

## CHAPTER TWENTY-FIVE.

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SEC. 876. On the trial of any issue joined, or of any matter or question, or on any inquiry arising in any suit, action, or other proceeding in any court of justice in the District, or before any person having by law, or by consent of parties, authority to hear, receive, and examine evidence within the District, the parties thereto, and the persons in whose behalf any such action or proceeding may be brought or defended, and all persons interested in the same, shall, except as provided in the following section, be competent and compellable to give evidence, either viva voce or by deposition, according to the practice of the court, on behalf of any of the parties to the action or other proceeding.

[See R. S. U. S., §§ 871-874.]

SEC. 877. Nothing in the preceding section shall render any person who is charged with an offense in any criminal proceeding competent or compellable to give evidence for or against himself;

Or render any person compellable to answer any question tending to criminate himself;

Or render a husband competent or compellable to give evidence for or against his wife, or a wife competent or compellable to give evidence for or against her husband, in any criminal proceeding or in any proceeding instituted in consequence of adultery;

Nor shall a husband be compellable to disclose any communication made to him by his wife during the marriage, nor shall a wife be compellable to disclose any communication made to her by her husband during the marriage.

SEC. 878. Every person accused or convicted of obtaining by false pretenses any goods or chattels, money, bank-note, promissory note, or any other instrument in writing, for the payment or delivery of money or other valuable thing, or of keeping a faro-bank or gaming-table, or of violating the laws relating to dueling, shall be a competent witness against every other person offending in the same transaction, and may be compelled to appear and give evidence in the same manner as other persons; but the testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person so testifying.

SEC. 879. In all judicial proceedings in the District there shall be no exclusion of any witness on account of color. [See R. S. U. S., § 1977.]

12 July, 1862, c. 154,

SEC. 880. Witnesses are entitled to the same compensation as received for their attendance in the circuit courts of the District prior to July seventh, eighteen hundred and thirty-eight. [See R. S. U. S., § 849.]

307. United States *vs.* Mullany, 1 Cranch, C. C., 517; United States *vs.* Williams, 1 Cranch, C. C., 178; Sadler *vs.* Moore, 1 Cranch, C. C., 212; Power *vs.* Semmes, 1 Cranch, C. C., 247.

## COMMISSIONS FOR TAKING TESTIMONY IN CRIMINAL CASES.

SEC. 881. Any defendant in a criminal case, either after preliminary examination, indictment, or information, may examine witnesses on commission in the manner prescribed by the thirteen succeeding sections.

Interested parties may be witnesses.

2 July, 1864, c. 222, v. 13, pp. 374, 375.

Bank of Columbia *vs.* Wright, 3 Cranch, C. C., 216; King *vs.* Fearson, 3 Cranch, C. C., 435.

Exceptions.

Ibid.

Sanderson's case, 3 Cranch, C. C., 638; United States *vs.* Hudland, 5 Cranch, C. C., 309.

Testimony in certain criminal cases.

2 March, 1831, c. 37, s. 12, v. 4, p. 449; 20 Feb., 1839, c. 30, s. 6, v. 5, p. 319.

No exclusion on account of color.

12 July, 1862, c. 154, s. 5, v. 12, p. 539.

Fees of witnesses.

7 July 1838, c. 192, s. 3, v. 5, p. 192.

Commissions to take testimony in criminal cases.

3 March, 1865, c. 106, s. 1, v. 13, p. 523.

Who may be commissioners.	SEC. 882. A defendant wishing to take the deposition of a witness residing more than one hundred miles from the city of Washington may select any of the following officers as a commissioner to take such deposition, either by the name of office of such officer, or by his individual name and official style:
3 March, 1865, c. 106, s. 2, v. 13, p. 528.	First. The clerk or judge of any court of record.
	Second. Any notary public.
	Third. Any consul of the United States.
What commission must state.	SEC. 883. The name of the court of which such constituted commissioner is clerk or judge and the name of the State and county, or if without the United States the name of the State and town, or city, in which such notary or consul resides must be stated in the notice and in the commission.
Ibid.	
Notice to district attorney.	SEC. 884. Five days' notice must be given by a defendant, or his attorney, of the time when a commission will be sued out of the office of the clerk of the supreme court of the District for taking the deposition of a witness.
Ibid., s. 3.	
Contents of notice.	SEC. 885. The notice must give the name of the witness and be accompanied with a copy of the interrogatories to be asked such witness.
Ibid.	
Service of notice and copy.	SEC. 886. The notice and copy of interrogatories may be served and returned in the same manner and by the same officers or persons as provided for the service and return of a summons or subpoena in civil actions within the District.
Ibid., s. 5, p. 529.	
Cross-interrogatories.	SEC. 887. At or before the time fixed in the notice, the district attorney may file cross-interrogatories; but if he fail to so do, the clerk shall file the following:
Ibid., s. 4, pp. 528, 529.	First. Are all your statements in the foregoing answers made from your personal knowledge; and if not, do your answers show what are made from your personal knowledge and what from information, and the source of that information? If not, now show what is from information, and give its source.
	Second. State everything you know concerning this case favorable to either the Government or the defendant.
Commission.	SEC. 888. The commission shall issue in the name of the supreme court, and under its seal, and must be signed by the clerk and need contain nothing but the authority conferred upon the commissioner and instructions to guide him, a statement of the cause in which the testimony is to be used, and a copy of all the interrogatories filed appended.
Ibid., s. 6.	
Duties of commissioner.	SEC. 889. The person before whom any of the depositions are taken must cause the interrogatories appended to the commission to be written out, and the answers thereto to be inserted immediately underneath the respective questions; the whole, when completed, being read over by or to the witness, must be by him subscribed and sworn to in the usual manner.
Ibid., s. 7.	
Exhibits.	SEC. 890. All exhibits produced before the person taking the deposition, or proved or referred to by any witness, or correct copies thereof, must be appended to the depositions, and returned with them, unless sufficient reasons be shown for not so doing.
Ibid., s. 8.	
Certificate and return.	SEC. 891. The person taking the deposition shall attach his certificate thereto, stating that it was subscribed and sworn to by the deponent at the time and place therein mentioned. The whole, including the commission and interrogatories, must then be sealed up and returned to the clerk of the supreme court of the District, by mail, unless the defendant and the district attorney agree upon some other mode; and, when received by the clerk, he shall open the package and place the deposition on file in his office.
Ibid., s. 9.	
Deviations.	SEC. 892. Unimportant deviations from any of the directions contained in the preceding sections shall not cause the deposition to be excluded where no substantial prejudice could be wrought to the Government by such deviation.
Ibid., s. 10.	

SEC. 893. The court may establish further rules for taking depositions and all other acts connected therewith, subject to the regulations contained in the thirteenth preceding sections.

Court may establish further rules.  
3 March, 1865, c. 106, s. 11, v. 13, p. 529.

#### PROOF OF WILLS BY COMMISSION.

SEC. 894. Whenever a will or codicil shall be exhibited for probate to the supreme court, if any of the witnesses to the same shall reside out of the District, or be temporarily absent therefrom at the time when the will or codicil shall be so exhibited, the court may issue, upon personal notice of not less than twenty days to all parties in interest, a commission to one or more competent persons to take the deposition of such absent witness, in such form as the court may prescribe, touching the execution of such will or codicil, and the competency of the testator at the time of the execution thereof.

Proof of wills by commission.

3 March, 1869, c. 149, v. 15, p. 340.

SEC. 895. In all such cases the original will or codicil shall accompany the commission, and be exhibited to the witnesses.

Will to accompany commission.

Ibid.

Effect of depositions.

Ibid.

SEC. 896. Such depositions, when returned to the court, shall be received therein as competent evidence, and have the same force and effect as if the witnesses were personally present and testifying in the court.

## CHAPTER TWENTY-SIX.

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#### PROVISIONS RELATING TO SEVERAL OFFICERS.

SEC. 897. The fees of the clerk, of the marshal, and of the United States district attorney, except, in each case, so far as differently specified in this chapter, shall be the same as the fees respectively allowed to clerks of the district and circuit courts, marshals, attorneys, solicitors, and proctors, by chapter sixteen, "Fees," of Title XIII, "The Judiciary," of the Revised Statutes. [See R. S. U. S., pp. 153-161.]

Fees of clerk, marshal, and attorney.

27 June, 1864, c. 163, s. 1, v. 13, pp. 195, 196.

SEC. 898. The marshal and clerk shall receive their daily compensation for attending court.

Per diem of marshal and clerk.

3 Mar., 1867, c. 23, s. 3, v. 2, p. 431.

Table of fees of marshal and clerk.

Ibid., s. 4.

SEC. 899. It shall be the duty of the marshal and clerk to make a table of their respective fees, in dollars and cents, according to law, and to keep a copy thereof, at all times, exposed to public view in their respective offices.