

*James C. Child*  
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THE

PUBLIC STATUTES

OF THE

STATE OF MINNESOTA.

(1849—1858.)

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COMPILED BY  
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Proceedings in  
supreme court  
upon appeal.

(27.) SEC. LXXVI. On the hearing of any such appeal, the supreme court shall annul, affirm, modify, or alter, the order or decree appealed from, or make any other order in the cause as justice under the law and rules of chancery proceedings may require; and may remit the cause to the district court, wherein the order or decree appealed from was made, for further proceedings, or may give any other direction in the cause as the circumstances of the case may require.

When supreme  
court may award  
damages in cer-  
tain cases.

(28.) SEC. LXXVII. The supreme court shall have power, in any case in which they are satisfied that an appeal has been taken from an interlocutory, or any other order or decree, except a final one, for the purpose of delay or on any frivolous pretense, to award such damages to the adverse party, as they may under the circumstances deem proper; the criterion for which damages shall be prescribed by rule.

## CHAPTER 84.

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THE ISSUING AND SERVICE OF SUBPŒNAS AND THE LIABILITY OF WITNESSES THEREON.

[ Chapter 95, Revised Statutes. ]

(1.) SEC. I. Every clerk of a court of record, and every justice of the peace may issue subpoenas for witnesses in all civil cases pending before the court, or before any magistrates, arbitrators, or other persons authorized to examine witnesses, and the subpoenas shall be in the form heretofore adopted and commonly used.

Who may issue subpoena.

(2.) SEC. II. Such subpoenas may be served by any person by exhibiting and reading it to the witness, or by giving him a copy thereof, or by leaving such copy at the place of his abode.

Subpoena by whom served.

(3.) SEC. III. No person shall be obliged to attend as a witness unless the fees are paid or tendered to him which are allowed by law for one day's attendance as a witness, and for traveling to and returning from the place where he is required to attend.

Person when obliged to attend as a witness.

(4.) SEC. IV. If any person duly subpoenaed and obliged to attend as a witness, shall fail so to do, without any reasonable excuse, he shall be liable to the aggrieved party for all damages occasioned by such failure, to be recovered in a civil action.

Witness refusing to attend how liable.

(5.) SEC. V. Such failure to attend as a witness in any court of record, shall also be considered a contempt of the court, and may be punished by a fine not exceeding twenty dollars.

Failure to attend a contempt of court.

(6.) SEC. VI. The court in such case may issue an attachment to bring such witness before them to answer for the contempt, and also to testify as a witness in the cause in which he was subpoenaed.

In such case attachment may issue.

TAKING THE TESTIMONY OF WITNESSES WITHIN THIS TERRITORY.

(7.) SEC. VII. Depositions may be taken in the manner and according to the regulations provided in this chapter, to be used before any magistrates or other persons authorized to examine witnesses in any other than criminal cases.

Depositions of witnesses may be taken.

(8.) SEC. VIII. When a witness whose testimony is wanted in any civil cause pending in this territory shall live more than thirty miles from

When witnesses' depositions may be taken.

the place of trial, or shall be about to go out of the territory and not to return in time for trial, or is so sick, infirm or aged as to make it probable that he will not be able to attend at the trial, his deposition may be taken in the manner hereinafter provided.

Party may apply to justice of the peace; duty of justice.

(9.) SEC. IX. At any time after the cause is commenced by the service of process or otherwise, or after it is submitted to arbitrators or referees, either party may apply to any justice of the peace who shall issue a notice to the adverse party, to appear before the said justice, or any other justice of the peace, at the time and place appointed for taking the deposition, and to put such interrogatories as he may think fit.

Notice served on adverse party, agent or attorney.

(10.) SEC. X. The said notice may be served on the agent or attorney of the adverse party, and shall have the same effect as if served on the party himself.

Service on one of several persons who are parties to suit sufficient.

(11.) SEC. XI. When there are several persons plaintiffs or defendants, or parties on either side in the cause, a notice served on either of them shall be sufficient.

Notice how served.

(12.) SEC. XII. The notice shall be served by delivering an attested copy thereof to the person to be notified, or by leaving such copy at his place of abode, allowing in all cases not less than twenty-four hours after such notice before the time appointed for taking the depositions, and also allowing time for his travel to the place appointed after being notified, not less than at the rate of one day, Sundays excepted, for every twenty miles travel.

Party may waive right to notice.

(13.) SEC. XIII. The written notice before prescribed may be wholly omitted, if the adverse party or his attorney shall in writing waive the right to it.

Deponent how sworn and examined.

(14.) SEC. XIV. The deponent shall be sworn to testify the truth, the whole truth, and nothing but the truth, relating to the cause for which the deposition is taken, and he shall then be examined by the parties if they think fit, or by the justice, and his testimony shall be taken in writing.

Examination how conducted.

(15.) SEC. XV. The party producing the deponent shall be allowed first to examine him, either upon verbal or written interrogatories, on all points which he shall deem material, and then the adverse party may examine the deponent in like manner; after which either party may propose such further interrogatories as the case may require.

Depositions to be written by justice.

(16.) SEC. XVI. The deposition shall be written by the justice or by the deponent, or by some disinterested person, in the presence and under the direction of the justice, and it shall be carefully read to or by the deponent, and shall then be subscribed by him.

Certificate to be annexed to deposition.

(17.) SEC. XVII. The justice shall annex to the deposition a certificate substantially as follows:

Territory of Minnesota, }  
County of                    } ss.

Form of certificate.

I, A. B., justice of the peace in and for said county, do hereby certify that the above deposition was taken before me, at my office in the                    ; in said county, on the                    day of                    , 18                    , at                    o'clock,                    ; that it was taken at the request of the plaintiff, (or defendant) upon verbal (or written) interrogatories; that it was reduced to writing by myself, (or by deponent, or by                    , a disinterested person, in my presence and under my direction,) that it was taken to be used in the suit of A. B. vs. C. D., now pending in                    court, and that the reason for taking it was (here state the true reason,) that                    attended at the taking of said deposition, (or that a notice, of which the annexed is a copy, was served upon him, on the                    day of                    18                    ;) that said deponent before examination was sworn to testify the

truth, the whole truth, and nothing but the truth, relative to the said cause, and that the said deposition was carefully read to (or by) said deponent, and then subscribed by him.

Dated at the day of one thousand eight hundred and

A. B., justice of the peace.

(18.) SEC. XVIII. The deposition shall be delivered by the justice to the court or arbitrators, or referees, before whom the cause is pending, or shall be inclosed and sealed by him, and directed to them, and shall remain sealed until opened by said court, or the clerk thereof, or arbitrators, or referees. Deposition shall be delivered to the court by justice.

(19.) SEC. XIX. No depositions shall be used if it shall appear that the reason for taking it no longer exists: *provided, however*, that if the party producing the deposition in such case shall show any sufficient cause then existing for using such deposition, it may be admitted. Deposition when not to be used.

(20.) SEC. XX. Every objection to the competency or credibility of the deponent, and to the propriety of any question put to him, or of any answer made by him, may be made when the deposition is produced, in the same manner as if the witness was personally examined on the trial: *provided*, that all objections to any interrogatory shall be made before it is answered, and if the interrogatory is not withdrawn, the objection shall be noted in the deposition, or otherwise the objection shall not be afterward allowed. Objections to competency of witness may be taken.

(21.) SEC. XXI. When the plaintiff in any suit shall discontinue it, or the suit shall be dismissed for any cause, and another suit shall afterward be commenced for the same cause between the same parties, or their respective representatives, all depositions lawfully taken for the first suit may be used in the second, in the same manner, and subject to the same conditions and objections as if originally taken for the second suit; *provided*, that the deposition shall have been duly filed in the court where the first suit is pending, and shall remain in the custody of the court, from the termination of the first suit until the commencement of the second. When deposition taken in one suit may be used in another.

(22.) SEC. XXII. When a suit shall have been appealed from one court to another, all depositions lawfully taken to be used in the court below, may be used in the appellate court in the same manner, and subject to such exception for informality or irregularity, and none other, as were taken to such depositions in writing in the court below. In case of appeal, deposition in the court below may be used in appellate court.

(23.) SEC. XXIII. The court may from time to time make such rules as they shall find proper and convenient, as to the time and manner of filing depositions, and the safe keeping thereof, and any other regulations concerning the taking and using of depositions, which may not be inconsistent with the provisions of law. Court may make rules as to the time and manner of taking depositions.

(24.) SEC. XXIV. Any witness may be subpoenaed and compelled to give his deposition, at any place within twenty miles of his abode, in like manner, and under the same penalties, as he may be subpoenaed and compelled to attend as a witness in any court. When person may be compelled to give deposition.

TAKING THE TESTIMONY OF WITNESSES OUT OF THIS TERRITORY.

(25.) SEC. XXV. <sup>C. S. S. 22</sup> [Sections 25, 26 and 27 as amended on pages 13 and 14 of the laws of 1856:] The deposition of any witness without this territory may be taken under a commission issued to any competent person in any state or county, by the court in which the cause is pending, or upon a reference as hereinafter provided; and the deposition may be used in the Depositions out of this territory.

same manner and subject to the same conditions and objections as if it had been taken in this territory.

When commis-  
sions to be issued.

(26.) SEC. XXVI. No commission shall be issued to take testimony out of this territory, except in the following cases:

1. When an issue has been joined in an action in a court of record in this territory, and it shall appear on the application of either party that any witness not residing in this territory, is material in the prosecution or defense of such action, and that the due notice of such application was served upon the adverse party at least ten days before the application is made.

2. When, in an action commenced in a court of record in this territory, the time for answering the complaint shall have expired, and the defendant shall not have answered or demurred to the said complaint, and it shall appear upon the application of the plaintiff that the testimony of any witness not residing in this territory is material and necessary to establish the facts stated in the complaint, and to enable the court to render judgment in such action.

Taking deposi-  
tions.

(27.) SEC. XXVII. When the application is made in behalf of the plaintiff in an action wherein no answer or demurrer to the complaint has been interposed, the court may, in its discretion, order a reference to one or more competent persons in any state or county to take such depositions, and report the same to the court in the same manner as testimony is taken and reported by referees within the territory. In all other cases such depositions shall be taken under a commission, and upon written interrogatories, to be exhibited to the adverse party or his attorney, and cross interrogatories to be filed by him, if he shall think fit: *provided*, that the parties may, by stipulation in writing, agree upon any other mode of taking depositions, and when taken pursuant to such stipulation, they may be used upon the trial with like force and effect in all respects as if taken upon the commissions and written interrogatories as hereinafter provided.

Court may make  
rules as to issu-  
ing commissions,  
&c.

(28.) SEC. XXVIII. The court may make rules as to the issuing of commissions, either in vacation or term time, and the filing of interrogatories, and all other matters relating to depositions taken out of the territory: *provided*, that such rules be not inconsistent with the provisions of law.

Certain deposi-  
tions to be taken  
or rejected in the  
discretion of the  
court.

(29.) SEC. XXIX. All depositions and affidavits taken out of the territory, in any other manner than is prescribed in the preceding sections, if taken before any notary public, or other person authorized by the laws of any state or country, to take depositions, may be admitted or rejected in the discretion of the court: *provided*, that no such deposition or affidavit shall be admitted, unless it appear that the adverse party had sufficient notice of the taking thereof, and opportunity to cross examine the witness.

#### PROCEEDINGS TO PERPETUATE THE TESTIMONY OF WITNESSES WITHIN THIS TERRITORY.

Testimony how  
perpetuated.

(30.) SEC. XXX. When any person shall be desirous to perpetuate the testimony of any witness, he shall make a statement in writing, setting forth briefly, and substantially, his title claim or interest, in or to the subject concerning which he desires to perpetuate the evidence, and the names of all other persons interested, or supposed to be interested therein, and also the name of the witness proposed to be examined, and shall deliver the said statement to the judge of a court of record, requesting him to take the deposition of the said witness.

Judge shall cause

(31.) SEC. XXXI. The said judge shall thereupon cause notice to be

given of the time and place appointed for taking the deposition, to all persons mentioned in the said statement, as interested in the case, which notice shall be given in the same manner as is prescribed in this chapter, respecting notice upon taking a deposition in this territory, to be used in any cause here pending.

notice to be given.

(32.) SEC. XXXII. The deponent shall be sworn and examined, and his deposition shall be written, read, and subscribed in the same manner as is prescribed respecting the other depositions before mentioned, and the judge shall annex thereto a certificate under his hand, of the time and manner of taking it, and that it was taken in perpetual remembrance of the thing, and he shall also insert in the certificate, the names of the persons at whose request it was taken, and of all those who were notified to attend, and of all those who did attend the taking thereof.

Deponent how sworn and examined.

(33.) SEC. XXXIII. The deposition with the certificate, and also the written statement of the party at whose request it was taken, shall, within ninety days after the taking thereof, be recorded in the registry of deeds in the county where the land lies, if the deposition relates to real estate, otherwise in the county where the parties, or some of them reside.

Deposition, certificate and statement to be recorded with register.

(34.) SEC. XXXIV. If any suit shall, either at the time of taking such deposition, or at any time afterwards, be pending between the person at whose request it was taken, and the persons named in the written statement, or any of them who were notified as aforesaid, or any person claiming under either of the said parties respectively, concerning the title, claim, or interest set forth in the statement, the deposition so taken, or a certified copy of it from the registry of deeds, may be used in such suit, in the same manner and subject to the same conditions and objections as if it had been originally taken for the said suit.

Deposition when and by whom used.

(35.) SEC. XXXV. Any witness may be subpoenaed and compelled to give his deposition in perpetual remembrance of the thing, as before prescribed, in like manner and under the same penalties as are provided in this chapter, respecting other depositions taken in this territory.

Any witness may be summoned to testify in perpetual remembrance, &c.

#### PROCEEDINGS TO PERPETUATE THE TESTIMONY OF WITNESSES OUT OF THIS TERRITORY.

(36.) SEC. XXXVI. Depositions to perpetuate the testimony of witnesses living without the territory, may be taken in any state, or in any foreign country, upon a commission to be issued by any court of record in the manner hereinafter provided.

Depositions to perpetuate testimony of witness out of the territory, how taken.

(37.) SEC. XXXVII. The person who proposes to take the deposition, shall apply to any such court, and file therein a statement like that before prescribed to be delivered to the judge or justice of the peace, upon taking such a deposition within this territory, and if the subject of the proposed deposition relate to real estate within this territory, the statement shall be filed in the county where the lands, or any part thereof lies; otherwise in the county where the parties, or some of them reside.

Depositions to perpetuate testimony of witness out of the territory, how taken.

(38.) SEC. XXXVIII. The court shall order notice of such application and statement, to be served on all the persons mentioned therein as adversely interested in the case, and living within the territory, which notice shall be served fourteen days at least before the time appointed for hearing the parties.

Notice to be given, and how.

(39.) SEC. XXXIX. If, upon such hearing of the parties, or of the applicant alone, should no adverse party appear, the court shall be satisfied that there is sufficient cause for taking the deposition, they shall issue

When court to issue commission.

a commission therefor, in like manner as for taking a deposition to be used in any cause pending in the same court.

How depositions to be taken and returned.

(40.) SEC. XL. The deposition shall be taken upon written interrogatories, filed by the applicant, and cross interrogatories filed by any party adversely interested, if he shall think fit; and it shall be taken and returned substantially in the same manner as if taken to be used in any cause pending in the same court.

Person applying may file statement with clerk in vacation, &c.

(41.) SEC. XLI. The person who proposes to take the deposition, may, at his election, file his statement in the clerk's office in vacation, and may cause notice thereof to be given to the persons therein named as adversely interested, by serving them with an attested copy of the said statement, fourteen days at least before the next term of the court; and the court may thereupon proceed to hear the parties, and to issue the commission as before provided.

Supreme court may make rules respecting such depositions.

(42.) SEC. XLII. The supreme court may, from time to time, make rules as to taking depositions, to perpetuate the testimony of witnesses without the territory when taken under a commission from any court of record, and as to the filing and recording of such deposition: *provided*, such rules be not inconsistent with the provisions of law.

How same may be used.

(43.) SEC. XLIII. All depositions to perpetuate the testimony of witnesses taken at any place without this territory, according to the provisions of this chapter, may be used in like manner as if taken within this territory.

#### PROCEEDINGS TO PERPETUATE THE TESTIMONY OF WITNESSES WITHIN AND WITHOUT THIS TERRITORY, AS AGAINST ALL PERSONS.

Depositions how taken to be used against all persons.

(44.) SEC. XLIV. Depositions to perpetuate the testimony of witnesses within or without this territory, so that the same may be evidence against all persons, may be taken upon a commission to be issued, after public notice, by any court of record.

Depositions how taken to be used against all persons.

(45.) SEC. XLV. The person who desires to have such deposition taken, may apply to any such court in the manner before prescribed, in the case of taking a deposition to perpetuate the testimony of a witness living without the territory, and all the proceedings thereon, shall be the same as are prescribed in the case last mentioned.

Depositions how taken to be used against all persons.

(46.) SEC. XLVI. The court shall, in addition to the proceedings so before prescribed, inquire upon the oath of the applicant, or otherwise, in their discretion, as to all persons known or supposed to be interested in the case, and shall in the commission direct the commissioner or commissioners, to publish in such newspaper or newspapers, within or without the territory, or both, or in such other manner as the court shall consider most effectual, such notice of the time and place of taking such deposition, and of the subject matter thereof as the court shall think proper; which notice shall be addressed specially by name to all persons who are known or supposed to be interested in the case, and generally to all others, that they may attend and propose cross interrogatories to the witness; and the court may also require personal notice of the time and place of taking, and of the subject matter of such deposition, to be given to such persons, and in such manner, as under all the circumstances shall seem proper.

Publication of notice, &c.

Depositions to be recorded and when.

(47.) SEC. XLVII. Such deposition having been taken and returned to the court by whose order the commission issued, and being found by the court to have been taken according to law and the directions contained in the commission, the court shall order it to be recorded within thirty days, in the registry of deeds for the county in which the land lies, if the

deposition relate to real estate, otherwise in the county in which the parties or some of them reside.

(48.) SEC. XLVIII. Any deposition taken and recorded under the provisions of the four preceding sections, or a certified copy thereof from the registry may be used by the person at whose request it was taken, or by any person claiming under him, against any person whatever in any suit or proceeding wherein shall be brought in question the title, claim or interest set forth in the statement upon which the commission was founded, in the same manner and subject to the same conditions and objections as if it had been originally taken for said suit or proceeding.

When and where the same may be used.

DEPOSITIONS TAKEN IN THIS TERRITORY TO BE USED IN COURTS OF OTHER STATES AND COUNTRIES.

(49.) SEC. XLIX. Any witness may be subpoenaed and compelled in like manner, and under the same penalties as are prescribed in this chapter, to give his deposition in any cause pending in a court in any state or government, which deposition may be taken before any justice of the peace in this territory, or before any commissioners that may be appointed under the authority of the state or government in which the suit is pending; and if the deposition is taken before such commissioners, the witness may be subpoenaed and compelled to appear before them by process from any justice of the peace in this territory.

Witnesses may be compelled to give evidence to be used in another state.

THE COMPETENCY OF CERTAIN PERSONS AS WITNESSES.

(50.) SEC. L. A witness is a person whose declaration under oath is received as evidence for any purpose, whether such declaration be made on oral examination or by deposition or affidavit.

(51.) SEC. LI. [As amended on page 20 of the amendments of 1852 to the revised statutes:] All persons without exception, otherwise than as specified in the next two sections, having the power and faculty to perceive, and of making known their perceptions to others, may be witnesses. Therefore, neither parties nor other persons, who have an interest in the event of an action, are excluded, nor those who have been convicted of a crime, nor persons on account of their religious opinions or belief; although in every case the credibility of the witness may be drawn in question. But no defendant in a criminal action or proceeding, shall be a competent witness therein for himself.

amended  
chap 36 h  
Witness defined.  
1861  
chap 39 h  
Who may be witnesses.  
1862  
+ chap 13 h  
1862 v de  
34 h 75  
1863  
Defendant in criminal action not to be witness  
Who are incompetent to testify.  
h 8  
1863

(52.) SEC. LII. The following persons are not competent to testify in any action or proceeding:

- 1. Those who are of unsound mind or intoxicated at the time of their production for examination;
- 2. Children under ten years of age, who appear incapable of receiving just impressions of the facts respecting which they are examined or of relating them truly.

(53.) SEC. LIII. There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore a person cannot be examined as a witness in the following cases:

- 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 exception 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;

In what cases persons cannot testify.

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2. An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of professional duty;

3. A clergyman or priest cannot, without the consent of the person making the confession, be examined as to the confession made to him in his professional character, in the course of discipline enjoined by the church to which he belongs;

4. A regular physician or surgeon cannot, without the consent of his patient, be examined in a civil action, as to any information acquired in attending the patient, which was necessary to enable him to prescribe or act for the patient;

5. A public officer cannot be examined as to communications made to him in official confidence, when the public interest would suffer by the disclosure.

THE PRINTED STATUTES OF THIS TERRITORY, THE RECORDS AND PROCEEDINGS OF COURTS, AND THE LAWS OF OTHER STATES, AND OF FOREIGN LAWS, AS EVIDENCE.

When records of courts of other states, &c., evidence.

(54.) SEC. LIV. The records and judicial proceedings of any court of any state or territory or of the United States, shall be admissible in evidence, in all cases in this territory, when authenticated by the attestation of the clerk, prothonotary or other officer having charge of the records of such court, with the seal of such court annexed.

When printed statutes, &c., of the territory to be evidence.

(55.) SEC. LV. The printed copies of all statutes, acts, and resolves of this territory, whether of a public or private nature, which shall be published under the authority of the territory, shall be admitted as sufficient evidence thereof in all courts of law, and on all occasions whatsoever.

Printed copies of the statutes of any state or territory of the U. S. to be evidence, &c.

(56.) SEC. LVI. Printed copies of the statute laws of any state or territory of the United States, if purporting to be published under the authority of their respective governments, or if commonly admitted and read as evidence in their courts, shall be admitted in all courts of law and on all other occasions in this territory as prima facie evidence of such laws.

Common law of other states, how proved.

(57.) SEC. LVII. The unwritten or common law of any state or territory of the United States, may be proved as facts by parol evidence, and the books of reports of cases, adjudged in their courts, may also be admitted as evidence of such law.

Foreign laws how proved.

(58.) SEC. LVIII. The existence and the tenor, or effect of all foreign laws, may be proved as facts, by parol evidence, but if it shall appear that the law in question is contained in a written statute or code, the court may in their discretion, reject any evidence of such law, that is not accompanied by a copy thereof.

THE EXEMPLIFICATION OF JUSTICES' JUDGMENTS IN OTHER STATES.

Judgments in justices' courts how proved.

(59.) SEC. LIX. An exemplification of a judgment rendered by any justice of the peace, in any state or territory of the United States, officially certified by such justice as a full and correct copy of all the proceedings in that case from his docket, with a certificate of magistracy thereon, signed and authenticated by a clerk of a court of record in the county, where such judgment was rendered, with the seal thereof attached, shall be good and legal evidence in any court or legal proceedings in this territory to prove the facts contained in such exemplification.

DOCUMENTARY EVIDENCE AND THE PRESERVATION THEREOF, ETC.

(60.) SEC. LX. When notice of any application to any court, or judicial officer for any proceeding authorized by law, is required to be published in one or more newspapers, an affidavit of the printer of such newspaper, or of his foreman or principal clerk, annexed to a printed copy of such notice, taken from the paper in which it was published, and specifying the time when, and the paper in which such notice was published may be filed with the proper officer of the court, or with the judicial officer before whom such proceeding shall be pending, at any time within six months after the last day of the publication of such notice, unless sooner specially required.

Proof of publication of notice how made, and when and where filed.

(61.) SEC. LXI. When any notice of a sale of real property is required by law, to be published in any newspaper, an affidavit of the printer of such newspaper, or of his foreman or principal clerk, annexed to a printed copy of such notice, taken from the paper in which it was published, and specifying the times when, and the paper in which such notice was published, may be filed at any time within six months after the last day of such publication with the register of deeds in the county in which the premises sold are situated.

Same of notice of sale of real property.

(62.) SEC. LXII. The original affidavit so filed pursuant to the last two preceding sections and copies thereof, duly certified by the officer in whose custody the same shall be, shall be presumptive evidence in all cases, and in every court or judicial proceeding, of the facts contained in such affidavit.

Affidavits filed, and copies thereof to be evidence.

(63.) SEC. LXIII. The affidavit of the printer, or foreman of such printer, of any public newspaper published in this territory, of the publication of any notice or advertisement which by any law of this territory shall be required to be published in such newspaper, shall be entitled to be read in evidence in all courts of justice in this territory, and in all proceedings before any officer, body, or board, and shall be prima facie evidence of such publication, and of the facts stated therein.

Affidavit of printer, &c., to be evidence.

(64.) SEC. LXIV. Whenever a certified copy of an affidavit, record, document, or other paper, is allowed by law to be evidence, such copy shall be certified by the officer in whose custody the same is required by law to be, to have been compared by him with the original and to be a correct transcript therefrom; and if such officer have any official seal by law, such certificate shall be authenticated by such seal.

How copy of papers, &c., to be certified, to be evidence.

(65.) SEC. LXV. But the preceding section shall not be construed to require the affixing of the seal of a court to any certified copy of a rule or order made by such court, or of any paper filed therein, when such copy is used in the same court or before any officer thereof.

When seal not required.

(66.) SEC. LXVI. Every written instrument except promissory notes, and bills of exchange, and except the last wills of deceased persons may be proved or acknowledged in the manner now provided by law for taking the proof or acknowledgment of conveyances of real estate, and the certificate of the proper officer indorsed thereon, shall entitle such instrument to be read in evidence in all courts of justice, and all proceedings before any officer, body or board, with the same effect, and in the same manner as if such instrument were a conveyance of real estate.

Certain written instruments may be acknowledged and read in evidence.

(67.) SEC. LXVII. The register of deeds, and the clerk of any court of record in every county of this territory, upon being paid the fees allowed therefor by law, shall receive and deposit in their offices respectively, any instruments or papers which any person shall offer them for that purpose, and if required, shall give such person a written receipt therefor.

Register and clerk to receive and deposit papers.

(68.) SEC. LXVIII. Such instruments or papers, shall be properly

How to be in-

dorsed, filed and kept. indorsed so as to indicate their general nature and the names of the parties thereto, shall be filed by the officer receiving the same, stating the time when received, and shall be deposited and kept by him and his successors in office, in the same manner as his official papers, in some place separate and distinct from such papers.

Papers, &c., how withdrawn, &c.

(69.) SEC. LXIX. The instruments or papers so received and deposited, shall not be withdrawn from such office, except on the order of some court for the purpose of being read in evidence in such court, and then to be returned to such office; nor shall they be delivered without such order, to any person, unless upon the written order of the person who deposited the same, or his executors or administrators.

Papers, &c., open to examination.

(70.) SEC. LXX. Such instruments or papers so deposited, shall be open to the examination of any person desiring the same, upon the payment of the fees allowed by law.

When certificate of officer to be evidence of loss of document, &c.

(71.) SEC. LXXI. Whenever any officer to whom the legal custody of any documents, instrument or paper shall belong, shall certify under his official seal, that he has made diligent examination in his office for such paper, instrument, or document, and that it cannot be found, such certificate shall be presumptive evidence of the facts so certified in all causes, matters and proceedings, in the same manner and with the like effect as if such officer had personally testified to the same in the court, or before the officer before whom such cause, matter or proceeding may be pending.

THE PRIVILEGE OF WITNESSES IN CERTAIN CASES.

When witness not to be excused from answering questions.

(72.) SEC. LXXII. Any competent witness in a cause shall not be excused from answering a question relevant to the matter in issue, on the ground merely that the answer to such question may establish or tend to establish that such witness owes a debt or is otherwise subject to a civil suit; but this provision shall not be construed to require a witness to give any answer which will have a tendency to accuse himself of any crime or misdemeanor, or to expose him to any penalty or forfeiture, nor in any respect to vary or alter any other rule respecting the examination of witnesses.

When shall be.

THE LOSS OF INSTRUMENTS AND PROCEEDINGS THEREON.

Proof of loss of instrument how rebutted.

(73.) SEC. LXXIII. Whenever a party to any action shall have been permitted to prove by his own oath the loss of any instrument, in order to admit other proof of the contents thereof, the adverse party may also be examined by the court, on oath, to disprove such loss and to account for such instrument.

Party may recover on lost note, &c.

(74.) SEC. LXXIV. In any suit founded on any negotiable promissory note or bill of exchange, or in which such note, if produced, might be allowed as a set-off in the defense of any suit, if it appear on the trial that such note or bill was lost while it belonged to the party claiming the amount due thereupon, parol or other evidence of the contents thereof may be given on such trial, and notwithstanding such note or bill was negotiable, such party shall be entitled to receive the amount due thereon, as if such note or bill had been produced.

Party may recover in bill, &c., lost; how.

(75.) SEC. LXXV. [As amended on page 20 and 21 of the amendments of 1852 to the revised statutes:] But to entitle a party to a recovery on a negotiable promissory note or bill of exchange which has been lost, 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 court in which the recovery shall be had, or the clerk thereof, in case no trial has been had, conditioned to indemnify the adverse party, his heirs and personal representatives, against all claims by any other persons on account of such note or bill, and against all costs and expenses by reason of such claim. Must give security.

ACCOUNT BOOKS, INSTRUMENTS AND JUSTICES' DOCKETS AS  
EVIDENCE.

(76.) SEC. LXXVI. Whenever a party in any cause or proceeding shall produce at the trial his account books, and swear that the same are his account books kept for that purpose, that they contain the original entries of charges for goods, or other articles delivered, or work and labor or other services performed, or materials found, and that such entries are just to the best of his knowledge and belief, that said entries are in his own hand writing, and that they were made at or about the time said goods or other articles were delivered, said work and labor or other services were performed, or said materials were found, the party offering such book or books as evidence, being subject to all the rules of cross-examination by the adverse party that would be applicable by the rules to any other witness giving testimony relating to said book or books, if it shall appear upon the examination of said party that all of the interrogatories in this section contained, are satisfactorily established in the affirmative, then the said book or books shall be received as prima facie evidence in proof of the charges therein contained. Account books evidence.

(77.) SEC. LXXVII. Whenever the original entries mentioned in the preceding section are in the hand writing of an agent, servant or clerk of the party, the oath of such agent, servant or clerk, may in like manner be admitted to verify the same, and said books shall be testimony in the same manner as the books mentioned in the preceding section: *provided*, that such books mentioned in this and the preceding section shall not be admitted as testimony of any item of money delivered at one time exceeding five dollars, or of money paid to third persons, or of charges for rent. When to be proved by oath, agent, &c.

(78.) SEC. LXXVIII. Where a book has marks which show that the items have been transferred to a ledger, the book shall not be testimony unless the ledger be produced. When ledger to be produced.

(79.) SEC. LXXIX. [*As amended on page 21 of the amendments of 1852 to the revised statutes:*] Any entries made in a book by a person authorized to make the same, he being dead, may be received as evidence in a case proper for the admission of such book as evidence, on proof that the same are in his hand writing, and in a book kept for such entries, without further verification. Entries in books may be received as evidence.

(80.) LXXX. Every written instrument purporting to have been signed or executed by any person, shall be proof that it was so signed or executed, until the person by whom it purports to have been signed or executed shall deny the signature or execution of the same by his oath or affidavit; but this section shall not extend to instruments purporting to have been signed or executed by any person who shall have died previous to the requirement of such proof. Written instrument purporting to have been signed, to be evidence.

(81.) SEC. LXXXI. Whenever it shall become necessary in an action before a justice of the peace to give evidence of a judgment, or other proceedings had before him, the docket of such judgment, or other Justices' docket to be evidence before him.

proceeding, or a transcript thereof certified by him, shall be good evidence thereof before such justice.

Transcript from justices' docket to be evidence in the courts.

(82.) SEC. LXXXII. A transcript from the docket of any justice of the peace of any judgment had before him of the proceeding in the case previous to such judgment, of the execution issued thereon if any, and of the return to such execution, if any, when certified by such justice, shall be evidence to prove the facts contained in such transcript in any court in the county where such judgment was rendered.

When clerks' certificate necessary.

(83.) SEC. LXXXIII. To entitle such transcript to be read in evidence in a different county than that in which the judgment was rendered, or the proceedings originated, there shall be attached thereto or indorsed thereon a certificate of the clerk of the district court of the same county in which such justice resides, under the seal of said court, specifying that the person subscribing such transcript was at the date of the judgment therein mentioned, a justice of the peace of such county.

What proceedings may be proved by oath of justice.

(84.) SEC. LXXXIV. 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 said justice, unless such paper or document be lost or destroyed, may be proved by the oath of the justice. In case of his death or absence they may be proved by producing the original minutes of such proceeding entered in a book kept by such justice, accompanied by proof of his hand writing; or they may be proved by producing copies of such minutes sworn to by a competent witness, as having been compared by him with the original entries, with proof that such entries were in the hand writing of the justice.

#### MISCELLANEOUS PROVISIONS.

Possession of note evidence of indorsement.

(85.) SEC. LXXXV. In all actions brought on promissory notes or bills of exchange by the indorsee, the possession of the note shall be prima facie evidence that the same was indorsed by the persons by whom it purports to be indorsed.

Notices may be given to agents, &c.

(86.) SEC. LXXXVI. All notices required by this chapter to be given to or by an adverse party, may be given by or to the agent or attorney of the said party.

Depositions taken out of the territory, to be before justice.

(87.) SEC. LXXXVII. The depositions of persons out of this territory, to be used in cases before justices of the peace within this territory, may be taken in the same manner, and under the same regulations as depositions are now authorized by law, to be taken of persons within this territory, and shall be subject to the same exceptions: *provided*, that in no case shall more than forty days notice of the taking of such depositions be required to be given to the adverse party.

Certificates of land offices to be evidence.

(88.) SEC. LXXXVIII. The receiver's receipt or certificate of purchase of public lands, signed by the receiver, and under the official certificate of any register or receiver, of the entry or purchase of any tract or tracts of land, or of the location of any tract or tracts by a military land warrant, shall be prima facie evidence in court in this territory, that the title of the lands mentioned or described, in said receipt or certificate is in the person or persons named therein, his, her, or their heirs, or assigns; but the said certificate shall not be construed to apply to cases in which the land was held, owned, or occupied by any person or persons as mineral ground at the time of said entry, and on which discoveries of lead or copper ore had been made: *provided*, the same be held by the original claimant, or his legal or equitable assignee.

(89.) SEC. LXXXIX. All deeds, mortgages, or other instruments in writing, relating to real estate situate within this territory, which shall have been recorded in the office of any register of deeds before this section shall take effect, purporting to have been acknowledged or proved without this territory, and having upon them substantially the ordinary form of a certificate of acknowledgment or proof, purporting to have been signed by some officer in another state or country shall be deemed prima facie in all legal proceedings to have been acknowledged or proved, (as the case may be,) before the proper officer and in conformity with the laws of such state or country, where it purports to have been acknowledged or proved; and the records of all such deeds, mortgages, and instruments, certificate of acknowledgment or proof may be read in evidence, in like manner and with the same effect as the originals.

Recorded deeds, &c., when to be evidence.

(90.) SEC. XC. [Added by laws of 1856, page 13 and 20:] All plats of surveys of public land in this territory, certified by the register of the land office of the district in which such land is situated, to be a correct copy of the certified copy on file in his office, of the original plat of such surveys, and all certificates by the register of such land office of the surveys of, and of other facts in relation to, such land taken from the certificate indorsed on the copy on file in said land office, of the original plat, shall entitle such certified copy or certificate to be read in evidence in the courts of the territory, in the same manner as if the same were a certified copy of, or certificate from the original plat or certificate of the surveys of such lands.

Certified copy to be evidence.

*amended*  
*Chap. 34*  
*1856*  
*1864*

(91.) SEC. XCI. [As amended on page 21 of the amendments of 1852 to the revised statutes:] Whenever any oath or affidavit is, or may be required or authorized by law, or in any judicial proceeding, (except oaths to jurors and witnesses in the trial of a cause, and such other oaths as are required by law to be taken before particular officers,) the same may be taken before any judge, judge of probate, clerk of any court of record, notary public, or justice of the peace; and when certified by any such officer to have been taken before him, may be read and used in any court of law or equity, of record or not of record, within this territory, and before any officer, judicial, executive or administrative.

Before whom oaths may be taken.

(92.) SEC. XCII. Every person who shall declare that he has conscientious scruples against taking an oath, or swearing in any form, shall be permitted to make his solemn declaration or affirmation.

When witness may affirm.

(93.) SEC. XCIII. Whenever the court before which any person shall be offered as a witness, shall be satisfied that such person has any peculiar mode of swearing, which is more solemn and obligatory in the opinion of such person, than the usual mode, the court may in its discretion, adopt such mode of swearing such person.

When the court may adopt other than the usual mode of swearing.

(94.) SEC. XCIV. Every person believing in any other than the Christian religion, shall be sworn according to the peculiar ceremonies of his religion, if there be any such ceremonies.

When the court may adopt other than the usual mode of swearing.

(95.) SEC. XCV. The court before whom an infant, or a person apparently of weak intellect, shall be produced as a witness, may examine such person to ascertain his capacity, and whether he understands the nature and obligations of an oath; and any court may inquire of any person, what are the peculiar ceremonies observed by him in swearing, which he deems most obligatory.

Court may examine infants, &c., to ascertain their capacity.

(96.) SEC. XCVI. [As amended on page 21 of the amendments of 1852 to the revised statutes:] In all cases in which an oath or affidavit is required, or authorized by law, or in any judicial proceeding, or by the rules or practice of any court of law or equity, the same may be taken in

Form in which oath may be taken.

any of the usual forms, and every person swearing, affirming, or declaring, in any such form, shall be deemed to have been lawfully sworn, and to be guilty of perjury for so corruptly or willfully and falsely swearing, affirming or declaring in any such form.

An Act to provide that copies of Records in the offices of Registers of Deeds may be admissible in evidence.

[Passed March 8, 1855.] c. 15

Deeds and copies of records received as evidence.  
 1855

(97.) SEC. I. *Be it enacted by the legislative assembly of the territory of Minnesota:* That copies of the records of all deeds, mortgages, town plats, or other investments of writing, relating to real estate within this territory, when certified by the register of deeds, of the county in which such investments are recorded to have been compared by him with the original records, and to be a correct transcript therefrom, may be read in evidence in like manner and with the same effect as the original records thereof.

An Act to authorize Clerks of Courts of Record, and Justices of the Peace, in this Territory, to issue Subpœnas to witnesses to, appear before the Register and Receiver of the Land Office.

[[Passed March 1, 1856.] c. 59

Witnesses.

(89.) SEC. I. *Be it enacted by the legislative assembly of the territory of Minnesota:* In all applications before the register and receiver of any United States land office in this territory, to pre-empt or to enter as a town site, any portion of the public lands, and in all contests concerning the same before said officers, each and every applicant and contestant shall have compulsory process for witnesses to establish his right to pre-empt or enter or disprove the right of adverse claimants.

Issuing subpœnas.

(99.) SEC. II. That whenever any pre-emptor or adverse claimant shall present to the clerk of any court of record and justice of the peace the official notice of the register and receiver of any land office in this territory, stating the name or names of the claimants, the name or names of the contestants, the time and place of meeting for the having said contests, it shall be the duty of the said clerk to issue subpœnas for witnesses for either party to attend before the said register and receiver at the time and place specified in the notice of said register and receiver.

Form of subpœnas.

(100.) SEC. III. Such subpœna may be in the form commonly used, except that they shall notify the witnesses in whose behalf they are called upon to testify and in what proceeding.

Fees of witnesses.

(101.) SEC. IV. Each witness shall be allowed the same fees for attendance and travel as in cases pending before the courts of this territory, but no person shall be obliged to attend as witness unless the fees are paid or tendered him, which are allowed by law for one day's attendance as a witness and for traveling to and returning from the place he is required to attend. Each party shall pay his own witnesses in all cases subpœnaed under the provisions of this act.

Failing to appear.

(102.) SEC. V. If any person duly subpœnaed as such witness, shall fail to attend as required, without reasonable excuse, he shall be liable to the party aggrieved for all damages occasioned by such failure, to be recovered in a civil action.

Questions.

(103.) SEC. VI. If any person attending as a witness under the provisions of this act, shall refuse to be sworn and examined, or being sworn shall refuse to answer any questions put to him and not overruled by said land officers, and the answer to which will not have a tendency to accuse him of a crime or misdemeanor, or to him to any penalty or forfeiture, he

shall be liable to the party aggrieved for all damages occasioned by such refusal, to be recovered in a civil action, and if the subpoena on which he attested shall have been issued out of any court of record, such refusal shall be considered a contempt of said court, and be punished by fine and imprisonment at the discretion of said court.

(104.) SEC. VII. Such court may also issue an attachment to bring Term time. such witness before them in vacation, as well as term time, to answer for said contempt.

(105.) SEC. VIII. The provisions of this act shall not be so construed How construed. as in any way to impair the validity of section 53 of chapter 95 of the revised statutes of Minnesota.

(106.) SEC. IX. This act shall take effect from and after its passage. To take effect.

CHAPTER 85.

ARBITRATORS.

SECTION

1. Controversy may be submitted to arbitrators.
2. When submission not to be made.
3. Parties to make agreement of submission; form of agreement.
4. Agreement to submit, what to contain.
5. Submission not to be revoked.
6. To appoint a time and place for the hearing.
7. Arbitrators to be sworn.
8. Award made after time fixed by parties not to have effect.
9. Award to be in writing.
10. To be delivered to the clerk.
11. Court to have cognizance of award.

SECTION

12. Award may be accepted, rejected or re-committed.
13. On what grounds party may move court to set aside award.
14. In what cases court may alter award.
15. Award when to be returned to court.
16. Judgment how rendered; costs how taxed.
17. Record of judgment, how made.
18. Record how filed and docketed, &c.
19. Arbitrators may make award concerning costs.
20. Court may enforce judgment.
21. Arbitrators may administer oaths.

[Chapter 96, Revised Statutes.]

(1.) SEC. I. All controversies which might be the subject of a personal action at law, or of a suit in equity, may be submitted to the decision of one or more arbitrators in the manner provided in this chapter. Controversy may be submitted to arbitrators.

(2.) SEC. II. No such submission shall be made respecting the claim of any person, to any estate in fee, or for life to real estate, but any claim to an interest for a term of years, or for one year or less, in real estate, and controversies respecting the partition of lands between joint tenants, or tenants in common, or concerning the boundaries of lands, or concerning the admeasurement of dower, may be submitted to arbitration. When submission not to be made.

(3.) SEC. III. The parties shall appear in person, or by their lawful agents or attorneys, before any justice of the peace, and shall there sign and acknowledge an agreement in substance as follows: Parties to make agreement of submission.

“ Know all men, that of and of Form of agreement.  
have agreed to submit the demand, a statement  
 whereof is hereto annexed, (and all other demands between them as the case may be,) to the determination of and the  
 award of whom or the greater part of whom, being made and reported  
 within from this day, to the district court for the county of