

WESTERN AUSTRALIA.

## EVIDENCE.

No. 28 of 1906.

[As amended by Acts

No. 16 of 1913, assented to 30th December, 1913;  
No. 19 of 1921, assented to 29th November, 1921;  
No. 34 of 1930, assented to 22nd December, 1930;  
No. 73 of 1948,<sup>1</sup> assented to 4th March, 1949;  
No. 16 of 1956, assented to 26th October, 1956;  
No. 10 of 1960, assented to 6th October, 1960;  
No. 12 of 1962, assented to 1st October, 1962;  
No. 54 of 1963,<sup>2</sup> assented to 17th December, 1963;  
No. 11 of 1964, assented to 2nd October, 1964;  
No. 113 of 1965,<sup>3</sup> assented to 21st December, 1965;  
and reprinted pursuant to the Amendments Incorporation Act,  
1938.]

### AN ACT to consolidate and amend the Statute Law of Evidence.

[Assented to 14th December, 1906.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Evidence Act, 1906-1965*.

Short title.  
No. 28 of  
1906, s. 1,  
amended by  
No. 113 of  
1965, s. 4 (2).

2. The Acts mentioned in the First Schedule to this Act are hereby repealed to the extent therein stated.

Repeal.

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

Interpreta-  
tion.  
Amended by  
No. 11 of  
1964, s. 2.

<sup>1</sup> Reserved 21st January, 1949; Proclaimed to commence on 1st January, 1950:  
See *Gazette* 19th October, 1949.

<sup>2</sup> Proclaimed to commence on 1st July, 1964: See *Gazette* 26th June, 1964.

<sup>3</sup> Decimal Currency Act, 1965, s. 4 (1), which section came into operation on  
14th February, 1966.

*Evidence.*

"Act" includes Ordinance;

"Australasian Colony" means and includes New South Wales, Queensland, South Australia, Tasmania, Victoria, and Western Australia during such time as such possessions constituted separate colonies; 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" means—

- (a) 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
- (b) any Government Savings Bank established under any law in force for the time being;

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;

"Colony" includes province;

"The Commonwealth" means the Commonwealth of Australia;

"Court" includes the High Court of Australia, the Supreme Court of Western Australia, any Local Court, Magistrate's Court, Police Court, Warden's Court, and any Court of summary jurisdiction;

"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;

"*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;

"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;

"Judge" means a Justice of the High Court of Australia and a Judge of the Supreme Court of Western Australia, and includes a Chairman of General Sessions of the Peace, a Police or Resident Magistrate, and also any Justice or Justices of the Peace sitting in Court;

"Legal Proceeding" or "Proceeding" includes any action, trial, inquiry, cause, or matter, whether civil or criminal, in which evidence is or may be given, and includes an arbitration;

"Person acting judicially" means any person having, in Western Australia, by law or by consent of parties, authority to hear, receive, and examine evidence;

"Photograph" means a durable facsimile of an original obtained by any photographic, photostatic or similar process;

"Prisoner" means and includes any person committed to prison for punishment, or on remand, or for trial, safe custody, or otherwise;

"State" means a State of the Commonwealth;

"The State" means the State of Western Australia or the Colony of Western Australia prior to the establishment of the Commonwealth;

"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 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.

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.

*Competency and Compellability of Witnesses.*

Witnesses interested or convicted of offence.

See 10 Vict., No. 14, s. 1; 16 Vict., No. 9, ss. 1, 2.

6. No person shall be excluded from giving evidence in any proceeding on the ground that he has or may have an interest in the matter in question, or in the result of the proceeding, or on the ground that he has previously been convicted of any offence.

Evidence of party, or of wife or husband of party in civil cases. 16 Vict., No. 9, s. 2; 18 Vict., No. 14, s. 1.

7. 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.

Competency of witnesses in criminal cases. Amended by No. 16 of 1913, s. 2. Cf. 63 Vict., No. 8, s. 3.

8. (1) Except as in this Act it is otherwise provided, 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 but not a com-

pellable witness at every stage of the proceedings whether the person so charged is charged solely or jointly with any other person: Provided as follows:—

- (a) A person so charged shall not be called as a witness except upon his own application:
- (b) If the wife or husband of a person so charged shall be called as a witness on behalf of the prosecution under the provisions of this section, it shall be the duty of the Judge to inform such wife or husband that she or he is not compellable to give evidence if she or he is unwilling to do so:
- (c) 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:
- (d) A person charged and being a witness in pursuance of this section may be asked any question in cross-examination, notwithstanding that it would tend to criminate him as to the offence charged:
- (e) 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—
  - (i) 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
  - (ii) 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

*Evidence.*

of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution; or

(iii) he has given evidence against any other person charged with the same offence:

(f) When subsection (e) (ii) or (e) (iii) is or becomes applicable to any person charged who gives evidence for the defence, 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:

(g) 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:

(h) Nothing in this section shall affect the provisions of section one hundred and two of the Justices Act, 1902.

Evidence of  
person  
charged.

(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.

Evidence of  
wife or  
husband in  
certain  
criminal  
cases.

Second  
Schedule.  
See 63 Vict.,  
No. 8,  
s. 6 (1).

9. (1) The wife or husband of a person charged with an offence under any enactment mentioned in Part I. of the Second Schedule to this Act shall be a competent and compellable witness, either for the prosecution or defence, at every stage of the proceedings, and without the consent of the person charged.

(2) The wife of a person charged with an offence under any enactment mentioned in Part II. of the Second Schedule to this Act shall be a competent and compellable witness, either for the prosecution or defence, at every stage of the proceedings, and without the consent of the person charged.

(3) The husband of a person charged with an offence under the enactment mentioned in Part III. of the Second Schedule to this Act shall be a competent and compellable witness, either for the prosecution or defence, at every stage of the proceedings, and without the consent of the person charged.

(4) Upon the prosecution of a husband on the complaint of his wife for an offence committed with respect to her property, and upon the prosecution of a wife on the complaint of her husband for an offence committed with respect to his property, the wife or husband, as the case may be, shall be a competent and compellable witness, either for the prosecution or defence, at every stage of the proceedings, and without the consent of the person charged.

C. Code,  
1902, s. 35.

In this subsection the term "property", used with respect to a wife, means her separate property.

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

63 Vict.,  
No. 8,  
s. 6 (2).

10. On the trial of any indictment or other proceeding for the non-repair of any public highway or bridge, or for a nuisance to any public highway, river, or bridge, and of any other indictment or proceeding instituted for the purpose of trying or enforcing a civil right only, every defendant to such indictment or proceeding, and the wife or husband of any such defendant, shall be admissible witnesses and compellable to give evidence.

In proceedings by indictment to enforce civil rights.  
63 Vict.,  
No. 8, s. 7.

11. (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

Power to compel answer to incriminating question.  
39 Vict.,  
No. 6, s. 2.

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.

Certificate  
to be given.  
*Ibid.*

(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 of the peace other than a police or resident magistrate.

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

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

- (a) Stamp duties; or
- (b) The public revenues; or
- (c) 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 in proceedings under paragraph (c), 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.

Witnesses making true discovery to be freed from penalties. N.Z., No. 16 of 1905, s. 17.

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

13. If any person called as a witness or interrogated under sections eleven or twelve 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:

Certificate may be pleaded in bar to prosecution. 39 Vict., No. 6, s. 3.

Provided that nothing herein contained shall make such certificate pleadable in bar of any indictment or information brought against such person for perjury committed in such proceeding as aforesaid.

14. In every Customs prosecution, except for an indictable offence or for an offence directly punishable by imprisonment, the defendant is compellable to give evidence.

Customs prosecutions. C. No. 6 of 1901, s. 254.

15. 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 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.

Persons may be examined without a subpoena. N.S.W., No. 11 of 1898, s. 12.

Witnesses  
failing to  
attend trial.  
N.S.W.,  
No. 11 of  
1898, s. 13.

16. (1) Where any person duly bound by recognisance or served with a subpoena, 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—

- (a) Upon proof of such recognisance or of his having been duly served with such subpoena, summons, or order, call upon him to show cause why execution upon such recognisance or an attachment for disobedience to such subpoena, summons, or order should not be issued against him; or
- (b) 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.  
N.S.W.,  
No. 11 of  
1898, s. 14.

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

- (a) be made returnable before the Court itself at the then sittings or at some future sitting; or
- (b) in respect of the non-appearance of a witness at a Circuit Court or 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.*

Communi-  
cations  
during  
marriage.  
18 Vict.,  
No. 14, s. 3.

18. Subject to the provisions of section nine, 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.

N.S.W.,  
No. 11 of  
1898, s. 11.

[Section 19 as enacted by No. 28 of 1906, repealed by No. 73 of 1948, s. 3 (2).]

*Spouses Competent to Give Evidence as to Non-access.*

19. In any proceedings including proceedings pending at the commencement of the Evidence Act Amendment Act, 1956, either party to a marriage may give evidence proving or tending to prove that the parties to the marriage did not have sexual relations with each other at any particular time notwithstanding that such evidence would show or tend to show that any child born to the wife during the marriage was illegitimate.

Evidence of  
non-access.  
Added by  
No. 16 of  
1956, s. 2.  
Cf. S.A.  
No. 36 of 1949,  
s. 3 (s. 34h).  
Cf. No. 73 of  
1948, s. 33.

*Impeaching Credit of Witnesses.*

20. 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, if in the opinion of the Judge he is hostile to the party producing him.

How far  
a party  
may discredit  
his own  
witness.  
See 34 Vict.,  
No. 5, s. 3.

21. 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-exam-  
ination as to  
previous  
statement  
in writing or  
deposition.  
Amended by  
No. 16 of  
1913, s. 3.  
See 34  
Vict., No. 5,  
s. 5.

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

Proof of  
contra-  
dictory  
statements  
of witness.  
See 34 Vict.,  
No. 5, ss. 3  
and 4.

22. 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—

- (a) a previous statement made or supposed to have been made by him in writing or reduced into writing, or
- (b) 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.

Proof of  
previous  
conviction of  
witness.  
Amended by  
No. 113 of  
1965, s. 4 (1).  
See 34 Vict.,  
No. 5, s. 6.

23. (1) A witness may be questioned as to whether he has been convicted of any indictable offence, 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.

(2) A certificate containing the substance and effect only (omitting formal parts) of the conviction for such offence, purporting to be signed by the clerk of the Court or other officer having the custody of the records of the Court where the offender was convicted, shall, upon proof of the identity of the person, be sufficient evidence of such conviction without proof of the signature or official character of the person appearing to have signed the same.

(3) A fee of fifty cents, and no more, shall be payable for such certificate.

*Protection of Witnesses.*

24. Except as hereinbefore provided, nothing in this Act shall render any person compellable to answer any question tending to criminate himself.

Questions tending to criminate. 16 Vict., No. 9, s. 3.

25. (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.

Cross examination as to credit. Indian Ev. Act. (No. 1 of 1872), s. 148.

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

- (a) 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.
- (b) Such questions are improper if the imputation they convey relates to matters so remote in time, or of such 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.
- (c) 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.

(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.

26. The Court may forbid any question it regards as—

- (a) indecent or scandalous, although such question may have some bearing on the case before the Court, unless the question

Indecent or scandalous questions. See Indian Ev. Act (No. 1 of 1872) ss. 151, 152.

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

- (b) 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.

27. (1) It shall not be lawful for any person to print or publish any question or inquiry which the Court—

- (a) has, under the provisions of the last preceding section, forbidden or disallowed and has ordered shall not be published; or
- (b) has warned the witness he is not obliged to answer and has ordered shall not be published.

(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 last-mentioned case.

*General Rules of Evidence.*

Evidence of authority. C. Code of 1902, s. 636.

28. (1) The averment or recital in an indictment that the prosecution is instituted by the direction of the Attorney General or of any other Crown Law officer, or at the request of the Government of any State, shall be sufficient evidence of the fact, until the contrary is shown.

(2) Any indictment filed or presented in any Court, and which purports to be signed by any person duly appointed to prosecute on behalf of His Majesty in respect of the offence alleged in such indictment, shall be deemed to be duly signed and presented until the contrary is shown.

(3) Any person who knowingly and wilfully signs and presents any indictment 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 such indictment is presented committed in face of the Court.

29. 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 of 1902, s. 641.

30. 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.  
34 Vict., No. 5, s. 7.

31. Comparison of a disputed handwriting with any writing proved to the satisfaction of the Judge 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 and jury as evidence of the genuineness or otherwise of the writing in dispute.

Comparison of disputed handwriting.  
34 Vict., No. 5, s. 8.

32. 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 of 1902, s. 642.

#### *Rules in Particular Cases.*

33. On the trial of a person charged with treason, evidence shall not be admitted of any overt act not alleged in the indictment.

Evidence on charge of treason.  
C. Code of 1902, s. 631.

34. A person charged with treason, or concealment of treason, or with any treasonable crime as defined by sections thirty-seven, thirty-eight, and thirty-nine of the Criminal Code shall not be convicted, except on his own plea of guilty, or on the evidence in open Court of two witnesses at least to one overt act of the kind of treason alleged, or the evidence of one witness to one overt act and one other witness to another overt act of the same kind of treason.

Evidence on charge of treason.  
C. Code of 1902, s. 40.

But this section shall not apply to cases in which the overt act of treason alleged is the killing of the Sovereign or a direct attempt to endanger the life or injure the person of the Sovereign.

Evidence on charge of perjury.  
C. Code of 1902, s. 126.

35. A person shall not be convicted of committing perjury or of counselling or procuring the commission of perjury upon the uncorroborated testimony of one witness.

Evidence on trials for perjury and subornation.  
C. Code of 1902, s. 632.

36. On the trial of a person charged with an offence of which the giving of false testimony by any person at the trial of a person charged with an offence is an element, a certificate setting out the substance and effect only, without the formal parts, of the indictment or complaint, and the proceedings at the trial, and purporting to be signed by the officer having the custody of the records of the Court where the indictment or complaint was tried, or by his deputy, shall be sufficient evidence of the trial, without proof of the signature or official character of the person who appears to have signed the certificate.

Evidence in certain offences against morality—Third Schedule.

37. A person shall not be convicted of any of the offences against morality defined in the Third Schedule to this Act upon the uncorroborated testimony of one witness.

Evidence of relationship on charge of incest.  
C. Code of 1902, s. 634.

38. On the trial of a person charged with an offence of which carnal knowledge, or an attempt to have carnal knowledge, of a woman or girl, is an element, and of which blood relationship is also an element—

- (1) It shall be sufficient to prove that the woman or girl on whose person or by whom the offence is alleged to have been committed is reputed to be the daughter or other lineal descendant, or sister or half-sister of the person charged, or of the person with whom the offence is alleged to have been committed, as the case may be, and it shall not be necessary to prove that such woman or girl, or any person being her



parent or ancestor, and being a decendant of the person charged, or of the person with whom the offence is alleged to have been committed, as the case may be, was born in lawful wedlock;

- (2) The accused person shall be, until the contrary is proved, presumed to have had knowledge at the time of the alleged offence of the relationship existing between the woman or girl on whose person or by whom the offence is alleged to have been committed and the person charged, or the person with whom the offence is alleged to have been committed, as the case may be.

39. On the trial of a person charged with an offence of such a nature that proof that any place was kept or used or resorted to for playing at any unlawful game or any game of chance, or of mixed chance and skill, is necessary, it shall not be necessary to prove that any person there found playing at any game was playing for any money, wager, or stake, but it may be presumed that the game was being played for money until the contrary is proved.

Evidence of  
gaming.  
C. Code of  
1902, s. 635.

40. In every Customs prosecution the averment of the prosecution or plaintiff contained in the information, declaration, or claim shall be deemed to be proved in the absence of proof to the contrary, but so that—

Averment of  
prosecution  
sufficient.  
C. No. 6 of  
1901, s. 255.

- (a) when an intent to defraud the revenue is charged, the averment shall not be deemed sufficient to prove the intent; and
- (b) in all proceedings for an indictable offence, or for an offence directly punishable by imprisonment, the guilt of the defendant must be established by evidence.

41. On the trial of a person charged with any offence of which the fact that some person was at some particular time an officer of Customs, or was at some particular time employed for the prevention of smuggling, is an element, the averment in the indictment or complaint that any person therein

Evidence on  
charges of  
offences  
against  
Customs  
laws.  
C. Code of  
1902, s. 637.

mentioned was an officer of Customs, or was employed for the prevention of smuggling at any time therein stated, shall be sufficient evidence of the fact until the contrary is shown.

Evidence of ownership in cases relating to property stolen from ships, wharves, etc. Inserted by No. 19 of 1921, s. 2. Cf. N.S.W., No. 35 of 1918, s. 2. T., No. 20 of 1920, s. 2.

41A. (1) On the prosecution of any person for the stealing of any property in or from any vessel, barge, or boat, or from any dock, wharf, or quay, or from any store or shed used in connection with or adjoining any such dock, wharf, or quay, or for receiving any such property, knowing it to have been so stolen, or for having on his person or in any place or conveying in any manner anything which may be reasonably suspected of being so stolen—

- (a) evidence may be given of any writing, printing, or marks upon the said property without producing the original writing, printing, or marks, or requiring the production thereof by notice or otherwise; and
- (b) any apparently genuine document purporting to be the bill of lading, manifest, shipping receipt, delivery order, specification, schedule, packing list, or invoice relating to the said property, or to property which from the description thereof in the document or from the writing, printing, or marks thereon, or on any package containing the same as detailed in the document, coupled with any other relevant circumstances, may be reasonably assumed to be the same as the property the subject of the prosecution, shall be admissible in evidence on production and without further proof, and shall be *prima facie* evidence of the particulars and facts contained therein and that the ownership of the property, the subject matter of the prosecution, is in the consignee referred to in the document or his assignee.

(2) In deciding whether any property described as aforesaid may be reasonably assumed to be the same as the property the subject of the prosecution, regard shall be had to the source from which the

document was produced, and the circumstances of its receipt or custody by the person producing it, or from whom it was obtained for the purposes of the prosecution.

(3) It shall be no objection to the admissibility in evidence of any such document as aforesaid that the statement of the place in or from which the stealing took place forms no part of the charge, if the evidence adduced on the prosecution indicates that the stealing did in fact take place in or from a place such as is hereinbefore mentioned.

42. On the trial of a person charged with the unlawful publication of defamatory matter which is contained in a periodical, after evidence sufficient in the opinion of the Court has been given of the publication by the accused person of the number or part of the periodical containing the matter complained of, other writings or prints purporting to be other numbers or parts of the same periodical previously or subsequently published, and containing a printed statement that they were published by or for the accused person, shall be admissible in evidence on either side, without further proof of publication of them.

Evidence on trial for defamation. C. Code of 1902, s. 638.

The term "periodical" includes any newspaper, review, magazine, or other writing or print, published periodically.

43. [*Repealed by No. 10 of 1960, s. 2.*]

44. (1) On the trial of a person charged with stealing 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.

Evidence on certain charges of stealing money. C. Code of 1902, s. 639.

(2) On the trial of a person charged with any such offence, it shall not be necessary to prove the stealing 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 accused person stole the deficient money or any part of it.

Evidence on charges relating to seals and stamps. C. Code of 1902, s. 640.

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

46. Where proceedings are taken against any person for having received anything which has been obtained by means of any act constituting an indictable offence, 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 an indictable offence.

Proof of conviction or acquittal. Amended by No. 16 of 1956, s. 3. 34 and 35 Vict., c. 112, s. 18. See C. Code of 1902, s. 633.

47. (1) A conviction or an acquittal of any person may be proved in any proceeding whatever by producing a record or extract of such conviction or acquittal, and by giving proof of the identity of the person in respect of whom the conviction or acquittal is sought to be proved with the person appearing in the record or extract of conviction or acquittal to have been convicted or acquitted.

(1a) For the purpose of proving the identity of a person alleged to have been convicted, whether before or after the commencement of the Evidence Act Amendment Act, 1956, an affidavit substantially in the form in the Sixth Schedule to this Act shall be admissible in evidence in all courts and shall be *prima facie* evidence that the person whose finger-prints are exhibited thereto—

Proof of identity.  
Cf S.A.  
No. 40 of  
1940, s. 5;  
Tas. 7  
Geo. VI.  
No. 40, s. 2;  
and N.S.W.  
No. 35 of  
1954, s. 2(e).  
Cf. s. 23 ante.  
Sixth  
Schedule.

- (a) is the person, who, in any document exhibited to the affidavit and purporting to be a record or abstract or certificate of conviction or a certified copy of a record or abstract or certificate of conviction, is referred to as having been convicted;
- (b) has been convicted of the offences mentioned in the affidavit.

(2) A record or extract of a conviction or acquittal may, in the case of an indictable offence, consist of a certificate containing the substance and effect only (omitting the formal part of the indictment and conviction or acquittal), and purporting to be signed by the clerk of the Court or other officer having the custody of the records of the Court before which such conviction or acquittal took place, or purporting to be signed by the deputy of such clerk or officer; and, in the case of a summary conviction or acquittal, may consist of a copy of such conviction or acquittal purporting to be signed by any justice of the peace having jurisdiction over the offence in respect of which such conviction or acquittal took place, or to be signed by the proper officer of the Court before which such conviction or acquittal took place, or by the clerk or other officer of any Court to which such conviction or acquittal has been returned.

(3) A record or extract of any conviction or acquittal made 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.

(4) 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.

(5) The mode of proving a conviction or an acquittal or identity authorised by this section shall be in addition to, and not in exclusion of, any other authorised mode of proving such conviction or acquittal or identity.

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

Actions for  
breach of  
promise.  
34 Vict.,  
No. 10, s. 2.

48. 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  
seduction.  
N.Z. No. 16 of  
1905, s. 22.

49. In any 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.

Corrobor-  
ation in cases  
of bastardy.  
See 39 Vict.,  
No. 8, ss.  
5 and 7

50. No order against any person alleged to be the father of a bastard child shall be made by any justices, or confirmed on appeal, unless the evidence of the mother of such bastard child is corroborated in some material particular, to the satisfaction of the Court.

*Evidence of Witnesses in Prison.*

Prisoner  
required to  
give evidence  
may be  
brought up  
on order.  
No. 14 of  
1903, s. 72.

51. When any person is detained in any prison under sentence or awaiting trial, or on remand for any offence, or for any other cause, and a trial, inquiry, inquest, or inquisition is pending at which it is deemed necessary that such prisoner should be present, any Judge, or, in criminal proceedings, at the request of a Crown Law officer, the Sheriff of Western Australia, or the Comptroller General of Prisons, may make an order under his hand directing any goaler to produce such person, and such

order shall be sufficient warrant or authority to any gaoler for producing such prisoner.

52. In every civil proceeding the Judge 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 the prison.

Expense of bringing up prisoner.  
N.Z., No. 16 of 1905, s. 25.

*Judicial Notice.*

53. (1) All Courts and all persons acting judicially shall take judicial notice—

- (a) of the Commonwealth and the States and of every Australasian Colony, and the extent of their respective territories; and
- (b) 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.

Commonwealth and States and Australasian Colonies and their Acts to be judicially noticed.  
See 63 Vict., No. 9, s. 3, ss. (1).  
C., No. 5 of 1901, s. 3.

(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.

Government Printer's copies of Acts to be deemed *prima facie* evidence.  
*Ibid.*, ss. (2).

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.

54. All Courts and all persons acting judicially shall take judicial notice of the impression of the seal of the Commonwealth and of the seal of any State, and of the seal of any Australasian Colony, without evidence of the seal having been impressed or any other evidence relating thereto.

Judicial notice of the seal of the Commonwealth and States.  
See 63 Vict., No. 9, s. 4.  
C., No. 5 of 1901, s. 4.  
C., No. 4 of 1905, s. 3.

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

55. 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.

Certain  
signatures  
to be  
judicially  
noticed.  
Amended by  
No. 16 of  
1956, s. 4.  
See C., No. 4  
of 1905, s. 4.

56. All Courts and all persons acting judicially shall take judicial notice of—

(a) the official signature of any person who holds or has held the office of Governor General, Minister of State, 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 Inter-State Commission, or any office to which the Governor-General, by order published in the *Gazette*, declares this section to apply; and

63 Vict.,  
No. 9, s. 10.

(b) the official signature of every person who is for the time being, and of every person who has at any time been Governor, Minister of the Crown, Judge of the Supreme Court, Prothonotary, Master, Registrar, or Chief Clerk of the Supreme Court, Commissioner of Titles, Registrar of Titles, Assistant or Deputy Registrar of Titles, Registrar General, Assistant or Deputy Registrar General, Government Statist or Assistant or Deputy Government Statist, Judge or Presiding Magistrate of any County Court, or District or Local Court, or Court of Mines, Warden, Chairman of any Court of General or Quarter Sessions, Judge of any Court of Bankruptcy or Insolvency, or Police or Stipendiary Magistrate, or Justice of the



Peace in any State or part or district of any State, or in any Australasian Colony or part or district of any Australasian Colony, and of any person holding in any State or in any Australasian Colony or part or district of any State or Australasian Colony any office corresponding to any of the aforesaid offices, and of any person holding in any such State or Colony any office to which the Governor may, at any time, by order published in the *Gazette*, declare this section to apply; and

- (c) the seal of every such Court or person; and
- (d) the fact that such person holds or has held such office,

if the signature or seal purports to be attached or appended to any judicial or official document.

*Proof of certain Documents.*

57. (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—

Royal Proclamations, Orders of the Privy Council, etc. Amended by No. 16 of 1956, s. 5. 63 Vict., No. 9, s. 5. 31 and 32 Vict., c. 37, s. 2.

- (a) by the production of a copy of the *London Gazette* or by the production of a copy of the *Government Gazette* purporting to contain a reprint or copy of such Proclamation, Order of the Privy Council, order, regulation, despatch, or other instrument.
- (b) by the production of a copy of such proclamation purporting to be printed by the Government Printer, or under the authority of Parliament.
- (c) 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 departments of the Government or officers mentioned in the first column of the Fourth Schedule 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.

(2) Any copy or extract made in pursuance of this section may be in print or in writing, or partly in print or 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 the Fourth Schedule to this Act.

Proclamation, orders in council, etc.  
See 63 Vict., No. 9, s. 6.  
C., No. 5 of 1901, s. 6.  
C., No. 4 of 1905, s. 5.

58. (1) Evidence of any proclamation, order in council, commission, order, regulation, 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 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, may be given in any Court or before any person acting judicially in any of the following modes, that is to say:—

(a) by the production of a copy of the *Gazette* purporting to contain the same;

- (b) 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;
- (c) by the production (in the case of any proclamation, order, commission, or regulation 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;
- (d) by the production (in the case of any proclamation, order in council, commission, order, regulation, 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;
- (e) by the production (in the case of any proclamation, order, commission, regulation, 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 such Minister or any other 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.

59. The production of the *Commonwealth of Australia Gazette* containing any proclamation, gazette notice, or regulation appearing to have been issued or made under the Customs Act, 1901, or the production of any document certified by the Comptroller General of Customs or a State Collector of Customs to be a true copy of or extract from any such proclamation, gazette notice, or regulation issued or made under the said Act, shall be *prima facie* evidence of the issue or making of such

Proof of  
proclama-  
tion, etc.  
under  
Customs Act.  
C., No. 6 of  
1901, s. 256.

proclamation, gazette notice, or regulation, and that the same is in force.

Proof of  
proclama-  
tions and  
acts of State.  
C., No. 5 of  
1901, s. 7.

60. 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—

- (a) proved to be an examined copy thereof; or
- (b) purporting to be sealed with the seal of that State.

Proof of  
proclama-  
tion, orders,  
etc., by  
official  
copies.  
51 Vict.,  
No. 7, s. 3.

61. 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 Legislative Assembly, or of the Head of any Department of the Government, or of any body or board in the first column of the Fifth Schedule to this Act mentioned, may be given in any Court or before any person acting judicially by 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.

Fifth  
Schedule.

Documents  
admissible  
in the  
United  
Kingdom,  
etc., to be  
admissible  
in Western  
Australia.  
See 63 Vict.,  
No. 9, s. 7.  
14 and 15  
Vict.,  
c. 99, s. 11.

62. Every document admissible in evidence for any purpose in any court of justice in any part of His Majesty's dominions, without proof of the seal or stamp or signature authenticating the same, or 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 Western Australia, without proof of the seal or stamp or signature authenticating the same, or of the judicial or official character of the person appearing to have signed the same.

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

63. (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.

64. 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.

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

65. (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—

Other public documents how provable. Amended by No. 113 of 1965, s. 4 (1). See 60 Vict., No. 26, s. 2. C., No. 5 of 1901, s. 10. C., No. 4 of 1905, s. 6.

- (a) it is proved to be an examined copy or extract; or
- (b) 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 Western Australia 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 four cents for every folio of seventy-two words.

Custodians to furnish copies. 60 Vict., No. 27, s. 5.

65A. (1) A photograph that is certified by an officer of the Library Board of Western Australia, as being a true reproduction of, or of part of, any book or other printed matter or of any document, in the custody and control of that Board, is admissible in evidence, to the same extent that the book or other

Certain photographs may be admissible in evidence, without proof. Added by No. 11 of 1964, s. 3.

printed matter or the original document would, if produced, be admissible.

(2) In this section, "officer of the Library Board of Western Australia" means an officer appointed by that Board under the provisions of section six of the Library Board of Western Australia Act, 1951; and judicial notice shall, for the purposes of this section, be taken of the official signature of every such officer.

Votes and proceedings of Parliament.

See 63 Vict., No. 9, s. 9.  
C. No. 5 of 1901, s. 11.  
C. No. 4 of 1905, s. 7.

66. All documents purporting to be copies of the Votes and Proceedings of either House of the Parliament of the Commonwealth, or of any State, or of any Australasian Colony, if purporting to be printed by the Government Printer, shall, on the mere production of the same, be admitted as evidence in any Court, or before any person acting judicially.

Proof of seal, signature, and official character dispensed with.

See 63 Vict., No. 9, s. 11.

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

- (a) any certificate; or
- (b) any official or public document; or
- (c) any document or proceeding of any corporation or joint-stock or other company; or
- (d) 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,

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 Western Australia, 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.

68. (1) Every register of a vessel kept under any of the Acts of the Imperial Parliament or of any British possession relating to the registry of any British or Colonial vessels, may be proved in any Court or before any person or persons acting judicially either by the production of the original, or by an examined copy thereof, or by a copy thereof purporting to be certified under the hand of the person having the charge of the original, and which person is hereby required to furnish such certified copy to any person applying at a reasonable time for the same, upon payment of the sum of twenty-five cents.

Register of  
British  
vessels, etc.,  
admissible  
as evidence.  
Amended by  
No. 113 of  
1965, s. 4 (1).  
See 16 Vict.,  
No. 9, s. 9.

(2) Every such register or such copy of a register, and also every certificate of registry granted under any of the Acts of the Imperial Parliament or of any British possession relating to the registry of any British or Colonial vessels, and purporting to be signed as required by law, 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 such register when the register or such copy thereof as aforesaid is produced, and of all the matters contained or recited in or indorsed on such certificate of registry when the said certificate is produced.

69. Every copy of an entry in or extract from the register of newspaper proprietors established under the Newspaper Libel and Registration Act, 1884, purporting to be certified by the Registrar of the Supreme Court or his deputy for the time being, or under the official seal of the Registrar, shall be received as conclusive evidence of the contents of the said register of newspaper proprietors, so far as the same appear in such copy or extract, without proof of the signature thereto, or of the seal of office affixed thereto.

Copies of  
register of  
newspaper  
proprietors.  
48 Vict.,  
No. 12, s. 15.

Every such certified copy or extract shall, in all proceedings, civil or criminal, be accepted as sufficient *prima facie* evidence of all matters and things thereby appearing, unless and until the contrary thereto is shown.

Proof of registers.  
Inserted by  
No. 16 of  
1913, s. 4.

69A. When by any Statute in force in the State any person is required to keep any register, then any register purporting or appearing to be kept pursuant to the Statute shall (save in so far as the contrary may be proved) be deemed to be and be admissible in evidence as a complete and accurate register and record and—

- (a) any document purporting to be a copy of the register and to be certified as correct by the person aforesaid; or
- (b) a *Gazette* containing what purports to be a copy of the register; or
- (c) any document purporting to be a copy of the register and to be printed by the Government Printer or by the authority of the Government of the State,

shall be *prima facie* evidence of the contents of the register as existing on the date when the document or *Gazette* purports to have been certified, or printed, or issued, and the production thereof in any Court or before any person shall (save in so far as it may be proved not to be a true copy) be equivalent to the production of the original register.

Statutes of any country published by authority.  
See 63 Vict., No. 9, s. 12.  
N.Z., No. 16 of 1905, s. 39.

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

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

71. Printed books purporting to contain Statutes, Ordinances, or other written laws in force in any country, 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 country, and text-books treating of the laws of such country, may be referred to by all Courts and persons acting judicially for the purpose of ascertaining the laws in force in such 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.

72. 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.

Standard  
works of  
general  
literature.  
N.Z., No. 16  
of 1905, s. 42.

73. 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, until further order.

Document  
may be  
impounded.  
60 Vict.,  
No. 27, s. 8.

*Proof of certain Matters.*

74. 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  
*Gazette*.  
See C. No. 5  
of 1901, s. 12;  
C., No. 4 of  
1905, s. 8.

75. 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

Proof of  
printing by  
Government  
Printer.  
See C., No. 5  
of 1901; C.,  
No. 4 of 1905,  
s. 9.

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.

76. 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.

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

77. 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.

By-laws and  
regulations.  
See C., No. 5  
of 1901, s. 15.

78. Where by any Act of the Commonwealth or of any State, power to make by-laws or regulations is conferred upon any person or body, and any printed paper purporting to be such by-laws or regulations, 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—

- (a) that by-laws or regulations in the words printed in such paper were duly made by such person or body; and
- (b) that such by-laws or regulations have been approved of or confirmed by the Governor General or the Governor of the State, if they appear by such paper to have been so approved or confirmed.

79. (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.*  
See 63 Vict., No. 9, s. 13; C., No. 5 of 1901, s. 16.

- (a) by the registrar or an assistant or deputy registrar of companies in England, Scotland, or Ireland, or in that State or Colony; or
- (b) 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 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.

79A. Where a document requires attestation to be valid that document may, in any legal proceeding, be proved in the manner in which it might be proved if no attesting witness to the document were alive, but this section does not apply to the proof of a will or other testamentary document.

*Proof of document requiring attestation.*  
Added by No. 12 of 1962, s. 2.  
Cf. U.K. 1 & 2 Geo. 6, Ch. 28, s. 3.

*Proof of Judicial Proceedings.*

Proof of  
judicial pro-  
ceedings.  
See 14 and  
15 Vict., c. 99,  
s. 7. C. No. 5  
of 1901, s. 17.  
C. No. 4 of  
1905, s. 11.

80. Evidence of any judgment, decree, rule, order, or other judicial proceeding of any Court in any part of His Majesty's dominions, or in any foreign State, 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—

- (a) proved to be an examined copy thereof; or
- (b) purporting to be sealed with the seal of the Court; or
- (c) purporting to be certified as a true copy by a registrar or chief officer of the Court; or
- (d) 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.

Faith and  
credit to be  
given to  
documents  
properly  
authenti-  
cated.  
C., No. 5 of  
1901, s. 18.

81. All public acts, records, and judicial proceedings of any State, if proved or authenticated as required by this Act, shall have such faith and credit given to them before all Courts and persons acting judicially, and in every public office, as they have by law or usage in the Courts and public offices of the State from whence they are taken.

*Proof of Telegraphic Messages.*

Notices to  
admit tele-  
graphic  
messages  
may be given  
in civil  
proceedings.  
38 Vict.,  
No. 6, s. 1.

82. (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 Western Australia:

Provided that—

- (a) 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

- (b) 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.

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

Proof of  
message.  
38 Vict.,  
No. 6, s. 2.

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.

84. 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:

Proof of  
the sending  
a message.  
38 Vict.,  
No. 6, s. 3.

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.

Certain documents may be transmitted by electric telegraph.  
 38 Vict., No. 6, s. 4.  
 41 Vict., No. 12, s. 1.

85. It shall be lawful for the Governor, any member of the Executive Council, the President of the Legislative Council, the Speaker of the Legislative Assembly, the Chief Justice, or any other Judge of the Supreme Court, any resident or police magistrate, the magistrate or any two or more justices of the peace exercising the power of the Court under the Local Courts Act, 1904, any officer of Government or other person whom the Governor may authorise in that behalf by warrant under his hand, or any solicitor, to cause to be transmitted by electric telegraph, the contents of any writ, warrant, rule, authority, order, affidavit, statutory declaration, or other communication requiring signature or seal, subject to the provisions following, that is to say:—

- (1) The original document shall be delivered at the telegraph station in the presence and under the inspection of some justice of the peace or public notary.
- (2) The person to whom the contents of any such document shall be so sent shall forthwith and under the supervision of a justice of the peace or public notary cause to be sent back by electric telegraph a copy of the message received by him; and in the event of any error appearing therein the process shall be repeated under the like supervision until it shall appear that a true copy of such document has been received by the person to whom it shall have been sent.
- (3) When it shall appear that such true copy has been so received, such first-mentioned justice or notary public shall indorse upon the original document a certificate that a true copy thereof has been sent under the provisions of this Act to the person to whom the same shall have been so sent, and shall forthwith by electric telegraph inform such person that such certificate has been so indorsed, and such last-mentioned person shall forthwith indorse on such copy a certificate that such copy was duly received

by him under the provisions of this Act, and this certificate shall be countersigned by the justice of the peace or notary public under whose supervision such copy was received.

86. (1) Every copy so indorsed, certified, and countersigned shall be as valid to all intents and purposes as the original whereof it purports to be a copy would have been, and shall be admissible as evidence in any case in which the original would have been so admissible.

Copies so transmitted to be as valid as originals. 41 Vict., No. 12, s. 3.

(2) Any person by whom such copy shall have been so received or who shall be thereby authorised, instructed or commanded, or who shall or may be lawfully charged with any duty in respect thereof, shall have and become liable to the same rights or duties in respect thereof as if he had received such original document duly signed and sealed, or signed, or sealed, or sworn or declared, as the case may be.

(3) And in the case of documents intended to be served, or the efficacy or use whereof depends upon service, every such copy shall, for the purpose of such service, be deemed to be the original document whereof it purports to be a copy.

87. Every original document a copy whereof shall have been transmitted under section eighty-five of this Act shall be kept at the telegraph station at which it was delivered for the purpose of such transmission, and shall, after the expiration of two days from the date of the certificate under subsection three of that section being indorsed upon it, be open within reasonable hours to the inspection of any person, upon payment of a fee of ten cents.

Original document may be inspected. Amended by No. 113 of 1965, s. 4 (1). See 38 Vict., No. 6, s. 6.

88. Any justice of the peace or public notary who shall wilfully and falsely indorse upon any original document delivered at a telegraph station, for the purpose of being transmitted under the provisions of this Act, a certificate that a true copy thereof has been sent under this Act, or who shall by telegraph wilfully and falsely inform any person to whom such document shall have been so sent that

Penalty for false certificates. Amended by No. 113 of 1965, s. 4 (1). See 38 Vict., No. 6, s. 9.

a certificate under the provisions of this Act has been indorsed thereon, shall forfeit and pay a sum not exceeding two hundred dollars, to be recoverable summarily before any justice of the peace in petty sessions.

*Bankers' Books.*

Entries in  
banker's  
books.  
58 Vict.,  
No. 6, s. 3.

89. Subject to the provisions 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.  
58 Vict.,  
No. 6, s. 4.

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

- (a) that the book was, at the time of the making of the entry, one of the ordinary books of the bank; and
- (b) that the entry was made in the usual and ordinary course of business; and
- (c) that the book is in the custody or control of the bank.

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

Verification  
of copy.  
58 Vict.,  
No. 6, s. 5.

91. (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.

Legal  
proceedings.  
Amended by  
No. 10 of  
1960, s. 3.  
See N.S.W.,  
No. 11 of  
1898, s. 48.

92. In any legal proceedings in which it is necessary to prove—

- (a) the state of an account in the books of any bank; or
- (b) 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 either orally or by affidavit by any officer or clerk of such bank who has examined such books.

92A. The provisions of sections eighty-nine, ninety, ninety-one and ninety-two of this Act shall apply to bankers' books and banks and branches of banks in any State or Territory of the Commonwealth.

Added by  
No. 10 of  
1960, s. 4.

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

Cases in  
which  
banker, etc.,  
not compell-  
able to pro-  
duce book,  
etc.

(a) to produce any banker's book, the contents of which can be proved under the provisions of this Act; or

58 Vict.,  
No. 6, s. 6.

(b) to appear as a witness to prove the matters, transactions, and accounts therein recorded,

unless by order of a Judge of the Supreme Court made for special cause.

94. (1) On the application of any party to a legal proceeding, the Court or a Judge of the Supreme Court 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.

Inspection  
of banker's  
books.  
See 58 Vict.,  
No. 6, s. 7.

(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 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.

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

*Ibid.*, s. 11.

Costs.  
58 Vict., No.  
6, s. 2.

95. (1) The costs of—

- (a) any application to a Court or Judge under or for the purposes of sections ninety-three or ninety-four; or of
- (b) anything done or to be done under an order of a Court or Judge made under or for the purposes of section ninety-four

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 default 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.

Powers of  
Judge  
extended to  
magistrates,  
etc.  
58 Vict.,  
No. 6, s. 9.

96. The magistrate of any local court, and any resident or police magistrate, any justice of the peace on the investigation of complaints of indictable offences, or the chairman of any court of general sessions of the peace may, with respect to any legal proceeding in the court in which he presides, exercise the powers of a Judge under this Act in regard to bankers' books.

*Mode of taking Evidence.*

Form of  
oaths.  
1 and 2 Vict.,  
c. 105.

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

Witnesses  
may be  
sworn in  
Scotch form.  
N.Z., No. 16  
of 1905, s. 48.

98. 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—

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

98A. Any person making an affidavit shall be entitled, if he so wishes, instead of having administered to him the oath usually administered, to have an oath administered to him in the form following, that is to say:—The person tendering the oath shall hold up his hand and say to the deponent “Hold up your hand and repeat after me:—‘I swear that this (pointing or referring to the signature of deponent, on the affidavit) is my name and hand-writing’ (and in the case of exhibits or productions, add:—‘and that these are the exhibits or productions referred to in my affidavit’), and the contents of this my affidavit are true, So help me God.’”

Method of administering oath to persons making an affidavit.

Inserted by No. 34 of 1930, s. 2.

99. (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 34 Vict., No. 10, s. 4.

(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.

(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.”

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

100. 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.  
N.Z., No. 16 of 1905, s. 51.

101. (1) In any civil or criminal proceeding, or in any inquiry or examination in any Court, or before any person acting judicially, where any child

Evidence of children not upon oath.  
See 48 and 49 Vict., c. 69, s. 4.

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.

(2) No person shall be convicted of any crime or misdemeanour 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.

(3) Any witness whose evidence has been admitted under this section shall be liable to indictment and punishment for perjury in all respects as if he or she had been sworn.

102. [*Repealed by No. 54 of 1963, s. 3.*]

103. (1) [*Repealed by No. 54 of 1963, s. 4.*]

(2) 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.”

(3) 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.

Certain persons to be admitted as interpreters on affirmation. Amended by No. 54 of 1963, s. 4. See 39 Vict., No. 2.

104. (1) All Courts 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.

Who may administer oaths.

(2) Every clerk of petty sessions and clerk of a local court, the registrar of the Department of Mines, and every mining registrar shall have the same authority to administer oaths and to take affirmations in lieu of oaths and statutory declarations as a justice of the peace now has, and oaths administered and affirmations and declarations made in pursuance of this subsection shall have the same force and effect as if administered or taken before a justice of the peace.

69 Vict., No. 30, s. 2;  
63 Vict., No. 37.

105. Subject to the provisions of section one hundred and six A, it is unlawful for any justice of the peace 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:

Voluntary oaths unlawful.  
Amended by No. 34 of 1930, s. 3.  
See 18 Vict., No. 12, s. 1.

But nothing herein contained shall be construed to extend to any oath, affirmation, or affidavit before any justice of the peace 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 to any oath, affirmation, or affidavit which may be required by any Act of the Parliament of the Commonwealth, or of any State, nor to any oath, affirmation, or affidavit 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.

106. It shall be lawful for any justice of the peace 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—

Statutory declarations.  
18 Vict., No. 12, s. 2.

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 one hundred and six of "The Evidence Act, 1906."

Declared at                      this                      day  
of                      19                      , before me, C.D., Justice of  
the Peace [*or as the case may be*].

Swearing of  
affidavit  
before a  
justice of  
the peace in  
absence of  
commissioner.  
Inserted by  
No. 34 of  
1930, s. 2.

106A. Any affidavit required for use in any action, suit, proceeding, cause or matter now or hereafter depending in or before the Supreme Court of Western Australia, or before any judge or officer of that court, and any bond or recognisance required to be filed in the said court, may respectively be sworn or executed before a justice of the peace for Western Australia, or for any part or district of Western Australia, in every instance where at the time of swearing such affidavit or executing such bond or recognisance there is not a commissioner for taking affidavits for use in the Supreme Court of Western Australia resident and present within a distance of three miles from the place where such affidavit, bond, or recognisance is sworn or executed, and a certificate signed by the said justice at the foot of or endorsed on any such affidavit, bond or recognisance that no such commissioner is resident and present within the distance aforesaid shall be conclusive evidence of that fact, and every such affidavit, bond or recognisance shall be admissible in evidence in any action, suit, proceeding, cause, or matter as aforesaid, and may be read and made use of to all intents and purposes as any affidavit, bond, or recognisance sworn or executed before any other person or authority.

#### Depositions.

Depositions  
under the  
Justices Act,  
1902.

107. A deposition taken in any proceeding under Part V. of the Justices Act, 1902, may be produced and given in evidence at the trial of the person against whom it was taken—

See 2 Edw.  
VII., No. 11,  
s. 109.

- (a) if it is proved to the satisfaction of the Judge that the witness is dead, or out of Western Australia, or so ill as not to be able

to travel, although there may be a prospect of his recovery; or

- (b) if the witness is kept out of the way by the person accused; and
- (c) if the deposition purports to be signed by the justice of the peace 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 Judge shall not be obliged to receive the deposition, but may postpone the trial, discharging the jury, where a jury has been empanelled, if he thinks fit.

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

Depositions of persons dangerously ill.  
2 Edw. VII., No. 11, s. 110.

(2) If it is made to appear to the satisfaction of any justice of the peace that any such person is dangerously ill and not likely to recover from such illness, and that it is not practicable for any justice of the peace to take a deposition of such person, in accordance with the provisions of Part IV. of the Justices Act, 1902, 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.

How deposition taken.  
*Ibid.*, s. 111.

If the deposition relates to any indictable 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 proper officer of the court for trial at which the accused person has been committed or bailed; and in all other cases he shall transmit the same to the

police or resident magistrate for the district in which he has taken the same, who shall preserve the same and file it of record.

When  
deposition  
admissible  
in evidence.  
2 Edw. VII.,  
No. 11, s. 112.

(3) 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—

- (a) if the deponent is proved to be dead; or
- (b) if it is proved that there is no reasonable probability that the deponent will ever be able to travel or to give evidence; and
- (c) the deposition purports to be signed by the justice of the peace by or before whom it purports to be taken; and
- (d) 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,
  - (i) that the person (whether prosecutor or accused) against whom it is proposed to read such deposition, or his counsel or solicitor had, or might have had if he had chosen to be present, full opportunity of cross-examining the deponent, and
  - (ii) 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 solicitor, 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.

(4) 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.



## THE FIRST SCHEDULE.

Section 2.

Date.	Title.	Extent of Repeal.
4 and 5 Vict., No. 22	An Act to allow the Aboriginal Natives of Western Australia to give information and evidence without the sanction of an Oath	The whole.
7 Vict., No. 7 ....	An Act to continue for a limited period an Act intituled "An Act to allow the Aboriginal Natives of Western Australia to give information and evidence without the sanction of an Oath"	The whole.
10 Vict., No. 14	An Ordinance for improving the Law of Evidence	The whole.
12 Vict., No. 14	An Ordinance to revive and continue an Ordinance intituled "An Act to allow the Aboriginal Natives of Western Australia to give information and evidence without the sanction of an Oath"	The whole.
16 Vict., No. 9 ....	An Ordinance to amend the Law of Evidence	The whole.
18 Vict., No. 12	An Ordinance for the Abolition of unnecessary Oaths and to substitute Declarations in lieu thereof	The whole.
18 Vict., No. 14	An Ordinance for the further amendment of the Laws with respect to Evidence (16 and 17 Vict., c. 83, Imperial)	The whole.
34 Vict., No. 5 ....	An Act to amend the Law of Evidence and Practice on Criminal Trials	The whole.
34 Vict., No. 10	The Evidence further Amendment Act, 1871	The whole.
38 Vict., No. 6 ....	The Telegraphic Messages Act, 1874	The whole.
39 Vict., No. 2 ....	An Act to further amend the Law of Evidence	The whole.
39 Vict., No. 6 ....	The Protection of Witnesses Act, 1875	The whole.
41 Vict., No. 12	The Telegraphic Messages Amendment Act, 1877	The whole.
51 Vict., No. 7 ....	The Documentary Evidence Act, 1887	The whole.
58 Vict., No. 6 ....	The Bankers' Books Evidence Act, 1894	The whole.
60 Vict., No. 27	The Evidence Amendment Act, 1896	The whole.
60 Vict., No. 30	An Act to facilitate the Administration of Justice and the taking of Statutory Declarations.	Section 2.
63 Vict., No. 8 ....	The Criminal Evidence Act, 1899	The whole.
63 Vict., No. 9 ....	The Evidence Act, 1899 ....	The whole.

*Evidence.*THE FIRST SCHEDULE—*continued.*

Date.	Title.	Extent of Repeal.
63 Vict., No. 37	An Act to amend an Act passed in the sixtieth year of Her Majesty numbered thirty and intituled "An Act to facilitate the Administration of Justice and the taking of Statutory Declarations"	The whole.
1 and 2 Edw. VII., No. 14	The Criminal Code ....	Chapter 64, and the proviso to Section 627.

## Section 9.

## THE SECOND SCHEDULE.

Session and Number.	Title.	Enactments referred to.
9 Vict., No. 2 ....	PART I. An Ordinance to provide for the maintenance and relief of destitute wives and children, and other destitute persons, and to make the property of husbands and near relatives, to whose assistance they have a natural claim, in certain circumstances, available for support	Sections 2, 3, 7, and 12.
1 and 2 Edw. VII., No. 14	The Criminal Code ....	Sections 186, 191, 192, 193, 194, and Chapter XXXII.
1 and 2 Edw. VII., No. 14	PART II. The Criminal Code ....	Sections 185, 187, 188, and 197.
1 and 2 Edw. VII., No. 14	PART III. The Criminal Code ....	Section 198.

## THE THIRD SCHEDULE.

Section 37.

Offence.	Section of Criminal Code (a).
Defilement of girl under thirteen ....	185
Defilement of girl under sixteen or idiot ....	188
Procuration ....	191
Procuring defilement of woman by threats, or fraud, or administering drugs ....	192

## THE FOURTH SCHEDULE.

Section 57.

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

(a) References are to sections of 1 and 2 Edw. VII., No. 14, repealed by No. 28 of 1913, s. 2.

## THE FIFTH SCHEDULE.

Column 1.	Column 2.
Name of Officer, Department, Body or Board.	Names of Certifying Officers.
The Governor ....	The Governor or his Private Secretary.
The Governor in Executive Council	The Clerk of the Executive Council.
The Legislative Council or Legislative Assembly	The Clerk or Clerk Assistant.
The Lands and Surveys Department	The Minister for Lands, the Under Secretary for Lands, or the Surveyor General.
No. 8 of 1925. The Treasurer's Department (a)	The Treasurer (b), the Under Treasurer, or the Auditor General.
The Education Department ....	The Minister of Education, or the Inspector General of Schools.
The Agricultural Department ....	The Minister for Agriculture, the Director of Agriculture, or the Secretary to the Department of Agriculture.
Or "Minister for Justice," No. 24 of 1922. See now No. 36 of 1935, s. 154. No. 50 of 1920, s. 2 (2). The Attorney General's Department	The Attorney General, the Under Secretary for Law, the Master Supreme Court, the Registrar or Deputy Registrar of Titles, or the Chief Electoral Officer.
The Mines Department ..	The Minister for Mines, or the Under Secretary for Mines (c).
The Railway Department ....	The Minister for Railways, the Commissioner of Railways, or the Secretary to the Commissioner of Railways.
No. 8 of 1925. The Chief Secretary's Department (d)	The Chief Secretary (e), the Under Secretary, the Comptroller General of Prisons, the Inspector General of Insane, the Commissioner of Police, or the Registrar General.
The Public Works Department	The Minister for Works, or the Under Secretary for Public Works.
Any Board constituted under any Act in force in Western Australia	The Chairman or Secretary.

(a) Formerly "The Colonial Treasurer's Department."

(b) Formerly "The Colonial Treasurer."

(c) Formerly the "Secretary for Mines."

(d) Formerly "The Colonial Secretary's Department."

(e) Formerly "The Colonial Secretary."

## SIXTH SCHEDULE.

Western Australia.

## THE EVIDENCE ACT, 1906.

S. 47 (1a).  
Added by  
No. 16 of  
1956.

(In the (a).....) ((a) Designa-  
(b)..... tion of  
IN THE MATTER of (c) by..... Court.)  
..... against..... ((b) Parties.)  
..... I..... ((c) Descrip-  
..... of..... tion of legal  
....., a fingerprint expert attached to proceedings,  
the (d)..... e.g. "an  
make oath and say as follows:— action", "a  
complaint",  
"an indict-  
ment", "an  
informa-  
tion".)  
((d) Desig-  
nation of  
department.)

1. I have examined the fingerprint card, now pro-  
duced and shown to me marked "A". The fingerprints  
on the card are identical with those on a fingerprint  
card, portion of the records of the (d).....  
.....being the fingerprints of  
one .....  
alias.....

2. According to those records, which I believe to be  
accurate, the said.....  
has been convicted of the offences set out below,  
namely:—

(Here insert description of offences, the Courts in which the convictions  
took place and the dates of the convictions.)

3. From an examination of those records I believe  
that the person referred to as having been convicted, in  
the document(s) now shown to me and marked respec-  
tively "B" ("C", "D", etc.), is identical with the person  
whose fingerprints are on the card marked "A".

Sworn at..... }  
this..... day of }  
..... 19..... }

Before me

A person having authority to take affidavits in