

GENERAL STATUTES

OF THE

STATE OF MINNESOTA,

IN FORCE JANUARY, 1891.

VOL. 2.

CONTAINING ALL THE LAW OF A GENERAL NATURE NOW IN FORCE AND NOT IN
VOL. 1, THE SAME BEING THE CODE OF CIVIL PROCEDURE AND ALL REME-
DIAL LAW, THE PROBATE CODE, THE PENAL CODE AND THE CRIM-
INAL PROCEDURE, THE CONSTITUTIONS AND ORGANIC ACTS.

COMPILED AND ANNOTATED

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CHAPTER 58 (G. S. ch. 72).

OATHS AND ACKNOWLEDGMENTS.

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TITLE 1.

OF PERSONS REQUIRED TO TAKE OATHS, WHO MAY ADMINISTER THE SAME, AND THE FORMS THEREOF.

SEC. 4275. **Persons required to take.**— Every person elected or appointed to any public office, whether executive, legislative or judicial, all county and local officers, their deputies, clerks and assistants, clerks of court, referees, commissioners, arbitrators and assessors shall, before entering on the discharge of their official duties, take and subscribe an oath as hereinafter prescribed.

G. S. ch. 72, § 1.

SEC. 4276. **Mode of administering.**— The usual mode of administering oaths now practised in this state, with the ceremony of holding up the hand, shall be observed in all cases in which an oath may be administered by law, except as hereinafter provided.

G. S. ch. 72, § 4 (7).

WHO MAY ADMINISTER OATHS.

SEC. 4277. **Generally.**— When no other provision is made by law, oaths of office may be administered by any judge or justice of the peace, or the presiding officer, secretary or clerk of either house of the legislature.

G. S. ch. 72, § 2.

SEC. 4278. **Same.**— Judges of the supreme, district and probate courts of this state, and the clerks of said courts,* county commissioners and registers of deeds, and all justices of the peace, shall have power, within their respective jurisdictions, to administer all oaths required or authorized by law,* and all committees of the legislature, or either branch thereof, all commissioners, referees and committees of persons appointed by any of said courts, are authorized to administer oaths necessary to be taken for the establishment of any fact or the furtherance of justice, in any matter coming before such committee, referee, commissioner or person for investigation.

G. S. ch. 72, § 3, as amended 1868, ch. 62. Amendment between * *. 30 M. 143.

SEC. 4279. **County auditors but not deputies.**— That county auditors duly elected and qualified in the several counties of this state, are, by this act, authorized and empowered to administer oaths in their respective counties, and certify the same under the seal of their office; but no deputy auditor, as such, shall exercise such power under this act.

1871, ch. 91: "An act to authorize county auditors to administer oaths." Approved March 6, 1871.

SEC. 4280. **Clerks of federal courts.**—The clerks of the circuit and district courts of the United States for the district of Minnesota shall have the same authority to administer oaths, and to take the acknowledgment of instruments, which notaries public now have, or hereafter may have, under the laws of this state.

1877, ch. 93: "An act in relation to the administering of oaths and the taking of acknowledgments of instruments." Approved March 5, 1877.

SEC. 4281. **Town and city clerks and recorders.**—That the town clerks of the several towns, city clerks of all cities, and recorders of all villages, in this state, are hereby authorized to administer all oaths, and take all acknowledgments of instruments, authorized or required by law.

1878, ch. 49: "An act to authorize clerks of towns and cities and recorders of villages in this state to administer oaths and take acknowledgments of instruments." Approved March 7, 1878.

FORM OF OATHS.

SEC. 4282. **Enumerated.**—The following are the forms of oaths to be administered to officers and persons as hereinafter provided:

OATHS OF MEMBERS AND OFFICERS OF THE LEGISLATIVE AND EXECUTIVE DEPARTMENTS, AND ALL OTHERS OCCUPYING AN OFFICE NOT JUDICIAL IN ITS CHARACTER.

You do solemnly swear that you will support the constitution of the United States, the constitution of the state of Minnesota, and faithfully discharge the duties of your office to the best of your judgment and ability. So help you God.

OATH OF JUDICIAL OFFICERS.

You do solemnly swear that you will support the constitution of the United States, the constitution of the state of Minnesota, and discharge the duties of your office faithfully and impartially, according to your best learning, judgment and discretion. So help you God.

OATH OF REFEREES, COMMISSIONERS AND OTHERS APPOINTED TO EXAMINE, HEAR AND DETERMINE UPON ANY MATTER, AND MAKE REPORT THEREOF, TO ANY COURT OR OTHER TRIBUNAL.

You do solemnly swear that you will faithfully and fairly hear and examine this action, wherein ——— is plaintiff and ——— defendant, and make a just and true report thereon, according to the best of your understanding and ability. So help you God.

OATH TO BE ADMINISTERED TO THE GRAND JURY.

You and each of you do solemnly swear that you will diligently inquire, and true presentment make, of all public offences committed or triable within this county, of which you have legal evidence, according to your charge; the counsel of the state, your own counsel, and that of your fellows, you shall keep secret; you will present no person through malice, hatred or ill-will, nor leave any person unrepresented through fear, favor or affection, or reward, or the promise or hope thereof; but you will present things truly as they come to your knowledge, to the best of your understanding, according to the laws of this state. So help you God.

OATH OF OFFICER ATTENDING THE GRAND JURY.

You solemnly swear that as officer of the grand jury you will keep their counsel and that of the state, and not disclose anything relative to their proceedings. So help you God.

OATH TO BE ADMINISTERED TO PETIT JURORS IMPANELLED FOR THE TRIAL OF ANY CIVIL ACTION OR PROCEEDING.

You and each of you do solemnly swear that you will well and truly try the matters in issue in this action (or proceeding) according to the evidence given you in court, and the laws of this state, and a true verdict give; your own counsel and that of your fellows you will duly observe and keep; you will say nothing to any person concerning this action, nor suffer any one to speak to you about the same but in court, and when you have agreed on a verdict, you will keep it secret until you deliver it in court. So help you God.

OATH OF PETIT JURORS IN CRIMINAL CASES.

You do solemnly swear that without respect of persons, or favor of any man, you will well and truly try, and true deliverance make, between the state of Minnesota and the defendant, according to the evidence given you in court, and the laws of this state. So help you God.

OATH OF JURORS IN A JUSTICE'S COURT IN CIVIL CAUSES.

You do solemnly swear that you will well and truly try the matters in difference between the parties in this cause, and a true verdict give, according to the evidence given you in court, and the laws of this state. So help you God.

OATH OF JURORS IN A JUSTICE'S COURT IN CRIMINAL CASES.

You do solemnly swear that you will well and truly try this cause, between the state of Minnesota, (county or city of,) and the accused, and a true verdict give, according to the evidence given you in court, and the laws of this state. So help you God.

OATH OF OFFICERS TAKING CHARGE OF A PETIT JURY IN THE DISTRICT COURT, OR A JUSTICE'S COURT.

You do solemnly swear that you will keep this jury together in some suitable place, without food or drink, unless ordered by the court; that you will suffer no person to speak to them upon matters submitted to their charge, until they are agreed, nor will you speak to them yourself about the cause, except to ask them whether they are agreed; that you will permit no person to listen to, or overhear, any conversation or discussion they may have while deliberating on their verdict; that you will not disclose their verdict, nor any conversation they may have respecting the cause, until they have delivered their verdict in court, or been discharged by order of the court. So help you God.

OATH OF OFFICER TAKING CHARGE OF JURY DURING RECESS OF COURT.

You do solemnly swear that you will keep together the persons composing this jury, until they return into court, and that in the mean time you will suffer no one to speak to them, or speak to them yourself, concerning the cause on trial, or any matter thereto relating. So help you God.

OATH OF WITNESSES.

You do solemnly swear that the evidence you shall give relative to the cause now under consideration shall be the whole truth, and nothing but the truth. So help you God.

INTERPRETER'S OATH.

You do solemnly swear that you will justly, truly and impartially interpret to ——— the oath about to be administered to him, and the testimony he shall give relative to the cause now under consideration. So help you God.

OATH OF PERSONS SIGNING AFFIDAVITS, VERIFICATIONS AND OTHER PAPERS.

You do solemnly swear that the contents of this affidavit, (verification or paper,) by you subscribed, are true, as therein stated. So help you God.

OATH OF ATTORNEYS.

You do solemnly swear that you will support the constitution of the United States, the constitution of the state of Minnesota, and that you will conduct yourself as an attorney and counsellor in the courts of this state, in an upright, courteous and gentlemanly manner, to the best of your learning and ability, with all good fidelity as well to the court as to the client; that you will use no falsehood or deceit, nor delay any person's cause for lucre or malice. So help you God.

G. S. ch. 72, § 5 (8). 22 M. 173, 177; 23 M. 528.

SEC. 4283. Same—Substitution of words.—In administering any oath, the word "swear" may be omitted, and the word "affirm" substituted, whenever the person to whom the obligation is to be administered is religiously scrupulous of swearing or taking an oath in the prescribed form; and in such case, the words "so help you God" may be omitted, and the words "under the pains and penalties of perjury" substituted; and every person so affirming shall be considered, for every legal purpose, privilege, qualification or liability, as having been duly sworn.

G. S. ch. 72, § 6 (9).

SEC. 4284. Oath for non-believer.—When an infidel, or any person not a believer in any religion, is offered as a witness, the following form of oath shall be used: You do honestly and sincerely promise and declare that the testimony you shall give relative to the cause now under consideration shall be the whole truth and nothing but the truth, and this under the pains and penalties of perjury; and any person so promising and declaring shall be considered as having been duly sworn.

G. S. ch. 72, § 7 (10).

TITLE 2.

ACKNOWLEDGMENTS.

WHO MAY TAKE.

SEC. 4285. Named.—Judges of the supreme and district courts and courts of probate, the clerks of said courts, notaries public, justices of the peace, registers of deeds, court commissioners and county auditors, are authorized to take the acknowledgments of deeds and other instruments in writing, within their several and respective jurisdictions; and whenever any officer having or using a seal of office takes an acknowledgment, he shall affix his seal to the instrument so acknowledged; * and all instruments heretofore acknowledged before any of the officials named are hereby legalized, and declared as valid as though such officials had, at the time of taking such acknowledgments, been so authorized to do.

G. S. ch. 72, § 8 (11), as amended 1876, ch. 40. Amendment inserted "county auditors" and matter below *.

SEC. 4286. Same—Depositions.—Any person qualified to take acknowledgments, as aforesaid, may take and certify depositions to be used in the courts of this state, except when otherwise expressly provided.

G. S. ch. 72, § 9 (12).

SEC. 4287. **Township clerks.**— That township clerks are authorized and empowered to take and certify acknowledgments of chattel mortgages, and acknowledgments so taken shall be valid and binding in law.

1871, ch. 58: "An act to authorize township clerks to take acknowledgments of chattel mortgages." Approved March 6, 1871.

COMMISSIONERS IN OTHER STATES.

SEC. 4288. **Appointment — Powers.**— 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.

G. S. ch. 72, § 10 (13).

SEC. 4289. **Same — Acknowledgments.**— 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.

G. S. ch. 72, § 11 (14).

SEC. 4290. **Same — Administer oaths and take depositions.**— 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.

G. S. ch. 72, § 12 (15).

SEC. 4291. **Same — Oath and seal.**— 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.

G. S. ch. 72, § 13 (16).

FORMS OF ACKNOWLEDGMENTS.

SEC. 4292. **Forms.**— That the following forms of acknowledgments may be used in the case of conveyances, or other written instruments affecting real estate; and any acknowledgment so taken and certified, shall be sufficient to satisfy all requirements of law relating to the execution or recording of such instruments:

(Begin in all cases by a caption specifying the state and place where the acknowledgment is taken.)

1. In the case of natural persons acting in their own right:

On this — day of —, 18—, before me, personally appeared A. B. (or A. B. and C. D.) to me known to be the person (or persons) described in, and who executed the foregoing instrument, and acknowledged that he (or they) executed the same as his (or their) free act and deed.

2. In the case of natural persons acting by attorney:

On this — day of —, 18—, before me personally appeared A. B. to me known to be the person who executed the foregoing instrument in behalf of C. D., and acknowledged that he executed the same, as the free act and deed of said C. D.

3. In the case of corporations or joint stock associations:

On this — day of —, 18—, before me appeared A. B., to me personally known, who, being by me duly sworn (or affirmed), did say that he is the president (or other officer or agent of the corporation or association) of (describing the corporation or association), and that the seal affixed to said instrument is the corporate seal of said corporation (or association), and that said instrument was signed and sealed in behalf of said corporation (or association) by authority of its board of directors (or trustees), and said A. B. acknowledged said instrument to be the free act and deed of said corporation (or association).

(In case the corporation or association has no corporate seal, omit the words "the seal affixed to said instrument is the corporate seal of said corporation (or association) and that," and add, at the end of the affidavit clause, the words, "and that said corporation (or association) has no corporate seal.")

(In all cases add signature and title of the officer taking the acknowledgment.)

* Any acknowledgment by or on behalf of a corporation made substantially in the form herein prescribed shall be prima facie evidence of the facts therein recited, and that such conveyance or instrument was executed by authority of its board of directors or trustees, and that such corporation was competent and authorized to make such conveyance.

1883, ch. 99, as amended 1889, ch. 118. Amendment below *. Acts 1883, ch. 99, is entitled: "An act relating to acknowledgments of instruments affecting real estate." Approved March 3, 1883.

SEC. 4293. **Same — Married women.**— When a married woman unites with her husband in the execution of any such instrument, and acknowledges the same in one of the forms above sanctioned, she shall be described in the acknowledgment as his wife, but in all other respects her acknowledgment shall be taken and certified as if she were sole; and no separate examination of a married woman in respect to the execution of any release of dower or other instrument affecting real estate, shall be required.

1883, ch. 99, § 2.

DEFECTIVE ACKNOWLEDGMENT.

SEC. 4294. **By acting notary, legalized.**— That all acknowledgments to any conveyances or other instruments heretofore taken by any person previously appointed or elected and then acting as a notary public or other officer authorized to take such acknowledgments, be and the same are hereby legalized and made of the same validity as though the term of such officer had not expired at the time of taking such acknowledgments, and the record of such conveyances or other instruments is hereby declared to be legal and valid and effectual for all purposes.

Provided, that the provisions of this act shall not apply to or affect any action or proceeding now pending in any court of this state.

Acts 1883, ch. 91, approved March 3d; 1885, ch. 239, approved March 7th; 1889, ch. 28, approved February 26th: "An act to legalize acknowledgments of conveyances and other instruments and the records thereof." These acts are all alike.

SEC. 4295. **By deputy register of deeds.**— That all acknowledgments to any conveyance or other instruments heretofore taken by any deputy register of deeds of any county in this state be, and the same are hereby, so legalized and the records of such conveyances and other instruments so legalized and made valid for all purposes of notice, evidence or otherwise, that the same shall be of the same force and effect as though such acknowledgments

had been taken by the register of deeds of such county instead of by his deputy; *provided*, that the provisions of this act shall not apply to any action or proceeding now pending in any court of this state.

1885, ch. 232: "An act to legalize acknowledgments of conveyances and other instruments and the record thereof." Approved February 26, 1885.

SEC. 4296. **By deputy clerk of court.**— All acknowledgments of deeds or other instruments, or contracts heretofore taken in this state, or in the territory of Minnesota, by any deputy clerk of any court of record in this state or territory of Minnesota, are hereby legalized and made valid, and all such deeds, instruments and contracts are hereby legalized and made valid, and may be recorded, to the same extent and for the same purposes as though the same had been acknowledged before a notary public or other officer duly authorized to take acknowledgments; and the record of such deeds and instruments where the same have been recorded or may be recorded, and copies thereof, are hereby legalized and made valid for all purposes as though such deeds and instruments had been acknowledged before a notary public or other officer duly authorized to take acknowledgments.

1875, ch. 47, § 1: "An act to legalize acknowledgments of deeds, mortgages and other instruments taken before a deputy clerk of court, and to legalize deeds and mortgages without seals of grantors." Approved February 24, 1875.