

CHAPTER 72.

[Published April 3, 1867.]

AN ACT to amend chapter 137 of the revised statutes, entitled
 "of evidence."

*The people of the state of Wisconsin, represented in senate
 and assembly, do enact as follows:*

SECTION 1. The plaintiff in any action now pending in any court of record, or which shall be hereafter commenced in any such court, may take the testimony of any witness or witnesses residing out of this state, at any time after a suit has been commenced and before an issue of fact has been joined in such action, or before or after an issue of law has been joined therein, or at any time before the defendant in such action shall have served upon the plaintiff an answer to the complaint therein: *provided*, that before any commission shall issue to take the testimony of such witness or witnesses, the plaintiff in such action, or some one in his behalf, shall file with the clerk of the court in which the action is pending, an affidavit setting forth briefly the following facts, to wit: 1st. That an action has been commenced, and the nature of such action, and that process has been served upon the defendant in said action personally, or pursuant to an order of publication, duly made therein. 2d. That the witness whose testimony is desired, resides out of this state, and the name [and] place of residence of such witness. 3d. That the testimony of such witness is material and necessary for the party making such application, in the prosecution of such action.

Plaintiff may take testimony of witness out of state after commencement of action.

Affidavit first to be filed—what to show.

SECTION 2. Upon filing such affidavit with such clerk, such party shall be entitled to have entered in the common rule-book kept by the clerk of the court in which the action is pending, a rule that a commission issue for the examination of such witness as may be named in said rule and affidavit, a copy of which rule and affidavit shall be served upon the attorney or attorneys of the defendant in such action, if said defendant has appeared in such action by attorney, if not, then, the same shall be served upon the defendant or defendants personally; and at the same time shall be served upon said defendant or his attorney, a copy of

Rule for commission for examination of witness—copy to be served on defendant's attorney, as also copy of interrogatories.

Cross-interrogatories.

the interrogatories to be propounded to the witness intended to be examined. Within five days after the service of said rule, affidavit and interrogatories, the said defendant or defendants, or his or their attorney, may serve on the attorney of the plaintiff applying for a commission, a copy of the cross-interrogatories which said defendant may desire to have propounded to the witness named in the rule and affidavit, and which cross-interrogatories shall, when received by the plaintiff's attorney, be annexed to and sent with the direct interrogatories, and shall be propounded to the witness examined with the direct interrogatories, or after the direct interrogatories have been propounded to said witness.

Application of laws.

SECTION 3. All laws and rules relating to the taking the testimony of witnesses under commissions, the manner of executing depositions and returning the same, shall apply to depositions taken under this act, so far as the same are consistent with the provisions herein contained.

Testimony may be read in evidence on trial, subject to objections, &c.

SECTION 4. The testimony of all witnesses taken under and in pursuance of the provisions of this act, may be read in evidence upon the trial of the case for which the same was taken; but this language shall not be so construed as to take away the right of the defendant to avail himself of any objection, lawfully made, to the competency, materiality or legality of any interrogatory propounded to such witness, or any answer given by such witness: *provided*, that such objections appear in said depositions; and in case the plaintiff shall be nonsuited in such action, or shall discontinue the same, and another action shall be commenced for the same cause against the same defendants, or against any defendant who had been a party in the taking of the deposition, all such depositions lawfully taken for the first action may be used in the second, subject to the same conditions and objections as if originally taken for the second action: *provided*, that the said depositions shall have been duly filed in the court where the first action was pending, and shall remain in the custody of the court or clerk of said court from the termination of the first action until the commencement of the second action.

Construction.

SECTION 5. This act shall not be so construed as to repeal any law or rule of court concerning the rights

of parties to take depositions of witnesses after issue of fact joined in a case.

SECTION 6. This act shall take effect and be in force from and after its passage.

Approved April 1, 1867.

CHAPTER 73.

[Published April 3, 1867.]

AN ACT relating to the fees of registers of deeds for recording marriage certificates.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows :

SECTION 1. The register of deeds of any county Fees 25c. in this state shall receive the sum of twenty-five cents for registering any marriage pursuant to law, which shall be paid him on demand by the treasurer of the county in which such registry is made, in lieu of the fee of ten cents heretofore authorized to be paid for such service: *provided*, that such register shall have complied with the provisions of chapter 110 of the revised statutes, entitled "of the registration of marriages, births and deaths."

SECTION 2. All acts and parts of acts contravening Repealed. the provisions of this act, are hereby repealed.

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

Approved April 1, 1867.