(2d)622, rev'g on other grounds 24FSupp640.

Parol evidence rule is not violated by proof of an oral agreement entered into subsequent to written contract. Hafiz v. M., 287NW677. See Dun. Dig. 1774, 3368, 3375.

Parol evidence is admissible as between a bank and the drawer of a check procuring its certification before delivery, that delivery of the certified check was made under a contract for a special purpose only. Gilbert v. P., 288NW153. See Dun. Dig. 977.

Where note and chattel mortgage evidencing a loan were signed in blank and were filled in in terms and figures differing from those agreed upon, parol evidence was admissible to show usury. Bearl v. E., 288NW844. See Dun. Dig. 3376.

Rule that oral testimony may not be received to vary or contradict a written instrument evidencing transaction is inapplicable where, in order to evade usury law, a certain printed form of contract is filled in by obligee in such fashion as to show no usury on its face. Midland Loan Finance Co. v. L., 296NW911. See Dun. Dig. 3403.

14. Expert and opinion testimony.

Answer of witness as to whether he could tell market value of automobile that "Yes, I could if I saw the car" was a disclaimer of ability to estimate market value without seeing car. Hafiz v. M., 287NW677. See Dun. Dig. 3322.

"Good condition" as applied to a used automobile is too vague and indefinite to be used as a standard for an opinion as to the market value of an automobile. Id.

Permitting expert to examine hospital records, but not their receipt into evidence was not error to defendant's prejudice. State v. Palmer, 288NW160. See Dun. Dig. 3340.

There was no error in permitting medical witnesses to express opinion on assumption that testimony of defendant's assistant in an abortion was true, opinion evidence not being objectionable ordinarily because it goes to ultimate issue. State v. Lemke, 290NW307. See Dun. Dig. 3326.

In prosecution for manslaughter by abortion question to medical witness as to whether he was "able to determine from the examination of this body of this girl, and the different things that you saw, as to whether in your opinion that induced abortion was necessary to save the life of this woman?" was not accurately worded, but there was no prejudicial error where, read in its context, it clearly refers to observations made by witness in course of an autopsy which had been previously detailed. Id. See Dun. Dig. 3336.

A physician as an expert may testify as to a person's physical condition, where hypothetical question eliciting his opinion is based on all facts admitted or established, or which, if controverted, might reasonably be found from evidence. Rice v. N., 290NW798. See Dun. Dig. 3337, 3338.

Proper foundation held not laid for opinion given at trial by physician to effect that defendant in malpractice case did not exercise proper skill in treating varicose veins by an injection. Simon v. L., 292NW270. See Dun. Dig. 3335.

The admission of expert testimony is largely a matter of descretion for the trial judge, and he may upon motion for a new trial decide that he abused that discretion and order a new trial on the ground of error of law occurring at the trial. Id. See Dun. Dig. 3325.

Reception of medical testimony based on part of patient's statement as to "past transactions" is not ground for reversal where facts asserted in statement were already in evidence. Ferch v. G., 292NW424. See Dun. Dig. 424.

There was not reversible error in excluding expert opinion evidence where a specialist in field was permitted to give his expert favorable opinion on the subject. Rhoads v. R., 292NW760. See Dun. Dig. 3344.

Expert testimony is not necessary to show that death resulted from drinking alcohol. Sworski v. C., 293NW 297. See Dun. Dig. 3327.

Any error which existed in overruling objection to reference by physician to a medical textbook was harmless in absence of motion to strike reference to textbook in previous answer. Wolfangel v. P., 296NW576. See Dun. Dig. 3336.

15. Nonexpert opinions and conclusions.

A plaintiff who has testified to business activities may properly state the value of lost time because of injuries sustained in an automobile accident, and loss sustained in commissions by failure of delivery of property sold on commission. Guin v. M., 288NW716. See Dun. Dig. 3322.

Owner of land may express an estimate of value without laying a foundation. Smith v. T., 291NW516. See Dun. Dig. 3322.

Testimony of witnesses that coal used in heating plant contained not less than 13,000 B.T.U. was not competent, being opinion of witnesses based exclusively on statements made to them by others and not upon any personal investigation, analysis, or experience of their own. Kavli v. L., 292NW210. See Dun. Dig. 3311.

16. Weight and sufficiency.

There is no arbitrary rule for weighing testimony of a witness, and jury should consider all of his testimony as brought out both on direct and cross-examination. Sankiewicz v. S., 296NW909. See Dun. Dig. 10343a.

Mere fact that a witness' testimony may be shaken on cross-examination does not, as a matter of law, remove from consideration of jury all testimony of such witness. Id.

16½. Examination of witnesses.

Chief purpose of cross- examination is to enable trier of facts to determine what evidence is credible and what is not, and for that purpose it is important to show relation of witness to cause and parties, his bias or interest or any other fact which may bear on his truthfulness. State v. Elijah, 289NW575. See Dun. Dig. 10348.

Where witnesses are unwilling and disclose a disposition to suppress the facts, trial court has power to facilitate examinations and aid in eliciting facts, and rulings should not be unnecessarily technical. Sworski v. S., 293NW309. See Dun. Dig. 10326.

17. Impeachment of witnesses.

Record held to sufficiently show that offer of pleading in evidence was for impeachment purposes and to show admission. Stolte v. L., (CCA8), 110F(2d)226.

Cross-examination to show illicit and other relations between a witness and prosecuting witness is a matter of right, denial of which is abuse of discretion and prejudicial. State v. Elijah, 289NW575. See Dun. Dig. 10348.

Impeached on cross-examination by reception in evidence, without objection, of witness' verified complaint in an action against both parties hereto, extent witness on redirect may explain conditions and circumstances under which verification was made is largely within discretion of trial court. Brusletten v. R., 291NW608. See Dun. Dig. 10351(80).

Impeaching testimony is negative and is admitted only for purpose of impairing credibility of witness who made a prior and inconsistent statement on same subject. Klingman v. L., 296NW528. See Dun. Dig. 10351.

In all cases where there is a fact issue for jury, truthfulness of testimony of the particular witness is to be determined upon his whole evidence as brought out both on direct and cross-examination. Id.

Court did not abuse its discretion in permitting defendant to cross-examine his own witnesses with respect to prior written inconsistent statement, on claim of surprise. Id. See Dun. Dig. 10356.