REVISED LAWS OF MINNESOTA 94

SUPPLEMENT 1909

CONTAINING

THE AMENDMENTS TO THE REVISED LAWS, AND OTHER LAWS OF A GENERAL AND PERMANENT NATURE, ENACTED BY THE LEGISLATURE IN 1905, 1907, AND 1909

WITH HISTORICAL AND EXPLANATORY NOTES TO PRIOR STATUTES AND FULL AND COMPLETE NOTES OF ALL APPLICABLE DECISIONS

COMPILED AND ANNOTATED BY
FRANCIS B. TIFFANY

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CHAPTER 90.

INSOLVENCY.

4628. Actions—Parties—Application of laws.

See note under section 4612.

4633. Preferred debts.

See In re Western Implement Co. (D. C.) 166 Fed. 576, cited in note under section 4618.

CHAPTER 91.

CONTEMPTS.

4640. Power to punish—Limitation.

Constructive contempt.—Under this section the power to punish for a constructive contempt is limited to a fine not exceeding $50 unless it expressly appears that the right of a party to an action or special proceeding was defeated or prejudiced thereby. State ex rel. Holland v. Miesen, 98 Minn. 19, 108 N. W. 513.

The court having found that the violation of a writ of injunction resulted in extra loss and injury to plaintiff, and was prejudicial to his rights, a fine of $250 and conditional imprisonment were not in excess of the authority conferred. Such fine and imprisonment in cases of contempt is not in contravention of the constitutional provision which prohibits excessive fines, and cruel and unusual punishment. State ex rel. Phillips v. District Court of Redwood County, 98 Minn. 136, 107 N. W. 963.

4648. Punishment.

Cited in State ex rel. Phillips v. District Court of Redwood County, 98 Minn. 136, 107 N. W. 963.

See note under section 4640.

CHAPTER 92.

WITNESSES AND EVIDENCE.

WITNESSES.

4660. Competency of witnesses.

Subd. 1.—The reception of evidence of communications between husband and wife, in apparent violation of this section, was without prejudice. White v. White, 101 Minn. 451, 112 N. W. 627.

Subd. 2.—Communications made to a clerk of an attorney at law are privileged, if made in the course of professional duties. Hilary v. Minneapolis St. R. Co., 104 Minn. 432, 116 N. W. 933.

Subd. 4.—G. S. 1894, § 5662, subd. 4, is for the protection of the patient, and he may waive it, and as a rule those who represent him after his death may also waive the privilege. Olson v. Court of Honor, 100 Minn. 117, 110 N. W. 374, 8 L. R. A. (N. S.) 521, 117 Am. St. Rep. 676. Cf. Mageau v. Great Northern R. Co., 103 Minn. 290, 115 N. W. 651, 946, 15 L. R. A. (N. S.) 511.

A party may consent that his attending physician may testify against him, but a statement made during cross-examination, without opportunity to advise with counsel and a full understanding of his legal rights, that he has no objection to the physician testifying, should not be treated as waiver which cannot be thereafter withdrawn. Ross v. Great Northern R. Co., 101 Minn. 122, 111 N. W. 951.

A physician cannot testify as to information acquired by him in attending his patient, and such privilege was not waived because plaintiff testified concerning

his condition while receiving treatment. Hilary v. Minneapolis St. R. Co., 104 Minn. 432, 116 N. W. 933.

Testimony of a physician who at one time treated plaintiff as to facts learned while attending her was properly excluded, and she had not waived the privilege by testifying as to her condition while under treatment. McAllister v. St. Paul City R. Co., 105 Minn. 1, 116 N. W. 917.

4662. Examination by adverse party.

Cited in Kelly v. Tyra, 103 Minn. 176, 114 N. W. 750, 115 N. W. 636, 17 L. R. A. (N. S.) 334.

Who may be called.—The master of a vessel owned by a corporation, with authority to direct its movements between ports, may be called as an adverse party in a suit against the corporation growing out of the navigation of the vessel. Davidson S. S. Co. v. United States, 142 Fed. 315, 73 C. C. A. 425.

Ruling allowing plaintiff to examine defendant in default, under statute, held error without prejudice. Bernick v. McClure, 119 N. W. 247.

4663. Conversation with deceased or insane person.

Who incompetent.—G. S. 1894, § 5660, was not enacted for the sole benefit of representatives of decedents. Upon a garnishee's disclosure the judgment debtor is a person interested and is prohibited from testifying on behalf of an executor for the benefit of the estate concerning conversations of the debtor with testator. Pitzl v. Winter, 96 Minn. 499, 105 N. W. 673, 5 L. R. A. (N. S.) 1009. Cf. Olson v. Court of Honor, 100 Minn. 117, 110 N. W. 374, 8 L. R. A. (N. S.) 521, 117 Am. St. Rep. 676.

A person named in a will as executor is competent, although he petitions for its probate, to testify as to the execution of the will, including what testator said relevant thereto. Geraghty v. Kilroy, 103 Minn. 286, 114 N. W. 838.

A legatee held not prohibited from testifying in support of a gift, where it was not only against her interest so to testify, but she had no direct interest in the result of the controversy adverse to the estate. Nelson v. Olson, 121 N. W. 609.

Certain evidence held not inadmissible, as relating to transactions with decedent. Peters v. Schultz, 119 N. W. 385.

Conversation with whom.—The prohibition extends to conversations or admissions of a deceased party with or to a third person in presence of the party testifying. Pederson v. Christofferson, 97 Minn. 491, 106 N. W. 958.

Testimony preserved.—The court did not err in permitting plaintiff to testify to conversations with a deceased defendant, who had testified as to such conversations on a former trial and whose testimony had been preserved. Myrick v. Purcell, 99 Minn. 457, 109 N. W. 995.

DEPOSITIONS.

4677. Deposition, how used—Objections.

Objection—Necessity for taking.—Objection to a deposition, upon the ground that the necessity for taking it is not shown to exist at the time it is offered, if not made before it is read in evidence, is waived. Schlag v. Gooding-Coxe Co., 98 Minn. 261, 108 N. W. 11.

4678. Informalities and defects—Motion to suppress.

Application in general.—Informalities and defects held not of a character to nullify the deposition, and cured by this section. Rock Island Plow Co. v. Schoening, 104 Minn. 163, 116 N. W. 356.

DOCUMENTARY EVIDENCE.

4707. Affidavit of officer of Historical Society.—When a legal notice appears in any newspaper, purporting to have been published in this state prior to the year 1900 and filed with the state historical society, the affidavit of any officer of such society, setting forth a copy of such notice, and stating that it is a true copy of the same as contained in said newspaper, and naming the place where it purports to have been published and the dates of the different issues thereof so on file containing such notice, may be recorded in the office of the register of deeds of any county in which there is real estate which may be affected by such notice; and such affidavit or record shall be prima facie evidence that the paper containing said notice was regularly published at the time and place so stated. (R. L. § 4707, as amended by Laws 1909, c. 19, § 1.)

4710. Instruments acknowledged—Evidence.

Proof of execution.—A duly acknowledged deed, with the proper certificate indorsed thereon, in possession of and produced by a party claiming under it, is prima facie evidence, not only that it was signed by the grantor, but that it was delivered. Tucker v. Helgren, 102 Minn. 382, 113 N. W. 912.

See note under section 4730.

LOST INSTRUMENTS.

4717. Evidence of contents of lost bill, etc.

Check.—The owner of a check, which was lost without his fault before presentment to the bank, may recover against the drawer upon filing a proper bond. First Nat. Bank of Belle Plaine v. McConnell, 103 Minn. 340, 114 N. W. 1129, 14 L. R. A. (N. S.) 616, 123 Am. St. Rep. 336.

4718. Bond to be given, when.

Cited and applied in First Nat. Bank of Belle Plaine v. McConnell, 103 Minn. 340, 114 N. W. 1129, 14 L. R. A. (N. S.) 616, 123 Am. St. Rep. 336.

See note under section 4717.

[4718—]1. Deed or court records destroyed, etc.—Abstract of title, etc., as evidence.—Whenever, 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. And 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. ('05 c. 193 § 1)

Historical.—"An act to authorize the reception as evidence, in actions where the title to land is in controversy, of abstracts of title and abstractor's data or minutes, or sworn copies thereof, when public records have been lost or destroyed and the original instruments cannot be produced." Approved April 15, 1905.

[4718—]2. Same—Copies as evidence.—A sworn copy of any writing admissible under section 1[4718—1] of this act, 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. ('05 c. 193 § 2)

MISCELLANEOUS PROVISIONS.

4719. Account books—Loose-leaf system, etc.—Whenever a party in any cause or proceeding shall produce at the trial his account books, and prove that the same are his account books kept for that purpose, that they contain the original entries for moneys paid, goods or other articles delivered, services performed or material furnished; that such entries were made at the time of the transactions therein entered; that they are in his handwriting or that of a person authorized to make charges in said books, and are just and true to the best knowledge and belief of the person making the proof, such books, subject to all just exceptions as to their credibility, shall be received as prima facie evidence of the charges therein

contained. If any book has marks which show that the items have been transferred to a ledger, it shall not be received unless the ledger is produced. Provided, that the entry of charges or credits, involving money, goods, chattels or services furnished or received, when the furnishing or receipt thereof constitutes a part of the usual course of business of the person on whose behalf such entry is made, shall be received as evidence tending to prove the fact of the furnishing or receiving of such moneys, goods, chattels or services, whether the same be contained in an account book, or in a so-called loose-leaf, card or similar system of keeping accounts, and whether the same be made by handwriting, typewriting or other similar means, if it shall appear that such entry was made by a duly authorized person contemporaneously with the transaction therein referred to, as a part of the general system of accounts of the person on whose behalf the entry is made, and that the same is made in the usual and ordinary course of said business. (R. L. § 4719, as amended by Laws 1909, c. 251, § 1.)

Cited in Deatherage v. Petruschke, 106 Minn. 20, 118 N. W. 153.

4722. Letter press copies.

Carbon copies—Duplicate originals.—The different impressions of a writing produced by placing carbon paper between sheets and writing upon the exposed surface are duplicate originals, and either may be introduced in evidence without accounting for the nonproduction of the other. International Harvester Co. v. Elfstrom, 101 Minn. 263, 112 N. W. 252, 12 L. R. A. (N. S.) 343, 118 Am. St. Rep. 626.

4730. Bills and notes—Indorsement—Signature to instruments presumed.

Indorsement.—Cited and applied in Mullen v. Jones, 102 Minn. 72, 112 N. W. 1048.

Execution.—This section does not qualify the effect of an acknowledgment under section 4710 as prima facie evidence of execution. Tucker v. Helgren, 102 Minn. 382, 113 N. W. 912.

See note under section 4710.

—— **Sufficiency of denial.**—This section applies to instruments purporting to be executed by corporations. A denial by attorney upon information and belief of the signature or execution of an instrument purporting to be executed by a corporation is not a denial upon oath or affidavit. La Plant v. Pratt-Ford Greenhouse Co., 102 Minn. 93, 112 N. W. 889.

4731. Indorsement of money received.

Indorsement of payment.—An indorsement of payment on a negotiable instrument is in the nature of a receipt, not of a contract. It may be contradicted or explained by parol. McCaffery v. Burkhardt, 97 Minn. 1, 105 N. W. 971, 114 Am. St. Rep. 688.

Cited in Atwood v. Lammers, 97 Minn. 214, 106 N. W. 310.

4744. Uncorroborated evidence of accomplice.

Accomplice.—The test to determine whether a witness is or is not an "accomplice" is: Could he himself have been indicted for the offense, as principal or accessory? State v. Gordon, 105 Minn. 217, 117 N. W. 483.

Corroborating evidence—Sufficiency.—The corroborating evidence is sufficient if, independently of the testimony of the accomplice, it tends in some degree to establish the guilt of accused. It need not be sufficient, standing alone, to make out a prima facie case. State v. Whitman, 103 Minn. 92, 114 N. W. 363.