CHAPTER 327.

DOCUMENTARY AND RECORD EVIDENCE.

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327.01 Publication by state as evidence of laws. Books, pamphlets and other documents purporting to be printed by the state as copies of its statutes, legislative acts and resolves, or as copies of the journals of the senate and assembly, are prima facie evidence that they are such publication as they purport to be, and are correct copies of such statutes, acts, resolutions and journals, respectively; and such printed journals of said houses, respectively, are prima facie evidence of their proceedings.

Note: In an action for causing death, receiving mortality tables in evidence on the question of damages was not error. Whether the court should take judicial notice of the contents of such tables and instruct the jury with reference thereto as a matter of law, not decided, Schaefer v. Rambo, 208 W 421, 243 NW 204.

327.02 Statutes of United States and other states. Books, pamphlets and other documents purporting to be printed by the United States or any state or territory thereof as copies of its statutes, congressional or legislative acts and resolutions, or if commonly admitted and read as evidence in their courts, are presumptive evidence of such statutes, acts and resolutions.

327.03 Copies certified by state librarian; fees. Matter contained in any book or pamphlet in the state library, purporting to be a copy of the opinion of any court, or of any statute, law, act or resolution of any state, territory, the United States, or any foreign country, certified by the state librarian, is prima facie evidence of the contents of such opinion, statute, law, act or resolution. The fee for such certification is the same as that provided for similar certification by the clerk of the supreme court.

327.04 Municipal ordinances, judicial notice. Matter printed in any newspaper, book, pamphlet, or other form purporting to be so published by any city or village in this state as a copy of its ordinance, by-law, resolution or regulation, is prima facie evidence thereof; and after three years from the date of such publication, such book or pamphlet shall be conclusive proof of the regularity of the adoption and publication of the ordinance, by-law, resolution or regulation.

327.05 Common law of sister states. The unwritten or common law of any state or territory of the United States may be proved by parol evidence, and by the books of reports of cases adjudged in its courts.

327.06 Alien laws. Foreign laws may be proved by parol evidence; but if it shall appear that the law in question is contained in a written statute or code the court may reject any evidence of such law that is not accompanied by a copy thereof.

327.07 Court records and copies. The original records, papers and files in or concerning any action or proceeding of any nature or description in any court of the state, being produced by the legal custodian thereof, shall be receivable in evidence whenever relevant; and a certified copy thereof shall be received with like effect as the original.

327.08 Copies, how certified, presumptions. (1) Whenever a certified copy is allowed by law to be evidence, such copy shall be certified by the legal custodian of the original to have been compared by him with the original, and to be a true copy thereof or a correct transcript therefrom, or to be a photograph of the original; such certificate must be under his official seal or under the seal of the court, public body or board, whose custodian he is, when he or it is required to have or keep such seal.

(2) The secretaries of the Wisconsin state boards and commissions and the chief clerk of the state land office, shall be deemed, for the purposes of this section and section 327.09, the legal custodians of the files and records of their respective boards, commissions and

land office, except that the director, or, in his absence, the deputy director of the conservation commission shall be deemed the legal custodian of the files and records of said commission.

(3) Any certificate purporting to be signed, or signed and sealed, as authorized by law, shall be presumptive evidence that it was signed by the proper officer, and if sealed, that it has the proper seal affixed, except when the law requires an additional certificate of genuineness.

(4) The seal need not be affixed to a copy of a rule or order made by a court, or of any paper filed therein, when such copy is used in the same court or before any officer thereof. [*1937 c. 154*]

Note: Testimony of the official custodian that photostatic copies of corporate reports filed in a sister state had been compared with the originals and were true and correct copies, constituted such copies sworn copies and rendered them competent, without authentication by official certificates in compliance with this section and 327.18, or section 906, U. S. Rev. Stats.; but such copies of other such reports were not competent in the absence of such testimony. Jesse v. Tinkham, 207 W 49, 239 NW 455.

327.09 Certification of nonfiling. (1) Whenever any officer to whom the legal custody of any document belongs, shall certify (under his official seal, if he have any) that he has made diligent examination in his office for such document, and that it cannot be found or that the same had not been filed or recorded in his office, such certificate shall be presumptive evidence of the fact so certified.

(2) The certificate of the legal custodian of the records of any public licensing officer, board or body that he has made diligent examination of the files and records of his office and that he can find no record of a license issued to a named person or that none has been issued to such person, specifying the kind of license in question, shall be evidence that none has been issued. [*Supreme Court Order, effective Jan. 1, 1937*]

Note: In proceeding to establish claim against decedent's estate for price of corporate stock, where claimant contended that form of contract involved had been recommended by securities division of public service commission, testimony of chief examiner for such division tending to show that commission had not approved form for contract in suit held competent. Estate of Leedom, 218 W 534, 259 NW 721, 261 NW 683.

327.10 Official certificates, etc. When a public officer is required or authorized by law to make a certificate or affidavit touching an act performed by him or to a fact ascertained by him in the course of his official duty and to file or deposit it in a public office such certificate or affidavit when so filed or deposited shall be received as presumptive evidence of the facts therein stated unless its effect is declared by some special provision of law.

Note: The official return and certificate of an officer making a search under a search warrant is presumptive evidence of the facts therein stated. A recital in a return that liquor found was intoxicating was competent evidence. State v. Bliven, 202 W 323, 232 NW 539.

327.11 Reporter's transcript as evidence. Any writing certified by the official reporter of any court to have been carefully compared by him with his minutes of testimony and proceedings taken on any trial or hearing in such court, and to be a true and correct transcript of all or a specified portion of such minutes, and to be a correct statement of the evidence and proceedings had on such trial or hearing, shall be received in evidence with the same effect as the oral testimony of such reporter to the facts so certified.

327.12 [*Repealed by 1927 c. 523 s. 72*]

327.13 Transcript of justice's records. A certified transcript from the original records, papers and files in or concerning any action or proceeding in justice court shall not be admissible in evidence outside of the county, unless there shall be affixed a certificate of the clerk of the circuit court of the county, under seal, that the person who certified the transcript was, at the date thereof, a justice of the peace of the county, or other person having legal custody of the books and papers; and if the judgment was rendered by another, that such other was, at the date of the rendition of the judgment, a justice of the peace of the county.

327.14 Proof of unrecorded proceedings before justice. The proceedings in any cause had before a justice, not reduced to writing by said justice, nor being the contents of any paper or document produced before such justice, and the contents of any such paper or document as shall have been lost or destroyed, may be proved by the oath of the justice.

327.15 Proceedings of other courts as evidence. The records and judicial proceedings of any court of the United States, or of any state or territory or district thereof and of any foreign country, and copies thereof, shall be admissible in evidence in all cases in this state when authenticated or certified in the manner directed by sections 327.07 and 327.08 or by acts of congress, or the laws of such state, territory or district, or of such foreign country.

327.16 Judgment of foreign justice. A certified copy of the record of the judicial proceedings of any foreign court not of record with a certificate of magistracy affixed,

signed and sealed by the clerk of a court of record in the county or district where such proceedings were had, shall be admissible in evidence in all cases.

327.17 Conveyances and record thereof. Every instrument entitled by law to be recorded or filed in the office of a register of deeds, and the record thereof and a certified copy of any such record or of any such filed instrument, is admissible in evidence without further proof thereof, and the record and copies shall have like effect with the original.

327.18 Official records. (1) AS EVIDENCE. Every official record, report or certificate made by any public officer, pursuant to law, is evidence of the facts which are therein stated and which are required or permitted to be by such officer recorded, reported or certified, except that the record by the county clerk of license or certificate under section 147.02, 147.14, 147.23, 153.05 [Stats. 1941] or 154.04 shall not be evidence on behalf of the licensee or certificate holder without production of the license or certificate or competent evidence from the board or body that issued the same.

(2) COPIES AS EVIDENCE. A certified copy of any written or printed matter preserved pursuant to law in any public office or with any public officer in this state, or of the United States, is admissible in evidence whenever and wherever the original is admissible, and with like effect.

(3) COPIES, DUTY TO MAKE. Any such officer of this state who, when tendered the legal fee therefor and requested to furnish such certified copy, shall unreasonably refuse to comply with such request, shall forfeit not less than twenty nor more than one hundred dollars, one-half to the person prosecuting therefor. [*Supreme Court Order, effective Jan. 1, 1937*]

Note: County judge is legal custodian of records of county court and must furnish certified copies of such records upon tender of legal fee therefor, but such fee may not be retained by him. 21 Atty. Gen. 549.

Under this section board of medical examiners need not furnish original or certified copies of examination papers. 22 Atty. Gen. 419.

327.19 Pedigree recitals in deeds and wills. Any deed, mortgage, land contract or other conveyance that has been duly recorded in the proper register's office for twenty years, and any will that has been admitted to probate, containing a recital in respect to pedigree, consanguinity, marriage, celibacy, adoption or descent, and being in other respects admissible in evidence, shall be admitted as prima facie evidence that the recital is true.

327.20 [*Renumbered section 235.47 by 1927 c. 523 s. 80*]

327.21 [*Renumbered section 269.57 by Supreme Court Order, effective Jan. 1, 1934*]

327.22 Demand to admit documents, facts; costs. (1) Any party to any action may, by notice in writing served upon a party or his attorney at any time after an issue of fact is joined and not later than ten days before the trial, call upon such other party to admit or refuse to admit in writing:

(a) The existence, due execution, correctness, validity, signing, sending or receiving of any document, or,

(b) The existence of any specific fact or facts material in the action and stated in the notice.

(2) Such admission if made shall be taken as conclusive evidence against the party making it, but only for that particular action and in favor of the party giving the notice; it shall not be used against him in any other action or proceeding or on any other occasion, and shall not be received in evidence in any other action or trial.

(3) If the party receiving such notice fails to comply therewith within five days after such service the facts therein stated shall be taken to be admitted.

(4) In case of refusal to make such admission, the reasonable expense of proving any fact or document mentioned in the notice and not so admitted shall be determined by the court at the trial and taxed as costs in any event against the party so notified, unless the court is satisfied the refusal was reasonable.

(5) The court may allow the party making any such admission to withdraw or amend it upon such terms as may be just, and may, for good cause shown, relieve a party from the consequences of a default. [*Supreme Court Order, effective Sept. 1, 1931; Supreme Court Order, effective Jan. 1, 1940*]

Note: This section and 328.25 are complementary to each other. Estate of Dick, 204 W 89, 235 NW 401.

327.23 Acknowledged writings, evidence. Every written instrument, except promissory notes and bills of exchange, and wills, may be proved or acknowledged in the manner now provided by law for taking the proof or acknowledgment of conveyances of real estate and when so proved and acknowledged shall be competent evidence whenever it is relevant. Any instrument, which is attested but which is not required by law to be witnessed, may be proved as though there were no attesting witness thereto.

327.24 Account books, loose leaf system. Whenever a party in any action or proceeding shall produce at the trial his account books, and prove that the same are his account books kept in due course of his business, that they contain the original entries for moneys, paid or received, property delivered or furnished or services performed; that such entries were made contemporaneously with the transactions therein entered; that they are in his handwriting or that of a person or persons authorized to make charges or give credits in said books, and are just and true to the best knowledge and belief of the person making the proof, such books shall be received as prima facie evidence of the entries contained therein. If any book has marks which show that the entries have been transferred to a ledger, the entries shall not be received unless the ledger is produced, or its nonproduction is excused by the court. The entry of charges or credits, involving money, property 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 prima facie evidence of the furnishing or receiving of such moneys, property or services, whether the same be contained in an account book, or in a loose leaf, card or similar system of keeping accounts, and whether the same be made by handwriting, typewriting or similar means, if it shall appear that such entry was made by a duly authorized person or persons 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. [*1933 c. 190 s. 36; Supreme Court Order, effective Jan. 1, 1936*]

Note: Permitting witnesses to refresh their recollection from account-book entries was proper regardless of the amounts, it appearing that the books were not offered in evidence as independent testimony and therefore were not subject to the five-dollar item limitation. That the entries were in the handwriting of a party's clerk or bookkeeper did not prevent them from being read as a record of such party's past recollection notwithstanding he had no present recollection. (Sec. 327.24, Stats. 1931). Dahl v. H. C. Crook R. Co., 208 W 506, 243 NW 426.

Under sec. 327.24 (1), Stats. 1933, requiring verification of books of account as "just," entries sworn to be "correct" by the bookkeeper who made or directed them are held to have been properly received in evidence, as against the contention that there was no evidence that the entries were "just." Blumer Brewing Corp. v. Mayer, 223 W 540, 269 NW 693.

327.25 Entries in the usual course of business. Entries on account books, cards, sales slips, loose leaf sheets or in a book or other permanent form (including those mentioned in sections 327.24 and 328.24) in the usual course of business, contemporaneous with the transactions to which they relate and as part of or connected with such transactions, made by persons authorized to make the same, may be received in evidence when shown to have been so made upon the testimony either of the person who made the same, or if he be beyond the jurisdiction of the court or insane, of any person having custody of the entries, and testifying that the same were made by a person authorized to make them in whose handwriting they are, and that they are true and correct to the best of his knowledge and belief. In case such entries are, in the usual course of the business, also made in other books and papers as a part of the system of keeping a record of such transactions, it shall not be necessary to produce all of the persons who were engaged in the making of such entries; but before such entries are admitted the court shall be satisfied that they are genuine and in other respects within the provisions of this section. This section shall apply to all entries made in the regular course of business whether or not they are the records of one of the parties to the action or relate to transactions between such parties and whether or not the party against whom they are used had any knowledge of or acquiesced in the making of such entries and in criminal as well as in civil cases or proceedings. [*1939 c. 481*]

Note: In an action against a bank for conversion of bonds admitting a notation on a scrap of paper, showing no connection with the bonds in question, which paper was found in the files of the company with whom the cashier dealt, was prejudicial error. Markgraf v. Columbia Bank of Lodi, 203 W 429, 233 NW 782.

327.26 Comparison of writing. Comparison of a disputed writing with any writing proved to the satisfaction of the court to be the genuine handwriting of any person claimed on the trial to have made or executed the disputed writing, shall be permitted to be made by witnesses, and such writings and evidence respecting them may be submitted to the court or jury.

327.27 Recovery on lost note. (1) In any action or defense founded upon any negotiable promissory note or bill of exchange, if it appear on the trial that such note or bill was lost or was destroyed without the owner's fault, while it belonged to the party claiming the amount due thereon, parol or other evidence of its contents may be given on such trial; such party shall be entitled to recover or set-off the amount due thereon as if such note or bill had been produced.

(2) But to entitle a party to such recovery he shall execute a bond to the adverse party in a penalty at least double the amount of such note or bill, with two sureties to be approved

by the trial court, conditioned to indemnify the adverse party, his heirs and personal representatives against all claims by any other person on account of such note or bill and against all costs and expenses by reason of such claim.

Note: 327.27 (1) and (2) are applicable whether the plaintiff is a holder in due course under 116.57 or a holder other than in due course under 116.63, and 327.27 (2) is mandatory, but such a bond need not be continued in force beyond the statutory period of limitations from the date of the last credit on the note. Goerlinger v. Juetten, 237 W 543, 297 NW 361.

327.28 Proof of age. The county court of any county may upon application and satisfactory proof made, make an order or judgment determining the age, place of birth, and parentage of any resident of the county. Such order or judgment or a certified copy thereof, when recorded in the office of the register of deeds shall be prima facie evidence of the facts therein stated. [*1937 c. 420; 1941 c. 118*]

Note: Order under this section, determining age of resident of county, should be recorded in volumes designated "miscellaneous" and then returned to party recording it. 26 Atty. Gen. 470.