

THE *J. Rogers*
GENERAL STATUTES

OF THE

STATE OF MINNESOTA:

REVISED BY COMMISSIONERS APPOINTED UNDER AN ACT APPROVED FEBRUARY 17, 1868, AND
ACTS SUBSEQUENT THERETO, AMENDED BY THE LEGISLATURE,
AND PASSED AT THE SESSION OF 1866.

TO WHICH

THE CONSTITUTION OF THE UNITED STATES, THE ORGANIC ACT, THE
ACT AUTHORIZING A STATE GOVERNMENT, AND THE
CONSTITUTION OF THE STATE OF MINNESOTA,

ARE PREFIXED;

AND A LIST OF ACTS PREVIOUSLY REPEALED,

A GLOSSARY, AND INDEX, ARE ADDED.

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the Laws of 1866.

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Commissioners appointed in other states, may take acknowledgments.

SEC. 10. Such commissioners as the governor shall appoint in any of the United States or territories of the United States, to take the acknowledgment of deeds or other instruments in writing to be used in this state, shall hold their office during the pleasure of the governor, and shall have power to take the acknowledgment and proofs of the execution of any deed or other conveyance or lease of any lands lying in this state, and of any contract, letter of attorney, or any other writing under seal, or not, to be used or recorded in this state.

Effect of such acknowledgment when duly certified.

SEC. 11. Such acknowledgment or proof so taken according to the laws of this state, and certified to by any such commissioner under his seal of office and annexed to or indorsed on such instrument, shall have the same power and effect as if the same had been made before any officer authorized to perform such acts in this state.

Such commissioners may administer oaths and certify depositions.

SEC. 12. Every commissioner appointed as before mentioned, shall have power to administer an oath which may be lawfully required in this state, to any person willing to take the same, and to take and duly certify all depositions to be used in any of the courts of this state in conformity to the laws thereof, either on interrogatories proposed under a commission from any court of this state, or by consent of parties, or on legal notice given to the opposite party; and all such acts shall be as valid as if done and certified according to law by a proper officer in this state.

Each commissioner to be sworn, and to file oath and impression of seal in office of secretary of state.

SEC. 13. Every such commissioner before performing any duty or exercising any power by virtue of his appointment, shall take and subscribe an oath or affirmation before a judge or a clerk of one of the courts of record of the state in which such commissioner resides, well and faithfully to execute and perform all the duties of such commissioner, under and by virtue of the laws of the state of Minnesota, which oath, with a description or impression of his seal of office, shall be filed in the office of the secretary of this state.

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TITLE I.

WITNESSES.

SECTION 1. 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 in all contests concerning lands before the register and receiver of any land office in this state.

Subpoenas for witnesses, when may issue.

SEC. 2. Such subpoena 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.

How served.

Person duly sub-
pœnaed, failing
to attend, liable
in damages.

SEC. 3. If any person duly subpœnaed and obliged to attend as a witness, fails to do so, without any reasonable excuse, he is liable to the aggrieved party for all damages occasioned by such failure, to be recovered in a civil action.

Also guilty of a
contempt.

SEC. 4. Such failure to attend as a witness, if the subpœna issues out of any court of record, is a contempt of the court, and may be punished by fine not exceeding twenty dollars.

Court may issue
attachment for
delinquent wit-
ness.

SEC. 5. The court in such case may issue an attachment to bring such witness before it, to answer for the contempt, and also to testify as a witness in the action or proceeding in which he was subpœnaed.

Witness, defini-
tion of.

SEC. 6. A witness is a person whose declaration under oath is received as evidence for any purpose, whether such declaration is made on oral examination or by deposition or affidavit.

Who may be
witnesses.
1 Min. 207.
4 Min. 433.
10 Min. 350.

SEC. 7. All persons, except as hereinafter provided, having the power and faculty to perceive, and make known their perceptions to others, may be witnesses. 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, nor, until acquitted or convicted, for a co-defendant.

1868-110

Party not allow-
ed to testify,
when
3 Min. 351.

SEC. 8. When one, or in case of a joint, or joint and several contract, all, of the original parties on the same side to a contract or cause of action in issue and on trial, are dead, or shown to the court to be insane, the other party or parties shall not be admitted to testify as to such contract in his or their own favor, unless such transaction was had and performed, on behalf of the party or parties so deceased or insane, by an agent whose testimony is received: *provided*, that whenever an assignor of a contract or thing in action, or the payee or indorser of a negotiable instrument is examined as a witness to matters transpiring prior to the transfer or assignment of such contract or instrument, on behalf of any person deriving title through or from him, the adverse party shall be received as a witness to the same matters in his own behalf.

1874-216

Who are not
competent as
witnesses.

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

First. Those who are of unsound mind or intoxicated at the time of their production for examination;

Second. 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.

SEC. 10. There are particular relations in which it is the policy of the law to encourage confidence and preserve it inviolate; therefore a person cannot be examined as a witness in the following cases:—

Persons holding
certain relations
may be witnesses,
when
4 Min. 335.

First. 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 afterward, 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;

Second. 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;

Third. 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;

Fourth. 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;

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

SEC. 11. Every person who declares that he has conscientious scruples against taking an oath, or swearing in any form, shall be permitted to make his solemn declaration or affirmation. Witness may affirm, when.

SEC. 12. Whenever the court before which any person is offered as a witness is 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. Mode of administering oath most binding on witness to be used.

SEC. 13. Every person believing in any other than the christian religion, shall be sworn according to the peculiar ceremonies of his religion, if there are any such ceremonies. Witness to be sworn according to the ceremonies of his religion.

SEC. 14. The court before whom an infant, or a person apparently of weak intellect, is 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 to ascertain capacity of person offered as a witness, when.

TITLE II.

1868-111 *Forcible attendance of witnesses*

TAKING THE TESTIMONY OF WITNESSES WITHIN THIS STATE.

SEC. 15. 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 authorized to be taken.

SEC. 16. When a witness whose testimony is wanted in any civil cause pending in this state, lives more than thirty miles from the place of trial, or is about to go out of the state, 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. When witness lives more than thirty miles from place of trial.

SEC. 17. 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 see fit. Justice to appoint time and place of taking deposition.

SEC. 18. 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. Notice on agent or attorney good.

SEC. 19. When there are several persons, plaintiffs or defendants, a notice served on either of them is sufficient. Notice to one of several plaintiffs or defendants, good.

SEC. 20. 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, how served.

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;

Notice may be waived.

SEC. 21. The written notice before prescribed may be wholly omitted, if the adverse party or his attorney, in writing, waives the right to it.

Oath of deponent.

SEC. 22. The deponent shall be sworn to testify 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 see fit, or by the justice, and his testimony shall be taken in writing.

Order of examination.

SEC. 23. The party producing the deponent shall be allowed first to examine him, either upon verbal or written interrogatories, on all points which he deems 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 requires.

Deposition to be written by justice or other person and read to deponent and be signed by him.

SEC. 24. 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 be carefully read to or by the deponent, and shall then be subscribed by him.

Certificate of justice to be annexed to deposition.

SEC. 25. The justice shall annex to the deposition a certificate substantially as follows:—

State of Minnesota, }
County of } ss.

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 disposition, (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 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.

Deposition, how disposed of.

SEC. 26. 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 used, when.

SEC. 27. No deposition shall be used if it appears that the reason for taking it no longer exists: *provided*, that if the party producing the deposition in such case shows any sufficient cause then existing for using such deposition, it may be admitted.

Objections, how and when taken.

SEC. 28. 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 the form of any interrogatory shall be made before it is answered, and if the interrogatory is not withdrawn, the

objection shall be noted in the deposition, otherwise the objection shall not be afterward entertained.

SEC. 29. When the plaintiff in any action discontinues it, or it is dismissed for any cause, and another action is afterward commenced for the same cause between the same parties, or their respective representatives, all depositions lawfully taken for the first action 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 action: *provided*, that the deposition has been duly filed in the court where the first action was pending, and remained in the custody of the court, from the termination of the first action until the commencement of the second.

Deposition used in second action, when.
2 Min. 118.

SEC. 30. When an action is 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 the same exceptions for informality or irregularity, as were taken to such depositions in writing in the court below.

Deposition used on appeal of action, how.

SEC. 31. 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.

Witness may be compelled to give deposition, when.

TITLE III.

TAKING THE TESTIMONY OF WITNESSES OUT OF THIS STATE.

SEC. 32. The deposition of any witness without this state may be taken under a commission issued to any competent person in any state or country, by the court in which the cause is pending, or upon a reference as hereinafter provided; and the deposition may be used in the same manner and subject to the same conditions and objections as if it had been taken in this state.

Depositions of witnesses out of the state may be taken, how.
1 Min. 297.
7 Min. 74.

SEC. 33. No commission shall be issued to take testimony out of this state, except in the following cases:

Commission shall issue, in what cases.

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

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

SEC. 34. When the application is made by the plaintiff, and there has been no appearance for the defendant in the action, it may be made *ex parte* and without notice, and the deposition may be taken upon interrogatories filed by the plaintiff and annexed to the commission. 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 sees fit: *provided*, that the parties may, by stipulation in writing, agree upon any other mode of taking depositions, and when taken, pursuant to such stipulations, they may be used upon the trial with like force and effect in all respects as if taken upon the commission and written interrogatories as herein provided.

Interrogatories and cross-interrogatories, how settled.

Oaths and affidavits taken out of the state used as evidence, when.

SEC. 35. All oaths or affidavits taken out of the state, before any officer authorized to administer oaths, and certified by the clerk of a court of record, may be used and read upon the argument of any motion, to the same extent, and with like effect, as if taken within this state: *provided*, that if such affidavit is taken before a notary public, or commissioner for this state, no such certificate shall be required.

TITLE IV.

PROCEEDINGS TO PERPETUATE THE TESTIMONY OF WITNESSES WITHIN THIS STATE.

Testimony of witness may be perpetuated—application how made.

SEC. 36. When any person is 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, their residences, if known, and if unknown shall be so stated, 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.

Notice to be given.

SEC. 37. 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 state, to be used in any cause here pending: *provided*, that in all cases where the judge is satisfied that by reason of the non-residence of any of the persons in this state, or for any other cause, it will be impossible to serve the notice as aforesaid, he may direct notice to be given by publishing the same for three successive weeks in a newspaper printed and published in the county where the applicant resides, or if there is none, then in a newspaper printed and published at the capital of the state.

Testimony taken, how—judge to annex certificate.

SEC. 38. 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.

Deposition and certificate to be recorded.

SEC. 39. 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 party applying for such deposition resides.

Deposition may be used, when.

SEC. 40. If any action, either at the time of taking such deposition, or at any time afterward, is pending between the person at whose request it was taken, and the persons named in the written statement, or any of them, 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 action, in the same manner and subject to the same conditions and objections as if it had been originally taken for the said action.

SEC. 41. 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 state.

Witness may be compelled to give deposition under this title.

TITLE V.

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

SEC. 42. Depositions to perpetuate the testimony of witnesses living without the state, 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 witnesses out of the state, taken by commission.

SEC. 43. The person who proposes to take the deposition, shall apply to the judge of any such court, and deliver to him a statement like that before prescribed to be delivered to the judge or justice of the peace upon taking such a deposition within this state, and if the subject of the proposed deposition relates to real estate within this state, the statement shall be filed in the county where the lands, or any part thereof lies; otherwise in the county where the applicant resides.

Proceedings in such case.

SEC. 44. The court shall order notice of such application, to be served on all the persons mentioned in such statement, and living within the state, which notice shall be served fourteen days at least before the time appointed for hearing the parties: *provided*, that if any of said parties reside out of this state or if their residence is unknown to the applicant, the judge shall order notice to be served on them by publishing the same for three successive weeks in a newspaper printed and published in the county where the applicant resides, or if there is none, then in a newspaper printed and published at the capital of the state.

Statement to be filed.

Notice to be given.

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

Judge to issue commission, when.

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

Deposition, how taken and returned.

SEC. 47. All depositions to perpetuate the testimony of witnesses taken at any place without this state, according to the provisions of this chapter, may be used in like manner as if taken within the state, and shall be filed and recorded within the same time and in the same manner.

Such deposition how used, filed and recorded.

TITLE VI.

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

SEC. 48. 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,

Witness may be compelled to give deposition to be used in another state.

which deposition may be taken before any justice of the peace in this state, or before any commissioners that may be appointed under the authority of the state government in which the action 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 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.

Records of foreign courts admissible as evidence, when.

SEC. 49. 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 state, 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.

Printed copies of statutes are admissible. 4 Min., 335.

SEC. 50. The printed copies of all statutes, acts, and resolves of this state, whether of a public or private nature, which are published under the authority of the state, are admissible as sufficient evidence thereof in all courts of law, and on all occasions whatsoever.

Printed copies of statutes of foreign states, admissible, when.

SEC. 51. 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, are admissible in all courts of law and on all other occasions in this state as prima facie evidence of such laws.

Common law of foreign states, how proved.

SEC. 52. 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.

Existence and effect of foreign laws, how proved.

SEC. 53. The existence and the tenor, or effect of all foreign laws, may be proved as facts, by parol evidence, but if it appears that the law in question is contained in a written statute or code, the court may, in its discretion, reject any evidence of such law, that is not accompanied by a copy thereof.

TITLE VIII.

DOCUMENTARY EVIDENCE AND THE PRESERVATION THEREOF.

Published notices may be filed, when and where. 8 Min., 381. Laws of 1866.

SEC. 54. 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 is pending, at any time within six months after the last day of the publication of such notice, unless sooner specially required.

Printed notice of sale of real estate may be filed, when and where. Laws of 1866.

SEC. 55. 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 speci-

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fyng 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.

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

Affidavit of publication, or copies, duly certified, evidence.

SEC. 57. The affidavit of the printer, or foreman of such printer, of any newspaper published in this state of the publication of any notice or advertisement which by any law of this state is required to be published in such newspaper, is prima facie evidence of such publication, and of the facts stated therein.

Affidavit of printer, evidence, when.

SEC. 58. 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.

Certificate to affidavit, how made.

SEC. 59. But the preceding section shall not be construed to require the affixing of the seal of the 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.

Limitation of preceding section.

SEC. 60. 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 was a conveyance of real estate.

Instruments, how acknowledged and made evidence.

SEC. 61. The register of deeds and the clerk of any court of record in every county of this state 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.

Duty of register and clerk.

SEC. 62. Such instruments or papers, shall be properly 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.

Instruments, how indorsed and filed.

SEC. 63. The instruments and 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.

Instruments on file, how withdrawn.

SEC. 64. 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.

May be examined by any person.

SEC. 65. When any officer to whom the legal custody of any documents, instrument or paper belongs, shall certify under his official seal, that he has made diligent examination in his office for such paper, instrument, or document, and that it can not be found, such certificate is presumptive evidence of the facts so certified in all causes, matters and pro

Lost instruments, certificate of, evidence.

ceedings, 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.

Copies and transcripts of papers filed, duly certified, are evidence. Laws of 1866.

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

TITLE IX.

THE LOSS OF INSTRUMENTS AND PROCEEDINGS THEREON.

Loss of instruments, proof of.

SEC. 67. Whenever a party to an action is 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.

Evidence of contents of lost promissory note, &c., allowed, when.

SEC. 68. In any action 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 defence of any action, if it appears 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.

In such case, bond shall be given.

SEC. 69. 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 is 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.

TITLE X.

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

Books of account evidence, when.

SEC. 70. Whenever a party in any cause or proceeding produces at the trial his account books, and swears 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 books as evidence, being subject to all the rules of cross-examination by the adverse party that would be applicable by such rules to any other witness giving testimony relating to said books, if it appears upon the examination of said party that all of the interrogatories in this section contained, are satisfactorily established in the affirmative, then the said books shall be received as prima facie evidence of the charges therein contained.

SEC. 71. 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 are testimony in the same manner as the books mentioned in the preceding section: *provided*, that such books mentioned in this and the preceding section are not admissible 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.

Books of account kept by clerk admissible, when.

SEC. 72. 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 is produced.

Ledger to be produced, when.

SEC. 73. 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 by person deceased admissible, when.

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

Minutes of conviction and judgment admissible, when.

SEC. 75. Whenever it becomes 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 proceeding, or a transcript thereof certified by him, shall be good evidence thereof before such justice.

Docket of justice of the peace admissible as evidence.

SEC. 76. A transcript from the docket of any justice of the peace of any judgment had before him, of the proceedings 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, is evidence to prove the facts contained in such transcript in any court in the county where such judgment was rendered.

Transcript from justice's docket evidence, when.

SEC. 77. 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 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.

To have certificate of clerk, when.

SEC. 78. 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 is 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.

Proceedings before justice, not reduced to writing, how proved.

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

Certificate of conviction before justice evidence, when.

SEC. 80. 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

Exemplification of foreign judgment rendered by justice, evidence, when.

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; is evidence in any court in this state to prove the facts contained in such exemplification.

Court may order inspection of documents, when.

SEC. 81. The court before which an action is pending; or a judge thereof, may order either party to give to the other, within a specified time, an inspection and copy, or permission to take a copy of any book, document or paper in his possession or under his control, containing evidence relating to the merits of the action, or the defence therein; if compliance with the order is refused, the court may exclude the book, document or paper from being given in evidence, or if wanted as evidence by the party applying, may direct the jury to presume it to be such as he alleges it to be; and the court may also punish the party refusing. This section is not to be construed to prevent a party from compelling another to produce books, papers or documents, when he is examined as a witness.

Effect of possession of note sued on as evidence.

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

Effect of indorsement of money received on note.

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

Land office receipt, effect of as evidence.

8 Min. 132.

SEC. 84. The receipt or certificate signed by the register or receiver of any United States land office, of the entry or purchase of any tract of land, or of the location of any tract by a military land warrant, is prima facie evidence in the courts of this state, that the title of the lands mentioned or described in said receipt or certificate is in the person named therein, his heirs or assigns.

Patents or duplicates issued by United States may be recorded and used as evidence, how.

SEC. 85. Patents issued by the United States of land in the state, or duplicates thereof, from the records in the general land office of the United States, certified by the commissioner of such land office, may be recorded in the registry of deeds of the county in which the land described in the patent is situated, and the record of such patents or duplicates or copies of such records certified by the register of deeds, are evidence in like manner and to the same extent as the records, or transcripts thereof, of other conveyances of real estate.

Plats of surveys evidence, when.

8 Min. 132.

SEC. 86. All plats of surveys of public lands certified by the register of the land office of the district in which such land is situated, to be a true copy of the certified copy on file in his office of the original plat thereof, and all certificates by the register of such land office, of the surveys or entry and location of, or other facts in relation to such lands, taken from the books of such land office, or from the certificate indorsed on the copy of the original plat on file therein, are prima facie evidence of the facts therein stated. The certificate of the county surveyor or any of his deputies, shall be admitted as legal evidence, but the same may be explained or rebutted by other evidence.

Conveyances and records thereof are evidence—may be rebutted by other evidence

6 Min. 46.

9 Min. 230.

Laws of 1866.

SEC. 87. All conveyances of real estate and other instruments authorized by law to be recorded, and which are acknowledged or proved as provided by law, and, if the same have been recorded, the record or a transcript thereof, certified by the register is whose office the same is recorded, may be read in evidence without further proof, but the effect of such evidence may be rebutted by other competent testimony.

Certificates and records of marriage are evidence

SEC. 88. The original certificates and records of marriage, made by the judge, justice or minister, as prescribed by law, and the record thereof by the clerk of the district court, or a copy of such record duly certified by such clerk, shall be received in all courts and places as presumptive evidence of the fact of such marriage.

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TITLE XI.

CHARACTER, COMPETENCY, AND EFFECT OF EVIDENCE.

SEC. 89. When the fact of marriage is required or offered to be proved before any court, evidence of the admission of such fact by the party against whom the proceeding is instituted, or of general repute, or of cohabitation as married persons, or any other circumstantial or presumptive evidence from which the fact may be inferred, shall be competent. Fact of marriage, how proved.

SEC. 90. In all prosecutions for forging or counterfeiting any notes or bills of any banking company or corporation, or for uttering, publishing, or tendering in payment as true, any forged or counterfeit bank bills or notes, or for being possessed thereof with the intent to utter and pass them as true, the testimony of the president and cashier of such banks may be dispensed with, if their place of residence is without this state, or more than forty miles from the place of trial; and the testimony of any person acquainted with the signature of the president or cashier of such banks, or who has knowledge of the difference in the appearance of the true and counterfeit bills or notes thereof, may be admitted to prove that any such bills or notes are counterfeit. In prosecutions for forgery, &c., of notes or bank bills, what testimony is receivable.

SEC. 91. In all prosecutions for forging or counterfeiting any note, certificate, bill of credit, or security issued on behalf of the United States, or on behalf of any state or territory, or for uttering, publishing, or tendering in payment as true, any such forged or counterfeit note, certificate, bill of credit, or security, or for being possessed thereof with intent to utter and pass the same as true, the certificate under oath of the secretary of the treasury, or of the treasurer of the United States, or of the secretary or treasurer of any state or territory on whose behalf such note, certificate, bill of credit, or security purports to have been issued, shall be admitted as evidence for the purpose of proving the same to be forged or counterfeit. Certificate of secretary of treasury of United States, receivable, when.

SEC. 92. Proof of actual penetration into the body is sufficient to sustain an indictment for rape, or for the crime against nature. What proof will sustain indictment for rape.

SEC. 93. A confession of a defendant, whether made in the course of judicial proceedings, or to a private person, can not be given in evidence against him, when made under the influence of fear produced by threats, nor is it sufficient to warrant his conviction, without evidence that the offense charged has been committed. Confessions when inadmissible as evidence. 4 Min. 368.

SEC. 94. A conviction can not be had upon the testimony of an accomplice unless he is corroborated by such other evidence as tends to convict the defendant of the commission of the offense, or the circumstances thereof. Testimony of accomplice not sufficient to convict, unless corroborated.

SEC. 95. In all criminal prosecutions or indictments for libel, the truth may be given in evidence; and if it appears to the jury that the matter charged as libelous is true, and was published with good motives and justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact. In cases of libel the truth may be given in evidence—jury to determine the law and the fact.

SEC. 96. Divorces shall not be granted on the sole confessions, admissions, or testimony of the parties, either in or out of court. Divorces not to be granted on sole testimony of the parties. 6 Min. 458.