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GENERAL STATUTES

OF THE

STATE OF MINNESOTA.

PREPARED BY THE COMMISSIONERS APPOINTED TO REVISE
THE STATUTES OF THE STATE, BY ACT OF THE
LEGISLATURE, PASSED FEBRUARY 17, 1863.

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2 cording to the laws of this state, and certified to by any
 3 such commissioner under his seal of office and annexed to C. S. p. 403, Sect. 48. c 35
 4 or endorsed on such instrument, shall have the same power
 5 and effect as if the same had been made before any officer
 6 authorized to perform such acts in this state.

1 SECT. 12. Every commissioner appointed as before men- C. S. p. 403, Sect. 49.
 2 tioned; shall have power to administer an oath which may
 3 be lawfully required in this state, to any person willing to take
 4 the same, and to take and duly certify all depositions to be
 5 used in any of the courts of this state in conformity to the
 6 laws thereof, either on interrogatories proposed under a
 7 commission from any court of this state, or by consent of
 8 parties, or on legal notice given to the opposite party; and
 9 all such acts shall be as valid as if done and certified accord-
 10 ing to law by a proper officer in this state.

1 SECT. 13. Every such commissioner before performing C. S. p. 403, Sect. 50.
 2 any duty or exercising any power by virtue of his appoint-
 3 ment, shall take and subscribe an oath or affirmation before
 4 a judge or a clerk of one of the courts of record of the state
 5 in which such commissioner resides, well and faithfully to
 6 execute and perform all the duties of such commissioner,
 7 under and by virtue of the laws of the state of Minnesota,
 8 which oath, with a description or impression of his seal of
 9 office, shall be filed in the office of the secretary of this state.

CHAPTER LXXIII.

WITNESSES AND EVIDENCE.

TITLE I.

WITNESSES.

1 SECTION 1. Every clerk of a court of record, and every
 2 justice of the peace may issue subpoenas for witnesses in all C. S. p. 675, Sect. 1. c 84
 3 civil cases pending before the court, or before any magis- Amended.
 4 trates, arbitrators, or other persons authorized to examine
 5 witnesses, and in all contests concerning lands before the
 6 register and receiver of any land office in this state.

1 SECT. 2. Such subpoenas may be served by any person C. S. p. 675, Sect. 2.
 2 by exhibiting and reading it to the witness, or by giving
 3 him a copy thereof, or by leaving such copy at the place of
 4 his abode.

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 C. S. P. 675, Sect. 4. 1 SECT. 3. If any person duly subpoenaed and obliged to
 2 attend as a witness, fails to do so, without any reasonable
 3 excuse, he is liable to the aggrieved party for all damages
 4 occasioned by such failure, to be recovered in a civil action.

C. S. P. 675, Sect. 5.
 Amended. 1 SECT. 4. Such failure to attend as a witness if the sub-
 2 poena issues out of any court of record is a contempt of the
 3 court, and may be punished by fine not exceeding twenty
 4 dollars.

C. S. P. 675, Sect. 6. 1 SECT. 5. The court in such case may issue an attach-
 2 ment to bring such witness before it, to answer for the con-
 3 tempt, and also to testify as a witness in the action or pro-
 4 ceeding in which he was subpoenaed.

C. S. P. 681, Sect. 50. 1 SECT. 6. A witness is a person whose declaration under
 2 oath is received as evidence for any purpose, whether such
 3 declaration is made on oral examination or by deposition or
 4 affidavit.

C. S. P. 681, Sect. 51. 1 SECT. 7. All persons, except as hereinafter provided,
 2 having the power and faculty to perceive, and make known
 3 their perceptions to others, may be witnesses. Neither parties
 4 nor other persons, who have an interest in the event of
 5 an action, are excluded, nor those who have been convicted
 6 of a crime, nor persons on account of their religious opin-
 7 ions or belief; although in every case the credibility of the
 8 witness may be drawn in question. But no defendant in a
 9 criminal action or proceeding, shall be a competent witness
 10 therein for himself, nor, until acquitted or convicted, for a
 11 codefendant.

1861—ch. 36, Sect. 1;
 1862—ch. 39, Sect. 1;
 Ex. Session of
 1862—ch. 13, Sect. 1;
 1863—ch. 34, Sect. 1,
 combined &
 amended. 1 SECT. 8. When one, or in case of a joint, or joint and
 2 several contract, all, of the original parties on the same side
 3 to a contract or cause of action in issue and on trial, are
 4 dead, or shown to the court to be insane, the other party or
 5 parties shall not be admitted to testify as to such contract
 6 in his or their own favor, unless such transaction was had
 7 and performed, on behalf of the party or parties so deceas-
 8 ed or insane, by an agent whose testimony is received; *Pro-*
 9 *vided*, That whenever an assignor of a contract or thing in ac-
 10 tion, or the payee or indorsee of a negotiable instrument is ex-
 11 amined as a witness to matters transpiring prior to the trans-
 12 fer or assignment of such contract or instrument, on behalf
 13 of any person deriving title through or from him, the ad-
 14 verse party shall be received as a witness to the same mat-
 15 ters in his own behalf.

1 SECT. 9. The following persons are not competent to
 2 testify in any action or proceeding:

3 *First.* Those who are of unsound mind or intoxicated at the
 4 time of their production for examination; C. S. p. 681, Sect. 52. c 84
 5 *Second.*—Children under ten years of age, who appear
 6 incapable of receiving just impressions of the facts respect-
 7 ing which they are examined or of relating them truly.

1 **SECT. 10.** There are particular relations in which it is
 2 the policy of the law to encourage confidence and preserve
 3 it inviolate; therefore a person cannot be examined as a
 4 witness in the following cases: s. 53

5 *First.* A husband cannot be examined for or against his
 6 wife, without her consent; nor a wife for or against her
 7 husband without his consent; nor can either, during the
 8 marriage or afterwards, be, without the consent of the oth-
 9 er, examined as to any communication made by one to the
 10 other during the marriage; but this exception does not ap-
 11 ply to a civil action or proceeding by one against the other;
 12 nor to a criminal action or proceeding for a crime committed
 13 by one against the other;

14 *Second.*—An attorney cannot, without the consent of his
 15 client, be examined as to any communication made by the
 16 client to him, or his advice given thereon in the course of
 17 professional duty;

18 *Third.*—A clergyman or priest cannot, without the con-
 19 sent of the person making the confession, be examined as
 20 to the confession made to him in his professional character
 21 in the course of discipline enjoined by the church to which
 22 he belongs;

23 *Fourth.*—A regular physician or surgeon cannot, with-
 24 out the consent of his patient, be examined in a civil action,
 25 as to any information acquired in attending the patient,
 26 which was necessary to enable him to prescribe or act for
 27 the patient;

28 *Fifth.*—A public officer cannot be examined as to
 29 communications made to him in official confidence,
 when the public interest would suffer by the disclosure.

1 **SECT. 11.** Every person who declares that he has con- C. S. p. 687, Sect. 92.
 2 scientious scruples against taking an oath, or swearing in
 3 any form, shall be permitted to make his solemn declara-
 4 tion or affirmation.

1 **SECT. 12.** Whenever the court before which any person C. S. p. 687, Sect. 93.
 2 is offered as a witness is satisfied that such person has any
 3 peculiar mode of swearing, which is more solemn and ob-
 4 ligatory in the opinion of such person, than the usual mode,
 5 the court may, in its discretion, adopt such mode of swear-
 6 ing such person.

1 **SECT. 13.** Every person believing in any other than the

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C. S. p. 687, Sect. 94.

2 christian religion, shall be sworn according to the pe-
 3 culiar ceremonies of his religion, if there are any such
 4 ceremonies.

C. S. p. 687, Sect. 95.

1 SECT. 14. The court before whom an infant, or a per-
 2 son apparently of weak intellect, is produced as a witness,
 3 may examine such person to ascertain his capacity, and
 4 whether he understands the nature and obligations of an
 5 oath; and any court may inquire of any person, what are
 6 the peculiar ceremonies observed by him in swearing, which
 7 he deems most obligatory.

TITLE II.

TAKING THE TESTIMONY OF WITNESSES WITHIN THIS STATE.

C. S. p. 676, Sect. 7.

1 SECT. 15. Depositions may be taken in the manner and
 2 according to the regulations provided in this chapter, to be
 3 used before any magistrates or other persons authorized to
 4 examine witnesses in any other than criminal cases.

C. S. p. 676, Sect. 8.

1 SECT. 16. When a witness whose testimony is wanted
 2 in any civil cause pending in this state, lives more than
 3 thirty miles from the place of trial, or is about to go out of
 4 the state, and not to return in time for trial, or is so sick,
 5 infirm or aged as to make it probable that he will not be
 6 able to attend at the trial, his deposition may be taken in
 7 the manner hereinafter provided.

C. S. p. 676, Sect. 9.

1 SECT. 17. At any time after the cause is commenced by
 2 the service of process or otherwise, or after it is submitted
 3 to arbitrators or referees, either party may apply to any
 4 justice of the peace who shall issue a notice to the adverse
 5 party, to appear before the said justice, or any other jus-
 6 tice of the peace, at the time and place appointed for
 7 taking the deposition, and to put such interrogatories as he
 8 may see fit.

C. S. p. 676, Sect. 10.

1 SECT. 18. The said notice may be served on the agent
 2 or attorney of the adverse party, and shall have the same ef-
 3 fect as if served on the party himself.

C. S. p. 676, Sect. 11.

1 SECT. 19. When there are several persons plaintiffs or
 2 defendants, a notice served on either of them is sufficient.

C. S. p. 676, Sect. 12.

1 SECT. 20. The notice shall be served by delivering an
 2 attested copy thereof to the person to be notified, or by
 3 leaving such copy at his place of abode, allowing in all ca-

4 ses not less than twenty-four hours after such notice
 5 before the time appointed for taking the depositions, and
 6 also allowing time for his travel to the place appointed af-
 7 ter being notified, not less than at the rate of one day, Sun-
 8 days excepted, for every twenty miles travel.

1 SECT. 21. The written notice before prescribed may be C. S. p. 676, Sect. 13. C 84
 2 wholly omitted, if the adverse party or his attorney in wri-
 3 ting waives the right to it.

1 SECT. 22. The deponent shall be sworn to testify the
 2 whole truth, and nothing but the truth, relating to the C. S. p. 676, Sect. 14.
 3 cause for which the deposition is taken, and he shall then
 4 be examined by the parties if they see fit, or by the justice,
 5 and his testimony shall be taken in writing.

1 SECT. 23. The party producing the deponent shall be
 2 allowed first to examine him, either upon verbal or written C. S. p. 676, Sect. 15.
 3 interrogatories, on all points which he deems material, and
 4 then the adverse party may examine the deponent in like
 5 manner; after which either party may propose such further
 6 interrogatories as the case requires.

1 SECT. 24. The deposition shall be written by the justice
 2 or by the deponent, or by some disinterested person, in the C. S. p. 676, Sect. 16.
 3 presence and under the direction of the justice, and be care-
 4 fully read to or by the deponent, and shall then be sub-
 5 scribed by him.

1 SECT. 25. The justice shall annex to the deposition a
 2 certificate substantially as follows:
 3 State of Minnesota, }
 4 County of } ss.
 5 I. A. B., justice of the peace in and for said county, do C. S. p. 676, Sect. 17.
 6 hereby certify that the above deposition was taken before
 7 me, at my office in the in said county, on the
 8 day of , 18 , at o'clock; ; that it was
 9 taken at the request of the plaintiff, (or defendant) upon
 10 verbal (or written) interrogatores; that it was reduced to
 11 writing by myself (or by deponent, or by , a
 12 disinterested person, in my presence and under my direc-
 13 tion,) that it was taken to be used in the suit of A. B. vs.
 14 C. D., now pending in court, and that the
 15 reason for taking it was (here state the true reason,) that
 16 attended at the taking of said deposition, (or
 17 that a notice, of which the annexed is a copy, was served
 18 upon him, on the day of 18 ;) that said
 19 deponent before examination was sworn to testify the
 20 whole truth, and nothing but the truth, relative to the said

21 cause, and that the said deposition was carefully read to (or
22 by) said deponent, and then subscribed by him.

23 Dated at the day of one thousand
24 eight hundred and

25 A. B., justice of the peace.

c. s. p. 677, Sect. 18. 1 SECT. 26. The deposition shall be delivered by the jus-
2 tice to the court or arbitrators, or referees, before whom
3 the cause is pending, or shall be inclosed and sealed by him,
4 and directed to them, and shall remain sealed until opened
5 by said court, or the clerk thereof, or arbitrators, or re-
6 ferees.

c. s. p. 677, Sect. 19. 1 SECT. 27. No deposition shall be used if it appears that
2 the reason for taking it no longer exists; *provided*, that if
3 the party producing the deposition in such case shows any
4 sufficient cause then existing for using such deposition, it
5 may be admitted.

c. s. p. 677, Sect. 20. 1 SECT. 28. Every objection to the competency or credi-
2 bility of the deponent, and to the propriety of any question
3 put to him, or of any answer made by him, may be made
4 when the deposition is produced, in the same manner as if
5 the witness was personally examined on the trial; *provided*,
6 that all objections to the form of any interrogatory shall be
7 made before it is answered, and if the interrogatory is not
8 withdrawn, the objection shall be noted in the deposition,
9 otherwise the objection shall not be afterward entertained.

c. s. p. 677, Sect. 21. 1 SECT. 29. When the plaintiff in any action discontinues
2 it, or it is dismissed for any cause, and another action is
3 afterward commenced for the same cause between the same
4 parties, or their respective representatives, all depositions
5 lawfully taken for the first action, may be used in the second,
6 in the same manner, and subject to the same conditions and
7 objections as if originally taken for the second action; *pro-*
8 *vided*, that the deposition has been duly filed in the court
9 where the first action was pending, and remained in the custo-
10 dy of the court, from the termination of the first action until
11 the commencement of the second.

c. s. p. 677, Sect. 22. 1 SECT. 30. When an action is appealed from one court
2 to another, all depositions lawfully taken to be used in the
3 court below, may be used in the appellate court in the same
4 manner, and subject to the same exceptions for informality
5 or irregularity, as were taken to such depositions in writ-
6 ing in the court below.

c. s. p. 677, Sect. 24. 1 SECT. 31. Any witness may be subpoenaed and compel-
2 led to give his deposition, at any place within twenty miles

3 of his abode, in like manner, and under the same penalties,
 4 as he may be subpoenaed and compelled to attend as a wit-
 5 ness in any court.

TITLE III.

TAKING THE TESTIMONY OF WITNESSES OUT OF THIS STATE.

1 SECT. 32. The deposition of any witness without this
 2 state may be taken under a commission issued to any com- C. S. p. 677, Sect. 25.
 3 petent person in any state or country, by the court in which
 4 the cause is pending, or upon a reference as hereinafter pro-
 5 vided; and the deposition may be used in the same manner
 6 and subject to the same conditions and objections as if it
 7 had been taken in this state. c 84

1 SECT. 33. No commission shall be issued to take testi-
 2 mony out of this state, except in the following cases: C. S. p. 678, Sect. 26.
Amended.
 3 *First.*—When an issue has been joined in an action in a
 4 court of record in this state, and it shall appear on
 6 the application of either party that any witness not
 7 residing in this state is material in the prosecution or de-
 8 fense of such action, and that due notice of such application
 9 was served upon the adverse party at least eight days be-
 10 fore the application is made.

11 *Second.*—When, in an action commenced in a court of
 12 record in this state, the time for answering the complaint
 13 has expired, and the defendant has not answered or demur-
 14 red to the said complaint, and it appears upon the applica-
 15 tion of the plaintiff that the testimony of any witness not
 16 residing in this state is material and necessary to establish
 17 the facts stated in the complaint, and to enable the court to
 18 render judgment in such action.

1 SECT. 34. When the application is made by the plain-
 2 tiff, and there has been no appearance for the defendant in C. S. p. 678, Sect. 27.
Amended.
 3 the action, it may be made *ex parte* and without notice, and
 4 the deposition may be taken upon interrogatories filed by
 5 the plaintiff and annexed to the commission. In all other
 6 cases such depositions shall be taken under a commission,
 7 and upon written interrogatories, to be exhibited to the ad-
 8 verse party or his attorney, and cross interrogatories to be
 9 filed by him, if he sees fit: *provided*, that the parties may,
 10 by stipulation in writing, agree upon any other mode of ta-
 11 king depositions, and when taken pursuant to such stipula-
 12 tions, they may be used upon the trial with like force and
 13 effect in all respects as if taken upon the commission and
 14 written interrogatories as herein provided.

New.

1 SECT. 35. All affidavits taken out of the state, before
 2 any officer authorized to administer oaths, and certified by
 3 the clerk of a court of record, may be used and read upon
 4 the argument of any motion to the same extent, and with
 5 like effect, as if taken within this state, *Provided*, That if
 6 such affidavit is taken before a notary public, or commis-
 7 sioner for this state, no such certificate shall be required.

TITLE IV.

PROCEEDINGS TO PERPETUATE THE TESTIMONY OF WITNESSES
WITHIN THIS STATE.C. S. p. 678, Sect. 30.
Amended.

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1 SECT. 36. When any person is desirous to perpetuate
 2 the testimony of any witness, he shall make a statement in
 3 writing, setting forth briefly, and substantially, his title
 4 claim or interest, in or to the subject concerning which he
 5 desires to perpetuate the evidence, and the names of all
 6 other persons interested, or supposed to be interested there-
 7 in; their residences, if known, and if unknown it shall be so
 8 stated, and also the name of the witness proposed to be ex-
 9 amined, and shall deliver the said statement to the judge of
 10 a court of record, requesting him to take the deposition of
 11 the said witness.

C. S. p. 678, Sect. 21.
Amended.

1 SECT. 37. The said judge shall thereupon cause notice
 2 to be given of the time and place appointed for taking the
 3 deposition, to all persons mentioned in the said statement,
 4 as interested in the case, which notice shall be given in the
 5 same manner as is prescribed in this chapter, respecting no-
 6 tice upon taking a deposition in this state, to be used in any
 7 cause here pending; *Provided*, That in all cases where the
 8 judge is satisfied that by reason of the non-residence of any
 9 of the persons in this state, or for any other cause, it will
 10 be impossible to serve the notice as aforesaid, he may direct
 11 notice to be given by publishing the same for three succes-
 12 sive weeks in a newspaper printed and published in the
 13 county where the applicant resides, or if there is none, then
 14 in a newspaper printed and published at the capital of the
 15 state.

C. S. p. 679, Sect. 22.

1 SECT. 38. The deponent shall be sworn and examined,
 2 and his deposition shall be written, read, and subscribed in
 3 the same manner as is prescribed respecting the other depo-
 4 sitions before mentioned, and the judge shall annex thereto
 5 a certificate under his hand, of the time and manner of
 6 taking it, and that it was taken in perpetual remembrance
 7 of the thing, and he shall also insert in the certificate, the

8 names of the persons at whose request it was taken, and of
 9 all those who were notified to attend, and of all those who
 10 did attend the taking thereof.

1 SECT. 39. The deposition with the certificate, and also
 2 the written statement of the party at whose request it was
 3 taken, shall, within ninety days after the taking thereof, be
 4 recorded in the registry of deeds in the county where the
 5 land lies, if the deposition relates to real estate, otherwise
 6 in the county where the party applying for such deposition
 7 resides. C. S. p. 679, Sect. 33. c 84

1 SECT. 40. If any action, either at the time of taking
 2 such deposition, or at any time afterwards, is pending be-
 3 tween the person at whose request it was taken, and the
 4 persons named in the written statement, or any of them, or
 5 any person claiming under either of the said parties respec-
 6 tively, concerning the title, claim, or interest set forth in
 7 the statement, the deposition so taken, or a certified copy
 8 of it from the registry of deeds, may be used in such action,
 9 in the same manner and subject to the same conditions and
 10 objections as if it had been originally taken for the said
 11 action. C. S. p. 679, Sect. 34.

1 SECT. 41. Any witness may be subpoenaed and com-
 2 pelled to give his deposition in perpetual remembrance of
 3 the thing, as before prescribed, in like manner and under
 4 the same penalties as are provided in this chapter, respect-
 5 ing other depositions taken in this state. C. S. p. 679, Sect. 35.

TITLE V.

PROCEEDINGS TO PERPETUATE THE TESTIMONY OF WITNESSES OUT OF THIS STATE.

1 SECT. 42. Depositions to perpetuate the testimony of
 2 of witnesses living without the state, may be taken in any
 3 state, or in any foreign country, upon a commission to be
 4 issued by any court of record in the manner hereinafter
 5 provided. C. S. p. 679, Sect. 36.

1 SECT. 43. The person who proposes to take the deposi-
 2 tion, shall apply to the judge of any such court, and deliver
 3 to him a statement like that before prescribed to be deliv-
 4 ered to the judge or justice of the peace, upon taking such
 5 a deposition within this state, and if the subject of the pro-
 6 posed deposition relate to real estate within this state, the
 7 statement shall be filed in the county where the lands, or
C. S. p. 679, Sect. 37.

8 any part thereof lies; otherwise in the county where the
9 applicant resides.

1 SECT. 44. The court shall order notice of such applica-
2 tion, to be served on all the persons mentioned in such
3 statement, and living within the state, which notice shall be
4 served fourteen days at least before the time appointed for
5 hearing the parties; *Provided*, That if any of said parties
6 reside out of this state or if their residence is unknown to
7 the applicant, the judge shall order notice to be served on
8 them by publishing the same for three successive weeks in
9 a newspaper printed and published in the county where the
10 applicant resides, or if there is none, then in a newspaper
11 printed and published at the capital of the state.

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C. S. p. 679, Sect. 38.
Amended.

C. S. p. 679, Sect. 39.

1 SECT. 45. If, upon such hearing of the parties, or of the
2 applicant alone, should no adverse party appear, the judge
3 is satisfied that there is sufficient cause for taking the depo-
4 sition, he shall issue a commission therefor, in like manner
5 as for taking a deposition to be used in any cause pending
6 in the same court.

C. S. p. 680, Sect. 40.

1 SECT. 46. The deposition shall be taken upon written
2 interrogatories, filed by the applicant, and cross interroga-
3 tories filed by any party adversely interested, if he sees fit;
4 and it shall be taken and returned substantially in the same
5 manner as if taken to be used in any cause pending in said
6 court.

C. S. p. 680, Sect. 43.
Amended.

1 SECT. 47. All depositions to perpetuate the testimony
2 of witnesses taken at any place without this state, according
3 to the provisions of this chapter, may be used in like man-
4 ner as if taken within the state, and shall be filed and re-
5 corded within the same time and in the same manner.

TITLE VI.

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

C. S. p. 681, Sect. 43.

1 SECT. 48. Any witness may be subpoenaed and com-
2 pelled in like manner, and under the same penalties as are
3 prescribed in this chapter, to give his deposition in any
4 cause pending in a court in any state or government,
5 which deposition may be taken before any justice of the
6 peace in this state, or before any commissioners that may be
7 appointed under the authority of the state or government in
8 which the action is pending; and if the deposition is taken

9 before such commissioners, the witness may be subpoenaed
10 and compelled to appear before them by process from any
11 justice of the peace in this state.

TITLE VII.

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

1 SECT. 49. The records and judicial proceedings of any
2 court of any state or territory or of the United States, C. S. p. 682, Sect. 54. c84
3 shall be admissible in evidence, in all cases in this state,
4 when authenticated by the attestation of the clerk, prothonotary
5 or other officer having charge of the records of such
6 court, with the seal of such court annexed.

1 SECT. 50. The printed copies of all statutes, acts, and C. S. p. 682, Sect. 55.
2 resolves of this state, whether of a public or private nature,
3 which are published under the authority of the state are admissible
4 as sufficient evidence thereof in all courts of law,
5 and on all occasions whatsoever.

1 SECT. 51. Printed copies of the statute laws of any state C. S. p. 682, Sect. 56.
2 or territory of the United States, if purporting to be published
3 under the authority of their respective governments, or if commonly
4 admitted and read as evidence in their courts, are admissible
5 in all courts of law and on all other occasions in this state as
6 *prima facie* evidence of such laws.

1 SECT. 52. The unwritten or common law of any state C. S. p. 682, Sect. 57.
2 or territory of the United States, may be proved as facts by
3 parol evidence, and the books of reports of cases, adjudged
4 in their courts, may also be admitted as evidence of such
5 law.

1 SECT. 53. The existence and the tenor, or effect of all C. S. p. 682, Sect. 58.
2 foreign laws, may be proved as facts, by parol evidence,
3 but if it appears that the law in question is contained in a
4 written statute or code, the court may in its discretion, reject
5 any evidence of such law, that is not accompanied by a
6 copy thereof.

TITLE VIII.

DOCUMENTARY EVIDENCE AND THE PRESERVATION THEREOF.

C. S. p. 683, Sect. 60.

1 SECT. 54. When notice of any application to any court,
 2 or judicial officer for any proceeding authorized by law, is
 3 required to be published in one or more newspapers, an af-
 4 fidavit of the printer of such newspaper, or of his foreman
 5 or principal clerk, annexed to a printed copy of such notice,
 6 taken from the paper in which it was published, and specify-
 7 ing the time when and the paper in which such notice was pub-
 8 lished, may be filed with the proper officer of the court, or with
 9 the judicial officer before whom such proceeding is pending,
 10 at any time within six months after the last day of the pub-
 11 lication of such notice, unless sooner specially required.

C. S. p. 683, Sect. 61.

1 SECT. 55. When any notice of a sale of real property is
 2 required by law, to be published in any newspaper, an affi-
 3 davit of the printer of such newspaper, or of his foreman or
 4 principal clerk, annexed to a printed copy of such notice,
 5 taken from the paper in which it was published, and speci-
 6 fying the times when, and the paper in which such notice
 7 was published, may be filed at any time within six months
 8 after the last day of such publication with the register of
 9 deeds in the county in which the premises sold are situated.

C. S. p. 683, Sect. 62.

1 SECT. 56. The original affidavit so filed pursuant to the
 2 two preceding sections and copies thereof, duly certified by
 3 the officer in whose custody the same may be, is evidence
 4 in all cases, and in every court or judicial proceeding, of the
 5 facts contained in such affidavit.

C. S. p. 683, Sect. 63.
Amended.

1 SECT. 57. The affidavit of the printer, or foreman of
 2 such printer, of any newspaper published in this state of
 3 the publication of any notice or advertisement which by any
 4 law of this state is required to be published in such newspa-
 5 per, is *prima facie* evidence of such publication, and of the
 6 facts stated therein.

C. S. p. 683, Sect. 64.

1 SECT. 58. Whenever a certified copy of an affidavit, re-
 2 cord, document, or other paper, is allowed by law to be evi-
 3 dence, such copy shall be certified by the officer in whose
 4 custody the same is required by law to be, to have been
 5 compared by him with the original and to be a correct trans-
 6 cript therefrom; and if such officer have any official seal by
 7 law, such certificate shall be authenticated by such seal.

C. S. p. 683, Sect. 65.

1 SECT. 59. But the preceding section shall not be con-
 2 strued to require the affixing of the seal of a court to any
 3 certified copy of a rule or order made by such court, or of any

4 paper filed therein, when such copy is used in the same
5 court or before any officer thereof.

1 SECT. 60. Every written instrument except promissory
2 notes, and bills of exchange, and except the last wills of
3 deceased persons may be proved or acknowledged in the
4 manner now provided by law for taking the proof or ac-
5 knowledgment of conveyances of real estate, and the certifi-
6 cate of the proper officer indorsed thereon, shall entitle such
7 instrument to be read in evidence in all courts of justice,
8 and all proceedings before any officer, body or board, with
9 the same effect, and in the same manner as if such instru-
10 ment was a conveyance of real estate.

C. S. p. 683, Sect. 66.

c 84

1 SECT. 61. The register of deeds and the clerk of any
2 court of record in every county of this state upon being paid
3 the fees allowed therefor by law, shall receive and deposit
4 in their offices respectively, any instruments or papers which
5 any person shall offer them for that purpose, and if required
6 shall give such person a written receipt therefor.

C. S. p. 683, Sect. 67.

1 SECT. 62. Such instruments or papers, shall be proper-
2 ly indorsed so as to indicate their general nature and the
3 names of the parties thereto, shall be filed by the officer re-
4 ceiving the same, stating the time when received, and shall
5 be deposited and kept by him and his successors in office,
6 in the same manner as his official papers, in some place
7 separate and distinct from such papers.

C. S. p. 683, Sect. 68.

1 SECT. 63. The instruments and papers so received and
2 deposited, shall not be withdrawn from such office, except
3 on the order of some court for the purpose of being read in
4 evidence in such court, and then to be returned to such of-
5 fice; nor shall they be delivered without such order, to any
6 person unless upon the written order of the person who de-
7 posited the same, or his executors or administrators.

C. S. p. 684, Sect. 69.

1 SECT. 64. Such instruments or papers so deposited, shall
2 be open to the examination of any person desiring the same,
3 upon the payment of the fees allowed by law.

C. S. p. 684, Sect. 70.

1 SECT. 65. When any officer to whom the legal custody
2 of any documents, instrument or paper belongs, shall certify
3 under his official seal, that he has made diligent examination
4 in his office for such paper, instrument, or document, and
5 that it cannot be found, such certificate is presumptive evi-
6 dence of the facts so certified in all causes, matters and pro-
7 ceedings, in the same manner and with the like effect as if
8 such officer had personally testified to the same in the court,
9 or before the officer before whom such cause, matter or pro-
10 ceeding may be pending.

C. S. p. 684, Sect. 71.

1 SECT. 66. Copies of all papers, documents or writings
 2 required by law to be filed or left in any public office in this
 3 state, and transcripts of any public records kept therein,
 4 certified by the officer having custody of the same, under his
 5 official seal, if he has one, are admissible in evidence with
 6 the like effect and to the same extent as the originals.

TITLE IX.

THE LOSS OF INSTRUMENTS AND PROCEEDINGS THEREON.

284 c. s. p. 684, Sect. 73. 1 SECT. 67. Whenever a party to an action is permitted
 2 to prove by his own oath the loss of any instrument, in or-
 3 der to admit other proof of the contents thereof, the adverse
 4 party may also be examined by the court, on oath, to dis-
 5 prove such loss and to account for such instrument.

c. s. p. 684, Sect. 74. 1 SECT. 68. In any action founded on any negotiable
 2 promissory note or bill of exchange, or in which such note,
 3 if produced, might be allowed as a set-off in the defense of
 4 any action, if it appears on the trial that such note or bill
 5 was lost while it belonged to the party claiming the amount
 6 due thereupon, parol or other evidence of the contents there-
 7 of may be given on such trial, and notwithstanding such
 8 note or bill was negotiable, such party shall be entitled to
 9 receive the amount due thereon, as if such note or bill had
 10 been produced.

c. s. p. 684, Sect. 75. 1 SECT. 69. But to entitle a party to a recovery on a ne-
 2 gotiable promissory note or bill of exchange which has been
 3 lost, he shall execute a bond to the adverse party in a pen-
 4 alty at least double the amount of such note or bill, with
 5 two sureties, to be approved by the court in which the re-
 6 covery is had, or the clerk thereof, in case no trial has been
 7 had, conditioned to indemnify the adverse party, his heirs,
 8 and personal representatives, against all claims by any oth-
 9 er persons on account of such note or bill, and against all
 10 costs and expenses by reason of such claim.

TITLE X.

ACCOUNT BOOKS, RECORDS, INSTRUMENTS AND JUSTICES' DOCKETS AS EVIDENCE.

c. s. p. 685, Sect. 76. 1 SECT. 70. Whenever a party in any cause or proceed-
 2 ing produces at the trial his account books, and swears that
 3 the same are his account books kept for that purpose, that

4 they contain the original entries of charges for goods, or
 5 other articles delivered or work and labor or other services
 6 performed, or materials found, and that such entries are just to
 7 the best of his knowledge and belief, that said entries are in his
 8 own hand writing, and that they were made at or about the time
 9 said goods or other articles were delivered, said work and labor
 10 or other services were performed, or said materials were
 11 found; the party offering such books as evidence, being
 12 subject to all the rules of cross-examination by the adverse
 13 party that would be applicable by such rules to any other
 14 witness giving testimony relating to said books, if it ap-
 15 pears upon the examination of said party that all of the in-
 16 terrogatories in this section contained, are satisfactorily es-
 17 tablished in the affirmative, then the said books shall be re-
 18 ceived as prima facie evidence of the charges therein con-
 19 tained.

1 SECT. 71. Whenever the original entries mentioned in
 2 the preceding section are in the hand writing of an agent,
 3 servant or clerk of the party, the oath of such agent, ser-
 4 vant or clerk, may in like manner be admitted to verify the
 5 same, and said books are testimony in the same manner as
 6 the books mentioned in the preceding section; *Provided*,
 7 That such books mentioned in this and the preceding sec-
 8 tion are not admissible as testimony of any item of money
 9 delivered at one time exceeding five dollars, or of money
 10 paid to third persons, or of charges for rent.

C. S. p. 685, Sect. 77. c 84

1 SECT. 72. Where a book has marks which show that the
 2 items have been transferred to a ledger, the book shall not
 3 be testimony unless the ledger is produced.

C. S. p. 685, Sect. 78.

1 SECT. 73. Any entries made in a book by a person au-
 2 thorized to make the same, he being dead, may be received
 3 as evidence in a case proper for the admission of such book
 4 as evidence, on proof that the same are in his hand writing,
 5 and in a book kept for such entries, without further verifi-
 6 cation.

C. S. p. 685, Sect. 79.

1 SECT. 74. A copy of the minutes of any conviction and
 2 judgment, duly certified by the clerk in whose custody such
 3 minutes are, under his official seal, together with a copy of
 4 the indictment on which the conviction was had, certified in
 5 the same manner, shall be evidence in all courts and places
 6 of such conviction and judgment, without the production of
 7 the judgment roll.

C. S. p. 786, Sect. 44. c 118

1 SECT. 75. Whenever it becomes necessary in an action
 2 before a justice of the peace to give evidence of a judgment,
 3 or other proceedings had before him, the docket of such

C. S. p. 685, Sect. 81. c 84

4 judgment, or other proceeding, or a transcript thereof cer-
5 tified by him, shall be good evidence thereof before such
6 justice.

1 ·SECT. 76. A transcript from the docket of any justice.
2 of the peace of any judgment had before him of the proceed-
3 ings in the case previous to such judgment, of the execution
4 issued thereon if any, and of the return to such execution,
5 if any, when certified by such justice, is evidence to prove
6 the facts contained in such transcript in any court in the
7 county where such judgment was rendered.

c84. C. S. p. 686, Sect. 82.

1 SECT. 77. To entitle such transcript to be read in evi-
2 dence in a different county than that in which the judgment
3 was rendered, or the proceedings originated, there shall be
4 attached thereto or indorsed thereon a certificate of the clerk
5 of the district court of the county in which such justice re-
6 sides, under the seal of said court, specifying that the per-
7 son subscribing such transcript was at the date of the judg-
8 ment therein mentioned, a justice of the peace of such
9 county.

C. S. p. 686, Sect. 83.

1 SECT. 78. The proceedings in any cause had before a
2 justice not reduced to writing by said justice, nor being the
3 contents of any paper or document produced before said
4 justice, unless such paper or document is lost or destroyed,
5 may be proved by the oath of the justice. In case of his
6 death or absence they may be proved by producing the
7 original minutes of such proceeding entered in a book kept
8 by such justice, accompanied by proof of his hand writing :
9 or they may be proved by producing copies of such minutes
10 sworn to by a competent witness, as having been compared
11 by him with the original entries, with proof that such entries
12 were in the hand writing of the justice.

C. S. p. 686, Sect. 84.

1 SECT. 79. Every certificate of conviction made and filed
2 by a justice under the provisions of law or a duly certified
3 copy thereof, is evidence in all courts and places, of the
4 facts therein contained.

c59 C. S. p. 526, Sect.
205. Amended.

1 SECT. 80. An exemplification of a judgment rendered
2 by any justice of the peace, in any state or territory of the
3 United States, officially certified by such justice as a full
4 and correct copy of all the proceedings in that case from
5 his docket, with a certificate of magistracy thereon, signed
6 and authenticated by a clerk of a court of record in the
7 county, where such judgment was rendered, with the seal
8 thereof attached, is evidence in any court in this state to
9 prove the facts contained in such exemplification.

c84 C. S. p. 682, Sect. 59.

1 SECT. 81. The court before which an action is pending,
 2 or a judge thereof, may order either party to give to the
 3 other, within a specified time, an inspection and copy, or
 4 permission to take a copy of any book, document or paper
 5 in his possession or under his control, containing evidence
 6 relating to the merits of the action, or the defense therein ;
 7 if compliance with the order is refused, the court may ex-
 8 clude the book, document or paper from being given in evi-
 9 dence, or if wanted as evidence by the party applying may
 10 direct the jury to presume it to be such as he alleges it to be ;
 11 and the court may also punish the party refusing. This
 12 section is not to be construed to prevent a party from com-
 13 pelling another to produce books, papers or documents,
 14 when he is examined as a witness.

C. S. p. 626, Sect. 12. c 72

1 SECT. 82. In actions brought on promissory notes or
 2 bills of exchange by the indorsee, the possession of the note
 3 is *prima facie* evidence that the same was indorsed by the
 4 persons by whom it purports to be indorsed.

c 84

1 SECT. 83. An indorsement of money received, on any
 2 promissory note, which appears to have been made when it
 3 was against the interest of the holder to make it, is *prima*
 4 *facie* evidence of the facts therein contained.

1 SECT. 84. The receipt or certificate signed by the regis-
 2 ter or receiver of any United States land office, of the en-
 3 try or purchase of any tract of land, or of the location of
 4 any tract by a military land warrant, is *prima facie* evidence
 5 in the courts of this state, that the title of the lands men-
 6 tioned or described, in said receipt or certificate is in the
 7 person named therein, his heirs or assigns.

C. S. p. 638, Sect. 88. Amended.

1 SECT. 85. Patents issued by the United States of land
 2 in the state, or duplicates thereof, from the records in the
 3 general land office of the United States, certified by the com-
 4 missioner of such land office, may be recorded in the regis-
 5 try of deeds, of the county in which the land described in
 6 the patent is situated, and the record of such patents or du-
 7 plicates or copies of such records certified by the register of
 8 deeds, are evidence in like manner and to the same extent
 9 as the records or transcripts thereof of other coveyances of
 10 real estate.

New.

1 SECT. 86. All plats of surveys of public lands certified
 2 by the register of the land office of the district in which
 3 such land is situated, to be a true copy of the certified copy
 4 on file in his office of the original plat thereof, and all cer-
 5 tificates by the register of such land office, of the surveys or
 6 entry and location of, or other facts in relation to such

C. S. p. 167, Sect. 84, in part; 1864-ch. 34, Sect. 1, combined & amended. c 7 34

7 lands, taken from the books of such land office, or from the
8 certificate endorsed on the copy of the original plat on file
9 therein, are *prima facie* evidence of the facts therein stated.
10 The certificate of the county surveyor or any of his depu-
11 ties, shall be admitted as legal evidence, but the same may
12 be explained or rebutted by other evidence.

c35
C. S. p. 400, Sect. 20.
Amended.

1 SECT. 87. All conveyances of real estate and other in-
2 struments authorized by law to be recorded, and which are
3 acknowledged or proved as provided by law, and, if the
4 same have been recorded, the record or a transcript thereof,
5 certified by the register in whose office the same is record-
6 ed, may be read in evidence without further proof, but the
7 effect of such evidence may be rebutted by other competent
8 testimony.

c52
C. S. p. 462, Sect. 17.

1 SECT. 88. The original certificates and records of mar-
2 riage, made by the judge, justice or minister, as prescribed
3 by law, and the record thereof by the clerk of the district
4 court, or a copy of such record duly certified by such clerk,
5 shall be received in all courts and places as presumptive
6 evidence of the fact of such marriage.

TITLE XI.

CHARACTER, COMPETENCY, AND EFFECT OF EVIDENCE.

New.

1 SECT. 89. When the fact of marriage is required or of-
2 fered to be proved before any court, evidence of the admis-
3 sion of such fact by the party against whom the proceed-
4 ing is instituted, or of general repute, or of cohabitation
5 as married persons, or any other circumstantial or presump-
6 tive evidence from which the fact may be inferred, shall be
7 competent.

c91
C. S. p. 718, Sect. 8.
Amended.

1 SECT. 90. In all prosecutions for forging or counterfeit-
2 ing any notes or bills of any banking company or corpora-
3 tion, or for uttering, publishing, or tendering in payment
4 as true, any forged or counterfeit bank bills or notes, or for
5 being possessed thereof with the intent to utter and pass
6 them as true, the testimony of the president and cashier of
7 such banks may be dispensed with, if their place of resi-
8 dence is without this state, or more than forty miles from
9 the place of trial; and the testimony of any person acquaint-
10 ed with the signature of the president or cashier of such
11 banks, or who has knowledge of the difference in the ap-
12 pearance of the true and counterfeit bills or notes thereof,
13 may be admitted to prove that any such bills or notes are
14 counterfeit.

1 SECT. 91. In all prosecutions for forging or counterfeit-
 2 ing any note, certificate, bill of credit, or security issued on
 3 behalf of the United States, or on behalf of any state or ter- C. S. p. 718, Sect. 9. *c 91*
 4 ritory, or for uttering, publishing, or tendering in payment
 5 as true, any such forged or counterfeit note, certificate, bill
 6 of credit, or security, or for being possessed thereof with
 7 intent to utter and pass the same as true, the certificate un-
 8 der oath of the secretary of the treasury, or of the treasurer
 9 of the United States, or of the secretary or treasurer of any
 10 state or territory on whose behalf such note, certificate, bill
 11 of credit, or security purports to have been issued, shall be
 12 admitted as evidence for the purpose of proving the same to
 13 be forged or counterfeit.

1 SECT. 92. Proof of actual penetration into the body is C. S. p. 782, Sect. 7. *c 118*
 2 sufficient to sustain an indictment for rape, or for the crime
 3 against nature.

1 SECT. 93. A confession of a defendant, whether made in
 2 the course of judicial proceedings, or to a private person, C. S. p. 782, Sect. 6.
 3 cannot be given in evidence against him, when made under
 4 the influence of fear produced by threats, nor is it sufficient
 5 to warrant his conviction, without evidence that the offense
 6 charged has been committed.

1 SECT. 94. A conviction cannot be had upon the testi- C. S. p. 782, Sect. 8.
 2 mony of an accomplice unless he is corroborated by such
 3 other evidence as tends to convict the defendant of the com-
 4 mission of the offense, and the corroboration is not sufficient
 5 if it merely shows the commission of the offense, or the
 6 circumstances thereof.

1 SECT. 95. In all criminal prosecutions or indictments
 2 for libel, the truth may be given in evidence; and if it ap- C. S. p. 734, Sect. 6. *c 98*
 3 pears to the jury that the matter charged as libelous is
 4 true, and was published with good motives and justifiable
 5 ends, the party shall be acquitted; and the jury shall have
 6 the right to determine the law and the fact.

1 SECT. 96. Divorces shall not be granted on the sole New.
 2 confessions, admissions, or testimony of the parties, either
 3 in or out of court.