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CHAPTER 3

RECORDS AND OTHER DOCUMENTS

SUBCHAPTER I

GENERAL PROVISIONS

§ 351. Testimony of deceased subscribing witness or magistrate

When the testimony of a subscribing witness to a deed or of the magistrate who took the acknowledgment thereof has been taken in the trial of any civil action in relation to the execution, delivery or registry of such deed, and such witness has since died, proof of such former testimony is admissible in the trial of any other civil action involving the same question if the parties are the same or if one of the parties is the same and the adverse party acted as agent or attorney for the adverse party in the former action, but such testimony may be impeached like the testimony of a living witness.

R.S.1954, c. 113, § 152; 1961, c. 317, § 378.

§ 352. Writings dated Sunday

No deed, contract, receipt or other instrument in writing is void because dated on the Lord's Day without other proof than the date of its having been made and delivered on that day.

R.S.1954, c. 113, § 153.

§ 353. Avoidance of Lord's Day contracts; restoration of consideration; torts on Lord's Day

No person who receives a valuable consideration for a contract, express or implied, made on the Lord's Day shall defend any action upon such contract on the ground that it was so made until he restores such consideration; nor shall Title 17, chapter 105 relating to the observance of the Lord's Day affect in any way the rights or remedy of either party in any action for a tort or injury suffered on that day.

R.S.1954, c. 113, § 154.

§ 354. Proof of signature

The signature to an attested instrument or writing, except a will, may be proved in the same manner as if it were not attested.

R.S.1954, c. 113, § 131.

§ 355. Affidavit of plaintiff as prima facie evidence

In all actions brought on an itemized account annexed to the complaint, the affidavit of the plaintiff, made before a notary public using a seal, that the account on which the action is brought is a true statement of the indebtedness existing between the parties to the action with all proper credits given and that the prices or items charged therein are just and reasonable shall be prima facie evidence of the truth of the statement made in such affidavit and shall entitle the plaintiff to the judgment unless rebutted by competent and sufficient evidence. When the plaintiff is a corporation, the affidavit may be made by its president, secretary or treasurer. If the said affidavit be made without the State before a notary public using a seal, a certificate of a clerk of a court of record or by a deputy or assistant clerk of the same with the seal of said court attached thereto stating that said notary public is duly authorized to act as such and to administer oaths shall be prima facie evidence of the authority of said notary public to act and to administer an oath and that the signature of said notary affixed thereto is genuine.

R.S.1954, c. 113, § 132; 1959, c. 317, § 191.

§ 356. Accounts admissible though hearsay or self serving

An entry in an account kept in a book or by a card system or by any other system of keeping accounts shall not be inadmissible

in any civil proceeding as evidence of the facts therein stated because it is transcribed or because it is hearsay or self-serving, if the court finds that the entry was made in good faith in the regular course of business and before the beginning of the civil proceeding. The court in its discretion, before admitting such entry in evidence, may, to such extent as it deems practicable or desirable but to no greater extent than the law required before June 30, 1933, require the party offering the same to produce and offer in evidence the original entry, writing, document or account from which the entry offered or the facts therein stated were transcribed or taken, and to call as his witness any person who made the entry offered or the original or any other entry, writing, document or account from which the entry offered or the facts therein stated were transcribed or taken or who has personal knowledge of the facts stated in the entry offered.

R.S.1954, c. 113, § 133.

SUBCHAPTER II

JUDICIAL NOTICE

Sec.
401. Construction to effectuate purpose.
402. Common law and statutes.
403. Information for court.
404. Determination of laws by court is reviewable.
405. Admissibility of laws of other jurisdictions.
406. Laws of foreign countries.

§ 401. Construction to effectuate purpose

This subchapter shall be so interpreted and construed as to effectuate their general purpose to make uniform the law of those states which enact them and may be cited as the "Uniform Judicial Notice of Foreign Law Act."

R.S.1954, c. 113, § 140.

§ 402. Common law and statutes

Every court of this State shall take judicial notice of the common law and statutes of every state, territory and other jurisdiction of the United States.

R.S.1954, c. 113, § 135.

§ 403. Information for court

The court may inform itself of such laws in such manner as it may deem proper and the court may call upon counsel to aid it in obtaining such information.

R.S.1954, c. 113, § 136.

§ 404. Determination of laws by court is reviewable

The determination of such laws shall be made by the court and not by the jury and shall be reviewable.

R.S.1954, c. 113, § 137.

§ 405. Admissibility of laws of other jurisdictions

Any party may present to the trial court any admissible evidence of such laws, but to enable a party to offer evidence of the law in another jurisdiction or to ask that judicial notice be taken thereof, reasonable notice shall be given to the adverse parties, if any, either in the pleadings or otherwise.

R.S.1954, c. 113, § 138.

§ 406. Laws of foreign countries

The law of a jurisdiction other than those referred to in section 402 shall be an issue for the court but shall not be subject to sections 402 to 405, concerning judicial notice.

R.S.1954, c. 113, § 139.

SUBCHAPTER III

PUBLIC RECORDS

Sec.

§ 451. Court records as evidence

The records and proceedings of any court of the United States or of any state, authenticated by the attestation of the clerk or officer having charge thereof and by the seal of such court, are evidence.

R.S.1954, c. 113, § 134.

§ 452. Admissibility; attested copies of deeds

In all actions touching the realty or in which the title to real estate is material to the issue, and where original deeds would be admissible, attested copies of such deeds from the registry may be used in evidence without proof of their execution when the party offering such copy is not a grantee in the deed, nor claims as heir, nor justifies as servant of the grantee or his heirs.

R.S.1954, c. 113, § 142.

§ 453. —Copied records of deeds

Copies made from any portion of either of the volumes of the early records in the York County registry of deeds published by the authority of the Legislature and placed in each registry, when attested by any register of deeds having lawful custody of such printed volume, and records duplicated from originals or from copies of originals in any registry of deeds and filed in such registry of deeds or in any other registry of deeds by authority of law and copies made from such records when attested by the register of deeds of the county or district where such records are filed, may be used in evidence like attested copies of the original records.

R.S.1954, c. 113, § 143.

§ 454. —Photostats of public records

Copies made by photographic process from public records shall be received as evidence in the courts of this State under existing laws if duly attested by the officials required by law to keep said records.

R.S.1954, c. 113, § 144.

§ 455. Authorization of photostats

Whenever any officer or employee of the State or of any county, city or town is required or authorized by law, or other-

wise, to record or copy any document, plat, paper or instrument in writing, he may do such recording or copying by any photostatic, photographic or other mechanical process which produces a clear, accurate and permanent copy or reproduction of the original document, plat, paper or instrument in writing.

R.S.1954, c. 113, § 145.

§ 456. Photostatic and microfilm reproductions admissible

If, in the regular course of any business or governmental activity, there is kept or recorded any memorandum, writing, entry, print, representation or combination thereof, of any act, transaction, occurrence or event, and in the regular course of any such business or governmental activity, causes any or all of the same to be recorded, copied or reproduced by any photographic, photostatic, microfilm, micro-card, miniature photographic or other process which accurately reproduces or forms a durable medium for so reproducing the original, such reproduction or copy, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of such reproduction or copy is likewise admissible in evidence if the original reproduction or copy is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement or facsimile does not preclude admission of the original. This section shall not be construed to exclude from evidence any document or copy thereof which is otherwise admissible under the rules of evidence.

R.S.1954, c. 113, § 146; 1955, c. 264; 1963, c. 429.

§ 457. Copies of consular and customhouse records and documents

Copies of papers and documents belonging to, or filed or remaining in the office of any consul, vice-consul or commercial agent of the United States and of official entries in the books or records of such office, when certified under the hand and official seal of the proper consul, vice-consul or commercial agent are evidence. Copies of registers or enrollments of vessels, or of any other customhouse records or documents deposited in the office of the collector of customs, attested by him or his deputy, under seal of office, may be used in evidence and shall have the same effect as the production of the records in court, verified by the recording officer in person.

R.S.1954, c. 113, § 147.

§ 458. Copies of deeds of Forest Commissioner

A copy from the records in the office of the Forest Commissioner of a deed from the State of the land of the State, or of a deed from the State and from the Commonwealth of Massachusetts of the undivided lands of the State and of said Commonwealth, or a deed from said Commonwealth of the lands of said Commonwealth in Maine, certified by the Forest Commissioner or other legal custodian of such records as a true copy thereof, may be filed and recorded in the registry of deeds in the county or registry district where the land lies, with the same effect as if the deed itself had been recorded, whether said deed shall or not have been acknowledged by the agent or other person making the same. Such record shall have all the force and effect of a record of deeds duly acknowledged, and certified copies thereof from such registry shall be evidence when the original would be.

R.S.1954, c. 36, § 6.

§ 459. Adjutant General's certificate as evidence

The certificate of the Adjutant General relating to the enlistment of any person from this State in the United States' service and of all facts pertaining to the situation of such person, to the time of and including his discharge, as found upon the records of his office, are prima facie evidence of the facts so certified in any civil action or proceeding.

R.S.1954, c. 113, § 148; 1961, c. 317, § 377.

§ 460. Proof of official record

An official record or an entry therein, when admissible for any purpose in any civil or criminal case, may be evidenced by a document purporting to be an official publication thereof, or by a copy attested as a correct copy by a person purporting to be an officer or a deputy of an officer having the legal custody of the record. If the office in which the record is kept is without the State, the copy shall be accompanied by a certificate that such officer or deputy has the custody of the record, which certificate shall be made as follows:

1. By judge of court of record. By a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court;

2. By public officer; seal of the court. By any public officer having a seal of office and having official duties in the district or

political subdivision in which the record is kept, authenticated by the seal of the court; or

3. By public officer; seal of his office. By any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office.

If the office in which the record is kept is in a foreign state or country, the certificate may be made by a secretary of embassy or legation, consul general, consul, vice-consul, or consular agent or by any officer in the foreign service of the United States stationed in a foreign state or country in which the record is kept, and authenticated by the seal of his office.

R.S.1954, c. 113, § 149; 1959, c. 317, § 192.

§ 461. Proof of lack of record

A written statement signed by a person purporting to be an officer or a deputy of an officer, having the official custody of specified official records, that he has made diligent search of the records of the office and has found therein no record or entry of a specified tenor, is admissible as evidence that the records of his office contain no such record or entry, provided that where the record is kept without the State, the statement shall be accompanied by a certificate as provided in section 460.

R.S.1954, c. 113, § 150; 1959, c. 317, § 193.

§ 462. Scope of proof

Sections 460 and 461 shall not prevent the proof of official records or of entry or lack of entry therein by any method authorized by any applicable statute, or by the rules of evidence at common law.

R.S.1954, c. 113, § 151.

SUBCHAPTER IV

STATUTES AND LAW

Sec.
501. Proof of foreign laws and unwritten state law.

§ 501. Proof of foreign laws and unwritten state law

Foreign laws may be proved by parol evidence, but when such law appears to be existing in a written statute or code, it

may be rejected unless accompanied by a copy thereof. The unwritten law of any other state or territory of the United States may be proved by parol evidence and by books of reports of cases adjudged in their courts.

Reference to the citation of such cases shall be deemed to incorporate them in the record. The determination of such law shall be for the court on all the evidence.

R.S.1954, c. 113, § 141.

SUBCHAPTER V

DEPOSITIONS

§ 551. Use of depositions

In trials before probate courts, arbitrators, referees under Title 14, chapter 303, and county commissioners, depositions may, upon order of the tribunal before which the matter is pending and on good cause shown, be taken and used in the manner provided by rule for depositions in the Superior Court. Depositions or affidavits may be taken in applications for pensions, bounties or arrears of pay under any law of the United States.

R.S.1954, c. 117, § 1; 1959, c. 317, § 251.

§ 552. Recording of deposition and other papers

Any deposition to perpetuate testimony taken before action or pending appeal together with the verified petition therefor and certificate of the officer before whom it was taken shall, within 90 days after the taking, be recorded in the registry of deeds in the county where the land or any part of it lies, if the deposition relates to real estate; if not, in the county where the parties or any of them reside.

R.S.1954, c. 117, § 24; 1959, c. 317, § 253.

§ 553. Deposition by compulsion

When a magistrate, duly authorized, has summoned a person before him to give his deposition or affidavit in any case authorized by this subchapter pending in this or any other state, the summons has been served and returned by a proper officer or other person, and proof thereof is entered on the summons, and legal fees have been tendered him a reasonable time before the day appointed for taking the deposition and he refuses to attend, the magistrate may adjourn the time of taking his deposition and issue a capias, directed to a proper officer, to apprehend and bring such person before him. If at the time of the adjournment he is not apprehended, the magistrate may adjourn from time to time until he is brought before him. If he then refuses to depose and answer such questions as are propounded to him by either of the parties or persons interested, under his direction, the magistrate may commit him to the county jail for contempt, as a court may commit a witness for refusing to testify. The capias may be served by the sheriff, deputy sheriff or any constable of the county in which such person resides. If he escapes into another county, either of said officers may arrest him there and bring him before said magistrate.

R.S.1954, c. 117, § 29.

§ 554. Stenographers with power to take depositions

The Governor with the advice and consent of the Council may, upon the written recommendation of any Justice of the Superior Court, appoint competent stenographers as commissioners to take depositions in all cases and disclosures of trustees, who shall hold office for 4 years. They may act throughout the State and shall have and exercise the same powers in taking depositions and disclosures of trustees as are exercised and possessed by justices of the peace.

R.S.1954, c. 117, § 30.

§ 555. Manner of taking depositions and disclosures

Depositions and disclosures of trustees may be taken by such commissioners stenographically by the consent of the parties to the action or proceeding, and their notes shall be transcribed in full by questions and answers and read to the deponent or trustee and signed by him. If the deponent or trustee in writing waives such reading, the transcript shall be admissible as his deposition or disclosure without his signature. No change of or

addition to the transcript shall be made by the deponent or trustee except in the presence of the counsel who attested the taking of the deposition. The commissioner shall state the facts in his certificate as to reading, signature or waiver and what, if any, changes or additions were made.

R.S.1954, c. 117, § 31; 1961, c. 317, § 409.

§ 556. Fees of commissioners

Commissioners shall receive the same fees for travel, swearing witnesses and notifying parties and deponents as are received by justices of the peace and, in addition thereto, 20¢ a page for their transcripts.

R.S.1954, c. 117, § 32.

§ 557. Testimony of party out of State

When a party to a civil action resides without the State or is absent therefrom during the pendency of the action and the opposite party desires his testimony, a commission under the rules of court may issue to take his deposition. Such nonresident or absent party, upon such notice to him or his attorney of record in the action of the time and place appointed for taking his deposition, as the court orders, shall appear and give his deposition. If he refuses or unreasonably delays to do so, the action may be dismissed or defaulted by order of court unless his attorney admits the affidavit of the party desiring his testimony as to what the absent party would say, if present, to be used as testimony in the case.

R.S.1954, c. 113, § 117; 1961, c. 317, § 374.