

## CHAPTER 603

## PROCURING EVIDENCE; INSPECTION

## 603.01 INSPECTION OF DOCUMENTS.

Under section 5750, G.S. 1894, the district court, in a cause commenced therein, where the summons and complaint have been served, may, for the benefit of one of the parties, in the exercise of its discretion, order a production or inspection of any paper, book, or document in the hands of his adversary, necessary for the amendment or preparation of his own pleadings, as well as to prepare for trial, after issue has been joined. An order granting or refusing such order for inspection is not appealable. *Harris v Richardson*, 92 M 353, 100 NW 92.

Where the defendant in an action for an accounting of partnership affairs applied to the court for an order permitting inspection of books of account which the plaintiff claimed had been lost, the trial court had jurisdiction to modify the order if satisfied that the books had in fact been lost. *Werring v Grimes*, 98 M 527, 106 NW 1134.

It is within the power of a 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 enable the opposite party to examine them and use information gained from them as a basis for taxing the property of third persons. *State v Minneapolis Cold Storage Co.* 150 M 209, 184 NW 854.

Where written evidence is shown to be in the possession of the accused, notice to produce the same on the trial may properly be given him as a foundation to the introduction of parol evidence of the contents thereof. *State v Chamberlain*, 152 M 401, 188 NW 1012.

This case involves the federal rules relating to pre-trial discovery practice. The district court ordered counsel for the defendant in a tort action to produce his private memoranda. The circuit court of appeals reversed the district court and in the instant case the supreme court affirmed the position of the circuit court of appeals. While the federal courts go a long way in permitting pre-trial discovery, it was held in this case that an attempt without necessity or justification to secure written statements, private memoranda, and personal recollections relating to oral statements of witnesses and similar, and prepared or formulated by an adverse party's counsel in the course of his preparation of the case, was not justified. *Hickman v Taylor*, 67 SC 385.

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

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