

# THE EVIDENCE ACT, 1910.

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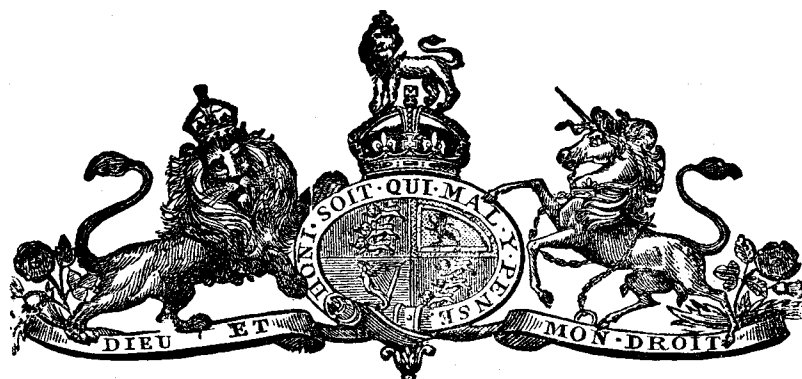
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# TASMANIA



1910.

ANNO PRIMO

## GEORGII V. REGIS.

### No. 20.

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AN ACT to consolidate and amend the Statute  
Law respecting Evidence.

A.D.  
1910.

[11 November, 1910.]

**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, 1910,” and shall come into operation on the First day of *January*, One thousand nine hundred and eleven, and is divided into parts and divisions, as follows :—

Short title.  
Commencement.

Part I.—Preliminary, ss. 2 to 5.

Part II.—The Means of Obtaining Evidence—

Division I.—Examination of Witnesses upon Interrogatories or Otherwise, ss. 6 to 13.

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## Part III.—Means of Proof and Admissibility of Evidence—

Division I.—By-laws, ss. 27 to 32.

Division II.—Bankers' Books, ss. 33 to 40.

Division III.—Proof of Telegraphic Messages,  
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ss. 48 to 76.

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Part V.—Oaths, Affirmations, and Depositions, ss. 123 to 135.

Part VI.—Evidence in Shorthand, ss. 136 to 144.

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**PART I.**

## PRELIMINARY.

Repeal.

**2**—(1.) From and after the commencement of this Act the Imperial Acts mentioned in Part 1 of Schedule (1.) to this Act shall not extend or apply to this State.

(2.) The Acts mentioned in Part 2 of Schedule (1.) to this Act are hereby repealed to the extent therein stated.

(3.) The repeal of the Act 52 *Victoria*, No. 26, shall not affect the appointment of any commission appointed under that Act, but otherwise the provisions of this Act as to evidence by Royal Commission shall apply to any such commission.

Interpretation.

**3** In this Act, unless the context or subject-matter otherwise indicates or requires—

“Australasian Colony.”

“Australasian Colony” means and includes *New South Wales, Queensland, South Australia, Victoria, Western Australia, and Tasmania*, during such time as such possessions constituted separate colonies; the Territory of Papua; *New Zealand*, and any part of *New Zealand* during such time as such part constituted a separate colony; *Fiji*; and any other *British* possession which may at any time be created within His Majesty's possessions in *Australasia* :

“Bank” or  
“banker.”  
Cf. 49 Vict. No.  
5, s. 8.

“Bank” or “banker” means—

1. Any person, persons, partnership, or company engaged in the ordinary business of banking by receiving deposits and issuing bills or notes payable to the bearer, or at sight or on demand: and

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11. Any savings bank established under any law in force for the time being : A.D. 1910.
- Expressions relating to "bankers' books" include ledgers, day-books, cash-books, account-books, and all other books used in the ordinary business of the bank : "Bankers' books." *Ibid.*
- "Court" includes every court of the State of whatsoever jurisdiction : "Court."
- "Examined copy" means a copy proved to have been examined with the original, and to correspond therewith. The examination may be made either by One person reading both the original and the copy, or by Two persons, one reading the original and the other the copy, and it is not necessary that each should alternately read both : "Examined copy."
- "Gazette" means and includes the "London Gazette," the "Edinburgh Gazette," the "Dublin Gazette," the "Commonwealth of Australia Gazette," and the "Government Gazette," "Royal Gazette," or other official gazette of any State or *Australasian* Colony : "Gazette."
- "Government Printer" means and includes the printer to His Majesty, and any person printing for the Government of the Commonwealth or of any State or *Australasian* Colony, and any printer purporting to be the printer authorised to print the statutes, ordinances, Acts of State, or other public Acts of the Legislature of any *Australasian* Colony, or otherwise to be the Government Printer of such Colony : "Government Printer."
- "Judge" means a judge of the Supreme Court, and includes a commissioner appointed under "The Local Courts Act, 1896," a commissioner of a bankruptcy court, a chairman of general or quarter sessions of the peace, a police or stipendiary magistrate, a warden of a warden's court under any Act relating to mining, and also includes any justice or justices of the peace sitting in court : "Judge."
- "Legal proceeding" or "proceeding" includes any action, trial, enquiry, cause, or matter, whether civil or criminal, in which evidence is or may be given, and includes an arbitration : "Legal proceeding" or "proceeding." Cf. 49 Vict. No. 5, s. 9.
- "Person acting judicially" means any person having, by law or by consent of parties, or by virtue of a Royal Commission, authority to hear, receive, and examine evidence or to make any enquiry : "Person acting judicially."
- "Prisoner" means and includes any person committed to prison for punishment, or on remand, or for trial, safe custody, or otherwise : "Prisoner."
- "State" means a State of the Commonwealth, and includes this State : "State."
- "*Tasmania*" includes any dependencies thereof : "*Tasmania*."

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- A.D. 1910. "The State."  
"Uncorroborated testimony."  
"Votes and proceedings."
- "The State" or "this State" means—  
i. The State of *Tasmania*; or  
ii. The Colony of *Tasmania* prior to the establishment of the Commonwealth:  
"Uncorroborated testimony" means testimony which is not corroborated in some material particular by other evidence implicating the accused person:  
"Votes and proceedings" shall be deemed to include journals and minutes, and any papers purporting to be printed by the authority of and to be laid before either House of the Parliament of the United Kingdom, or of the Commonwealth, or of any State, or of any *Australasian* Colony.
- Application of Act. **4** All the provisions of this Act, except where the contrary intention appears, shall apply to every legal proceeding.
- This Act not to derogate from existing powers. See C. No. 5 of 1901, s. 19. **5** The provisions of this Act shall be in addition to and not in derogation of any powers, rights, or rules of evidence existing at common law, or given by any law at any time in force in the State not inconsistent with the provisions of this Act.

## PART II.

## THE MEANS OF OBTAINING EVIDENCE.

Division I.—*Examination of Witnesses upon Interrogatories or otherwise.*

- "Court."  
60 Vict. No. 48.  
"Judge."
- 6** In this division of this part of this Act—  
"Court" means and includes the Supreme Court in any jurisdiction (including its "Local Courts Act" jurisdiction), any court held under "The Local Courts Act, 1896," before a commissioner, and any warden's court under any Act relating to mining:  
"Judge" means and includes a judge of the Supreme Court, a commissioner appointed to hold any court under "The Local Courts Act, 1896," or his duly appointed substitute, and a warden of mines or his duly appointed substitute.
- Supreme Court or judge may order examination of witnesses on interrogatories or otherwise. 5 Wm. IV. No. 2, s. 1. No. 34 of 1900 s. 4 (N.S.W.). Cf. 1 Wm. IV. c. 22. **7**—(1.) In any action, suit, or other proceeding in the court, except a criminal proceeding, at any stage thereof, and upon the application of any party thereto, the court or a judge may by rule or order direct—  
i. That any witness within the jurisdiction of the court be examined on oath, either *viva voce* or upon interrogatories or otherwise, before an officer of the court or other person to be named in the rule or order: or



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ii. That a commission do issue for the examination of witnesses on oath, either *vivâ voce* or upon interrogatories or otherwise, at any place in or out of the jurisdiction. A.D. 1910.

(2.) The court or judge may by the same or any subsequent rule or order give all such directions touching the time, place, and manner of such examination as well within the jurisdiction as without, and all other matters and circumstances connected with such examination as may appear reasonable and just.

(3.) Where the application is made to—

i. A court of requests or a commissioner thereof: or

ii. A warden's court or a warden of mines—

the practice of the Supreme Court in like cases shall apply and be followed as far as possible in making the application and in relation to the proceedings to be had thereupon.

Cf. 60 Vict. No. 48, s. 58.

8 No such rule or order shall be made with respect to a witness who is a party to the suit, action, or proceeding, on the ground of his intended departure from *Tasmania*, unless it be shown to the satisfaction of the court or judge that such departure is in fact urgently required by unavoidable circumstances or some unexpected emergency, and that the examination is not sought in order to avoid cross-examination before the court or a jury.

Parties.  
No. 34 of 1900,  
s. 5 (N.S.W.).

9—(1.) Where any rule or order is made under this division of this Act—

i. For the examination of any witness: or

ii. For the issue of a commission for an examination of witnesses within the jurisdiction of the court—

the court or judge may by such rule or order or any subsequent rule or order command the attendance of any person named therein for the purpose of being examined, or the production of any book, writing, or other document mentioned therein, and may direct the attendance of such person to be at his own place of abode, or elsewhere, if necessary or convenient so to do.

Compelling attendance of witnesses or production of documents.  
Cf. 5 Wm. IV. No. 2, s. 2.  
*Ibid.*, N.S.W., s. 7.

(2.) If any person served with a copy of any such rule or order (whether the copy is served personally or by being left at his usual place of abode), without reasonable excuse, disobeys any such rule or order he shall be liable as for contempt of court, and—

Penalty for disobedience.

i. In the case of the Supreme Court or a judge thereof proceedings may be thereupon had by attachment:

ii. In any other case it shall be lawful for the court or a judge, if it or he thinks fit, by a warrant under the hand of the registrar, to commit any such offender to any gaol or house of correction for any time not exceeding Three months, or to impose upon such offender a penalty not exceeding Fifty Pounds, and in default of payment thereof to commit the offender to any gaol or house of correction for any time not exceeding Three months unless the said fine is sooner paid.

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Payment of  
expenses.  
*Ibid.*, s. 3.

Examinations of  
witnesses to be  
taken upon oath.  
5 Wm. IV. No.  
2, s. 5.  
*Ibid.*, N.S.W., s.  
9.

Persons giving  
false evidence to  
be deemed guilty  
of perjury.

Persons appointed  
for taking exami-  
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upon the conduct  
or absence of wit-  
nesses if necessary.  
5 Wm. IV. No.  
2, s. 6.  
*Ibid.*, N.S.W.,  
s. 10.

Costs of the  
examination may  
be made costs in  
the cause.  
5 Wm. IV. No.  
2, s. 7.  
*Ibid.*, N.S.W.,  
s. 12.

As to the reading  
of such examina-  
tions.  
5 Wm. IV. No.  
2, s. 8.  
*Ibid.*, N.S.W.,  
s. 11.

Power to send for  
witnesses and  
documents.  
Cf. 52 Vict. No.  
26, s. 1. (Tas.),  
C. No. 12 of  
1902, s. 2.

(3.) No person shall be compelled to produce under any such rule or order any book, writing, or other document that he would not be compellable to produce at the trial.

(4.) Every person whose attendance shall be so required shall be entitled to the like conduct money, and payment for expenses and loss of time, as upon attendance at a trial.

**10**—(1.) Any person authorised by any rule, order, or commission under this division of this part of this Act to take the examination of any witness, shall take such examination upon the oath of such witness (or his affirmation in cases where the same is allowed by law), to be administered by the person so authorised or by a judge.

(2.) Any witness who upon such oath or affirmation wilfully gives any false evidence shall be deemed guilty of perjury, and be liable to such punishment as by law may be inflicted for that offence.

**11**—(1.) Any person authorised by any rule, order, or commission under this division of this part of this Act to take an examination within the jurisdiction may, and if need be, shall, make a special report to the court touching the examination and the conduct or absence of any witness or other person thereon or relating thereto.

(2.) The court may institute such proceedings and make such order upon such report as justice requires, and as may be instituted and made in any case of contempt of court.

**12** The costs of every rule, order, or commission under this division of this part of this Act, and of the proceedings thereupon, shall be costs in the cause unless otherwise directed by the judge making the rule or order, or by the judge before whom the cause may be had, or by the court wherein the action, suit, or proceeding is depending.

**13**—(1.) The examination of any witness taken under this division of this part of this Act may be read in evidence at the hearing, saving all just exceptions.

(2.) Provided that if it appears to the satisfaction of the court or judge at the hearing that such witness is within the jurisdiction and able to attend the hearing, such examination shall be rejected.

(3.) Where such examination appears to be certified under the hand of the person authorised to take the same, no proof shall be necessary of the signature of such person.

Division II.—*Evidence by Royal Commission.*

**14** Whenever the Governor or the Governor in Council, by letters patent under the seal of the State, issues a commission to any persons to make any enquiry, the president or chairman of the commission or the sole commissioner, as the case may be, may by writing under his hand summon any person to attend the commission at a time and place named in the summons, and then and there to give evidence and to

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produce any books, documents, or writings in his custody or control material to the subject-matter of the enquiry. A.D. 1910.

**15** Any of the commissioners may—

- i. Administer an oath, or solemn affirmation in lieu of oath, to any person appearing as a witness before the commission, whether the witness has been summoned or appears without being summoned: and
  - ii. Examine the witness upon oath or solemn affirmation in lieu of oath.
- Power to examine upon oath.  
Cf. Tas., s. 1.  
Com., s. 3.

**16** If any person served with a summons to attend a commission, whether the summons is served personally or by being left at his usual place of abode, fails without reasonable excuse—

- i. To attend the commission: or
  - ii. To produce any books, documents, or writings in his custody or control which he was required by the summons to produce—
- Penalty for failing to attend or produce documents.  
Cf. Tas., s. 2.  
Com., s. 5.

he shall be liable, on summary conviction before a police magistrate or any Two or more justices, to a penalty not exceeding Twenty Pounds.

**17** If any person appearing as a witness before the commission refuses to be sworn or to make an affirmation or to answer any question put to him by any of the commissioners touching the subject-matter of the enquiry, he shall be liable on summary conviction before a police magistrate or any Two or more justices to a penalty not exceeding Twenty Pounds.

Penalty for refusing to be sworn or to give evidence.  
Cf. Tas., s. 2.  
Com., s. 6.

**18**—(1.) Every such commissioner shall in the exercise of his duty as commissioner have the same power, protection, and immunity as a judge of the Supreme Court.

(2.) Every witness summoned to attend or appearing before the commission shall have the same protection, and shall in addition to the penalties provided by the Two immediately preceding sections of this Act be subject to the same liabilities in any civil or criminal proceeding, as a witness in any case tried in the Supreme Court.

Protection to commissioners.  
Cf. Tas., s. 1.  
Com., s. 7.  
Protection to and liability of witnesses.

**19**—(1.) The Governor may make regulations prescribing a scale of allowances to be paid to any witness summoned to attend before the Commission for his travelling expenses and maintenance while absent from his usual place of abode.

Allowances to witnesses.  
Cf. Tas., s. 3.  
Com., s. 8.

(2.) The claim to allowance of any such witness, certified by the president or chairman of the commission or by the sole commissioner, as the case may be, shall be paid by the Treasurer of the State out of the Consolidated Revenue, or out of moneys, if any, to be provided by Parliament for the purposes of the commission.

**20** Any person may, if so authorised by the commission, appear before it by counsel.

Power to appear by counsel  
Cf. Tas., s. 4.

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Indemnity to  
witnesses.  
Cf. Tas., s. 5.

**21**—(1.) A person examined as a witness before the commission shall not be excused from answering any question put to him, or from producing any document, on the ground that the answer thereto or production thereof may criminate or tend to criminate him.

(2.) Every witness examined before the commission who, in the opinion of the commission, makes a full and true disclosure touching all the matters in respect of which he is examined, shall be entitled to receive a certificate that he has made such disclosure, signed by the president or chairman of the commission or by the sole commissioner, as the case may be.

(3.) If any civil or criminal proceeding is at any time thereafter instituted against any such witness in respect of any matter touching which he has been so examined, the court having cognizance of the case, or a judge of the said court sitting in chambers, shall, on his application, and on proof of the certificate, stay the proceedings, and may in their or his discretion award to the witness such costs incurred by him in or by reason of the proceeding as to the court or judge may appear reasonable.

Cf. 6 Ed. VII.  
c. 6, s. 2.

(4.) Provided that no evidence taken before the commission shall be admissible against any person in any civil or criminal proceeding, except in the case of a witness accused of having given false evidence before the commission, or of having procured, or attempted or conspired to procure, the giving of such evidence.

Commission may  
refer disputed  
point of law to  
Supreme Court  
for decision.  
3 Ed. VII. No. 20,  
s. 10 (N.Z.).

**22**—(1.) The commission may refer any disputed point of law arising in the course of an inquiry to the Supreme Court for decision, and for this purpose may either conclude the inquiry, subject to such decision, or may at any stage of the inquiry adjourn it until after the decision is given.

(2.) The question shall be referred in the form of a special case to be drawn up by the parties (if any) to the inquiry, and if the parties do not agree, or if there are no parties, the special case shall be settled by the commission.

(3.) The decision of the Supreme Court shall be final and binding upon all parties to the inquiry and upon the commission.

Division III.—*Examination of Witnesses by Parliamentary  
Committee.*

Select committees  
of either House  
of Parliament  
may examine  
witnesses upon  
declaration, and  
take the same.  
35 Vict. No. 11,  
s. 1.

**23** Any—

- i. Select committee of either House of Parliament: or
- ii. Joint committee of both Houses of Parliament—

to which any matter has been referred by such House or Houses, with power to send for persons and papers, may examine witnesses upon their solemn declaration upon any subject relating to the matter which has been so referred, and for that purpose any such witness may make before the chairman of any such committee or joint committee a declaration as follows, namely:—

“I, A.B., solemnly promise and declare that the evidence given by me to this committee shall be the truth, the whole truth, and nothing but the truth.”

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**24** Any person examined as aforesaid who wilfully gives false evidence shall be deemed guilty of perjury, and be liable to such punishment as by law may be inflicted for that offence.

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False evidence  
perjury.  
*Ibid.*, s. 2.

Division IV.—*Bills to Perpetuate Testimony.*

**25**—(1.) Any person who would, under the circumstances alleged by him to exist, become entitled upon the happening of any future event—

Bills to perpetuate  
testimony.  
20 Vict. No. 24.  
s. 1.  
Cf. 5 and 6 Vict.  
c. 69.

i. To any honour, title, dignity, or office : or

ii. Any estate or interest in any property, real or personal—the right or claim to which cannot by him be brought to trial before the happening of such event, shall be entitled (and whether all or any of the circumstances which would entitle any such person may have occurred previously to the passing of this Act) to file a bill in the Supreme Court to perpetuate any testimony which may be material for establishing such right or claim.

All laws, rules, and regulations not contrary to the provisions of this section now in force or in use in suits to perpetuate testimony, or respecting depositions taken in such suits, or the punishment of perjury committed in making such depositions, shall be in force and used and applied in all suits to be instituted under the authority of this section, and in respect to depositions taken on such suits.

(2.) In all suits which may be so instituted under the authority of this section touching any honour, title, dignity, or office, or any other matter or thing in which the Crown may have any estate or interest, it shall be lawful to make the Attorney-General for the time being a defendant; and in all proceedings in which the depositions taken in any such suit in which the Attorney-General for the time being was so made a defendant may be offered in evidence, such depositions may be admissible, notwithstanding any objection to such depositions upon the ground that the Crown was not a party to the suit in which such depositions were taken.

Attorney-General  
to be party where  
Crown interested.  
*Ibid.*, s. 2.

Division V.—*Inspection of Realty or Personalty.*

**26**—(1.) Any party to any proceeding shall be at liberty to apply to a court or judge, or person acting judicially, for a rule or order for the inspection by himself, or by his witnesses, or by the jury, of any real or personal property the inspection of which may be material to the proper determination of the question in dispute or the making of any enquiry. It shall be lawful for the court or a judge, or such person as aforesaid, if they or he think fit, to make such rule or order upon such terms as to costs and otherwise as such court, judge, or person may direct.

Party may be  
ordered to allow  
inspection of  
realty or  
personalty.  
17 & 18 Vict.  
c. 125, s. 58.

Provided always that nothing in this section contained shall affect the provisions of any Act as to obtaining a view by a jury.

(2.) Whenever any proceeding shall be pending in the Supreme Court in any jurisdiction, or in any court under "The Local Courts Act, 1896," the court or a judge thereof may, upon the application of any party to the proceeding, compel the opposite party to allow the

60 Vict. No. 48.  
Provision for  
inspection of  
documents. when-

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ever equity would  
grant discovery.  
( f. 17 Vict.  
No. 15, s. 6.  
60 Vict. No. 48,  
s. 52.

applicant to inspect all documents in the custody or under the control of such opposite party relating to the proceeding, and if necessary to take examined copies of the same, in all cases in which previous to the Sixth day of *October*, One thousand eight hundred and fifty-three, a discovery might have been obtained by filing a bill or by any other proceeding in a court of equity at the instance of such applicant.

**PART III.****MEANS OF PROOF AND ADMISSIBILITY OF EVIDENCE.****Division I.—By-laws.**

Interpretation.  
49 Vict. No. 22,  
s. 1.

**27** In the construction and for the purposes of this division of this part of this Act—

- I. "By-laws" includes articles of association, regulations, and rules:
- II. "Corporation" includes every corporation howsoever created, and whether the same exists for municipal, trading, mining, scientific, charitable, or other purposes.

Proof of by-laws.  
*Ibid.*, s. 2.

**28** In addition to the mode of proof prescribed by Section Seventy-three of this Act the production of a written or printed copy of any by-law made by or on behalf of any corporation under any present or future general or local Act of Parliament, or any Act of a local or personal nature authenticated as hereinafter mentioned, shall be evidence, until the contrary is proved, of—

- I. The due making and existence of such by-laws: and
  - II. Of the time at which the same by-laws came into force—
- in all legal proceedings, without further proof of the making of such by-laws, or of the performance of any condition, the doing of any act, or the lapse of any time respectively necessary to give them validity.

Form of  
certificate.  
*Ibid.*, s. 3.

**29** For the purpose of such authentication a certificate in the form contained in the following schedule, or to the like effect, written or printed on any such copy as aforesaid, shall be sealed with the common seal of the corporation.

In the case of any municipal corporation the seal shall be affixed in the presence of and attested by the mayor and town clerk, or warden and council clerk, as the case may be.

In the case of any other corporation, the seal shall be affixed in the presence of and attested by any Two of the board of directors, or managing or governing body, by whatsoever designation or title they may be called or known.

**SCHEDULE.**

THIS is to certify that the matter above written [*or printed, as the case may be*] contained on [*two*] sheets [*or pages*] of paper, is a true copy of a [*by-law*] of "The \_\_\_\_\_," and that we have informed ourselves of the legislative requirements necessary to the giving validity to such by-law, and as to their observance,

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and believe that such requirements have been fulfilled; and we further certify that such [by-law] came into force on the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord One thousand nine hundred and \_\_\_\_\_ A.D. 1910.

Sealed in our presence, this \_\_\_\_\_ day }  
of \_\_\_\_\_, in the year of our Lord } (L.S.)  
One thousand nine hundred and \_\_\_\_\_ }

[Signature], Mayor [or as the case may be].  
[Signature], Town Clerk [or as the case may be].  
[Signature], }  
[Signature], } Two of the Board of Directors.

**30** It shall not be necessary to—

- i. Give any proof of the common seal when purporting to be attached to any such certificate; nor
- ii. Prove, by the attesting witnesses or otherwise, that such seal was affixed in their presence, or that the persons signing filled the offices or characters set opposite to their names respectively; but on proof by admission or otherwise of the handwriting of such attesting witnesses, it shall be presumed, until the contrary is proved, that such seal was affixed as it purports to have been, and that they filled the offices or characters represented.

Technical proof unnecessary.  
*Ibid.*, s. 4.

**31** Any minute of proceedings at meetings of any municipal council, or of any board of directors, or of any managing or governing body, by whatsoever designation or title they may be called or known, or of committees of any municipal council, if signed by any person purporting to be the mayor or warden of a municipality, or the chairman of a meeting of a municipal council or board of directors, or of the managing or governing body, either at the meeting at which such proceedings took place or at the next ensuing meeting of the body whose proceedings are recorded, shall be receivable in evidence in all legal proceedings without further proof.

Proof of proceedings of councils, committees, &c.  
*Ibid.*, s. 5.

See 33 Vict. No. 22, s. 73.

Until the contrary is proved, every meeting in respect of the proceedings of which the minutes have been so made shall be deemed to have been duly convened and held, and all the members thereof to have been duly qualified, and, when such proceedings are proceedings of committees, that such committees have been duly and regularly constituted and had power to deal with the matters referred to in such proceedings.

**32** Any person who pays into the Supreme Court the sum of Fifteen Pounds as security for the costs of the proceedings hereinafter in this section mentioned may apply to the said court or a judge thereof for a rule calling upon the person or corporation, or unincorporate body, by or on whose behalf any by-law shall have been made, to show cause why such by-law should not be quashed, either wholly or in part, for the illegality thereof; and the said court or judge may make such rule absolute, or discharge the same, with or without costs, as to the said court or judge seems meet.

Proceedings to test legality.  
*Ibid.*, s. 8.  
See 6 Ed. VII. No. 31, s. 26.  
See 57 Vict. No. 11, s. 279 (Hobart).  
54 Vict. No. 1088, s. 48 (Vict.).

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Division II.—*Bankers' Books.*

Entries in bankers' books.  
49 Vict. No. 5,  
s. 2.

**33** Subject to the provisions of this division of this part of this Act, a copy of any entry in a banker's book shall be evidence of such entry, and of the matters, transactions, and accounts therein recorded.

Proof that book is a banker's book.  
*Ibid.*, s. 3.

**34**—(1.) A copy of an entry in a banker's book shall not be received in evidence unless it is first proved—

- I. That the book was, at the time of the making of the entry, one of the ordinary books of the bank : and
- II. That the entry was made in the usual and ordinary course of business : and
- III. That the book is in the custody or control of the bank.

(2.) Such proof may be given by a partner or manager or officer of the bank, and may be given either orally or by affidavit.

Verification of copy.  
*Ibid.*, s. 4.

**35**—(1.) A copy of an entry in a banker's book shall not be received in evidence unless it is further proved that the copy has been examined with the original entry and is correct.

(2.) Such proof shall be given by some person who has examined the copy with the original entry, and may be given either orally or by affidavit.

Criminal proceedings.  
N.S.W., No. 11  
of 1898, s. 48.

**36** In any criminal proceeding in which it is necessary to prove—

- I. The state of an account in the books of any bank : or
- II. That any person had not an account or any funds to his credit in such books—

it shall not be necessary to produce any such book, but evidence of the state of such account, or that no such account or funds existed, may be given by any officer or clerk of such bank who has examined such books.

Cases in which banker, &c., not compellable to produce book, &c.  
*Ibid.*, s. 5.

**37** A banker or manager or officer of a bank shall not, in any legal proceeding to which the bank is not a party, be compellable—

- I. To produce any banker's book, the contents of which can be proved under the provisions of this division of this part of this Act : or
- II. To appear as a witness to prove the matters, transactions, and accounts therein recorded—

unless by order of a judge.

Inspection of bankers' books.  
*Ibid.*, s. 6.

**38**—(1.) On the application of any party to a legal proceeding, the court or a judge may order that such party be at liberty to inspect and take copies of any entries in a banker's book relating to the matters in question in such proceeding.

(2.) An order under this section may be made either with or without summoning the bank or any other party, and shall be served on the bank by delivering a copy of the order to an officer of such bank at a



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principal or a branch office thereof, having the custody of the book of which inspection is desired, Three clear days before the same is to be obeyed, unless the court or judge otherwise directs. A.D. 1910.

(3.) *Sunday*, Christmas Day, Good *Friday*, and any bank holiday shall be excluded from the computation of time under this section. *Ibid.*, s. 10.

**39**—(1.) The costs of—

- i. Any application to a court or judge under or for the purposes of either of the Two immediately preceding sections : or of Costs. *Ibid.*, s. 7.
- ii. Anything done or to be done under an order of a court or judge made under or for the purposes of the immediately preceding section—

shall be in the discretion of the court or judge, who may order the same or any part thereof to be paid to any party by the bank where the same have been occasioned by any fault or delay on the part of the bank.

(2.) Any such order against a bank may be enforced as if the bank was a party to the proceeding.

**40** Any affidavit to be used under the provisions of this division of this part of this Act shall be admissible in evidence if it purports to be sworn before a commissioner of the Supreme Court or other person authorised to take affidavits. Affidavits, when admissible in evidence.

Division III.—*Proof of Telegraphic Messages.*

**41**—(1.) Any party to any civil proceeding may, at any time after the commencement thereof, give notice to any other party that he proposes to adduce in evidence at the trial or hearing any telegraphic message that before the date of such notice shall have been received by electric telegraph in this State : Provided that— Notices to admit telegraphic messages may be given in civil proceedings. 6 Ed. VII. No. 28, s. 82 (W.A.).

- i. The time between the giving of such notice and the day on which such evidence shall be tendered shall not in any case be less than Two days before the day of such hearing or trial : and
- ii. Every such notice shall specify the names of the sender and receiver of such message, and its date as nearly as may be.

(2.) Any such notice may be served, and the service thereof proved, in the same manner as notices to admit and produce may now be served and proved respectively.

**42** Whenever such notice is given, the production of any telegraphic message described in such notice, and purporting to have been sent by any person, together with evidence that the same was received from a telegraph-station, shall be *prima facie* evidence that such message was signed and sent by the person so purporting to be Proof of message. *Ibid.*, s. 83.

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the sender thereof to the person to whom the same is addressed, without any further proof of the identity of the sender.

But the party against whom such message is given in evidence shall be at liberty to prove that the same was not in fact sent by the person by whom it purports to have been sent.

Proof of the sending a message.  
*Ibid.*, s. 84.

**43** In any civil proceeding the production of any telegraphic message, or a copy thereof verified on oath, together with evidence that such message was taken to a telegraph-station, and that the fees (if any) for the transmission thereof were paid, shall be *prima facie* evidence that such message was duly delivered to the person named therein as the person to whom the same was to be transmitted; and the burden of proving that such message was not in fact received shall be upon the person against whom such message is given in evidence.

Provided that notice shall be first given by the party adducing the same in evidence to the other party of his intention to do so; and such notice may be given in such manner and at such times as by the practice of the court in which the proceeding is taken notices to produce or admit are required to be given.

Division IV.—*Judicial Notice.*

Commonwealth and States and Australasian Colonies and their Acts to be judicially noticed. C., No. 5 of 1901, s. 3.

**44**—(1.) All courts and all persons acting judicially shall take judicial notice—

- i. Of the Commonwealth and the States and of every *Australasian* Colony, and the extent of their respective territories: and
- ii. Of all Acts of the Parliament of the United Kingdom and of the Commonwealth, and of any State, and of any *Australasian* Colony passed before or after the commencement of this Act.

Government Printer's copies of Acts to be deemed *prima facie* evidence.

(2.) Any paper purporting to be a copy of any Act of the Parliament of the United Kingdom, or of the Commonwealth, or of any State, or of any *Australasian* Colony, whether passed before or after the commencement of this Act, and purporting to be printed by the Government Printer, shall, *prima facie*, be deemed to be a correct copy of such Act without any further proof thereof.

The date which appears on any such copy purporting to be the day on which such Act received the Royal assent, or was proclaimed to commence, shall be received for all purposes as evidence of the date of such assent or commencement.

Judicial notice of the seal of the Commonwealth and States. See 6 Ed. VII. No. 28, s. 54 (W.A.). C., No. 5 of 1901, s. 4. C., No. 4 of 1905, s. 3.

**45** All courts and all persons acting judicially shall take judicial notice of the impression of the seal of—

- i. The Commonwealth:
  - ii. Any State:
  - iii. Any *Australasian* Colony—
- without evidence of the seal having been impressed or any other evidence relating thereto.

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**46** When by any Act any seal or stamp is authorised to be used by any court, officer, body corporate, or any other person, judicial notice shall be taken of the impression of such seal or stamp without evidence of the same having been impressed or any other evidence relating thereto.

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And of official seals.  
N.Z., No. 16 of 1905, s. 27.

**47** All courts and all persons acting judicially shall take judicial notice of—

Certain signatures to be judicially noticed.

See C., -No. 4 of 1905, s. 4.

- i. The official signature of any person who holds or has held the office of Governor-General, Minister of State for the Commonwealth, President of the Senate, Speaker of the House of Representatives, Secretary to the Federal Executive Council, Justice of the High Court, Principal Registrar, Deputy-Registrar or District Registrar of the High Court, President or Deputy-President of the Commonwealth Court of Conciliation and Arbitration, Industrial Registrar or Deputy Industrial Registrar, or president or judge or member of any Federal court, or of the Interstate Commission, or any office to which the Governor-General, by order, published in the "Commonwealth Gazette" has declared, or hereafter declares, Section Four of "The Evidence Act, 1905" (Commonwealth Act) shall apply: and

- ii. The official signature of every person who holds or has held in any State or part or district of any State, or in any *Australasian* Colony, or part or district of any *Australasian* Colony, the office of Governor, Lieutenant-Governor, Premier, Minister of the Crown, judge of the Supreme Court, President or Speaker of a House of Legislature, Agent-General, Solicitor-General, Secretary of the Law Department, Sheriff, Prothonotary, Registrar, or Chief Clerk of the Supreme Court, Registrar of Deeds, Commissioner of Titles, Recorder or Registrar of Titles, Assistant or Deputy-Recorder or Registrar of Titles, Registrar-General, Assistant or Deputy-Registrar-General, Government Statist or Assistant or Deputy Government Statist, judge, commissioner or registrar of a bankruptcy or insolvency court, judge, presiding magistrate or commissioner of any county court or court of requests or local court, Secretary for Mines, commissioner or warden or registrar of a court of mines, mayor of a city, warden of a municipality, chairman of any court of general or quarter sessions, police or stipendiary or resident or special magistrate, General Manager of Railways, Commissioner of Crown Lands, Surveyor-General, Secretary for Lands, Commissioner of Police, Chief Electoral Officer, Auditor-General, Chief Health Officer, Director of Education, Commissioner of Taxes, Government Printer, or justice of the peace, or any office corresponding to any of

Cf. C., No. 5 of 1901, s. 5.

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the aforesaid offices, or any office to which the Governor may, at any time, by order published in the "Gazette," declare this section to apply: and

iii. The seal of every such court or person: and

iv. The fact that such person holds or has held such office—

if the signature or seal purports to be attached or appended to any certificate or any consent leave or approval in writing or any judicial or official document or memorandum.

Division V.—*Documents and Proceedings Generally.*

Royal proclamations, orders of the Privy Council, &c.  
31 & 32 Vict. c. 37, s. 2.

**48**—(1.) Evidence of any Royal proclamation, order of His Majesty's Privy Council, order, regulation, despatch, or any other instrument whatsoever made or issued before or after the commencement of this Act by His Majesty, or by His Majesty's Privy Council, or by or under the authority of any of His Majesty's Secretaries of State, or any department of His Majesty's Government in the United Kingdom, may be given in any court or before any person acting judicially—

i. By the production of a copy of the "London Gazette" or of the "Government Gazette" of this State purporting to contain a reprint or copy of such proclamation, order of the Privy Council, order, regulation, despatch, or other instrument:

ii. By the production of a copy of such proclamation purporting to be printed by the Government Printer or under the authority of Parliament:

iii. By the production, in the case of any proclamation, order, or regulation issued by His Majesty or by the Privy Council, of a copy or extract purporting to be certified to be true by the Clerk of the Privy Council, or by any one of the Lords or others of the Privy Council, and, in the case of any proclamation, order, or regulation issued by or under the authority of any of the departments of the Government or officers mentioned in the first column of Schedule (2.) to this Act, by the production of a copy or extract purporting to be certified to be true by the person or persons specified in the Second column of the said schedule in connection with such department or officer.

Schedule (2.).

(2.) Any copy or extract made in pursuance of this section may be in print or in writing, or partly in print and partly in writing.

(3.) No proof shall be required of the handwriting or official position of any person certifying, in pursuance of this section, to the truth of any copy of or extract from any proclamation, order, or regulation.

(4.) In this section the words "Privy Council" include His Majesty in Council and the Lords and others of His Majesty's Privy Council, or any of them, and any committee of the Privy Council that is not specially named in Schedule (2.) to this Act.

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**49**—(1.) Evidence of any proclamation, order-in-council, commission, order, regulation, appointment, or other instrument whatsoever made or issued before or after the commencement of this Act by the Governor-General of the Commonwealth, or by the Governor or Governor in Council of any State or of any *Australasian* Colony, or by or under the authority of any Minister of the Crown for the Commonwealth, or for any State or *Australasian* Colony, or of any public commission or board, or local body or local authority, may be given in any court or before any person acting judicially in any of the following modes, that is to say:—

- i. By the production of a copy of the "Gazette" purporting to contain the same :
- ii. By the production of a document purporting to be a copy thereof, and purporting to be printed by the Government Printer or by the authority of the Government :
- iii. By the production (in the case of any proclamation, order, commission, or regulation, or appointment issued or made by the Governor-General of the Commonwealth) of a document purporting to be certified by the Secretary to the Federal Executive Council as a true copy thereof or extract therefrom :
- iv. By the production (in the case of any proclamation, order-in-council, commission, order, regulation, appointment, or other instrument whatsoever made or issued by the Governor of any State or of any *Australasian* Colony) of a copy or extract purporting to be certified by the Clerk of the Executive Council of such State or *Australasian* Colony :
- v. By the production (in the case of any proclamation, order, commission, regulation, appointment, or other instrument made or issued by or under the authority of any Minister of the Crown) of a document purporting to be certified as a true copy thereof or extract therefrom by any Minister of the Crown.

(2.) No proof shall be required of the handwriting or official position of any person certifying in pursuance of this section.

**50** Evidence of any proclamation or other act of State of any State may be given in any court, or before any person acting judicially, by the production of a copy thereof either—

- i. Proved to be an examined copy thereof: or
- ii. Purporting to be sealed with the seal of that State.

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Proclamation,  
order in-council,  
&c.  
See 38 Vict. No  
10, s. 1.  
C., No. 5 of 1901  
s. 6.  
C., No. 4 of 1905  
s. 5.

**51** Evidence of any proclamation, order, regulation, or notice made or issued before or after the commencement of this Act by or under the authority of the Governor, or of the Governor in Executive Council, or of the Legislative Council or House of Assembly, or of the head of any department of the Government, or of any body or board in the First column of Schedule (3.) to this Act mentioned, may be given in any court, or before any person acting judicially, by

Proof of procla-  
mations, orders,  
&c., by official  
copies.  
Schedule (3.).

Proof of procla-  
mations and Acts  
of State.  
C., No. 5 of 1901  
s. 7.

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the production of a copy of or extract therefrom, such copy or extract purporting to be certified to be true by the person or persons specified in the Second column of the said schedule in connection with the officer, department, or board in the said First column mentioned.

Documents  
admissible in  
His Majesty's  
dominions to be  
admissible in  
Tasmania.  
C., No. 5 of 1901,  
s. 9.  
C., 14 & 15 Vict.  
c. 99, s. 11.

**52** Every document admissible in evidence for any purpose in any court of justice in any part of His Majesty's dominions, without proof of—

- i. The seal or stamp or signature authenticating the same: or
- ii. Of the judicial or official character of the person appearing to have signed the same—

shall be admitted in evidence to the same extent and for the like purpose in any court, or before any person acting judicially in this State, without such proof.

Manner of  
proving acts of  
State, &c., of any  
other country.  
14 & 15 Vict. c.  
99, s. 7.

**53**—(1.) All proclamations, treaties, and other acts of State of any foreign State or of any *British* possession may be proved in any court, or before any person acting judicially, either by examined copies or by copies sealed with the seal of the foreign State or *British* possession to which the original document belongs.

(2.) Any copy purporting to be sealed as in this section directed shall be admitted in evidence in every case where the original document could have been so admitted, without any proof of the seal.

Proclamations,  
&c., receivable  
although not  
proved by sealed  
copies.  
N.Z., No. 16 of  
1905, s. 38.

**54** Proclamations, international treaties, and orders-in-council of any country, although not proved in the manner provided by the last preceding section, may nevertheless be received in evidence in any court or before any person acting judicially, if such court or person considers the same to be authentic.

Other public  
documents, how  
provable.  
C., No. 5 of 1901,  
s. 10.  
C., No. 4 of 1905,  
s. 6.  
See 14 and 15  
Vict. c. 99, s. 14.

**55**—(1.) Whenever in any part of His Majesty's dominions any book or other document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, any copy thereof or extract therefrom shall be admissible in evidence in any court, or before any person acting judicially, if—

- i. It is proved to be an examined copy or extract: or
- ii. It purports to be signed and certified as a true copy or extract by the officer to whose custody the original is entrusted.

(2.) Every officer to whose custody the original of any book or document of such a public nature as aforesaid is entrusted in *Tasmania* is hereby required to furnish a certified copy of such book or extract therefrom to any person applying at a reasonable time, and paying a reasonable sum for the same, not exceeding Sixpence for every folio of Seventy-two words.

Custodians to  
furnish copies.  
Ct. 17 Vict. No.  
15, s. 9.

Votes and pro-  
ceedings of  
Parliament.  
C., No. 5 of 1901,  
s. 11.  
C., No. 4 of 1905,  
s. 7.  
See 8 and 9 Vict.  
c. 113, s. 3.

**56** All documents purporting to be copies of the votes and proceedings of either House of the Parliament of the United Kingdom, or of the Commonwealth, or of any State, or of any *Australasian* Colony, if purporting to be printed by the Government Printer, shall, on the

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mere production of the same, be admitted as evidence in any court, or before any person acting judicially. A.D. 1910.

**57** Whenever by this Act, or by any Imperial Act, or any Act of the Parliament of any State or of any *Australasian* Colony, now or hereafter to be in force—

- i. Any certificate : or
- ii. Any official or public document : or
- iii. Any document or proceeding of any corporation or joint stock or other company : or
- iv. Any copy of or extract from any document or by-law, or entry in any register or other book, or of or from any other proceeding—

Proof of seal, signature, and official character dispensed with. 6 Ed. VII. No. 28, s. 67 (W.A.).

is admissible in evidence in any legal proceeding in the United Kingdom or in the particular State or Colony, the same shall respectively be admitted in evidence in all courts and before all persons acting judicially in *Tasmania* if it purports to be certified or sealed, or impressed with a stamp, or sealed and signed, or signed alone, or impressed with a stamp and signed, as directed by such Act, without any proof—

- i. Of the seal or stamp, where a seal or stamp is necessary :  
or
- ii. Of the signature : or
- iii. Of the official character of the person appearing to have signed the same—

and without any further proof thereof.

**58**—(1.) The words “Police Magistrate” or the letters “P.M.” after the signature to any magisterial act shall be *prima facie* evidence that the person whose signature it purports to be is a police magistrate having jurisdiction in the matter.

Police magistrate or justice of the peace. Act No. 11 of 1898, s. 25 (N.S.W.).

(2.) The words “Justice of the Peace” or the letters “J.P.” after the signature to any magisterial act shall be *prima facie* evidence that the person whose signature it purports to be is a justice of the peace having jurisdiction in the matter.

(3.) When a justice is described as a justice of the peace for the State of *Tasmania*, such description shall, unless there is something to denote a different meaning, be taken to mean that he is a justice of the peace for the State generally.

**59**—(1.) All maps, plans, documents, or papers certified under the hand of the Surveyor-General or his chief clerk to be copies of original maps, plans, documents, or papers in the custody or control of the Surveyor-General or kept in the Department of Lands and Surveys, shall be admissible in evidence in any court or before any person acting judicially, and shall be *prima facie* evidence for the same purposes and to the same extent as the originals thereof if they had been produced.

Certified copies of maps and documents in custody of Surveyor-General to be *prima facie* evidence. Cf. 54 Vict. No. 1088, s. 18 (Vic.).

(2.) All such maps and plans shall, if certified as aforesaid to have been made from actual survey, be presumed *prima facie* to have been

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so made by a competent surveyor; and all courts and persons acting judicially shall take judicial notice of the signature of the Surveyor General or his chief clerk to any such certificate.

Certified copies of instruments under "The Real Property Act" *prima facie* evidence. Cf. 25 Vict. No. 16, s. 105.

**60** Every certified copy of any registered instrument affecting land under the provisions of "The Real Property Act" furnished pursuant to Section One hundred and five of that Act, and signed by the Recorder of Titles and sealed with his seal, shall be received in evidence in any court, or before any person acting judicially, as *prima facie* proof of all the matters contained or recited in or endorsed on the original instrument.

Secondary evidence of a deed or document registered, &c. Cf. No. 11 of 1898, s. 28 (N.S.W.).

**61**—(1.) Secondary evidence of any deed or document registered in or deposited for safe custody in the office of the Registrar of Deeds, or filed, entered, registered, recorded, or enrolled in the Supreme Court, or in the Lands' Titles Office, or any other public office under the provisions of any Act, may be given by the production of an office copy of such deed or document, if reasonable notice in writing has been given to the adverse party by the party producing the same.

Evidence of contents of memorial.

(2.) Evidence of the contents of any memorial of a deed or document so registered in the office of the Registrar of Deeds may be given by the production of an office copy of such memorial, if such notice as aforesaid has been given.

Probate and letters of administration. Cf. 38 Vict. No. 1, s. 13. Cf. 54 Vict. No. 1088, s. 27 (Vic.).

**62**—(1.) The probate of a will or codicil or letters of administration with the will or codicil annexed shall be evidence of the original will or codicil upon all questions concerning real and personal estate, in like manner as if such original were produced and proved in due course of law.

(2.) Every probate of any will or codicil or letters of administration with the will or codicil annexed shall in all cases be *prima facie* evidence of the death and the date of the death of the testator or intestate.

(3.) In this section the expression "probate of any will or codicil or letters of administration with the will or codicil annexed" includes—

- i. An exemplification of probate or of letters of administration: and
- ii. Any document accepted as sufficient in lieu of such exemplification by the Supreme Court in its probate jurisdiction.

Where no direct evidence of death, application may be made to judge that probate, &c., be taken as conclusive evidence. 6 Ed.VII. No. 20.

**63**—(1.) In any case where—

- i. Direct evidence of the death of a testator or intestate is not forthcoming: and
- ii. Any claim in relation to any property or assets whatsoever forming part of his estate is disputed on the ground that there is not sufficient evidence to establish his death as a fact—

it shall be lawful for a judge of the Supreme Court sitting in chambers, upon the application by or on behalf of the executor or



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administrator of the testator or intestate, in a summary way, to call upon any person disputing the sufficiency of the evidence as to death to appear before him and show cause why the probate of the will of the testator, or letters of administration of the estate of the intestate, as the case may be, should not be conclusive evidence of the death of the testator or intestate, as the case may be.

Upon the hearing of any such application the judge may make such order in the matter, including any order as to costs, as he may think fit.

(2.) Every such application shall be made by ordinary summons in chambers. The judge may, if he thinks fit, adjourn the summons into court.

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Application to be by summons. Summons may be adjourned into court.

**64—(1.)—**

i. A copy of a register, or of an entry in a register, certified under the hand of the Registrar-General or his deputy, or any registrar or his deputy: or  
 ii. A certificate under the hand of such Registrar-General or his deputy, or of such registrar or his deputy, and sealed or stamped with the seal of his office—  
 relating to any birth, marriage, or death shall be evidence—

- (a) Of the fact of such birth, marriage, or death; and  
 (b) Of the particulars contained in such copy or certificate respecting such birth, marriage, or death; and  
 (c) In the case of a marriage, that it has been celebrated.

(2.) A certificate of the birth, marriage, or death of any person in any part of the *British* dominions other than *Tasmania*, if it purports to be issued by the officer authorised by the law in that behalf of such part of the said dominions, shall be evidence of the matters stated in such certificate, without proof of the seal or stamp or signature, or of the official character of the person appearing to have signed the same.

(3.) A certificate under the hand of the Registrar-General that any original register of births, marriages, or deaths, for any specified period and for any particular district, is lost or destroyed shall be conclusive evidence of that fact.

Births, marriages, and deaths.  
 59 Vict. No. 9, s. 40.  
 59 Vict. No. 23, s. 38.  
 Cf. No. 11 of 1898, s. 30 (N.S.W.).

Lost and destroyed registers.

**65** Books purporting to have been printed or published, whether before or after the commencement of this Act, under the authority of the Government of the Commonwealth, or of any State, or of any country whatsoever, or by the printer to such Government, and purporting to contain statutes, ordinances, or other written laws in force in such Commonwealth, State, or country, shall on production be admitted and received by all courts and persons acting judicially as *prima facie* evidence of such laws.

Statutes of any country published by authority.  
 See 6 Ed. VII. No. 28, s. 70 (W.A.).  
 N.Z., No. 16 of 1905, s. 39.

**66** Printed books purporting to contain statutes, ordinances, or other written laws in force in the Commonwealth, or any State, or in any country whatsoever, although not purporting to have been printed or published by authority as aforesaid, books purporting to contain reports of decisions of courts or judges in such Commonwealth, State

Certain law-books may be referred to as evidence of laws.  
 6 Ed. VII. No. 28, s. 71.  
 N.Z., No. 16 of 1905, s. 40.

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- or country, and text-books treating of the laws of such Commonwealth, State or country, may be referred to by all courts and persons acting judicially for the purpose of ascertaining the laws in force in such Commonwealth, State, or country; but such courts or persons shall not be bound to accept or act on the statements in any such books as evidence of such laws.
- Standard works of general literature.  
W.A., s. 72.  
N.Z., s. 42.
- 67** All courts and persons acting judicially may, in matters of public history, literature, science, or art, refer, for the purposes of evidence, to such published books, maps, or charts as such courts or persons consider to be of authority on the subjects to which they respectively relate
- Machine copies to be evidence.  
Cf. 54 Vict. No. 1008, s. 28 (Vict.).  
No. 11 of 1898,  
s. 34 (N.S.W.).
- 68** When any writing whatsoever has been copied by means of any machine or press or operation which produces a facsimile impression or copy of such writing, such impression or copy shall, upon proof to the satisfaction of the court or person acting judicially that the same was taken or made from the original writing by means of such machine or press or operation as aforesaid, be evidence of such writing, without any proof that such impression or copy was compared with the said original thereof, and without any notice to produce such original.
- Proof of Certain Matters.*
- Proof of "Gazette."  
See C., No. 5 of 1901, s. 12; C., No. 4 of 1905, s. 8.
- 69** The mere production of a paper purporting to be the "London Gazette," the "Edinburgh Gazette," the "Dublin Gazette," the "Commonwealth of Australia Gazette," or the "Gazette" of any State or of any *Australasian* Colony, shall, before all courts and persons acting judicially, be evidence that the paper is such "Gazette," and was published on the day on which it bears date.
- Proof of printing by Government Printer.  
See C., No. 5 of 1901, s. 13; C., No. 4 of 1905, s. 9.
- 70** The mere production of a paper purporting to be printed by the Government Printer, or by the authority of the Imperial Government, or the Government of the Commonwealth, or of any State, or of any *Australasian* Colony, shall, before all courts and persons acting judicially, be evidence that the paper was printed by the Government Printer or by such authority.
- Documents printed under authority of Stationery Office.  
45 Vict. c. 9, s. 2.
- 71** Where by this Act or any other enactment, whether passed before or after this Act, it is provided that a copy of any Act of Parliament, proclamation, order, regulation, rule, warrant, circular, list, "Gazette," or document shall be conclusive evidence or have any other effect when purporting to be printed by the Government Printer, or the King's Printer, or a printer authorised by His Majesty, whatever may be the precise expression used, such copy shall also be conclusive evidence, or evidence, or have the said effect, as the case may be, if it purports to be printed under the superintendence or authority of His Majesty's Stationery Office.

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**72** Where by any law at any time in force the Governor-General, or the Governor of any State, or of any *Australasian* Colony, or any Minister of the Crown for the Commonwealth or a State, or any *Australasian* Colony, is authorised or empowered to do any act, production of the "Gazette" purporting to contain a copy or notification of any such act shall, before all courts and persons acting judicially, be evidence of the act having been duly done.

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Proof of act done by Governor or Minister.  
See C., No. 5 of 1901, s. 14; C., No. 4 of 1905, s. 10.

**73** Where by any Act of the Commonwealth or of any State, power to make by-laws, rules, regulations, or orders is conferred upon any person or body corporate or unincorporate, any printed paper purporting to be or contain such by-laws, rules, regulations, or orders, and to be printed by the Government Printer, or by the authority of the Government of the Commonwealth or of the State, shall, before all courts and persons acting judicially, be evidence—

By-laws, rules, and regulations.  
See C., No. 5 of 1901, s. 15.  
See 38 Vict. No. 10, s. 2.  
See 49 Vict. No. 22, s. 2.  
Cf. 57 Vict. No. 11, s. 275.  
Cf. 58 Vict. No. 30, s. 274.

- i. That by-laws, rules, regulations, or orders in the words printed in such paper were duly made by such person, or body corporate or unincorporate : and
- ii. That such by-laws, rules, regulations, or orders have been approved of, certified to, and confirmed, as required by law, and that all things necessary to give validity to the same have been duly done, and that the same are in force.

**74**—(1.) All courts and persons acting judicially shall admit and receive as evidence of the incorporation of a company incorporated or registered in the United Kingdom or in any State or *Australasian* Colony, either before or after the commencement of this Act, a certificate of the incorporation or registration thereof which purports to have been signed—

Proof of incorporation of any company.  
C., No. 5 of 1901, s. 16.

- i. By the registrar or an assistant or deputy registrar of companies in *England, Scotland, or Ireland*, or in that State or Colony : or
- ii. By a person whose authority to give the same shall be verified by a statutory declaration made before any judge or justice of the peace of *England, Scotland, or Ireland*, or of such State or Colony, of whose signature such courts and persons aforesaid shall take judicial notice.

And the date of incorporation or registration mentioned in such certificate shall be evidence of the date on which the company was incorporated or registered.

(2.) Any copy of or extract from any document kept and registered at the office for the registration of companies in the United Kingdom or any part thereof, or in any State or *Australasian* Colony, if certified under the hand of the registrar or an assistant or deputy registrar, shall, before all courts and persons acting judicially, be admissible in evidence in all cases in which the original document is admissible in evidence, and for the same purposes and to the same extent.

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*Proof of Judicial Proceedings.*

Proof of judicial proceedings.  
See 14 & 15 Vict. c. 99, s. 7.  
C., No. 5 of 1901, s. 17.  
C., No. 4 of 1905, s. 11.

**75** Evidence of any judgment, decree, rule, order, petition, or other judicial or legal proceeding of any court in this State, or in any other part of His Majesty's dominions, or in any foreign State, or of any judge or justice of such court, including any affidavit, pleading, or legal document filed or deposited in any such court, may be given in all courts and before all persons acting judicially by the production of a document purporting to be a copy thereof, and—

- i. Proved to be an examined copy thereof: or
- ii. Purporting to be sealed with the seal of the court: or
- iii. Purporting to be certified as a true copy by a registrar or chief officer of the court: or
- iv. Purporting to be signed by a judge of such court, with a statement in writing attached by him to his signature that such court has no seal, and without proof of his judicial character or of the truth of such statement.

Convictions, acquittals, and other judicial proceedings.  
Cf. No. 11 of 1898, s. 23 (N.S.W.).  
6 Ed. VII. No. 28, s. 47 (W.A.).

**76**—(1.) Where it is necessary to prove any of the following facts—

- i. The conviction or acquittal before or by any court or judge or justice of any person charged with any offence: or
- ii. That any person was sentenced to any punishment or pecuniary fine by any court or judge or justice: or
- iii. That any person was ordered by any court or judge or justice to pay any sum of money: or
- iv. The pendency or existence at any time before any court, judge, justice, or other official person, or person acting judicially, of any suit, action, trial, proceeding, inquiry, charge, or matter, civil or criminal—

evidence of such fact may be given by the production of a certificate under the hand of—

- (a) Any such judge, or justice, or person: or
- (b) The clerk of such court: or
- (c) The officer having ordinarily the custody of the records, or documents, or proceedings, or minutes of such court or judge or justice: or
- (d) The officer having ordinarily the custody of the records of a court of general or quarter sessions, in the case of any conviction which has been transmitted by any justices to such court: or
- (e) The deputy of such clerk or officer—

showing such fact, or purporting to contain the substance, omitting the formal parts, of the record, information, conviction, acquittal sentence, or order, or of the proceeding, inquiry, charge, or matter in question.

Provided that the time and place of such conviction, acquittal, sentence, or order, or of such suit, action, trial, proceeding, inquiry,

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charge, or matter are stated in such certificate, with the title of such court or the name of the judge or justice or person before or by whom it was had, or passed, or made, or pending, or existing. A.D. 1910.

(2.) Any such certificate stating that the person signing the same has ordinarily the custody of the records, or documents, or proceedings, or minutes referred to therein, shall be evidence of that fact.

(3.) Any such certificate showing such conviction, acquittal, sentence, or order shall also be evidence of the particular offence or matter in respect of which the same was had, or passed, or made, if stated in such certificate.

(4.) Any such certificate showing the pendency or existence of any such suit, action, trial, proceeding, inquiry, charge, or matter shall also be evidence of the particular nature and occasion or ground and cause thereof, if stated in such certificate.

(5.) Any such certificate purporting to contain the substance, omitting the formal parts, of any record, information, conviction, acquittal, sentence, or order, or of any proceeding, inquiry, charge, or matter as aforesaid, shall also be evidence of the matters stated in such certificate.

(6.) A certificate given in pursuance of this section shall be admissible in evidence without proof of the signature or official character of the person appearing to have signed the same.

(7.) A conviction or an acquittal in any part of His Majesty's dominions may be proved under this section in respect of any person, and a conviction or an acquittal before the passing of this Act shall be admissible in the same manner as if it had taken place after the passing thereof.

(8.) The mode of proving any fact authorised by this section shall be in addition to, and not in exclusion of, any other authorised mode of proving such fact.

(9.) A conviction shall be presumed not to have been appealed against or quashed or set aside until the contrary is shown.

Division VI.—*Offences.*

**77** If any officer authorised or required by this part of this Act to furnish any certificated copies or extracts shall wilfully certify any document as being a true copy or extract, knowing that the same is not a true copy or extract, as the case may be, he shall be guilty of a misdemeanour, and be liable on conviction to imprisonment for any term not exceeding Eighteen months. Giving false certificates misdemeanour. 17 Vict. No. 15, s. 10. Cf. 14 and 15 Vict. c. 99, s. 15.

**78** If any person commits any of the offences following; that is to say—  
 i. Forges the seal, stamp, or signature of any document in this part of this Act mentioned or referred to: or  
 ii. Tenders in evidence any such document with a false or counterfeit seal, stamp, or signature thereto, knowing the same to be false or counterfeit—  
 he shall be guilty of felony, and shall upon conviction be liable to be imprisoned for any term not exceeding Three years. Forging any document or tendering it in evidence, felony. Cf. 17 Vict. No. 15, s. 12. Cf. 14 and 15 Vict. c. 99, s. 17. Cf. 49 Vict. No. 22, s. 6.

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Punishment for issuing or using false certificate. 49 Vict. No. 22, s. 7.

Printing false documents and uttering same, or false certificates, felony. 38 Vict. No. 10, s. 3. Cf. 31 and 32 Vict. c. 37, s. 4.

Document may be impounded. 6 Ed. VII. No. 28, s. 73 (W.A.). Cf. 17 Vict. No. 15, s. 12.

**79** If any person affixes the common seal of any corporation or any signature to any document in this part of this Act mentioned or referred to, or tenders in evidence any such document, knowing the same to be untrue, he shall be guilty of a misdemeanor, and upon conviction thereof shall be liable to be imprisoned for Three years.

**80** If any person commits any of the offences following ; that is to say—

- i Prints any copy of any proclamation, order-in-council, commission, order, regulation, or notification which falsely purports to have been printed by the Government Printer, or tenders in evidence any copy of any proclamation, order-in-council, commission, order, regulation, or notification, which falsely purports to have been printed as aforesaid, knowing that the same was not so printed : or
- ii Forges or tenders in evidence, knowing the same to have been forged, any certificate by this Act authorised to be annexed to a copy of or extract from any proclamation, order-in-council, commission, order, regulation, or other instrument—

he shall be guilty of felony, and shall on conviction be liable to be imprisoned for any term not exceeding Four years.

**81** Where any document has been received in evidence the court, or person acting judicially, admitting the same may direct that such document be impounded and kept in the custody of some officer of the court, or other proper person, for such period and subject to such conditions as such court or person thinks fit, or until further order.

**PART IV.****WITNESSES.***Competency and Compellability of Witnesses.*

Witnesses interested or convicted of offence. See 6 and 7 Vict. c. 85, extended to Tasmania by 8 Vict. No. 2.

Evidence of deaf and dumb witness. Taylor on "Evidence," 10th Edition, Vol. II., p. 985.

**82** No person shall be excluded from giving evidence in any proceeding on the ground—

- i. That he has or may have an interest in the matter in question, or in the result of the proceeding : or
- ii. That he has previously been convicted of any offence

**83** A witness unable to speak or hear is not incompetent, but may give his evidence by writing or by signs, or in any other manner in which he can make it intelligible ; but such writing must be written and such signs made in open court.

Evidence so given is deemed to be oral evidence.

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**84** In any civil proceeding the parties thereto, and the persons on whose behalf such proceeding is brought or defended, and the husbands and wives of such parties or persons respectively, shall, subject to the provisions of this Act, be competent and compellable to give evidence on behalf of either or any of the parties to such proceeding.

The expression "civil proceeding" includes any complaint made to justices upon which they have authority by law to make an order on any person for the payment of money, or for doing or refraining from doing any other act.

**85**—(1.) Every person charged with an offence, and the wife or husband, as the case may be, of the person so charged, shall be a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person: Provided as follows:—

- i. A person so charged shall not be called as a witness except upon his own application:
- ii. The wife or husband of the person charged shall not be called as a witness, except on the application of the person so charged:
- iii. The failure of any person charged with an offence, or of the wife or husband, as the case may be, of the person so charged to give evidence shall not be made the subject of any comment by the prosecution:
- iv. A person charged and being a witness in pursuance of this section may be asked and shall be required to answer any question in cross-examination, notwithstanding that it would tend to criminate him as to the offence charged:
- v. A person charged and called as a witness in pursuance of this section shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than that wherewith he is then charged, or is of bad character, unless—
  - (a) The proof that he has committed or been convicted of such other offence is admissible in evidence to show that he is guilty of the offence wherewith he is then charged; or
  - (b) He has personally, or by his advocate, asked questions of the witnesses for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution; or
  - (c) He has given evidence against any other person charged with the same offence:
- vi. When paragraph v. (b) or v. (c) is or becomes applicable to any person charged who gives evidence for the defence,

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Evidence of party, or of wife or husband of party, in civil cases.

Cf. 17 Vict. No. 15, s. 1.  
14 and 15 Vict. c. 99, ss. 2-3.

Competency of accused or his wife as witness in criminal cases  
61 & 62 Vict. c. 36, s. 1.  
See Kenny's "Outlines of Crim. Law," p. 401, *et seq.*

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it shall be open to the prosecution, or to any other person charged against whom he has given evidence, to call evidence that such person is of bad character or has been convicted of or charged with any offence other than that with which he then stands charged, notwithstanding that the case for the prosecution or of such other person charged may already have been closed :

vii. Every person called as a witness in pursuance of this section shall, unless otherwise ordered by the court, give his evidence from the witness-box or other place from which the other witnesses give their evidence :

viii. Nothing in this section shall affect the provisions of Section Twelve of "The Magistrates Criminal Procedure Act" or any right of the person charged to make a statement without being sworn.

19 Vict. No. 9,  
s. 12.Evidence of  
person charged.  
*Ibid.*, s. 2.

Saving.

(2.) Where the only witness to the facts of the case called by the defence is the person charged, he shall be called as a witness immediately after the close of the evidence for the prosecution.

(3.) Nothing in this Act shall affect a case where the wife or husband of a person charged with an offence may at common law or by statute law be called as a witness without the consent of that person.

In proceedings by  
indictment to en-  
force civil rights.  
40 and 41 Vict.  
c. 14, s. 1.

**86** On the trial of any information filed in the Supreme Court or other proceeding—

- i. For the non-repair of any public highway or bridge : or
- ii. For a nuisance to any public highway, river, or bridge : or
- iii. Instituted for the purpose of trying or enforcing a civil right only —

every defendant to such information or proceeding, and the wife or husband of any such defendant, shall be admissible witnesses and compellable to give evidence.

Power to compel  
answer to incrim-  
inating question.  
6 Ed. VII. No. 28,  
s. 11 (W.A.).  
Cf. Canada  
Evidence Act  
(R.S. 1906), s. 5.  
See Phipson,  
Fourth Edition,  
pp. 193-198.Certificate to be  
given.  
*Ibid.*

**87**—(1.) Whenever in any proceeding any person called as a witness, or required to answer any interrogatory, declines to answer any question or interrogatory on the ground that his answer will criminate or tend to criminate him, the judge may, if it appears to him expedient for the ends of justice that such person should be compelled to answer such question or interrogatory, tell such person that, if he answers such question or interrogatory, and other questions or interrogatories that may be put to him, in a satisfactory manner, he will grant him the certificate hereinafter mentioned.

(2.) Thereupon such person shall no longer be entitled to refuse to answer any question or interrogatory on the ground that his answer will criminate or tend to criminate him ; and thereafter if such person shall have given his evidence to the satisfaction of the judge, the judge shall give such person a certificate to the effect that he was called as a witness or interrogated in the said proceeding, and that his evidence was required for the ends of justice, and was given to his satisfaction.

(3.) The power conferred by this section shall not be exercisable by any justice or justices other than a police or stipendiary magistrate,



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**88**—(1.) In any proceeding for the breach of any Act relating to

- i. Stamp duties : or
- ii. The public revenues : or
- iii. The sale of intoxicating liquors—

or in any proceeding brought by or on behalf of or against the Crown under or in pursuance of the provisions of any such Act, the judge may require any person, except the accused or his wife in proceedings under Paragraph iii., to be examined as a witness.

(2.) A person so required to be examined as aforesaid shall not be excused from being so examined, or from answering any question put to him touching any such breach as aforesaid, on the ground that his evidence will tend to incriminate him.

(3.) If any such person refuses to be examined, or to answer any such question as aforesaid, he shall be deemed to be a witness appearing under a subpoena and refusing without lawful cause or excuse to be sworn or to give evidence.

(4.) Every person required to be examined under this section touching any such breach as aforesaid, who on such examination makes to the best of his knowledge true and faithful discovery of all matters whereon he is so examined touching such breach, and thereby gives evidence tending to incriminate himself, shall, on application, receive from the judge before whom he is examined a certificate in writing under his hand that he has made such true and faithful discovery.

(5.) This section shall not apply to proceedings before any justice or justices other than a police or stipendiary magistrate.

**89** If any person called as a witness or interrogated under Sections Eighty-seven or Eighty-eight receives the certificate therein mentioned (but not otherwise), he shall be freed from all criminal prosecutions and penal actions, and from all penalties, forfeitures, and punishments to which he was liable for anything done before that time in respect of the matters touching which he is so examined.

Provided that nothing herein contained shall make such certificate pleadable in bar of any information filed in the Supreme Court against such person for perjury committed in such proceeding as aforesaid.

**90** Any person present at any legal proceeding wherein he might have been compellable to give evidence and produce documents by virtue of a subpoena or other summons or order duly issued and served for that purpose, shall be compellable to give evidence, and to produce documents then in his possession and power, in the same manner, and in case of refusal shall be subject to the same penalties and liabilities, as if he had been duly subpoenaed or summoned for that purpose.

**91** A judge of the Supreme Court may at any time in the course of any legal proceeding which is being conducted before him direct the Registrar of the Court, or the Sheriff, to issue a subpoena or other

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Witnesses in revenue cases may be compelled to give evidence. N.Z., No. 16 of 1905, s. 16.

Witnesses making true discovery to be freed from penalties. *Ibid.*, N.Z., s. 17.

Certificate may be pleaded in bar to prosecution. See 52 Vict. No. 26, s. 5.

Persons present may be examined without a subpoena. N.S.W., No. 11 of 1898, s. 12. Cf. 54 Vict. No. 1088, s. 11 (Vic.).

Judge of Supreme Court may in the course of legal

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proceeding before  
him direct sub-  
pœna to issue.

order in writing, commanding any person whom the judge shall name to attend and give evidence as a witness in such proceeding.

The expenses of such person in attending to give evidence in such proceeding shall be paid by the Sheriff out of the moneys provided by Parliament for witnesses summoned to give evidence on behalf of the Crown: Provided always that the judge may direct that the expenses of any witness called by him in any civil proceeding shall be costs in the cause.

Witnesses failing  
to attend trial.

*Ibid.*, N.S.W., s.  
13.

Cf. 19 Vict. No. 9,  
s. 10.

8 Vict. No. 13, s.  
11.

19 Vict. No. 10,  
s. 11.

60 Vict. No. 48,  
ss. 59, 60.

38 Vict. No. 2, s.  
7.

**92**—(1.) Where any person duly bound by recognisance or served with a subpœna, summons, or order to attend in any court as a witness at the trial of any case, civil or criminal, fails to appear when called in open court, either at such trial or upon the day appointed for such trial, the court may—

- i. Upon proof of such recognisance, or of his having been duly served with such subpœna, summons, or order, call upon him to show cause why execution upon such recognisance or an attachment for disobedience to such subpœna, summons, or order should not be issued against him: or
- ii. Upon proof of such recognisance or service, and also that his non-appearance is without just cause or reasonable excuse, and upon oath that he will probably be able to give material evidence, issue a warrant to bring him before the court to give evidence at such trial.

(2.) Such proof may be oral before the court or by affidavit.

Procedure.

*Ibid.*, N.S.W.,  
s. 14.

**93**—(1.) Every rule or order to show cause as aforesaid may—

- i. Be made returnable before the court itself at the then sittings or at some future sitting: or
- ii. On the trial of a case pending in the Supreme Court, be made returnable in the Supreme Court.

(2.) On the return of any such rule or order, the court may deal with the case as the Supreme Court might and would have done upon a rule to the like effect issued out of that court.

*Privilege of Witnesses.*

Communications  
during marriage.  
17 Vict. No. 15,  
s. 2.

N.S.W., No. 11  
of 1898, s. 11.  
*Jones v. Jones.*  
7 N.S.W., R.  
(Div.) 9.

Privilege in suits  
for adultery.  
34 Vict. No. 18,  
s. 3.

**94** A husband shall not be compellable in any proceeding to disclose any communication made to him by his wife during the marriage, and a wife shall not be compellable in any proceeding to disclose any communication made to her by her husband during the marriage.

Provided that this section shall not apply in any proceeding in the Supreme Court in its divorce and matrimonial causes jurisdiction to any husband and wife who are both parties to such proceeding.

**95** In any proceeding instituted in consequence of adultery, no witness, whether a party to the proceeding or not, shall be liable to be asked or bound to answer any question tending to show that he has been guilty of adultery, unless such witness has already given evidence in the same proceeding in disproof of his alleged adultery.

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**96**—(1.) No clergyman of any church or religious denomination shall divulge in any proceeding any confession made to him in his professional character, except with the consent of the person who made such confession.

(2.) No physician or surgeon shall, without the consent of his patient, divulge in any civil proceeding (unless the sanity of the patient be the matter in dispute) any communication made to him in his professional character by such patient, and necessary to enable him to prescribe or act for such patient.

(3.) Nothing in this section shall protect any communication made for any criminal purpose, or prejudice the right to give in evidence any statement or representation at any time made to or by a physician or surgeon in or about the effecting by any person of an insurance on the life of himself or any other person.

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Communications to clergymen and medical men.  
Cf. 54 Vict. No. 1088, s. 55 (Vic.).  
Cf. 5 Ed. VII. No. 16, s. 8 (N.Z.).

*Impeaching Credit of Witnesses.*

**97** A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but may contradict him by other evidence relevant to the issue.

How far a party may discredit his own witness.  
See 19 Vict. No. 16, s. 21.

**98** Every witness under cross-examination in any proceeding, civil or criminal, may be asked whether he has made any former statement relative to the subject-matter of the proceeding, and inconsistent with his present testimony, the circumstances of the supposed statement being referred to sufficiently to designate the particular occasion, and if he does not distinctly admit that he made such statement, proof may be given that he did in fact make it.

Cross-examination as to previous statement in writing or deposition.  
See *ibid.*, s. 22.  
See Stephens' "Digest of Evidence," 7th Edition, Article 131.  
See *ibid.*, s. 21.

The same course may be taken with a witness upon his examination in chief, if the judge is of opinion that the witness is hostile to the party by whom he was called and permits the question.

**99** A witness under cross-examination, or a witness whom the judge, under the provisions of the last preceding section, has permitted to be examined by the party who called him as to previous statements inconsistent with his present testimony, may be questioned as to—

Proof of contradictory statements of witness.  
See *ibid.*, s. 23.  
See Stephens' "Digest," Article 132.

- i. A previous statement made or supposed to have been made by him in writing or reduced into writing: or
- ii. Evidence given or supposed to have been given by him before any justice—

without such writing or the deposition of such witness being shown to him.

But if it is intended to contradict him by such writing or deposition, his attention must, before such contradictory proof can be given, be called to those parts of the writing or deposition which are to be used for the purpose of so contradicting him.

Provided that the judge may, at any time during the trial, require the writing or deposition to be produced for his inspection, and may thereupon make use of it for the purposes of the trial as he thinks fit.

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Proof of previous conviction of witness.  
See *ibid.*, s. 24.

**100** A witness may be questioned as to whether he has been convicted of any felony or misdemeanor, and, upon being so questioned, if he either denies or does not admit the fact, or refuses to answer, the cross-examining party may prove such conviction.

*Protection of Witnesses.*

Questions tending to criminate.  
17 Vict. No. 15, s. 3.

**101** Except as provided in this Act nothing in this Act shall render any person compellable to answer any question tending to criminate himself.

Cross-examination as to credit.  
Indian Ev. Act, No. 1 of 1872, s. 148.  
53 Vict. No. 21, s. 3.

**102**—(1.) If any question put to a witness upon cross-examination relates to a matter not relevant to the proceeding, except in so far as it affects the credit of the witness by injuring his character, it shall be the duty of the court to decide whether or not the witness shall be compelled to answer it, and the court may, if it thinks fit, inform the witness that he is not obliged to answer it.

(2.) In exercising this discretion the court shall have regard to the following considerations:—

- i. Such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the court as to the credibility of the witness on the matter to which he testifies :
- ii. Such questions are improper if the imputation they convey relates to matters so remote in time, or of such a character that the truth of the imputation would not affect, or would affect in a slight degree only, the opinion of the court as to the credibility of the witness on the matter to which he testifies :
- iii. Such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence.

*Ibid.*, Tas., s. 4.

(3.) Nothing herein shall be deemed to make any witness compellable to give evidence upon any matter he is now by law privileged from disclosing.

Indecent or scandalous questions.  
See Indian Ev. Act, No. 1 of 1872, ss. 151, 152.  
*Ibid.*, Tas., ss. 5, 6.

**103** The court may forbid any question it regards as—

- i. Indecent or scandalous, although such question may have some bearing on the case before the court, unless the question relates to facts in issue or to matters necessary to be known in order to determine whether or not the facts in issue existed : or
- ii. Intended to insult or annoy, or needlessly offensive in form, notwithstanding that such question may be proper in itself.

Prohibited questions not to be published.  
N.Z., No. 16 of 1905, s. 15.

**104**—(1.) It shall not be lawful for any person to print or publish any question or enquiry which the court—

- i. Has, under the provisions of the last preceding section, forbidden or disallowed, and has ordered shall not be published : or

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ii. Has informed the witness he is not obliged to answer, and has ordered shall not be published. A.D. 1910.

(2.) Every person who prints or publishes any question in breach of this section commits a contempt of court, and shall be liable to punishment for such contempt as if the contempt had been committed in face of the court against which the contempt is committed, and on the like proceedings as in such lastmentioned case

*General Rules of Evidence.*

**105**—(1.) The averment or recital in an information filed in the Supreme Court that the prosecution is instituted by or by the direction of the Attorney-General or Solicitor-General or of any other officer duly appointed for such purpose, or at the request of the Government of any State, shall be sufficient evidence of the fact until the contrary is shown. Evidence of authority. See C. Code (Q.), s. 638. Cf. 9 G. IV. c. 83, s. 5.

(2.) Any information filed in the Supreme Court, and which purports to be signed by the Attorney-General or Solicitor-General or any other officer duly appointed to prosecute on behalf of His Majesty in respect of the offence alleged in such information, shall be deemed to be duly signed until the contrary is shown.

(3.) Any person who knowingly and wilfully signs and files any such information which he is not authorised to sign shall be deemed guilty of and liable to punishment as for a contempt of the court in which the information is filed committed in face of the court.

**106** On the trial of a person charged with any offence of which an intent to injure or deceive or defraud, or an intent to enable another person to deceive or defraud, is an element, it shall not be necessary to prove an intent to injure or deceive or defraud any particular person, or an intent to enable any particular person to deceive or defraud any particular person. Intention to defraud. C. Code (Q.), s. 643.

**107** It shall not be necessary to prove, by the attesting witness, any instrument to the validity of which attestation is not requisite, and such instrument may be proved as if there had been no attesting witness thereto. Proof by attesting witness. 19 Vict. No. 16, s. 25.

**108** Comparison of a disputed handwriting with any writing proved to the satisfaction of the judge or person acting judicially to be genuine may be made by witnesses, and such writings and the testimony of witnesses respecting the same may be submitted to the court or such person and the jury or assessors, if any, as evidence of the genuineness or otherwise of the writing in dispute. Comparison of disputed handwriting. 19 Vict. No. 16, s. 26.

**109** An accused person, either personally or by his counsel or solicitor, in his presence, may admit on his trial any fact alleged or sought to be proved against him, and such admission shall be sufficient proof of the fact without other evidence. Admissions in criminal cases. C. Code (Q.), s. 644.

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Proof of exemption, &c., to lie upon defendant.  
Cf. 19 Vict. No. 8, s. 15.  
As re-enacted by 63 Vict. No. 27, s. 5.

**110** It shall not be necessary—

- i. In any information filed in the Supreme Court: or
- ii. In any information laid or complaint made before a justice—  
to specify or negative, nor for the prosecutor, informant, or complainant to prove; any exemption, exception, proviso, condition, excuse, or qualification, whether it does or does not accompany in the same section the description of the offence in the Act, by-law, regulation, order, or other document creating the offence; but where any such exemption, exception, proviso, condition, excuse, or qualification shall be relied upon by the defendant, the proof thereof shall lie upon him.

Confession after promise or threat.

**111** A confession tendered in evidence in any criminal proceeding shall not be rejected on the ground that a promise or threat has been held out to the person confessing, unless the judge or other presiding officer is of opinion that the inducement was in fact likely to cause an untrue admission of guilt to be made.

Dying declarations.  
No. 11 of 1898, s. 40 (N.S.W.).

**112**—(1.) Every declaration by a person since deceased shall be admissible in evidence in any criminal proceeding in any case where a dying declaration is now admissible, if the declarant was at the time aware of his danger, and on the whole believed that he would shortly die, although he entertained some degree of hope of recovery.

(2.) No such declaration, if otherwise admissible as a dying declaration, shall be excluded because of its having been or purporting to be on oath.

Certain errors not to avoid conviction.  
Cf. 1. 2 Ed. VII. No. 14, s. 670 (W.A.).

**113** A conviction, whether upon information filed in the Supreme Court or summary, cannot be set aside upon the ground of the improper admission of evidence—

- i. If it appears to the court that the evidence was not material:  
nor
- ii. Upon the ground of the improper admission of evidence adduced for the defence.

*Rules in Particular Cases.*

Evidence on certain charges relating to money. See C. Code (Q.), s. 641.

**114**—(1.) On the trial of a person charged with the larceny or embezzlement of money, an entry in any book of account shown to be kept by the accused person, or kept in, under, or subject to his charge or supervision, purporting to be an entry of the receipt of any money, shall be evidence that the money so purporting to have been received was so received by him.

(2.) On the trial of a person charged with any such offence, it shall not be necessary to prove the larceny or embezzlement by the accused person of any specific sum of money if, on examination of the books of account or entries kept or made by him, or kept or made in, under, or subject to his charge or supervision, or by any other evidence, there is proof of a general deficiency, and if the jury are satisfied that the

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accused person was guilty of larceny or embezzlement of the deficient money or any part of it. A.D. 1910.

**115** On the trial of a person charged with any offence relating to any seal or stamp used for the purposes of the public revenue, or of the post-office in any part of His Majesty's dominions, or in any foreign State, a despatch from one of His Majesty's principal Secretaries of State, transmitting to the Governor any stamp, mark, or impression and stating it to be a genuine stamp, mark, or impression of a die, plate, or other instrument provided, made, or used by or under the direction of the proper authority of the country in question, for the purpose of expressing or denoting any stamp duty or postal charge, shall be admissible as evidence of the facts stated in the despatch; and the stamp, mark, or impression so transmitted may be used by the court and jury and by witnesses for the purposes of comparison.

Evidence on charges relating to seals and stamps. C. Code (Q.), s. 642.

**116** Where proceedings are taken against any person for having received anything which has been obtained by means of any act constituting a felony or misdemeanour, knowing the same to have been so obtained, evidence may be given at any stage of the proceedings that there was found in the possession of such person any other thing obtained by such means within the preceding period of Twelve months, and such evidence may be taken into consideration for the purpose of proving that such person knew the property which forms the subject of the proceedings taken against him to have been obtained by means of an act constituting a felony or misdemeanor.

Evidence in cases of receiving stolen property. See 34 & 35 Vict. c. 112, s. 19.

**117** The plaintiff in an action for breach of promise of marriage shall not recover a verdict unless his or her testimony is corroborated by some other material evidence in support of such promise.

Actions for breach of promise. 34 Vict. No. 18, s. 2.

**118**—(1.) In an action to recover damages for seduction brought by a parent of the woman seduced, or by a person standing to her in the place of a parent, it shall not be necessary to allege or prove that she was in the service of the plaintiff, or that he sustained any loss of service by reason of the seduction.

Actions for seduction. N.Z., No. 16 of 1905, s. 22.

(2.) The plaintiff in such action shall not recover a verdict unless the evidence of the woman seduced is corroborated by some other material evidence of such seduction.

**119** If upon the hearing of any complaint relating to an illegitimate infant the court is satisfied that the paternity of such infant is established by the admission of the person alleged to be the father of such infant, the court may if it thinks fit dispense with any evidence on the part of the mother of the infant, and may accept the said admission as conclusive evidence of the paternity.

Admission of paternity in cases of bastardy. 7 Ed. VII. No. 51, Part IV.

**120** On the prosecution of a person for bigamy, the first marriage shall not be proved by the evidence of the wife or husband of such marriage alone.

Bigamy. No. 11 of 1898, s. 31 (N.S.W.).

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*Evidence of Witnesses in Prison.*

Prisoner required to give evidence may be brought up on order. See 37 Vict. No. 6, s. 27. Cf. 6 Ed. VII. No. 28, s. 51 (W.A.).

**121**—(1.) It shall be lawful for—

- i. Any judge of the Supreme Court: or
- ii. The Commissioner in Bankruptcy at *Launceston*: or
- iii. Any commissioner of a court of requests: or
- iv. Any warden of mines: or
- v. Any police magistrate—

when and as he sees fit, by any verbal order to the Sheriff, or by an order in writing addressed to any gaoler, to cause any person under imprisonment for any cause to be brought up in order to his being examined as a witness in any case or matter, civil or criminal, depending before such judge, commissioner, warden, or police magistrate.

After his evidence has been given the Sheriff or gaoler shall cause the prisoner to be removed and again imprisoned, the non-issue of a writ of *habeas corpus* in any such case notwithstanding.

Expenses of bringing up prisoner. N.Z., No. 16 of 1905, s. 25. 6 Ed. VII. No. 28, s. 52 (W.A.).

(2.) In every civil proceeding the judge or other person making the order under the preceding subsection shall, and in every other proceeding he may, before making such order, require the applicant to deposit a sum sufficient to pay the expense of bringing up the prisoner, maintaining him while out of prison, and returning him thither, including the expense of his custody from the time he leaves until the time he returns to prison.

Provision for prisoner being present at taking of deposition of person dangerously ill. Cf. 34 Vict. No. 3, s. 6.

**122** Whenever a prisoner in actual custody has received notice of an intention to take the deposition of a person dangerously ill and unable to travel, the Sheriff of *Tasmania*, at the request of a judge of the Supreme Court or of a justice, may make an order under his hand directing any gaoler to convey the prisoner to the place mentioned in the said notice for the purpose of being present at the taking of the deposition; and the gaoler shall convey the prisoner accordingly and afterwards return him to prison.

## PART V.

## OATHS, AFFIRMATIONS, AND DEPOSITIONS.

Form of oaths. 1 & 2 Vict. c. 105.

**123** Every oath shall be binding which is administered in such form and with such ceremonies as the person sworn declares to be binding.

Practice of "kissing the book" to be discontinued. See "Lancet," Jan. 16, 1909, p. 213.

**124** Whereas the practice, upon taking an oath, of kissing or handling a bible by numbers of persons in common is insanitary and calculated to spread disease, and no effective means of rendering safe from risk any bible so in use can be applied with certainty: Be it therefore enacted, that the practice of a person sworn according to the



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*English* form of oath, kissing or touching the bible or testament, shall be discontinued, and instead thereof the person tendering the oath shall, standing up, hold the bible or testament in his hand and tender the oath, and the witness shall, bowing his head, audibly say, "I swear," to signify his taking of the oath. A.D. 1910.

**125** Every witness in any civil or criminal proceeding, or in any inquiry or examination in any court or before any person acting judicially, shall be entitled, if he so wishes, instead of taking the oath usually administered to witnesses, to have an oath administered to him in the form following; that is to say:—The officer or person tendering the oath shall hold up his hand, and say to the witness, "Witness, hold up your hand, and repeat after me:—

Witnesses may be sworn in Scotch form.  
N.Z., No. 16 of 1905, s. 48.  
See 53 Vict. No. 9, s. 7.

"I swear by Almighty God that I will speak the truth, the whole truth, and nothing but the truth."

**126**—(1.) Every person shall be entitled as of right to make his solemn affirmation, instead of taking an oath, in all places and for all purposes where an oath is required by law, and such affirmation shall be of the same force and effect as an oath. Affirmation in lieu of oath.  
See 53 Vict. No. 9, s. 3.

(2.) Every such affirmation shall be as follows: "I, *A. B.*, do solemnly, sincerely, and truly declare and affirm," and shall then proceed with the words of the oath prescribed by law, omitting any words of imprecation or calling to witness. *Ibid.*, s. 4.

(3.) Every affirmation in writing shall begin: "I, *A. B.*, of \_\_\_\_\_, do solemnly and sincerely affirm," and the form in lieu of jurat shall be: "Affirmed at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me." *Ibid.*, s. 6.

(4.) Every person commits perjury who makes any false statement on affirmation that would amount to perjury if made on oath.

**127** Where an oath has been duly administered and taken, the fact that the person to whom the same was administered had at the time of taking such oath no religious belief shall not for any purpose affect the validity of such oath. Oath not affected by want of religious belief.  
*Ibid.*, s. 5.

**128**—(1.) In any civil or criminal proceeding, or in any enquiry or examination in any court, or before any person acting judicially, where any child of tender years who is tendered as a witness does not, in the opinion of the court or person acting judicially, understand the nature of an oath, the evidence of such child may be received, though not given upon oath, if in the opinion of the court or person acting judicially such child is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth. Evidence of children not upon oath.  
See 48 & 49 Vict. c. 69, s. 4.  
See *ibid.*, Tas., s. 8.  
Cf. The Canada Evidence Act, s. 16.

(2.) No person shall be convicted of any offence on the testimony of a child who gives evidence under the provisions of this section unless the testimony of such child is corroborated by other evidence in some material particular.

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Persons to be admitted as interpreters on affirmation. See 39 Vict. No. 2, s. 103, s.s. 2 (W.A.).

**129**—(1.) If any person is called to act as interpreter in any court, or before any person acting judicially, and objects to take an oath, or is objected to as incompetent to take an oath, such person shall, if the court or person acting judicially is satisfied that the taking of an oath would have no binding effect on his conscience, be admitted to act as interpreter in the same way as if he had taken the usual oath required of a person so called, on his making the following promise or declaration:—“I solemnly promise and declare that I will well and truly interpret the evidence given to the court.”

(2.) Any person who, having made such affirmation, promise, or declaration, shall wilfully and corruptly falsely interpret shall be liable to be indicted, tried, and convicted for perjury as if he had taken an oath.

Who may administer oaths. Cf. 17 Vict. No. 15, s. 11.

**130** All courts, judges, and persons acting judicially are hereby empowered to administer an oath to all such witnesses as are lawfully called or voluntarily come before them respectively, or to take the affirmation of any such witness in lieu of such oath.

Voluntary oath unlawful. 8 Wm. IV. No. 2.

**131** It is unlawful for any justice or other person to administer, or cause or allow to be administered, or to receive or cause or allow to be received, any oath, affirmation in lieu of oath, or affidavit touching any matter or thing whereof such justice or other person has not jurisdiction or cognisance by some law in force for the time being.

But nothing herein contained shall be construed to extend to any oath, affirmation, or affidavit—

- i. Before any justice or other person in any matter or thing touching any legal proceeding, or any proceeding before either House of the Parliament, or any committee thereof: nor
- ii. Which may be required by any Act of the Parliament of the Commonwealth or of any State: nor
- iii. Which may be required by the laws of any part of His Majesty's dominions or any foreign country to give validity to instruments in writing designed to be used there.

Statutory declarations. *Ibid.*

**132**—(1.) It shall be lawful for any justice or other person by law authorised to administer an oath to take and receive the declaration of any person voluntarily making the same before him in the following form, namely:—

“I, *A.B.* [*insert place of abode and occupation*], do solemnly and sincerely declare that [*here state the facts*]; and I make this solemn declaration by virtue of Section of “The Evidence Act, 1910.”

“Declared at                    this                    day of                    191                    ,  
before me, *C.D.*, Justice of the Peace [*or as the case may be*].

Fees on oaths payable on declaration.

(2.) Whenever such declaration shall be made by any person, such fees as would have been due and payable on the taking or making of

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any legal oath, affirmation, or affidavit shall be in like manner due and payable upon making such declaration. A.D. 1910.

*Depositions.*

**133** Depositions taken on the preliminary or other investigation of any charge of felony or misdemeanour may be read as evidence on the trial of the accused for any other offence, although of a higher or different nature, if they would be admissible on his trial for the offence in respect of which they were taken.

Depositions on one charge admissible on trial of another.  
No. 11 of 1898, s. 37 (N.S.W.).

Such depositions may be proved in the same manner as if the accused were on trial for that offence.

**134**—(1.) A deposition taken in any proceeding under “The Magistrates Criminal Procedure Act” may be produced and given in evidence at the trial of the person for or against whom it was taken—

Depositions under “The Magistrates Criminal Procedure Act.”  
See 19 Vict. No. 9, s. 11.  
See 37 Vict. No. 13, s. 11.

- i. If it is proved to the satisfaction of the Supreme Court that the witness is dead, or out of *Tasmania*, or insane, or so ill as not to be able to travel, although there may be a prospect of his recovery : or
- ii. If the witness is kept out of the way by the person accused : and
- iii. If the deposition purports to be signed by the justice by or before whom it purports to have been taken, unless it is proved that the deposition was not in fact signed by the justice by whom it purports to be signed.

If there is a prospect of the recovery of a witness proved to be too ill to travel, the court shall not be obliged to receive the deposition, but may postpone the trial, discharging the jury, where a jury has been empanelled, if the court thinks fit.

(2.) The deposition of a witness taken before a coroner may in the like cases be produced and given in evidence at the trial of any person who shall have been present during the examination of the witness.

**135**—(1.) In this section—

“Offence” means any treason, felony, or misdemeanour cognisable in the Supreme Court :

“Court” means any judge of the Supreme Court, or any police magistrate, or Two justices having jurisdiction to hear and determine any case.

Depositions of persons dangerously ill.  
34 Vict. No. 3, s. 5.

(2.) If a person dangerously ill and unable to travel is believed to be able to give material and important information relating to any offence, or to a person accused thereof, the proceedings described in the next subsection may take place.

(3.) If it is made to appear to the satisfaction of any justice—

- i. That any such person is dangerously ill and not likely to recover from such illness : and

How deposition taken.  
*Ibid.*

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ii. That it is not practicable for any justice to take a deposition of such person, in accordance with the provisions of "The Magistrates Criminal Procedure Act"—

the justice may take in writing the statement on oath or affirmation of such person; and the justice shall thereupon subscribe the same, and add thereto a statement of his reason for taking the same, and of the day and place when and where the same was taken, and of the names of the persons (if any) present at the taking thereof.

If the deposition relates to any offence for which any accused person is already committed or bailed to appear for trial, the justice shall transmit the same, with the said addition, to the Attorney-General or other officer duly appointed to prosecute crimes, misdemeanours, and offences cognisable in the Supreme Court.

When deposition  
admissible in  
evidence.

(4.) A deposition taken under this section may be produced and read as evidence, either for or against the accused, upon the trial of any offender or offence to which it relates—

- i. If the deponent is proved to be dead: or
- ii. If it is proved that there is no reasonable probability that the deponent will ever be able to travel or to give evidence: and
- iii. The deposition purports to be signed by the justice by or before whom it purports to be taken: and
- iv. It is shown to the satisfaction of the court by the contents of the deposition or the statement of the justice before whom the same is taken attached thereto, or otherwise howsoever—

(a) That the person (whether prosecutor or accused) against whom it is proposed to read such deposition, or his counsel or attorney, had or might have had, if he had chosen to be present, full opportunity of cross-examining the deponent; and

(b) In cases where the person against whom it is proposed to read the deposition is not shown to have been present, or represented by counsel or attorney, at the taking thereof, that notice in writing of the intention to take such deposition was given to such person a reasonable and sufficient time beforehand, having regard to the urgency of the circumstances, to have enabled him to be present.

(5.) Nothing in this section contained shall render inadmissible in evidence any declaration in writing or otherwise which is admissible in evidence as a dying declaration.

**PART VI.****EVIDENCE IN SHORTHAND.**

Examiners of  
shorthand writers  
to be appointed  
by Governor.  
54 Vict.No. mcci.,  
s. 2 (Vic.).

**136** The judges of the Supreme Court may appoint as many fit persons as may be required to be examiners to conduct the examinations of applicants for license as shorthand writers, subject to regulations made as herein provided.

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**137** The Chief Justice may from time to time license fit and proper persons to be shorthand writers for the purpose of taking down in shorthand and transcribing, or causing to be transcribed, any evidence as hereinafter provided, and may cancel the licence of any such person.

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Shorthand writers  
to be licensed.  
*Ibid.*, s. 3.

**138**—(1.) Every person licensed as a shorthand writer, before entering upon the duties of his office, shall take before a judge of the Supreme Court the following oath:—

Shorthand writers  
to be sworn.  
*Ibid.*, s. 4.

“I swear that I will faithfully take down and transcribe, or cause to be transcribed, the evidence I am required by law to take down in any cause or matter.”

(2.) Every judge of the Supreme Court is hereby authorised to administer, or cause to be administered, such oath to every such person.

(3.) Every person authorised by law to make an affirmation instead of making an oath, may make such affirmation instead of making such oath.

**139** Any judge of the Supreme Court, or any commissioner, warden, chairman, or justice of any court, and any person acting judicially, may, at his or their discretion, on the application of all the parties to any cause, matter, inquiry, or proceeding, either civil or criminal, depending before him or them, direct that the evidence to be given in such cause, matter, inquiry, or proceeding, and any ruling, direction, or summing up, be taken down in shorthand by a shorthand writer licensed as aforesaid, provided a shorthand writer be then available for that purpose: Provided that the judge, commissioner, warden, chairman, or justices may decide in his or their discretion by whom the costs shall be paid.

Judge or chairman of courts or justices, &c., may direct evidence to be taken down in shorthand in certain cases.  
*Ibid.*, s. 5.

**140** Every shorthand writer licensed as aforesaid—

- i. Shall for the time being be an officer of the court in or for which he shall be required to take down evidence: and
- ii. Shall be under the direction of the said court with regard to the performance of his duty in taking down and transcribing, or causing to be transcribed, such evidence.

Shorthand writer to be officer of court whilst in performance of duty.  
*Ibid.*, s. 6.

**141** The shorthand writer's shorthand notes and also the transcript thereof, either by writing, printing, or type-writing, when certified to as correct by a shorthand writer licensed as aforesaid, shall be received by every court as *primâ facie* evidence of the evidence, ruling, direction, or summing up so taken down.

Transcript of notes to be received as evidence *primâ facie*.  
*Ibid.*, s. 7.

**142** Any witness may at his option sign either the shorthand notes or the transcript of any deposition or evidence taken down in shorthand under Section One hundred and thirty-nine of this Act, and which deposition or evidence is now required by law to be put into writing and signed by the witness.

Witness may sign either shorthand notes or transcript of evidence.  
*Ibid.*, s. 8.

*Evidence.*

A.D. 1910.

Penalty for  
wrongly taking  
evidence, &c.  
*Ibid.*, s. 9.

**143** If any shorthand writer licensed as aforesaid—

- i. Wilfully wrongly takes down any such evidence, ruling, direction, or summing-up : or
  - ii. Tampers with or alters or falsifies, or permits any one to tamper with, alter, or falsify, his shorthand notes of any such evidence, ruling, direction, or summing-up, or the transcript thereof : or
  - iii. Wilfully certifies as correct any shorthand notes or transcript of such evidence which falsely purport to be correct—
- he shall be guilty of felony, and on conviction thereof shall be liable to be imprisoned for any term not exceeding Five years.

Regulations.  
*Ibid.*, s. 10.

**144** The judges of the Supreme Court may from time to time make regulations for all or any of the following purposes :—

- i. For determining the nature or character, standard, and requirements of the examinations or tests to be applied to applicants for licence as shorthand writers, and which such applicants shall undergo :
- ii. For prescribing the form of register of such applicants, and the mode of keeping the register, and the mode of selecting persons therefrom :
- iii. Prescribing the fees payable to any shorthand writer licensed as aforesaid for his services and for a transcript of his notes :
- iv. And, generally, for the effectual execution of this part of this Act and of the objects thereof.

**PART VII.**

## FOREIGN TRIBUNAL'S EVIDENCE.

Interpretation.

**145** In this part of this Act—

- “Foreign tribunal” means a court of justice in any place outside of His Majesty’s dominions :
- “Affidavit” means any written statement made on oath before a solicitor of the Supreme Court of *Tasmania* :
- “Declaration” means any written statement declared by the maker thereof to be true in the presence of a solicitor of the Supreme Court of *Tasmania*.

Solicitor may  
take affidavit or  
declaration for  
purposes of this  
Act.

**146** It shall be lawful for any solicitor of the Supreme Court of *Tasmania* to take the affidavit or declaration of any person in relation to any matter, whether civil or criminal, which is certified in accordance with this Act to be pending before any foreign tribunal.

How affidavit  
or declaration to  
be intituled.

**147** Every such affidavit or declaration shall be intituled in the matter of “The Evidence Act, 1910,” Part VII. (Foreign Tribunals’ Evidence) ; and every such declaration shall be expressed to be made in pursuance of the provisions of that Act.

*Evidence.*

**148**—(1.) No such affidavit or declaration shall be taken unless the solicitor taking it has received a written certificate from a consul or vice-consul or consular agent of the State to which such foreign tribunal belongs that he believes the said affidavit or declaration to be required for the purpose of a matter pending in the said tribunal.

A.D. 1910.

Certificate of consul or vice-consul or consular agent.

(2.) The jurat or attestation of the said affidavit or declaration shall state the name and official designation of the consul or vice-consul or consular agent on whose certificate the said affidavit or declaration has been taken.

**149**—(1.) Every such affidavit or declaration shall be deemed to have been made in a judicial proceeding, and any person who falsely makes any such affidavit or declaration shall be guilty of perjury, and be liable to such punishment as by law may be inflicted for that offence.

False affidavit or declaration.

(2.) In any prosecution for perjury in respect of any such affidavit or declaration it shall not be necessary to prove that any judicial or other proceeding was actually pending in any foreign tribunal, or that any such certificate as is mentioned in the immediately preceding section was actually given, nor shall any evidence to the contrary be admissible.

**SCHEDULES.**

(1.)

<i>Date and Number of Act.</i>	<i>Title of Act.</i>	<i>Extent of Repeal.</i>
<b>PART I.</b>		
3 and 4 Wm. IV. Cap. 49 (1833)	An Act to allow Quakers and Moravians to make Affirmation in all cases where an Oath is or shall be required	The whole Act S. 2, s.s. (1).
6 and 7 Vict. Cap. 85 (1843)	An Act for improving the Law of Evidence	The whole Act
<b>PART II.</b>		
5 Wm. IV. No. 2 (1834)	An Act for introducing into this Island parts of certain Statutes passed in England relative to the Examination of Witnesses—to giving Summary Relief in cases of Conflicting Claims—and to the improvement of Proceedings in Prohibition and Writs of Mandamus	The Preamble and Sections One to Eight, both inclusive S. 2, s.s. (2).
6 Wm. IV. No. 16 (1836)	An Act for extending to this Colony the provisions of certain Acts of Parliament passed for shortening the Time of Prescription in certain cases, for the Limitation of certain Actions, for the improvement of the Law in certain respects relating to Real Property, and for amending the Law of Evidence and the Law of Inheritance and of Dower	Section Nine
8 Wm IV. No. 2	The Statutory Declarations Act, 1837	The whole Act

*Evidence.*

A.D. 1910.

<i>Date and Number of Act.</i>	<i>Title of Act.</i>	<i>Extent of Repeal.</i>
8 Vict. No. 2	An Act to extend to this Island and its Dependencies an Act lately passed in England for improving the Law of Evidence (6 and 7 Vict. c. 85)	The whole Act
17 Vict. No. 15 19 Vict. No. 9	An Act to amend the Law of Evidence The Magistrates Criminal Procedure Act	The whole Act Part of Section Eleven, namely, the word "and" at the end of the Seventeenth line, and the remainder of the Section following that word
19 Vict. No. 16	The Common Law Procedure Act, No. 2	Sections Twenty-one to Twenty-six, both inclusive, and Section Forty-two
20 Vict. No. 24	An Act for perpetuating Testimony in certain cases	The whole Act
34 Vict. No. 3	An Act to remove some Defects in the Administration of the Criminal Law	Sections Five and Six
34 Vict. No. 18	The Evidence Further Amendment Act, 1870	The whole Act
35 Vict. No. 11	An Act to enable the Committees or Joint Committees of both Houses of Parliament to examine Witnesses on their Solemn Declaration in certain cases	The whole Act
37 Vict. No. 6	The Criminal Law Procedure Act, 1873	Section Twenty-seven
38 Vict. No. 1	The Deceased Persons' Estate Act, 1874	Section Thirteen
38 Vict. No. 10	The Documentary Evidence Act, 1874	The whole Act
47 Vict. No. 19	The Conveyancing and Law of Property Act, 1884	Section Seventy-five
49 Vict. No. 5	The Bankers' Books Evidence Act, 1885	The whole Act
49 Vict. No. 22	An Act to facilitate the Proof of By-laws and Proceedings of Corporations, and for other purposes	The whole Act
52 Vict. No. 7	An Act to further amend the Law of Evidence	The whole Act
52 Vict. No. 26	An Act to regulate the Taking of Evidence by Commissioners appointed under the Seal of the Colony	The whole Act
53 Vict. No. 9	The Oaths Act, 1889	The whole Act
53 Vict. No. 21	The Evidence Act, 1889	The whole Act
57 Vict. No. 11	The Hobart Corporation Act, 1893	Section Two hundred and seventy-nine
59 Vict. No. 9	The Registration of Births and Deaths Act, 1895	Section Forty
59 Vict. No. 23	The Marriage Act, 1895	Section Thirty-eight
60 Vict. No. 48	The Local Courts Act, 1896	Sections Fifty-two, Fifty-seven, and Fifty-eight
63 Vict. No. 27	The Magistrates Summary Procedure Amendment Act, 1899	Section Five
6 Ed. VII. No. 20	The Probate Amendment Act, 1906	The whole Act
6 Ed. VII. No. 31	The Local Government Act, 1906	Section Two hundred and two



*Evidence.*

(2.)

A.D. 1910.

<i>Column 1.</i>	<i>Column 2.</i>
<i>Name of Department or Officer.</i>	<i>Names of Certifying Officers.</i>
The Commissioners of the Treasury The Commissioners for executing the office of Lord High Admiral Secretaries of State Committee of Privy Council for Trade The Poor Law Board	Any Commissioner, Secretary, or Assistant-Secretary of the Treasury Any of the Commissioners for executing the office of Lord High Admiral or either of the Secretaries to the said Commissioners Any Secretary or Under-Secretary of State Any member of the Committee of Privy Council for Trade, or any Secretary or Assistant-Secretary of the said Committee Any Commissioner of the Poor Law Board, or any Secretary or Assistant-Secretary of the said Board

See 31 and 32  
Vict. c. 37  
(schedule).  
S. 48, s.s. (1.)  
and (4).

(3.)

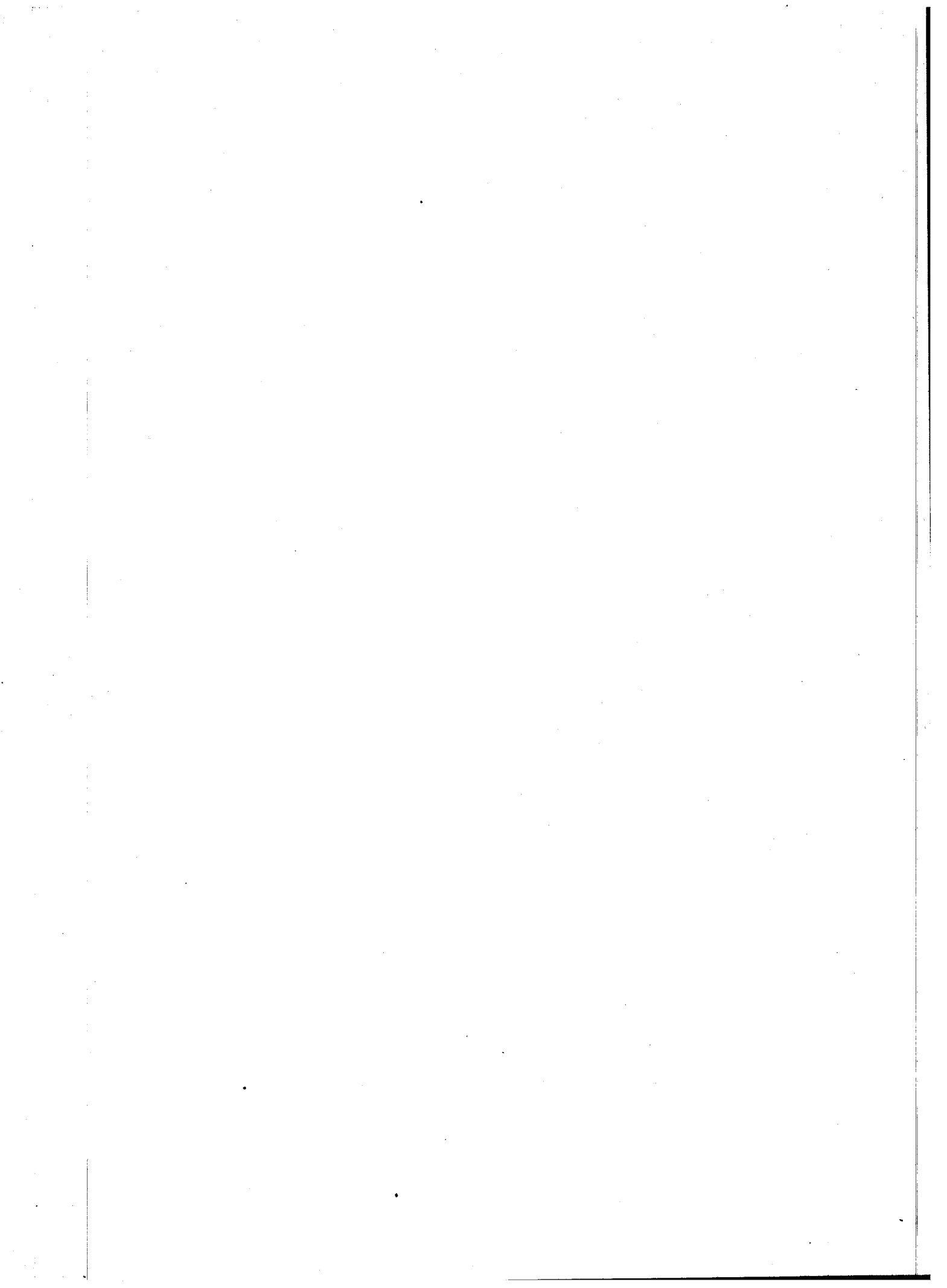
<i>Column 1.</i>	<i>Column 2.</i>
<i>Name of Officer, Department, Body, or Board.</i>	<i>Names of Certifying Officers.</i>
The Governor The Governor in Executive Council. The Legislative Council or House of Assembly The Lands and Surveys Department The Treasurer's Department The Education Department  The Department of Agriculture The Attorney-General's Department	The Governor or his Private Secretary The Clerk of the Executive Council  The Clerk or Clerk Assistant  The Minister for Lands, the Secretary or Lands, or the Surveyor-General The Treasurer or the Under-Treasurer The Minister for Education, or the Director of Education, or the Chief Clerk of the Director of Education  The Minister for Lands or the Secretary to the Department of Agriculture The Attorney-General, the Secretary to the Law Department, the Registrar of the Supreme Court, the Registrar or Deputy-Registrar of Deeds, the Recorder or Deputy-Recorder of Titles, the Commissioner of Police, or the Sheriff

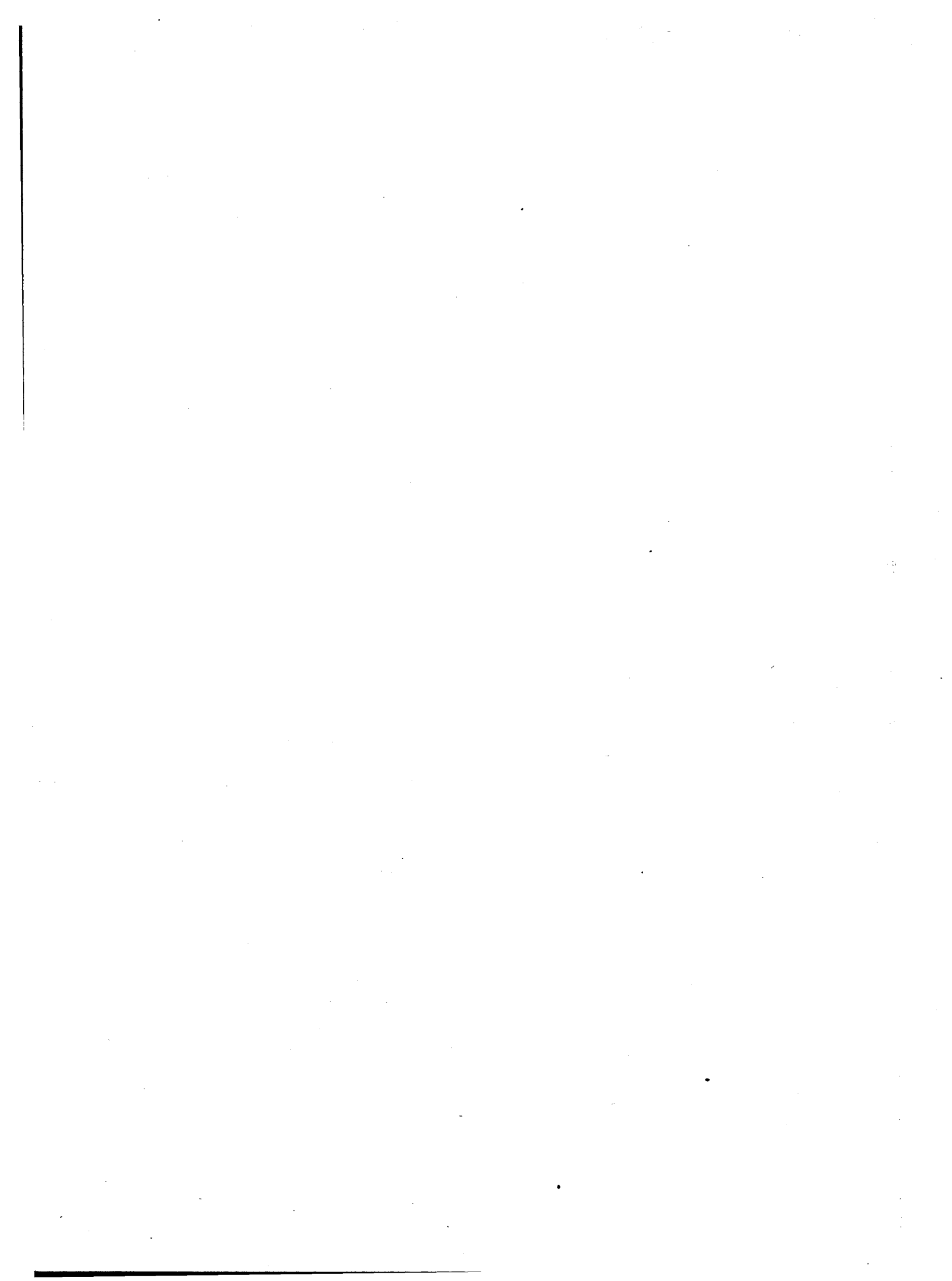
S. 51.

*Evidence.*

A.D. 1910.

<i>Column 1.</i>	<i>Column 2.</i>
<i>Name of Officer, Department, Body, or Board.</i>	<i>Names of Certifying Officers.</i>
The Mines Department The Railway Department	The Minister for Mines or the Secretary for Mines The Minister for Lands, the General Manager of Railways, or the Secretary to the General Manager
The Chief Secretary's Department The Public Works Department	The Chief Secretary, the Under-Secretary, the Chief Health Officer, or the Registrar-General The Minister for Lands or the Secretary for Public Works
Any board constituted under any Act in force in Tasmania	The Chairman or Secretary





# THE INFLAMMABLE OILS ACT, 1910.

## ANALYSIS.

### PART I.—PRELIMINARY AND INTERPRETATION.

1. Short title.
2. Commencement of Act.
3. Division of Act.
4. Repeal.
5. Definitions.
6. Definition of "inflammable oil."
7. Classification of "inflammable oil."  
Proclamation under Commonwealth Customs Act, "Commonwealth Gazette," November 19, 1904.
8. Flashing point.

### PART II.—KEEPING OF INFLAMMABLE OIL AND CARBIDE OF CALCIUM.

9. Stores and premises may be licensed or registered for petrol.
10. Only limited quantities of petrol may be kept in unlicensed and unregistered stores and premises.
11. Registered premises for petrol.
12. Rules as to registered premises.  
Explosives regulations.
13. Registration may be cancelled.
14. Licensed stores.
15. Conditions as to licensing stores.
16. Licence may be forfeited.
17. Rules as to licensed stores.
18. Premises may be registered for keeping carbide of calcium and kerosene.
19. Two hundredweight of carbide of calcium or Two hundred gallons of kerosene may be kept on unregistered premises in certain cases.

### PART III.—MARKING OF PACKAGES.

20. Package containing petrol to be marked.
21. Packages containing kerosene to be marked.
22. Carbide of calcium not to be kept, &c., unless vessel containing same indicates contents.

### PART IV.—CONVEYANCE OF INFLAMMABLE OIL.

23. Rules as to conveying, loading, and unloading inflammable oil.
24. Notice.

### PART V.—GOVERNMENT CONTROL AND INSPECTION.

25. Powers of inspector.
26. Inspector to be assisted.
27. Protection to inspector.

### PART VI.—TESTING

28. Standard model apparatus for testing.
29. Verification with standard model.
30. Stamping of apparatus.
31. Tests by unverified apparatus to be deemed inaccurate.

### PART VII.—LEGAL PROCEEDINGS.

32. Penalties recoverable summarily.
33. Appeal.
34. Averments which need not be proved.
35. Analyst's certificate to be evidence.
36. "Gazette" *prima facie* evidence.
37. Notices, &c., may be sent by post.
38. Saving of remedies at common law.

### PART VIII.—GENERAL PROVISIONS.

39. Penalties and forfeitures are cumulative.
40. Disposal of forfeited property.
41. Application of penalty.
42. Recovery of penalty in case of ship.
43. Forging stamp.
44. Proclamations.
45. Saving as to Government departments.
46. Regulations.
47. Testing validity of regulations.

