

CHAPTER 601

LOST INSTRUMENTS

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601.01 PROOF OF LOSS. When a party to an action is permitted to prove by his own oath the loss of any instrument, in order to admit other proof of the contents thereof, the adverse party, before the admission of such proof, may also be examined on oath to disprove such loss and to account for such instrument.

[R. L. s. 4716] (9871)

601.02 EVIDENCE OF CONTENTS OF LOST INSTRUMENTS. When it appears on the trial of an action founded upon a negotiable promissory note, bill of exchange, bond, or other instrument for the payment of money, or in which any such instrument might be allowed as a set-off or counterclaim, that such instrument was lost while it belonged to the party claiming the amount due thereon in such action, parol or other evidence of the contents thereof may be given on such trial and, notwithstanding the instrument was negotiable, such party shall be entitled to recover the amount due thereon as if it had been produced upon compliance with the provisions of section 601.03.

[R. L. s. 4717] (9872)

601.03 BOND. To entitle a party to a recovery in such case, he shall execute a bond to the adverse party before judgment is entered, in a penalty at least double the amount of such instrument, approved by the court, or, in case no trial is had, by the clerk, conditioned to indemnify the adverse party, his heirs and personal representatives, against all claims by any other person on account of such instrument, and against all costs and expenses by reason of such claims. If the statute of limitations has run against such instrument while the action is pending, and before a recovery is had thereon, the court, in its discretion, may reduce the amount of the penalty, or permit judgment to be entered without bond.

[R. L. s. 4718] (9873)

601.04 DEED OR COURT RECORDS DESTROYED; ABSTRACT OF TITLE AS EVIDENCE. When, upon the trial of any action or proceeding which is now, or hereafter may be, pending in any court in this state, any party to such action or proceeding, or his agent or attorney, shall make and file an affidavit in such cause, stating that the original of any deed or other instrument in writing or the records of any court relating to any lands, the title or any interest therein being in controversy or question in such action or proceeding, are lost or destroyed, and not within the power of such party to produce the same; and the record of such deed, instrument, or other writing has been destroyed by fire or otherwise, it shall be lawful for the court to receive as evidence in such action or proceeding, any abstract of title to such lands made in the ordinary course of business before such loss or destruction. It shall also be lawful for the court to receive as evidence any copy, extract, or minutes from such destroyed records or from the original thereof, which were, at the date of such destruction or loss, in the possession of any person then engaged in the business of making abstracts of title for others for hire.

[1905 c. 193 s. 1] (9874)

601.05 COPIES AS EVIDENCE. A sworn copy of any writing admissible under section 601.04, made by the person having possession of such writing, shall be admissible in like manner and with like effect as such writing, provided that the party desiring to use such sworn copy as evidence shall have given the opposite party a reasonable opportunity to verify the correctness of such copy.

[1905 c. 193 s. 2] (9875)