Revisor's Note, 1927: The change of "and" to "or" and "their" to "its" makes it clearer that the power is granted to each board, severally, not to all of them jointly. The matter of subpoenas is fully covered by section 325.01. The reference to section 326.09 is ambiguous and is unnecessary. The conduct of the proceeding is sufficiently covered by section 326.21. The law is unchanged. [Bill 10-S, s. 54]

887.24 History: R. S. 1849 c. 98 s. 48; R. S. 1858 c. 137 s. 48; R. S. 1878 s. 4109; Stats. 1898 s. 4109; 1917 c. 163; 1917 c. 677 s. 16; Stats. 1925 s. 326.24; 1927 c. 523 s. 55; 1965 c. 66 s. 2; Stats. 1965 s. 887.24.

887.25 History: 1917 c. 176; Stats. 1917 s. 4109a; Stats. 1925 s. 326.25; 1927 c. 523 s. 56; 1933 c. 48 s. 1; 1965 c. 66 s. 2; Stats. 1965 s. 887.25.

887.26 History: R. S. 1849 c. 88 s. 73; R. S. 1849 c. 98 s. 25, 26, 94; R. S. 1858 c. 120 s. 72; R. S. 1858 c. 133 s. 10; R. S. 1858 c. 137 s. 25, 26, 102; 1867 c. 73 s. 1; 1867 c. 94 s. 1; 1872 c. 68; 1874 c. 196; 1876 c. 40; 1877 c. 72 s. 2; R. S. 1878 s. 4110, 4111, 4112, 4113, 4114, 4115, 4116; Stats. 1898 s. 4110, 4111, 4112, 4113, 4114, 4115, 4116; 1899 c. 351 s. 46; 1905 c. 237 s. 2; Supl. 1906 s. 4112; Stats. 1925 s. 326.26; 1927 c. 523 s. 57; Court Rule XVII s. 5, 6, 7; Sup. Ct. Order, 212 W xx; Sup. Ct. Order, 229 W ix; 1965 c. 66 s. 2; Stats. 1965 s. 887.26; 1967 c. 276 s. 39; 1969 c. 87.

Legislative Council Note, 1969: Section 887.26 refers to depositions taken outside the state. This amendment makes no change in the law since fees allowed municipal justices presently refer to s. 252.17. [Bill 9-A]

A commission to take testimony in a foreign state may issue, by consent, without naming the commissioner. Carlyle v. Plumer, 11 W 96.

The form of certificate prescribed by sec. 4106 must be used under sec. 4112, R. S. 1878. Hayes v. Frey, 54 W 503, 11 NW 695.

It is a substantial compliance with the statute if the residences of the witnesses are given in the notice accompanying the interrogatories. Semmens v. Walters, 55 W 675, 13 NW 889.

A deposition taken by a notary without the state need not be authenticated by a certificate of his official character. Sleep v. Heymann, 57 W 495, 16 NW 17.

If a party elects to take the deposition of his witness out of the state on commission and written interrogatories the adverse party cannot cross-examine the witness orally. Neeves v. Gregory, 86 W 319, 56 NW 909.

887.27 History: R. S. 1849 c. 98 s. 29 to 33; R. S. 1858 c. 137 s. 29 to 33; R. S. 1878 s. 4117, 4118, 4119, 4120, 4121; Stats. 1898 s. 4117, 4118, 4119, 4120, 4121; 1901 c. 14 s. 1; Supl. 1906 s. 4119a; 1911 c. 663 s. 452; Stats. 1925 s. 326.27; 1927 c. 523 s. 58; 1961 c. 622; 1965 c. 66 s. 2; Stats. 1965 s. 887.27.

Revisor's Note, 1927: Subsection (6) was enacted under a misapprehension of the law. The provisions as to a court commissioner added nothing to the law, section 269.29; all mention of such officer may be omitted. The only reason for its inclusion is that it may save misconstruction of the section. Section 326.29 expressly applies to proceedings as well as to actions. Such is believed to be the intent of section 326.27; hence the insertion of the words "or proceedings" in subsection (5). This harmonizes the two sections.

The provision for subpoenaing the witness is derived from section 325.22, which is repealed, section 47 of this bill. [Bill 10-S, s. 58]

See note to 274.33, on orders not appealable under 274.33 (2), citing Sioux L. Co. v. Ewing, 148 W 600, 135 NW 130.

326.27 cannot be used as a means of conducting an adverse examination of one not a party nor the agent or servant of a party to a prospective action. Application of Duveneck, 13 W (2d) 88, 108 NW (2d) 113.

887.28 History: R. S. 1849 c. 98 s. 35 to 41; R. S. 1858 c. 137 s. 35 to 41; R. S. 1878 s. 4123, 4124, 4125, 4126, 4127, 4128, 4129; Stats. 1898 s. 4123, 4124, 4125, 4126, 4127, 4128, 4129; Stats. 1925 s. 326.28; 1927 c. 523 s. 59; 1965 c. 66 s. 2; Stats. 1965 s. 887.28.

A proceeding to perpetuate the testimony of a witness living without the state is not precluded by the fact that the applicant might immediately begin an action to quiet title and take his deposition in the action. Sioux L. Co. v. Ewing, 165 W 40, 160 NW 1059.

887.29 History: R. S. 1849 c. 98 s. 43 to 47; R. S. 1858 c. 137 s. 43 to 47; R. S. 1878 s. 4130, 4131, 4132, 4133, 4134; Stats. 1898 s. 4130, 4131, 4132, 4133, 4134; Stats. 1925 s. 326.29; 1927 c. 523 s. 60; 1965 c. 66 s. 2; Stats. 1965 s. 887.29.

Revisor's Note, 1927: It was decided in Sioux L. Co. v. Ewing, 148 W 600, 135 NW 130, that the order for recording the deposition must be made upon notice of motion. The law is not changed. [Bill 10-S, s. 60]

A proceeding for the perpetuation of testimony as against all persons is not an action, and a mere prospective witness whose testimony is sought cannot be made or considered a party thereto who, as such, can be subjected to an adverse examination under 326.12. Sova v. Ries, 226 W 53, 276 NW 111.

CHAPTER 889.

Documentary and Record Evidence.

Editor's Note: The sections comprising this chapter were not assigned decimal numbers by ch. 4, Laws 1925, but were renumbered by the Revisor in 1925 under his general authority.

889.01 History: R. S. 1849 c. 98 s. 53; R. S. 1858 c. 137 s. 62; 1878 c. 4; R.S. 1878 s. 4135; Ann. Stats. 1889 s. 4135; Stats. 1898 s. 4135; Stats. 1925 s. 327.01; 1927 c. 523 s. 62; 1953 c. 445; 1965 c. 66 s. 2; Stats. 1965 s. 889.01.

Revisor's Note, 1927: The real purpose of this section was to provide a handy and inexpensive mode of proving what are or have been our statutes, legislative acts, and proceedings of our senate and assembly. But the section, as it now reads, refers to "the printed copies of all statutes," etc. Therefore when a judge or lawyer wishes to make use of this

section he must first be sure that he has a "printed copy." The language of the section furnishes no guide for this first step. What it attempted, as a short cut, was the making of publications purporting to be published by the state prima facie evidence of what they purport to be. That was the whole purpose. But the strict grammar of the section requires that a person first provide himself with something that is truly a correct copy, and not until then, can he make use of the declaration that it is a true copy. These comments are supported by the form and language of subsection (1) of section 327.02. [Bill 10-S, s. 62]

Editor's Note: In Shipman v. State, 42 W 377, which was decided prior to the adoption of ch. 4, Laws 1878, and sec. 4135, R. S. 1878, the supreme court indicated that it could not take judicial notice of matters appearing in a legislative journal.

On legislative journals see notes to sec. 10, art. IV; on publication of statute law see notes to sec. 21, art. VII; and on publication of rules see notes to 227.025.

Ch. 237, Laws 1864, authorizing a town to purchase a bridge, is a public act, of which the courts take judicial notice without its being pleaded or proven. Castello v. Landwehr, 28 W 522.

Where the journal of one house of the legislature shows that bills named were read a third time it is satisfactory evidence of that fact. Bound v. Wisconsin C. R. Co. 45 W 543.

Sec. 4135, R. S. 1878, providing that the printed copies of the statutes shall be *sufficient* evidence thereof, does not make them conclusive evidence that a statute therein contained was enacted. Meracle v. Down, 64 W 323, 25 NW 412.

See note to 270.49, on excessive or inadequate damages, citing Donlea v. Carpenter, 21 W (2d) 390, 124 NW (2d) 305.

See note to sec. 1, art. IV, on legislative power generally, citing Case v. Kelly, 133 US 21.

889.02 History: R. S. 1849 c. 6 s. 1; R. S. 1858 c. 137 s. 63; R. S. 1878 s. 4136; Stats. 1898 s. 4136; 1899 c. 351 s. 47; Supl. 1906 s. 4136; Stats. 1925 s. 327.02; 1927 c. 523 s. 63; 1953 c. 445; 1965 c. 66 s. 2; Stats. 1965 s. 889.02.

If foreign laws have not been offered in evidence the court cannot consider them. References made thereto in the argument of counsel do not amount to an offer and admission of them in evidence. Slaughter v. Bernards, 88 W 111, 59 NW 576.

Statutes of Minnesota compiled and published by private parties but containing an act which declared them to be competent evidence in courts of that state, are competent under sec. 4136, Stats. 1898. Hollister v. McCord, 111 W 538, 87 NW 475.

When a foreign law is offered in evidence from a book and such evidence is sought to be made a part of the bill of exceptions, it is necessary that the bill of exceptions show by accurate description the book containing the written law so offered, and also refer to the particular act of the legislature, chapter and sections of the statute. Where this is done it is not necessary to copy the foreign law in the bill of exceptions. Where neither method is pursued the supreme court cannot examine such foreign law. Christiansen v. Kriesel, 133 W 508, 113 NW 980.

889.03 History: R. S. 1849 c. 6 s. 1; R. S. 1858 c. 137 s. 63; R. S. 1878 s. 4136; Stats. 1898 s. 4136; 1899 c. 351 s. 47; Supl. 1906 s. 4136; Stats. 1925 s. 327.03; 1927 c. 523 s. 64; 1965 c. 66 s. 2; Stats. 1965 s. 889.03.

889.04 History: 1872 c. 188 s. 75; R. S. 1878 s. 4137; 1897 c. 97; Stats. 1898 s. 4137; 1921 c. 390; Stats. 1925 s. 327.04; 1927 c. 523 s. 65; 1945 c. 139; 1965 c. 66 s. 2; Stats. 1965 s. 889.04.

Where a copy of a village ordinance is not properly certified it may be objected to on that ground. Its admission against general objection is not error. The rule is otherwise if there is no proof that the ordinance was published as required by the charter. Petit v. May, 34 W 666.

Evidence introduced that the county clerk did not have the zoning map in question on file in his office, did not establish that the same was not properly attached to the zoning ordinance when enacted, and was insufficient to rebut the prima facie presumption raised by 327.04, Stats. 1949. Evidence introduced that the county clerk found no proof of publication of the zoning ordinance in question did not establish that the ordinance and amendments thereto were never published, and failed to rebut the prima facie presumption of due publication raised by 327.04. Jefferson County v. Timmel, 261 W 39, 51 NW (2d) 518.

In an action by a county to restrain the defendant from using his premises for purposes in violation of a county zoning ordinance, a printed pamphlet, introduced by the county, and containing on the cover thereof the title of the zoning ordinance and the names and titles of the chairman of the county board and the county clerk, was sufficient to indicate that the pamphlet purported to be published by the county so as to make the printed pamphlet prima facie evidence of the county zoning ordinance and building-permit ordinance printed therein, and of an attached zoning map as part of the zoning ordinance, and was likewise prima facie evidence of the publication of such ordinances. When a pamphlet purporting to be published by a county and containing county ordinances is received in evidence, the pamphlet is prima facie evidence of ordinances duly adopted and properly signed by the chairman and the clerk of the county board, and it is not necessary that such signatures be reproduced or printed in the pamphlet as part of such ordinances. Jefferson County v. Timmel, 261 W 39, 51 NW (2d) 518.

889.05 History: R. S. 1849 c. 98 s. 55; R. S. 1858 c. 137 s. 64; R. S. 1878 s. 4138; Stats. 1898 s. 4138; Stats. 1925 s. 327.05; 1927 c. 523 s. 66; 1965 c. 66 s. 2; Stats. 1965 s. 889.05.

889.06 History: R. S. 1849 c. 98 s. 56; R. S. 1858 c. 137 s. 65; R. S. 1878 s. 4139; Stats. 1898 s. 4139; Stats. 1925 s. 327.06; 1927 c. 523 s. 67; 1965 c. 66 s. 2; Stats. 1965 s. 889.06.

889.07 History: R. S. 1849 c. 10 s. 140; R. S. 1849 c. 66 s. 38; R. S. 1849 c. 85 s. 2, 3; R. S.

1858 c. 13 s. 159; R. S. 1858 c. 97 s. 38; R. S. 1858 c. 117 s. 2, 3; R. S. 1878 s. 4140; Stats. 1898 s. 4140; Stats. 1925 s. 327.07; 1927 c. 523 s. 68; 1965 c. 66 s. 2; Stats. 1965 s. 889.07.

In an action on an administration bond a certified copy of an order by the probate court was evidence to show a breach of the bond, without producing a record of prior proceedings to show the court's jurisdiction to make such order. Elwell v. Prescott, 38 W 274.

A judgment of acquittal in a criminal prosecution is admissible in evidence in a suit for malicious prosecution to show that prosecution has terminated. Winn v. Peckham, 42 W 493.

Minutes of testimony written by a stenographer on a preliminary examination before a magistrate and testimony written by a stenographer at the time of examination of witnesses before a coroner's jury and not by the direction of the magistrate, and not signed by the witnesses, is not admissible as evidence in a subsequent trial as records. Rounds v. State, 57 W 45, 14 NW 865.

A letter written by the clerk of the court, reciting that certain judgments were still unsatisfied of record, was incompetent to prove the facts recited, it not being a copy of the record or properly certified. Bitof v. Hoppe, 186 W 409, 202 NW 699.

889.08 History: R. S. 1849 c. 98 s. 66, 67; R. S. 1858 c. 137 s. 71, 72; R. S. 1878 s. 4149, 4150; Stats. 1898 s. 4149, 4150, 4972 (13); 1899 c. 351 s. 48; Supl. 1906 s. 4149; 1915 c. 245; 1923 c. 350 s. 3; Stats. 1923 s. 4149, 4150, 4971 (40); 1925 c. 4; Stats. 1925 s. 327.08, 370.01 (40); 1927 c. 523 s. 69; 1937 c. 154; 1951 c. 261 s. 4; 1951 c. 619; Stats. 1951 s. 327.08; 1965 c. 66 s. 2; Stats. 1965 s. 889.08.

A copy of the certificate of sale under an execution filed by the sheriff with the register of deeds and certified by the latter is evidence of the sale though not acknowledged by the sheriff. Knowlton v. Ray, 4 W 288.

Each document or record must be certified to separately. Newell v. Smith, 38 W 39. The officer certifying must state that it has been compared by him with the original. Stevens v. Clark County, 43 W 36.

The recital of a consideration in a certified copy of an assignment of a mortgage, which certificate substantially complied with 327.08, is open to explanation by parol proof, which may show that the consideration was never in fact paid. Estate of Carlin, 190 W 133, 208 NW 988.

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 327.08 and 327.18; 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.

889.09 History: R. S. 1849 c. 98 s. 73; R. S. 1858 c. 137 s. 78; R. S. 1878 s. 4163; 1879 c. 20; Ann. Stats. 1889 s. 4151a, 4163; Stats. 1898 s. 4163; 1907 c. 276; Stats. 1925 s. 327.09; 1927 c. 523 s. 70; Sup. Ct. Order, 221 W vi; 1965 c. 66 s. 2; Stats. 1965 s. 889.09.

Sec. 4163, Stats. 1898, does not preclude a witness from testifying as to a search made in public records. State ex rel. Leonard v. Rosenthal, 123 W 442, 102 NW 49.

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

889.10 History: R. S. 1878 s. 4164; Stats. 1898 s. 4164; Stats. 1925 s. 327.10; 1965 c. 66 s. 2; Stats. 1965 s. 889.10.

Revisers' Note, 1878: A new section, taken from section 922 of the revision of New York Code, enacted in 1877.

See note to 889.18, citing Vogel v. Delaware, L. & W. R. Co. 168 W 567, 171 NW 198.

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.

889.11 History: R. S. 1878 s. 4141; Stats. 1898 s. 4141; Stats. 1925 s. 327.11; 1927 c. 523 s. 71; 1965 c. 66 s. 2; Stats. 1965 s. 889.11.

Where the evidence taken at a former trial was not certified as required by sec. 4141, Stats. 1898, and no proof was made of the facts required to be certified, but the reporter testified that the transcript was a correct copy made by him of the notes of the testimony, it was inadmissible. Wells v. Chase, 126 W 202, 105 NW 799.

In a proper case the testimony given at a former trial, as preserved in the bill of exceptions, may be admitted in evidence. Howard v. Beldenville L. Co. 134 W 644, 114 NW 1114.

889.13 History: R. S. 1849 c. 98 s. 87, 88; R. S. 1858 c. 137 s. 95, 96; R. S. 1878 s. 4143; Stats. 1898 s. 4143; Stats. 1925 s. 327.13; 1927 c. 523 s. 73; 1965 c. 66 s. 2; Stats. 1965 s. 889.13; 1967 c. 276 ss. 39, 40.

Where the justice's record shows an adjournment of the cause to a certain day at his office and that the cause was called at the specified time, but does not state where it was called, it must be presumed that it was called at his office. The record imports verity even upon matters going to the jurisdiction, notwithstanding contrary statements in the return. Cassidy v. Millerick, 52 W 379, 9 NW 165.

889.14 History: R. S. 1849 c. 98 s. 89; R. S. 1858 c. 137 s. 97; R. S. 1878 s. 4144; Stats. 1898 s. 4144; Stats. 1925 s. 327.14; 1927 c. 523 s. 74; 1965 c. 66 s. 2; Stats. 1965 s. 889.14.

Minutes of testimony taken on a trial before a justice are not admissible either generally or to impeach or sustain a witness. Zitske v. Goldberg, 38 W 216.

889.15 History: R. S. 1849 c. 98 s. 52; R. S.

1858 c. 137 s. 61; R. S. 1878 s. 4145; Stats. 1898 s. 4145; 1911 c. 180; Stats. 1925 s. 327.15; 1927 c. 523 s. 75; 1929 c. 262 s. 23; 1965 c. 66 s. 2; Stats. 1965 s. 889.15.

Where a seal is annexed to a certificate of the judge instead of that of the clerk the copy is not admissible. Kirschner v. State, 9 W 140.

Where a copy offered is not authenticated according to an act of congress it must be certified to have been compared with the original and to be a correct transcript therefrom, and have the officer's seal attached, if he have one. Hackett v. Bonnell, 16 W 471.

A foreign record certified in accordance with the provisions of federal statutes is admissible in evidence in this state although not certified in the manner required by our statutes. (In re Box's Will, 127 W 264, 106 NW 1063, overruled insofar as it conflicts with this doctrine.) Halfhill v. Malick, 145 W 200, 129 NW 1086.

889.16 History: R. S. 1849 c. 98 s. 61; R. S. 1858 c. 137 s. 66; 1870 c. 5 s. 1; R. S. 1878 s. 4146, 4147; Stats. 1898 s. 4146, 4147; Stats. 1925 s. 327.16; 1927 c. 523 s. 76; 1965 c. 66 s. 2; Stats. 1965 s. 889.16.

Revisers' Note, 1878: Section 1, chapter 5, 1870, condensed by reference to preceding sections. It is of course to be observed that there may be, under the constitution of the United States, a different effect given to the judgments of courts in the states of the Union from that which is given foreign judgments. Hence the expression is retained, limiting expressly the effect of the evidence so as to be presumptive only. It may be, perhaps, held that such is the effect of the proof authorized by the two preceding sections. The difference is between the effects of the judgment, when established, rather than between the effects of the proofs to establish.

Revisor's Note, 1927: Section 327.16 is rewritten for brevity and greater clearness. The form of authentication or certification is amply covered by section 327.08. There is not change in substance intended. [Bill 10-S, s. 76]

889.17 History: R. S. 1849 c. 10 s. 126; R. S. 1849 c. 98 s. 85; R. S. 1858 c. 13 s. 145; R. S. 1858 c. 86 s. 27, 31; R. S. 1858 c. 137 s. 92; 1869 c. 40 s. 2; R. S. 1878 s. 4156; Stats. 1898 s. 4156; Stats. 1925 s. 327.17; 1927 c. 523 s. 77; 1965 c. 66 s. 2; Stats. 1965 s. 889.17.

A patent which on its face appears to have been regularly issued will be presumed to have been signed and executed according to law until the contrary shall be made to appear. Parkinson v. Bracken, 1 Pin. 174.

Properly recorded tax deeds, regularly executed, acknowledged and certified, are receivable in evidence, notwithstanding absence of facsimile of original impression of official seal. Putney v. Cutler, 54 W 66, 11 NW 437.

Where there was nothing in the register's record to show the existence of a seal upon the original deed, it was not admissible in evidence although the certificate stated that a seal had been attached. Peters v. Reichenbach, 114 W 209, 90 NW 184.

The evidence in this case was sufficient to contradict the statement in the acknowledgment of a deed. Larson v. Pederson, 115 W 191, 91 NW 659.

The presumption created by sec. 4156 is not conclusive. A mortgagee may show that a recorded release is a forgery and void. But if the original document is lost the rule of strict proof will be relaxed, and the presumption is further weakened where the acknowledging officer acted fraudulently. And if the release was not a forgery, but its execution was procured of the mortgagee by fraud, it was voidable, and not void, and as between the mortgagee and an innocent purchaser of the premises equity favors the latter where there was some negligence on the part of the former contributing to the recording of the fraudulent release. Seidl v. Paulu, 174 W 403, 183 NW 246.

Where an original release of a mortgage, entitled to record and recorded, had been destroyed, the presumption of its genuineness under 327.17, Stats. 1925, arising from the recording can only be overcome by clear and convincing proof, unless the acknowledging officer has been guilty of fraud, a crime, or a gross irregularity. Mergener v. Fuhr, 189 W 571, 208 NW 267.

889.18 History: R. S. 1849 c. 12 s. 65; R. S. 1849 c. 52 s. 65; R. S. 1849 c. 59 s. 26; 1856 c. 30 s. 1; R. S. 1858 c. 13 s. 159; R. S. 1858 c. 15 s. 74; R. S. 1858 c. 44 s. 3; R. S. 1858 c. 70 s. 65; R. S. 1858 c. 86 s. 31; R. S. 1858 c. 110 s. 14; R. S. 1858 c. 137 s. 104; 1864 c. 316 s. 1; 1867 c. 11 s. 1; 1867 c. 129 s. 14; 1872 c. 188 s. 38; R. S. 1878 s. 4148, 4151; 1879 c. 20; Ann. Stats. 1889 s. 4151a; Stats. 1898 s. 4148, 4151, 4151a; 1919 c. 679 s. 104; Stats. 1925 s. 327.18; 1927 c. 523 s. 78; Sup. Ct. Order, 221 W vi; 1957 c. 313; 1965 c. 66 s. 2; Stats. 1965 s. 889.18; 1969 c. 55; 1969 c. 336 s. 176.

Revisers' Note, 1878: Written so as to permit any document, paper or record in legal custody to be admitted on certificate of the legal custodian, including papers and documents in offices of the United States. This does not, of course, exclude the common-law mode of authentication by oath, but is a more convenient course of proof generally, and seems open to no more objection when applied to one class of officers than to another. It is the habit of the legislature to declare it in almost every new act touching papers in any office, and a single comprehensive section enables the omission of numerous repetitions. Among others, the following sections, or parts of them, are embodied, viz.: Section 159, chapter 13, R. S. 1858; section 1, chapter 316, Laws 1864; section 74, chapter 15, R. S. 1858; section 38, chapter 188, Laws 1872; section 65, chapter 70, R. S. 1858; section 31, chapter 86, R. S. 1858; section 14, chapter 110, R. S. 1858, as amended by section 14, chapter 129, Laws 1867; section 1, chapter 11, Laws 1867. Provision is added to compel the furnishing of copies in proper cases.

Revisor's Note, 1927: Subsection (1) is new but it is merely declaratory of the existing rule.

"Relevant public records and documents are always admissible in evidence." 22 C. J. 791, note 18, citing cases in the supreme court of

the United States and nearly every state of the Union, including Wisconsin. "All public records which are by law required to be kept for the purpose of preserving evidence of transactions and occurrences, for public use are competent to establish such transactions or occurrences when they are material in a judicial proceeding." Marshall, J., in Hempton v. State, 111 W 127, 133. See also Jones Com. on Ev., sections 508, 514; Wigmore on Ev., sections 1633, 1639; Greenleaf on Ev., sections 483, 484 (16 Ed).

Minnesota has the following statutory provision: "The original record made by any public officer in the performance of his official duty shall be prima facie evidence of the facts required or permitted by law to be by him recorded." Section 8423, Gen. Stats. 1913.

As a general thing well settled and satisfactory rules of evidence should not be enacted into statutes because they are available in the treatise on evidence. They are voluminous; and if put into the statutes would enormously increase the bulk. But we have in the statutes, part of the rule of evidence applicable to public records, i. e., that when a public record is competent, a certified copy is equally admissible in evidence (section 327.18). Now, when that statutory rule is read by a layman or a young lawyer, or even some experienced lawyer, the question will arise (or may arise) in his mind: Where is the authority which makes the original records competent evidence? To answer that question, it is quite proper to enact the authority into statute to the end that those who need to prove facts that are stated in public documents, may at once have the whole rule of evidence on the subject. This addition to the mass of statutes is very small and it will serve to render unnecessary the passage of special provisions on the same subject when new kinds of public documents are created; and it will also render obsolete and therefore properly repealable, many existing special provisions on the subject. [Bill 10-S, s. 78]

A remonstrance addressed by plaintiff to the common council against the abandonment of condemnation proceedings against his land in which he itemized and estimated his damages from such proceedings is not admissible as evidence in his behalf in an action for such damages. Van Valkenburgh v. Milwaukee, 43 W 574.

A certified copy of a record, preservation of which is provided for by act of Congress, is admissible. Bovee v. McLean, 24 W 225.

A letter from the commissioner of the land office is inadmissible to prove facts therein stated. Cornelius v. Kessel, 53 W 395, 10 NW 520.

In an action by a town to recover moneys of a village the properly certified copy of the record of the proceedings of the village board appropriating the moneys is admissible in evidence. Town of Fox Lake v. Village of Fox Lake, 62 W 486, 22 NW 584.

See note to 51.20, citing Hempton v. State, 111 W 127, 86 NW 596.

Sec. 4148, Stats. 1898, imposes upon school district clerks the duty of furnishing certified copies of their district records. Musback v. Schaefer, 115 W 357, 91 NW 966.

A consular invoice, duly issued and certified in accordance with the federal statutes, is admissible in evidence. Vogel v. Delaware, L. & W. R. Co. 168 W 567, 171 NW 198.

In a prosecution for violation of the cold storage act, certified copies of letters from an Illinois plant to the Illinois department of agriculture are not competent evidence as to the facts therein stated; furthermore the letters were improperly received in evidence because the certification purported to have been made in accordance with sec. 4148 which refers only to the public records of the United States and of Wisconsin. The certification or authentication should have been made as provided by federal statute. Green Bay F. Co. v. State, 186 W 330, 202 NW 667.

327.18, Stats. 1941, does not make admissible in evidence anything to which the officer making a report could not testify on the witness stand, and hence does not make a conclusion or opinion, stated in a traffic officer's report of an automobile collision as to the "manner of collision" and that it was a "sideswipe," admissible as evidence of that fact; but the statute does make such report admissible so far as it is a mere memorandum of measurements and the physical facts observable by the officer. Jacobson v. Bryan, 244 W 359, 12 NW (2d) 789.

A certified copy of a death certificate is not inadmissible in evidence on the ground that it is not properly authenticated, unless such record is one issued in a foreign country. Death certificates are within the category of exceptions to the hearsay rule. They are prima facie evidence of the facts stated therein, although such facts are subject to rebuttal. Information contained therein, based on hearsay evidence, is admissible, but may be rebutted. Conclusions stated in official records are not admissible. Estate of Eannelli, 269 W 192, 68 NW (2d) 791.

Conclusions stated in official records are not admissible under 327.18 (1). Smith v. Rural Mut. Ins. Co. 20 W (2d) 592, 123 NW (2d) 496.

327.18 does not authorize admission of an accident report purporting to contain admissions of a driver where the officer making the report is dead and the accuracy of it cannot be tested. Voigt v. Voigt, 22 W (2d) 573, 126 NW (2d) 543.

A death certificate by a coroner is an official record, but when made by a coroner who is not a physician any medical conclusion stated therein is inadmissible to establish the cause of death. Novakofski v. State Farm Mut. Auto. Ins. Co. 34 W (2d) 154, 148 NW (2d) 714.

A mere letter from an employe of a governmental department purporting to reflect the contents of the public record could not be considered an official record, since it did not come within any of the exceptions permitted either by statute or case law, but ran afoul of the best-evidence rule, was inadmissible. Ernst v. Greenwald, 35 W (2d) 763, 151 NW (2d) 706.

In a prosecution for operating a motor vehicle while privileges were revoked, challenge to the conviction because of admission without testimonial authentication of a certified copy of defendant's driver's record from the division of motor vehicles could not be validly

maintained, where the document, consisting of an official record, contained a photostatic copy of the commissioner's order revoking defendant's privileges during the period in question, and the name, date of birth, and residence of defendant stated in the order were identical to information given to the arresting officer. State v. Carmody, 44 W (2d) 33, 170 NW (2d) 818.

Sec. 4148, Stats. 1921, does not require a public officer to furnish a certified copy of a document contained in his files, where divulging its contents would hamper the officer in the enforcement of a criminal statute. 11 Atty. Gen. 549.

The county judge is the legal custodian of the records of the county court and must furnish certified copies of such records upon tender of the legal fee. 21 Atty. Gen. 549.

Under 327.18 the board of medical examiners need not furnish original or certified copies of examination papers. 22 Atty. Gen. 419.

See notes to 19.21, citing 35 Atty. Gen. 279 and 57 Atty. Gen. 138.

889.19 History: 1901 c. 28 s. 1; Supl. 1906 s. 2216c; 1921 c. 178 s. 2; Stats. 1923 s. 4149a; Stats. 1925 s. 327.19; 1927 c. 523 s. 79; 1965 c. 66 s. 2; Stats. 1965 s. 889.19.

Revisor's Note, 1927: This is a condensation without change of meaning, except that it makes all wills evidence of such recitals therein. The law now limits such evidence to wills which devise real estate. There is no good reason for such distinction among wills. Legatees are as much entitled to that kind of evidence as devisees are, and may be equally in need of it. The judiciary committee of the senate, in 1925, proposed this change. See amendment No. 1, S to Bill 35-S. [Bill 10-S, s. 79]

889.22 History: 1856 c. 120 s. 290; R. S. 1858 c. 137 s. 93; R. S. 1878 s. 4184; Stats. 1898 s. 4184; Stats. 1925 s. 327.22; 1927 c. 316; 1927 c. 523 s. 82; 1927 c. 541 s. 32; Sup. Ct. Order, 204 W ix; Sup. Ct. Order, 232 W x; 1965 c. 66 s. 2; Stats. 1965 s. 889.22; Sup. Ct. Order, 29 W (2d) ix.

327.22 and 328.25 are complementary to each other. Estate of Dick, 204 W 89, 235 NW 401.

Admissions responsive to demands to admit the existence of documents or facts before trial are binding on the party making such admissions to the extent that they are complete. Grady v. Hartford S. B. I. & Ins. Co. 265 W 610, 62 NW (2d) 399.

Where the refusal of the defendant liability insurer to admit liability to the plaintiffs beyond the amount of its policy limits was 2 days late under 327.22, but the plaintiffs, on the trial, did not state such default as an objection to questions put to the insurer's agent regarding the coverage limits of the policy, the plaintiffs thereby waived any right to rely on such default, since, if the plaintiffs had made such an objection, counsel for the insurer might then have presented evidence to the trial court establishing good cause for the 2 days' delay in serving refusal, in which case the trial court, under authority of 327.22 (5) could have relieved the insurer from the consequences of such default. Foellmi v. Smith, 15 W (2d) 274, 112 NW (2d) 712.

Where the defendants offered copies of letters in evidence, the failure of the defendants to employ 327.22 or the purpose of having the plaintiff admit or refuse to admit the existence of the letters did not preclude the admission of documents, or their copies, into evidence under rules of evidence applicable thereto. Grunwaldt v. State Highway Comm. 21 W (2d) 153, 124 NW (2d) 13.

Operation of the "notice to admit" statute. Hardgrove, 12 MLR 93.

889.23 History: R. S. 1849 c. 98 s. 68; R. S. 1858 c. 137 s. 73; R. S. 1878 s. 4185; Stats. 1898 s. 4185; Stats. 1925 s. 327.23; 1927 c. 523 s. 83; 1965 c. 66 s. 2; Stats. 1965 s. 889.23.

889.24 History: R. S. 1849 c. 59 ss. 14, 15; R. S. 1858 c. 86 ss. 15, 16; R. S. 1878 s. 2227; Stats. 1898 s. 2227; 1925 c. 4; Stats. 1925 s. 235.34; 1969 c. 285 s. 7; Stats. 1969 s. 889.24.

Editor's Note: This section and the following four sections are restatements of provisions appearing in ch. 235; under the terms of ch. 285, Laws 1969, they will become effective on July 1, 1971.

889.241 History: R. S. 1849 c. 59 ss. 16, 17; R. S. 1858 c. 86 ss. 17, 18; R. S. 1878 s. 2228; Stats. 1898 s. 2228; 1925 c. 4; Stats. 1925 s. 235.35; 1967 c. 276; 1969 c. 285 s. 7; Stats. 1969 s. 889.241.

889.242 History: R. S. 1849 c. 59 s. 18; R. S. 1858 c. 86 s. 19; R. S. 1878 s. 2229; Stats. 1898 s. 2229; 1925 c. 4; Stats. 1925 s. 235.36; 1969 c. 285 s. 8; Stats. 1969 s. 889.242.

889.243 History: R. S. 1849 c. 59 s. 19, 20; R. S. 1858 c. 86 ss. 20, 21; R. S. 1878 s. 2230; Stats. 1898 s. 2230; 1925 c. 4; Stats. 1925 s. 235.37; 1967 c. 276; 1969 c. 285 s. 8; Stats. 1969 s. 889.243.

889.244 History: R. S. 1849 c. 59 ss. 21, 22; R. S. 1858 c. 86 ss. 22, 23; R. S. 1878 s. 2231; Stats. 1898 s. 2231; 1925 c. 4; Stats. 1925 s. 235.38; 1969 c. 285 s. 9; Stats. 1969 s. 889.244.

889.25 History: R. S. 1849 c. 98 s. 84; R. S. 1858 c. 137 s. 91; R. S. 1878 s. 4189; Stats. 1898 s. 4189; 1925 c. 156; Stats. 1925 s. 327.25; 1927 c. 523 s. 85; 1939 c. 481; Sup. Ct. Order, 17 W (2d) xxiii; 1963 c. 256, 459; 1965 c. 66 s. 2; Stats. 1965 s. 889.25.

Editor's Note: By supreme court order effective July 15, 1963, secs. 327.24 and 327.25, Stats. 1961, were repealed and superseded by sec. 327.25; the latter section was repealed and recreated by ch. 256, Laws 1963; and the new section was amended by ch. 459, Laws 1963, and by ch. 66, Laws 1965. For notes of decisions construing the statutory provisions in effect up to July 15, 1963, see Wis. Annotations, 1960; and see also Rupp v. Travelers Ind. Co. 17 W (2d) 16, 115 NW (2d) 612, and United States F. & G. Co. v. Milwaukee & S. T. Corp. 18 W (2d) 1, 117 NW (2d) 708. On the problems caused by the overlapping effects of secs. 327.24 and 327.25, see Laikin, 18 MLR 173.

Prejudicial error could not be predicated upon receipt in evidence of a Xerox copy of a

hospital record pertaining to treatment of the plaintiff immediately following the accident, where it appeared that the original was received in evidence but without knowledge of plaintiff's attorney was taken back to the hospital by the custodian, and there was no showing how the adverse party was prejudiced thereby, since receipt of a copy of the record under these circumstances, although error, was harmless. Lundquist v. Western C. & S. Co. 30 W (2d) 159, 140 NW (2d) 241.

A record of investigation of an accident made 6 months after the occurrence and after action started does not qualify as a business record. Smith v. Milwaukee & S. T. Co. 33 W (2d) 269, 147 NW (2d) 233.

Medical evidence in Wisconsin, 1956-1966. Arnold, 49 MLR 657.

Admissibility of hospital records. 49 MLR 801.

Admissibility of business entries. Skogstad and Koppa, 1958 WLR 245.

889.26 History: 1881 c. 226; Ann. Stats. 1889 s. 4189a; Stats. 1898 s. 4189a; Stats. 1925 s. 327.26; 1927 c. 523 s. 86; 1965 c. 66 s. 2; Stats. 1965 s. 889.26.

Revisers' Note, 1898: Section 4189a, Ann. Stats. 1889, with the addition of the words in brackets, which are from an amendment made to the original as passed in New York by chapter 555, Laws 1888.

Editor's Note: A statute on the same subject, ch. 36, Laws of New York, 1880, was considered and applied in Peck v. Callaghan, 95 N.Y. 73 (1884).

A party denying the signature to a paper cannot cross-examine witnesses as to the writing in papers the genuineness of which has neither been admitted nor proved. Pierce v. Northey, 14 W 9.

A comparison of hands by a juxtaposition of 2 writings is wholly inadmissible as evidence of the genuineness of a signature, except when the writing is of such antiquity that it cannot be proved in the ordinary way or where the other writings to be compared with it are already in the case and before the jury. Hazleton v. Union Bank, 32 W 34.

A paper may be compared with other papers already admitted in evidence upon other grounds to prove the handwriting of the first paper, but such other paper or papers cannot be admitted solely for the purpose of such comparison. State v. Miller, 47 W 530, 3 NW 31.

It was error to permit a cross-examination of a handwriting witness respecting signatures on a document not in evidence. Alesch v. Haave, 178 W 19, 189 NW 155.

Testimony by a handwriting expert as to the genuineness of disputed handwriting, based on comparisons between photographic copies of the signature of the will and signatures in the handwriting of deceased, is admissible where the will had been either destroyed or lost subsequent to making the photographic copies. Fenelon v. State, 195 W 416, 217 NW 711, 218 NW 830.

Modes of proof of spurious and questioned documents and identity of handwriting. Spencer, 1 MLR 114.

Testing witnesses in questioned document cases. Spencer, 13 MLR 129.

Standards of proof of questioned documents. Spencer, 20 MLR 167.

889.28 History: 1937 c. 420; Stats. 1937 s. 327.28; 1941 c. 118; 1945 c. 36; 1947 c. 246; Sup. Ct. Order 262 W vi; 1965 c. 66 s. 2; Stats. 1965 s. 889.28.

Comment of Judicial Council, 1952: This prima facie certificate is not a judgment since it does not finally determine rights and is not an order since it is not a direction of a court or judge. See 270.53. The practice in many courts is to issue a duplicate instead of a certified copy for filing in the office of the register of deeds. [Re Order effective May 1, 1953]

889.29 History: 1945 c. 407; Stats. 1945 s. 327.29; 1951 c. 284, 457, 735; 1953 c. 61; 1959 c. 19; 1961 c. 567 s. 3; 1963 c. 167; 1965 c. 66 s. 2; Stats. 1965 s. 889.29.

Editor's Note: For foreign decisions construing the "Uniform Photographic Copies as Evidence Act" consult *Uniform Laws, Annotated.*

889.30 History: 1947 c. 345; Stats. 1947 s. 327.30; 1957 c. 230; 1959 c. 399; 1965 c. 66 s. 2; Stats. 1965 s. 889.30.

CHAPTER 891.

Presumptions and Judicial Notices.

Editor's Note: The sections comprising this chapter were not assigned decimal numbers by ch. 4, Laws 1925, but were renumbered by the Revisor in 1925 under his general authority.

891.01 History: 1921 c. 214; Stats. 1921 s. 4135m; Stats. 1925 s. 328.01; 1927 c. 523 s. 89; 1947 c. 363; 1949 c. 262; 1965 c. 66 s. 2; Stats. 1965 s. 891.01.

Editor's Note: For foreign decisions construing the "Uniform Judicial Notice of Foreign Law Act" consult *Uniform Laws, Annotated.*

In a prosecution for violation of the cold storage act, markings on boxes purporting to designate the time the fish were received in cold storage in Illinois, are of no probative force. While the courts of this state take judicial notice of the public laws of a sister state, the laws of Illinois could not make the markings evidence in the courts of this state. Green Bay F. Co. v. State, 186 W 330, 202 NW 667.

Courts are not bound to take actual notice of the laws of other states, in the absence of all proof, but may presume them to be in accordance with their own. (Decided without reference to 328.01) Ellis v. Gordon, 202 W 134, 231 NW 585.

As bearing on the question of negligence of an Illinois owner who had loaned his automobile to a 15-year-old boy to drive to Wisconsin, the Illinois statutes relating to the licensing of drivers and the fixing of the minimum age of drivers should be taken into consideration. Canzoneri v. Heckert, 223 W 25, 269 NW 716.

The supreme court is not prepared to take judicial notice of German laws. Estate of Wieboldt, 5 W (2d) 363, 92 NW (2d) 849.