

No. 884, A.]

[Published June 25, 1907.]

CHAPTER 368.

AN ACT to amend section 762 of the statutes, providing for a system of tract indices in counties having a population of one hundred fifty thousand or more.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. Section 762 of the statutes is amended to read:

* * * * *

Approved June 24, 1907.

(In effect July 1, 1907.)

No. 780, A.]

[Published June 25, 1907.]

CHAPTER 369.

AN ACT to amend section 4096 of the statutes, concerning examinations of parties before trial.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. Section 4096 of the statutes is amended to read:

* * * * *

Approved June 24, 1907.

(In effect July 1, 1907.)

pose may be compelled, in the same manner and subject to the same rules for examination as any other witness, to testify; but the party calling for such examination shall not be concluded thereby and may rebut the evidence given thereon by counter or impeaching testimony.

(Ch. 271, 1907.)

Corporation witnesses concerning decedents and insane.

SECTION 4069. * * * *No person or stockholder, officer or trustee of a corporation in his or its own behalf or interest * * * nor any person, stockholder, officer or trustee of a corporation from, through or under whom a party derives his interest or title, shall be examined as a witness in respect to any transaction or communication by him personally with a deceased person or with a person then insane, in any civil action or proceeding in which the opposite party derives his title, or sustains his liability, to the cause of action from, through or under such deceased person or such insane person or in which such insane person is a party prosecuting or defending by guardian unless such opposite party shall first be examined or examine some other witness in his behalf concerning some transaction or communication between the deceased or insane and such party or person, or unless the testimony of such deceased person given in his lifetime or of such insane person be first read or given in evidence by the opposite party, and then, in either case respectively, only in respect to such transaction or communication of which testimony is so given or to the matters to which such testimony relates.*

(Ch. 197, 1907.)

Examinations before trial: production of papers, power to compel. SECTION 4096. *1. No action to obtain a discovery under oath, in aid of prosecution or defense of another action, shall be allowed; but the examination of the party, his or its assignor, agent or employe, or, in case a private corporation be a party, in addition to the foregoing, the examination of the president, secretary or other principal officer of such corporation, or of the person who was such president, secretary, officer, agent or employe, at the time of the occurrence of the facts made the subject of the examination, otherwise than as a witness on a trial, may be taken by deposition at the instance of the adverse party in any action or proceeding, at any time after the commencement thereof and before judgment.*

2. Such deposition shall be taken before a judge at chambers or a court commissioner on a previous notice to such party and any other adverse party or their respective attorneys or at least five days; or it may be taken without the state in the manner provided for taking other depositions.

3. The attendance of the party to be examined, and the production of all papers, books, files, records, things and matters in the possession of such party, his or its assignors, officers, agents or employes, relevant to the controversy, may be compelled upon subpoena and the payment or tender of his fees as a witness.

4. Such examination shall be subject to the same rules as that of any other witness, but he shall not be compelled to disclose anything not relevant to the controversy.

5. If such examination shall be taken before issue joined the notice of taking the same shall be accompanied by an affidavit of the party, his agent or attorney, stating the general nature and object of the action, that discovery is sought to enable the party to plead and the points upon which such discovery is desired, and such examination shall be limited to the discovery of the facts relevant to such points unless the court or the presiding judge thereof, on motion and one day's notice, shall before the examination is begun, by order further limit the subjects to which it shall extend; but such examination shall not preclude the right to another examination after issue joined upon all the issues in the cause, and the party examining shall, in all cases, be allowed to examine upon oral interrogatories.

6. Such examinations shall not be compelled in any other county than that in which the party to be examined resides; provided, that whenever plaintiff or defendant is a non-resident of this state his deposition may be had under the provisions of this section in the county in which the action is pending, if he can be personally served with notice and subpoena in such county.

7. In case a foreign corporation is a party, the examination of its president, secretary, other principal officer, assignor or agent or employe, or the person who was such, or either of them at the time of the occurrence of the facts made the subject of the examination, may be had under the provisions of this section in this state, in the county in which the action may be pending or in which it was originally brought, if such officer or agent can there be personally served with notice for taking such deposition and a subpoena to attend such examination.

8. In any examination under these provisions the judge or commissioner before whom the same is had may compel the party examined to answer all questions relevant to the issues involved and also compel the production by him of books and papers relevant and pertinent to the issues and may enforce such answers and the production of such books and papers by contempt proceedings.

9. Whenever a party shall be examined and his deposition taken under the provisions of this section the party taking such examination and the party examined, or their counsel, may stipulate upon the record before the judge or court commissioner before whom the examination is had, that the reading of the deposition to or by the deponent and his signature thereto are waived by consent, and that the deposition may be used with the same force and effect as if read over and signed; and in cases where such stipulation is made the said examination or deposition may be used in the action in which the same is taken and in any other action or proceeding in that or in any other court where it could have been used if read over and signed, with the same force and effect in all respects as if the deponent had read and signed the same.

10. In all cases where the reading and signature shall not be waived as aforesaid, the said deposition shall be read over to or by the deponent and signed by him before the officer before whom the same was taken, and the attendance of the party examined for the purpose of reading and signing said deposition may be compelled in the same manner as his attendance for the purpose of submitting to such examination may now be compelled by law.

It shall in all cases be delivered or transmitted by the officer before whom taken to the clerk of the court, magistrate or other person before whom the action or proceeding is pending securely sealed, and shall remain sealed until opened by the court or clerk thereof or such magistrate or other person.

(Ch. 369, 1907.)

Taking of depositions: if opposite party fails to appear, proceedings. SECTION 4102. Such deposition may be taken, within the territory within which he is authorized to act, by a justice of the peace, notary public, court commissioner or other person authorized by law to take depositions at any time after the action or proceeding is commenced or after a submission to arbitration. Notice in writing shall be given to the adverse party, his attorney or agent, that the deposition of