



1943.

ANNO SEPTIMO

GEORGII VI. REGIS.

No. 40.

## ANALYSIS.

1. Short title.
2. Amendment of 1 Geo. V. No. 20.
  - New section 77.
    - Proof of identity of convicted person.
  - New section 78.
    - Admissibility of certain documentary evidence.
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    - Weight to be attached to such evidence.
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    - Proof of instrument where attestation needed.
  - New section 95A.
    - Evidence of non-access.
  - New section 132B.
    - Attestation by justices out of the jurisdiction.
  - New fifth schedule.

AN ACT to amend the *Evidence Act 1910*.  
 [19 October, 1943.]

A.D.  
 1943.

**B**E it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

**1** This Act may be cited as the *Evidence Act, 1943*.

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**2** The Principal Act is hereby amended—

Amendment  
of 1 Geo. V.  
No. 20.  
New section  
77.  
Proof of  
identity of  
convicted  
person.

- I. By substituting for repealed sections seventy-seven to eighty thereof the following new sections seventy-seven to eighty—

“**77**—(1) An affidavit purporting to be made by a finger-print expert who is an officer of the police of any other State or Territory of the Commonwealth and in the form set out in the fifth schedule shall be admissible as evidence in all courts for the purpose of proving the identity of any person alleged to have been convicted in such State or Territory of any offence.

(2) Any such affidavit shall be proof, unless the contrary is proved, that the person, a copy of whose finger-prints is exhibited to such affidavit—

- I. Is the person who, in any document exhibited to such affidavit and purporting to be a certificate of conviction or certified copy of a conviction, is referred to as having been convicted: and
- II. Has been convicted of the offences mentioned in such affidavit.

“**78**—(1) In any civil proceedings where direct evidence of a fact would be admissible, any statement made by a person in a document and tending to establish that fact shall, on production of the original document, be admissible as evidence of that fact if the following conditions are satisfied, that is to say, if the maker of the statement—

## I. Either—

- (a) Had personal knowledge of the matters dealt with by the statement: or
- (b) Where the document in question is or forms part of a record purporting to be a continuous record, made the statement (in so far as the matters dealt with thereby are not within his personal knowledge) in the performance of a duty to record information supplied to him by a person who had, or might reasonably be supposed to have, personal knowledge of those matters: and

- II. Is called as a witness in the proceedings:

New section  
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Admissibility  
of certain  
documentary  
evidence.

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Provided that the condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead, or unfit by reason of his bodily or mental condition to attend as a witness, or if he is beyond the seas and it is not reasonably practicable to secure his attendance, or if all reasonable efforts to find him have been made without success. A.D. 1943.

(2) In any civil proceedings, the court may at any stage of the proceedings, if having regard to all the circumstances of the case it is satisfied that undue delay or expense would otherwise be caused, order that such a statement as is mentioned in subsection (1) of this section shall be admissible as evidence or may, without any such order having been made, admit such a statement in evidence—

- I. Notwithstanding that the maker of the statement is available but is not called as a witness: and
- II. Notwithstanding that the original document is not produced, if in lieu thereof there is produced a copy of the original document or of the material part thereof certified to be a true copy in such manner as may be specified in the order or as the court may approve, as the case may be.

(3) Nothing in this section shall render admissible as evidence any statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish.

(4) For the purposes of this section, a statement in a document shall not be deemed to have been made by a person unless the document or the material part thereof was written, made, or produced by him with his own hand, or was signed or initialed by him or otherwise recognised by him in writing as one for the accuracy of which he is responsible.

(5) For the purpose of deciding whether or not a statement is admissible as evidence by virtue of the foregoing provisions, the court may draw any reasonable inference from the form or contents of the document in which the statement is contained, or from any other circumstances, and may, in deciding whether or not a person is fit to attend as a witness, act on a certificate purporting to be the certificate of a registered medical practitioner, and where the proceedings are with a jury, the Court may in its discretion reject the statement

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notwithstanding that the requirements of this section are satisfied with respect thereto, if for any reason it appears to it to be inexpedient in the interests of justice that the statement should be admitted.

(6) For the purposes of this section—

- I. "Document" includes any book, map, plan, drawing, or photograph:
- II. "Proceedings" includes an arbitration or reference and "court" shall be construed accordingly: and
- III. "Statement" includes any representation of fact whether made in words or otherwise.

New section  
79.

Weight to be  
attached to  
such evidence.

"79—(1) In estimating the weight, if any, to be attached to a statement rendered admissible as evidence by section seventy-eight, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement, and, in particular, to the question whether or not—

- I. The statement was made contemporaneously with the occurrence or existence of the facts stated: and
- II. The maker of the statement had any incentive to conceal or misrepresent facts.

(2) For the purpose of any rule of law or practice requiring evidence to be corroborated or regulating the manner in which uncorroborated evidence is to be treated, a statement rendered admissible as evidence by section seventy-eight shall not be treated as corroboration of evidence given by the maker of the statement.

New section  
80.

Proof of  
instrument  
where  
attestation  
needed.

"80 Subject as hereinafter provided, in any proceedings, whether civil or criminal, an instrument to the validity of which attestation is requisite may, instead of being proved by an attesting witness, be proved in the manner in which it might be proved if no attesting witness were alive: Provided that this provision shall not apply to the proof of wills or other testamentary documents.":

New section  
95A.

II. By inserting after section ninety-five thereof the following new section ninety-five A—

Evidence of  
non-access.

"95A—(1) In any proceeding either of two spouses may give evidence proving or tending to prove that such spouses did not have sexual relations with each other at any particular time notwithstanding that such evidence would tend to

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show that any child born to the wife during A.D. 1943 marriage was illegitimate.

(2) Nothing in this section shall affect the operation of section ninety-four or section ninety-five.”:

III. By inserting after section one hundred and thirty-two A thereof the following new section one hundred and thirty-two B— New section 132B.

“ **132B** Where by any Act any affidavit or declaration is required to be made, or any document to be signed, before any justice, it shall be sufficient if such affidavit or declaration is made or document is signed before a justice for that part of His Majesty’s dominions in which such affidavit or declaration is made or document is signed, as the case may be; and the signature of any person to such affidavit, declaration, or document purporting to be that of a justice for that part of His Majesty’s dominions in which the same is made or signed, shall be received as *prima facie* evidence that such person is a justice and signed such affidavit, declaration, or document and had authority to administer such oath, or take such affidavit or declaration or to attest the signature to such document, as the case may be.”: Attestation by justices out of the jurisdiction.

IV. By adding after the fourth schedule thereto the following new fifth schedule— New fifth sch. dule.

## “ THE FIFTH SCHEDULE.

## AFFIDAVIT OF IDENTITY.

Tasmania.

In the Supreme Court of Tasmania

[or the Court of Petty Sessions

held at

or as the case may be].

The King *v.* (*name of defendant or party*) [or In the matter of a complaint by  
against *or, as the case may be*].

I (*name of deponent*) of *in the*  
(*State or Territory*) make oath and say—

1. That I am a finger-print expert and an officer of the police force of the said State [or Territory].
2. That I have examined the finger-print card now produced and shown to me marked ‘A’.
3. That the finger-prints on the said card are identical with those appearing on a finger-print card in the records of the police department being the finger-prints of one (*name of person*; and alias, if any).

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4. According to the said records which I believe to be accurate the said was convicted in the said State [or Territory] of the following offences—

*[Set out description of offences, dates of conviction, and courts in which the person was convicted.]*

5. From an examination of the said records I believe the person referred to in the document(s) hereto annexed now shown to me and marked 'B' ['C', 'D', &c., respectively] as having been convicted of the offence(s) therein stated is identical with the person whose finger-prints are shown on the said card marked 'A'.

Sworn at

in

this        day of        , 19 .

Before me,

A person authorised to take affidavits in the  
[State or Territory] of        .”