

Conversations with a party since deceased prevented the plaintiff from relating any conversations had with the decedent as to a contract to devise property to plaintiff. *Alsldorf v Svoboda*, ..... M ....., 57 NW(2d) 824.

In determining whether the evidence is sufficient to establish an agreement between husband and wife, the circumstances concerning their dealings with each other may be taken into consideration as well as the testimony of disinterested witnesses. *Peterson v Swan*, ..... M ....., 57 NW(2d) 842.

Where there was nothing in the record that the witness for the contestant to a will was an interested witness or party within the meaning of the "dead man's statute," a motion to strike all of her testimony concerning conversations with the decedent was properly denied. *Palmer's Estate*, ..... M ....., 57 NW(2d) 409.

In an action to recover balance of joint bank accounts opened by plaintiff's aunt, now deceased, in name of herself and plaintiff brought against the bank and against the person named as joint depositor in accounts subsequently opened, plaintiff was not competent to testify that the aunt, when opening the accounts in the joint name, stated to an official of the defendant bank that "she wished to give me an interest in her bank account" for the purpose of establishing a present gift. *Cashman v Mason*, 72 F Supp 487.

**595.05** Superseded by Rules of Civil Procedure, Rule 43.04.

## **595.06 CAPACITY OF WITNESS**

A "res gestae" statement must be contemporaneous with the cost or transaction of which it is a part and it is sufficient if made so soon after the act or transaction that it may fairly be regarded as a part or incident thereof. In determining whether an utterance or statement is a part of the res gestae, the trial court has a wide discretion which is not absolute. *State v Gorman*, 229 M 524, 40 NW(2d) 347.

## **CHAPTER 596**

### **SUBPOENAS**

**596.01** Superseded by Rules of Civil Procedure, Rule 45.05, to the extent applicable to district and municipal courts.

**596.02** Superseded by Rules of Civil Procedure, Rule 45.03.

**596.04** Superseded by Rules of Civil Procedure, Rule 45.06.

## **CHAPTER 597**

### **DEPOSITIONS**

**597.01** Superseded by Rules of Civil Procedure, Rules 26.01, 26.07, 28.01, 28.02, and 30.01.

Annotations relating to superseded section 597.01.

Discovery under the federal rules. 31 MLR 712.

Depositions. 31 MLR 716.

Right to a deposition on allegation of statutory ground. 34 MLR 562.

Where proper notice is served for taking a deposition de bene esse the court has no jurisdiction to restrain the taking of such deposition. Statutory grounds must exist before such a deposition may be taken, and if at the time of trial it appears that such reason did not exist the deposition may not be used. This applies where an application is made to take the deposition of a witness in litigation relating to an automobile accident, and the statutory reason given was that the witness was about to leave the state and did not intend to return to be present at the trial. *Juster v Grossman*, 229 M 280, 38 NW(2d) 832.

**597.02** Superseded by Rules of Civil Procedure, Rule 30.01.

**597.03 EXAMINATION OF WITNESS**

Depositions; examiner's right to a protective order. 35 MLR 407.

**597.04** Superseded by Rules of Civil Procedure, Rules 26.01, 28.01, 28.02, and 31.01.

**597.05** Superseded by Rules of Civil Procedure, Rules 26.01 and 31.01.

**597.06** Superseded by Rules of Civil Procedure, Rule 29.

**597.07** Superseded by Rules of Civil Procedure, Rules 30.03, 30.05, and 31.02.

**597.08** Superseded by Rules of Civil Procedure, Rules 30.05, 30.06, and 31.02.

**597.09** Superseded by Rules of Civil Procedure, Rules 30.06 and 31.02.

**597.10** Superseded by Rules of Civil Procedure, Rules 30.03 and 31.02.

**597.11** Superseded by Rules of Civil Procedure, Rules 37.02 and 45.04.

**597.12** Superseded by Rules of Civil Procedure, Rules 26.04, 26.05, and 32.03.

**597.13** Superseded by Rules of Civil Procedure, Rules 32.01, 32.02, 32.03, and 32.04.

**597.14** Superseded by Rules of Civil Procedure, Rule 30.07.

**597.15** Superseded by Rules of Civil Procedure, Rule 26.04.

**597.16** Superseded by Rules of Civil Procedure, Rule 26.04.

**CHAPTER 598**

**PERPETUATION OF TESTIMONY**

**598.01-598.03** Superseded by Rules of Civil Procedure, Rule 27.01.

**598.05-598.11** Superseded by Rules of Civil Procedure, Rule 27.01.