

Case No. 4,871.
[5 Dill. 481.]¹

FLINT v. CRAWFORD COUNTY.

Circuit Court, D. Kansas.

1879.

PRACTICE—DEPOSITIONS—MODE OF TAKING.

In common law actions in the federal courts, depositions may be taken pursuant to the state law or the act of congress, as parties may elect.

[Cited in *Randall v. Venable*, 17 Fed. 166; *M'Lennan v. Kansas City, St. J. & C. B. R. Co.*, 22 Fed. 199.]

This was a common law action, in which depositions were taken and certified on behalf of the plaintiff [Charles L. Flint] in conformity to the provisions of the statute of the state regulating the practice and procedure in the state courts. The defendant [the board of commissioners of Crawford county] filed a motion to suppress, stating several grounds of objection, based upon the failure of the notice and procedure to conform to the requirements of the act of congress relating to taking testimony by deposition.

John T. Voss, for the motion.

J. D. Campbell, opposed.

MILLER, Circuit Justice. The motion to suppress must be denied. In common law actions in the federal courts, where, under the provisions of the act of congress, a case arises in which testimony may be taken by deposition, the parties may follow, in respect to the manner of taking them, either the provisions of the state law or of the act of congress, as they may elect. Since the notice and certificate in this case conform to the provisions of the state statute, I hold that the depositions may be read in evidence. Such has been the practice, so far as I know, in the circuit from the earliest period. Prior to the act of 1872 (Rev. St. 914), it is probable that the practice may have rested upon the rules of court adopting the state regulations as to taking and certifying depositions; but that act is broad enough to sanction the practice where the local regulations do not conflict with any special provision of the acts of congress on the subject Motion denied.

¹ [Reported by Hon. John F. Dillon, Circuit Judge, and here reprinted by permission.]