

disinterested freeholder as one appraiser, the party taking up the estray shall choose one disinterested freeholder, and the two so chosen shall appoint a third person living in the vicinity where the estray was taken up, and the three persons shall constitute a board of appraisers who shall act without compensation. If such appraisers shall appraise the estray as worthless, it shall be destroyed by the party taking it up.

Approved March 13, 1907.

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## EVIDENCE

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### CHAPTER 118.

[S. B. No. 251—Purcell]

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#### BUSINESS RECORDS EVIDENCE.

AN ACT Making Entries in a Book or Other Permanent Form Evidence in Certain Cases.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. BUSINESS RECORD RECEIVED AS EVIDENCE.] Any entries in a book or other permanent form, in the usual course of business, contemporaneous with the transactions to which they relate and as a 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 reach of a subpoena of the trial court or insane, of any person having custody of the entries and testifying that the same were made by a person or persons 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 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 as witnesses all of the persons subject to subpoena 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.

Approved March 19, 1907.

## CHAPTER 119.

[H. B. No. 343—Rose]

## WITNESSES AND EVIDENCE.

AN ACT to Amend Section 7253 of the Revised Codes of 1905, Relating to Witnesses and Evidence.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] Section 7253 of the revised codes of 1905 is amended to read as follows:

§ 7253. WHO NOT EXCLUDED. HUSBAND AND WIFE. DECEDENT'S TESTIMONY.] No person offered as a witness in any action or proceeding in any court, or before any officer or person having authority to examine witnesses or hear evidence, shall be excluded or excused by reason of such person's interest in the event of the action or proceeding; or because such person is a party thereto, or because such person is the husband or wife of a party thereto, or of any person in whose behalf such action or proceeding is commenced, prosecuted, opposed or defended, except as hereinafter provided.

1. A husband cannot be examined for or against his wife without her consent, nor a wife, for or against her husband without his consent, nor can either, during the marriage or afterwards, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this subdivision does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other.

2. In civil action or proceeding by or against executors, administrators, heirs-at-law or next of kin in which judgment may be rendered or order entered for or against them, neither party shall be allowed to testify against the other as to any transaction whatever with or statement by the testator or intestate, unless called to testify thereto by the opposite party; and where a corporation is a party in proceedings mentioned in this section, no agent, stockholder, officer or manager of such corporation shall be permitted to testify to any transaction had with the testator or intestate. But if the testimony of a party to the action or proceeding has been taken and he shall afterwards die and after his death the testimony so taken shall be used upon any trial or hearing in behalf of his executors, administrators, heirs-at-law or next of kin, then the other party shall be a competent witness as to any and all matters to which the testimony so taken relates.

Approved March 14, 1907.