

CHAPTER LX.

AN ACT REQUIRING ADDITIONAL BONDS OF EXECUTORS,
ADMINISTRATORS AND GUARDIANS IN CERTAIN CASES.*Be it enacted by the Legislature of the State of Minnesota :*

Judge of probate
may require ad-
ditional bond of
executor, &c.

SECTION 1. Whenever any judge of probate is satisfied that the bond of an executor, administrator or guardian is insufficient, he may on his own motion or on application of any one or more of the relatives of the deceased, or of the ward, require an additional bond, and a refusal or failure to furnish or give the same within a reasonable length of time shall be deemed a sufficient cause for the removal of such executor, administrator or guardian.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved March 10, 1873.

CHAPTER LXI.

AN ACT TO PROVIDE A MORE EFFICIENT METHOD FOR THE
TAKING OF DEPOSITIONS OF PERSONS WITHOUT THE
STATE.*Be it enacted by the Legislature of the State of Minnesota :*

Of the notice re-
quired of the tak-
ing of depositions
in civil cases.

SECTION 1. Whenever the testimony of any person without the state is wanted in any civil action or proceeding now pending or hereafter commenced in any court of this state the same may be taken by and before any officer authorized to administer an oath then and there upon notice to the adverse party of the time and place of taking the same, such notice shall be in writing, and shall be served as other notices in civil actions are required to be

served, and it shall be served so as to allow the adverse party time sufficient to enable him to proceed to the place where the examination is to be conducted, and have one day for preparation; *Provided*, That the justice of the peace before whom the action or proceeding is pending, or if it be pending in a court of record, then the judge thereof, or a court commissioner, may on motion and by an order in the cause designate the time and place for the taking of the testimony and the time within which a copy of the order shall be served on the adverse party or his attorney; *And provided further*, That whenever the defendant in the action or proceeding is in default for want of an answer or other defense, such notice or order need not be served upon him.

SEC. 2. At the time and place specified in the notice or order, or within one hour thereafter, the examination shall commence. Each witness shall before testifying be sworn by the officer to testify the whole truth and nothing but the truth relative to the cause specified in the notice or order. The testimony shall be written by the officer. The proceeding may be adjourned from day to day until the examinations are closed. Either party may appear in person or by an agent or attorney and take part in the examination. The testimony of each witness when completed shall be carefully read over by the officer to him, whereupon he may add thereto or qualify the same as he may desire. When the deposition is completed the witness shall sign his name or make his mark at the end thereof as well as upon each piece of paper on which any portion of his testimony is written. Thereupon the officer taking such deposition shall annex thereto a copy of the notice or order and a certificate under his hand and official seal (if he have one) stating what office he held and exercised when taking such depositions, and that by virtue thereof he was then and there authorized to administer an oath, and that each witness before testifying was duly sworn to testify the whole truth and nothing but the truth relative to the cause specified in the notice or order, and that each of such depositions were taken pursuant to such notice or order, and who, if any one, examined for the parties respectively. Such certificate shall be prima facie evidence of the matters therein stated, and it may be substantially in the following form :

How the depositions shall be taken—how authenticated.

Form of certificate.

STATE OF _____ }
 COUNTY OF _____ } ss.

Be it known, that I took the annexed depositions pursuant to the annexed notice (or order); that I was then and there (state the title of the officer); that I exercised the power of that office in taking such deposition; that by virtue thereof, I was then and there authorized to administer an oath; that each witness before testifying was duly sworn to testify the whole truth and nothing but the truth relative to the cause specified in the annexed notice (or order); that the testimony of each witness was correctly read over to him by me before he signed the same; that the examination was conducted on behalf of the plaintiff by _____; that the examination was conducted on behalf of the defendant by _____.

Witness my hand and seal this day of
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How returned to court.

Such depositions shall be returned by mail to the justice of the peace before whom the cause is pending, or if it be pending in a probate court, to the judge thereof, or if it be pending in any other court of record then to the clerk thereof; and upon their return they shall be opened and subject to the inspection of either party.

How used on the trial.

SEC. 3. Such depositions may be read in evidence at the trial of the action or proceeding, but when the same is offered in evidence, objection may be interposed to the competency of the witness or to any question put to him, or to the whole or any part of his testimony in like manner, upon the same grounds and with the like effect as if the witness was there testifying in open court. *Provided*, That no objection to the form of any question can be made unless such objection was made before and noted by the officer taking such deposition.

What defects in proceedings shall be fatal.

SEC. 4. No informality, error or defect in any proceeding under this statute shall be sufficient ground for excluding the deposition unless the party making objection thereto shall make it appear to the satisfaction of the court that the officer taking such deposition was not authorized to administer an oath then and there, or that such party was, by such informality, error or defect precluded from appearing and cross-examining the witness, and every objection to the sufficiency of the notice, or to the manner of taking or certifying or returning such

depositions, shall be deemed to have been forever waived, unless such objections are taken by motion to suppress such depositions, which motion shall be made within ten days after service of such notice in writing of the return thereof.

SEC. 5. This act shall take effect and be in force from and after the passage thereof.

Approved March 11, 1873.

CHAPTER LXII.

AN ACT TO LEGALIZE THE FILING OF AFFIDAVITS IN CERTAIN CASES, AND MAKING THEM EVIDENCE.

Be it enacted by the Legislature of the State of Minnesota:

SECTION 1. That in all cases when affidavits authorized by sections fifty-four and fifty-five of chapter seventy-three, and sections nineteen and twenty, of chapter eighty-one, have been heretofore filed and recorded, or shall be hereafter filed and recorded, within one year after this act shall become a law, such affidavits, or duly certified copies thereof shall be received in evidence in the same manner and with the same effect as if the same had been filed and recorded within the time in said sections specified.

Affidavits made valid in certain cases, though not made in time.

SEC. 2. No proceeding in which such affidavits might have been heretofore filed and recorded, shall be deemed invalid in consequence of the failure to file and record the same within the time provided by said sections. *Provided*, That nothing herein contained shall be held to affect any vested rights of any person or persons not parties to such proceedings.

Proceedings not invalidated by delay in making such affidavits.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved February 7, 1873.