

This Act is amended by Act No. 14 of 1899, and Act No. 40 of 1900.

New South Wales.



ANNO SEXAGESIMO SECUNDO

VICTORIÆ REGINÆ.

Act No. 11, 1898.

An Act to consolidate the statute law relating to Evidence.
[Assented to, 27th July, 1898.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

Preliminary.

1. This Act may be cited as the "Evidence Act, 1898," and is divided into Parts, as follows:— Short title and division.

PART I.—*Preliminary*—ss. 1-4.

PART II.—*Competency and compellability of witnesses*—ss. 5-14.

A St. 189

PART

Evidence.

PART III.—*Means of proof and admissibility of evidence—*
ss. 15-43.

PART IV.—*Bankers' Books—ss. 44-52.*

PART V.—*Examination and cross-examination of witnesses—*
ss. 53-55.

Repeal.
 Schedule.

2. The Acts mentioned in the Schedule to this Act are, to the extent therein expressed, hereby repealed:

Provided that this repeal shall not render inadmissible in evidence any certificate, entry, copy, extract, or document in existence at the time of the passing of this Act, which would have been admissible in evidence under any Act hereby repealed.

Interpretation.

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

55 Vic. No. 4, s. 2.

“Bank” or “banker” means—

- (a) any person, partnership, or company engaged in the ordinary business of banking by receiving deposits and issuing bills or notes payable to the bearer at sight or on demand; and also
- (b) the Savings Bank of New South Wales; and
- (c) any Government or Post Office Savings Bank, established under any law in force for the time being.

Expressions relating to “bankers’ books” include ledgers, day-books, cash-books, and other account books used in the ordinary business of the bank.

“Court” means the Court, Judge, justice, arbitrator, or person before whom a legal proceeding is held or taken.

“Justice” means justice of the peace.

“Legal proceeding” means any civil or criminal proceeding or inquiry in which evidence is or may be given, and includes an arbitration.

4. All the provisions of this Act, except where the contrary intention appears, shall apply to every legal proceeding.

PART II.

Competency and compellability of witnesses.

Competency.

- 8 Vic. No. 1, s. 1.
- 16 Vic. No. 14, ss. 1, 2, 4.
- 18 Vic. No. 13, s. 1.
- 22 Vic. No. 7, s. 2.
- 36 Vic. No. 9, ss. 11, 13, 14.
- 40 Vic. No. 8, s. 1.
- 46 Vic. No. 5, s. 1.
- 46 Vic. No. 17, ss. 351, 354.
- 55 Vic. No. 5, s. 6.
- 55 Vic. No. 30, s. 23.
- 66 Vic. No. 36, s. 9.

Compellability.

- 16 Vic. No. 14, s. 2.
- 18 Vic. No. 13, s. 1.
- 22 Vic. No. 7, s. 2.
- 36 Vic. No. 9, ss. 11, 13.

5. No person offered as a witness shall be incompetent to give evidence by reason of incapacity from crime or interest.

6. In any legal proceeding in which witnesses are compellable to give evidence, every person offered as a witness and competent to give evidence shall, except as hereinafter provided, be compellable to give evidence.

Evidence.

7. No accused person in a criminal proceeding, or husband or wife of any such accused, shall be compellable to give evidence in such proceeding.

Defendants in criminal proceedings and their husbands or wives.

No accused person in a criminal proceeding charged with an indictable offence shall be liable—

16 Vic. No. 14, s. 3.
22 Vic. No. 7, s. 3.
46 Vic. No. 17, s. 354.
55 Vic. No. 5, s. 6.
55 Vic. No. 30, s. 23.

- (a) to be called as a witness on behalf of the prosecution; or
- (b) to be questioned on cross-examination as to his previous character or antecedents without the leave of the Judge:

Provided that this section shall not apply to any person who, but for this Act, would be at common law or by any Act or Imperial Act compellable to give evidence in such proceeding.

8. In any legal proceeding in the Supreme Court in its matrimonial causes jurisdiction the Court may order the attendance of the petitioner, and may examine him or her, or permit him or her to be examined or cross-examined on oath on the hearing of the petition.

Parties to matrimonial suits.
36 Vic. No. 9, s. 37.

9. Nothing in this Act shall render any person compellable to answer any question tending to criminate himself.

Questions tending to criminate.
16 Vic. No. 14, s. 3.

10. No witness in any proceeding in the Supreme Court in its matrimonial causes jurisdiction, whether a party to the suit or not, shall be liable to be asked or bound to answer any question tending to show that he has been guilty of adultery, unless he has already given evidence in the same proceeding in disproof of his alleged adultery.

Questions tending to show adultery.
36 Vic. No. 9, ss. 14, 37.
56 Vic. No. 36, s. 9.

11. No husband shall be competent to disclose any communication made to him by his wife during the marriage, and no wife shall be competent to disclose any communication made to her by her husband during the marriage:

Communications during marriage.
22 Vic. No. 7, s. 4.

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

Jones v. Jones,
7 N.S.W.R. (Div.) 9.

12. 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.
22 Vic. No. 7, s. 5.

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

Witnesses failing to attend trial.
Ibid. s. 13.

- (a) upon proof of such recognisance or of his having been duly served with such subpoena, call upon him to show cause why execution upon such recognisance or an attachment for disobedience to such subpoena should not be issued against him; or
- (b)

See also *Chiffell v. Chiffell*
Chiffell v. Chiffell
22 N.S.W.R. 517

Evidence.

(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.

22 Vic. No. 7, s. 14.

Procedure.

Ibid.

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

14. (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.

PART III.

Means of proof and admissibility of evidence.

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

13 Vic. No. 16, s. 2.

15. Whenever by this or any other Act now or hereafter 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 of any particular in any legal proceeding, a document purporting to be such certificate, document, proceeding, copy, or extract shall be admitted in evidence, 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—

(e) of the seal or stamp, where a seal or stamp is necessary; or

(f) of the signature; or

(g) of the official character of the person appearing to have signed the same,

and without any further proof thereof.

Public books and documents.

16 Vic. No. 14, s. 9.

16. (1) Whenever 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, and no Act exists which renders its contents provable

Evidence.

provable by means of a copy, a copy thereof or extract therefrom shall be admissible in evidence, if it is—

- (a) proved to be an examined copy or extract; or
- (b) certified under the hand of the officer to whose custody the original is intrusted.

(2) Such officer shall furnish such certified copy or extract to any person applying at a reasonable time for the same upon payment of a reasonable sum for the same not exceeding fourpence for every folio of ninety words.

17. Evidence of any proclamation, treaty, or other act of State Acts of State. of any part of the British dominions, or of any foreign State, may 16 Vic. No. 14, s. 7. be given by the production of a copy thereof, either—

- (a) proved to be an examined copy thereof; or
- (b) sealed with the seal of such part of the British dominions or of such foreign State.

18. Evidence of—

(a) any private Act; or
 (b) any proclamation or commission issued by the Governor, Private Acts, proclamations, and commissions. 13 Vic. No. 16, s. 4.
 may be given 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.

19. (1) Evidence of any statute, code, or other written law Foreign law. of any part of the British dominions other than New South Wales, 55 Vic. No. 5, s. 11. or of any foreign State, may be given by the production of a printed copy in a volume of such statute, code, or law, either—

- (a) purporting to be published by the authority of the Government of such part of the said dominions, or of such State; or
- (b) proved to the satisfaction of the Court to be commonly admitted as evidence in the Courts and judicial tribunals of such part of the said dominions, or of such State.

(2) Evidence of the unwritten or common law of any such part of the said dominions, or any such State, may be given by the production of a book of reports of cases adjudged in the Courts thereof, purporting or proved to the satisfaction of the Court to be authorised reports.

20. (1) Evidence of any judgment, decree, rule, order, or other Judgments, &c., of Supreme Court. judicial proceeding of the Supreme Court or a Judge thereof in any 13 Vic. No. 16, s. 1. jurisdiction may be given by the production of a copy thereof certified under the hand of the proper officer of such Court in such jurisdiction.

(2) The proper officer within the meaning of this section—

- (a) in the equitable jurisdiction of such Court is the master or deputy registrar in equity;
- (b)

Evidence.

- (b) in the bankruptcy jurisdiction of such Court is the registrar or chief clerk in bankruptcy ;
- (c) in the matrimonial causes jurisdiction of such Court is the registrar or deputy registrar in divorce ;
- (d) in the probate jurisdiction of such Court is the registrar or deputy registrar of probates ; and
- (e) in every other case is the prothonotary or chief clerk of such Court.

Judgments, &c., of
British, colonial,
and foreign Courts.
16 Vic. No. 14, s. 7.

21. Evidence of—

- (a) any judgment, decree, rule, order, or other judicial proceeding of any Court of justice out of New South Wales ; or
 - (b) any affidavit, pleading, or other legal document filed or deposited in any such Court,
- may be given by the production of a copy thereof—
- (c) proved to be an examined copy thereof ; or
 - (d) sealed with the seal of such Court ; or
 - (e) signed by a Judge of such Court, with a statement in writing attached by him to his signature on such copy that such Court has no seal, and without any proof of his judicial character or of the truth of such statement.

Proceedings in
bankruptcy.
51 Vic. No. 19,
s. 145.

- 22. (a)** Any petition or copy of a petition in bankruptcy ; or
- (b) any order or certificate or copy of an order or certificate made by any Court having jurisdiction in bankruptcy ; or
- (c) any instrument or copy of an instrument, affidavit, or document made or used in the course of any bankruptcy proceeding, or other proceedings had under the Bankruptcy Act of 1887, or any Act amending the same,

shall be admissible in evidence if it is

- (d) sealed with the seal of any Court having jurisdiction in bankruptcy ; or
- (e) signed by any Judge thereof ; or
- (f) certified under the hand of any Registrar thereof.

Convictions,
acquittals, and other
judicial proceedings. facts—

16 Vic. No. 14, s. 8.
22 Vic. No. 7,
ss. 7, 8, 9.
46 Vic. No. 17,
ss. 358, 359, 442.

23. (1) Where it is necessary to prove any of the following

- (a) the conviction or acquittal before or by any Court or Judge or justice of any person charged with any offence ; or
 - (b) that any person was sentenced to any punishment or pecuniary fine by any Court or Judge or justice ; or
 - (c) that any person was ordered by any Court or Judge or justice to pay any sum of money ; or
 - (d) the pendency or existence at any time before any Court, Judge, justice, or other official person, of any suit, action, trial, proceeding, inquiry, charge, or matter, civil or criminal,
- evidence of such fact may be given by the production of a certificate under the hand of—

- (e) any such Judge or justice or official person ; or
- (f)

Evidence.

- (f) the clerk of such Court ; or
- (g) the officer having ordinarily the custody of the records, or documents, or proceedings, or minutes of such Court or Judge or justice ; or
- (h) the officer having ordinarily the custody of the records of a Court of Quarter Sessions, in the case of any conviction which has been transmitted by any justices to such Court ; or
- (i) the deputy of such clerk or officer,

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

Provided that the time and place of such conviction, acquittal, sentence, or order, or of such suit, action, trial, proceeding, inquiry, charge, or matter are stated in such certificate, with the title of such Court or the name of the Judge or justice or official person before or by whom it was had, or passed, or made, or pending, or existing.

(2) During the sitting of any Circuit Court, the Judge's associate, or other officer there acting as clerk of assize, shall, in respect of all proceedings at such sitting, be deemed for the purposes of this section to be the officer having ordinarily the custody of the records of such Court.

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

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

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

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

(7) Every summary conviction shall be presumed not to have been appealed from until the contrary is shown.

24. Judicial notice shall be taken of the signature of—

- (a) any Judge of the Supreme Court ; or
- (b) the prothonotary or chief clerk of such Court ; or
- (c) the master or deputy registrar in equity ; or

Presumption as to
summary convictions.
46 Vic. No. 17, s. 358.
Signatures of judges
and officers of
Supreme Court.
13 Vic. No. 16, s. 3.

(d)

Evidence.

- (d) the registrar or chief clerk in bankruptcy; or
- (e) the registrar or deputy registrar in divorce: or
- (f) the registrar or deputy registrar of probates:

Provided such signature purports to be attached or appended to any decree, order, certificate, or other judicial or official document.

Justices of the peace.
17 Vic. No. 39, s. 12.

25. The words "justice of the peace" or the letters "J.P." after the signature to any magisterial act shall be evidence that the person whose signature it purports to be is in fact a justice of the peace.

Letters patent and
Crown grants.
11 Vic. No. 38,
preamble, and s. 1.

26. (1) Every entry or copy—
- (a) kept as of record or for public or official purposes in the office of the Colonial Secretary or of the Registrar-General; and
 - (b) purporting to be an entry or copy of any letters patent or deed of grant from the Crown by which any land in New South Wales has been granted to any person for any estate or interest,

shall, if such letters patent or deed of grant be not produced in evidence, be deemed and taken to be of the same force and effect as the original letters patent or deed of grant under the seal of the Colony duly recorded and signed by the Governor.

(2) A copy of any such entry or copy, certified under the hand of the Colonial Secretary or the Registrar-General, shall have the same force and effect for the purposes of evidence to all intents and purposes whatsoever as if the original letters patent or deed of grant had been produced in evidence.

Ibid. s. 2.

(3) For every such certified copy, a fee at the rate of one shilling and threepence for every folio of seventy-two words shall be charged previously to the delivery of the same.

By-laws and
regulations.
46 Vic. No. 17,
s. 472.

27. Where by any Act, power to make by-laws or regulations is conferred upon any person or body, any printed paper purporting to be such by-laws or regulations, and to be printed by the Government Printer, shall in any criminal proceeding 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, if they appear by such paper to have been so approved of or confirmed.

Registered deeds,
memorials, and
wills.
7 Vic. No. 16,
ss. 13, 24, 30.

28. (1) Secondary evidence of any deed registered in the office of the Registrar-General under the provisions of any Act may be given by the production of—

- (a) the certified copy of such deed filed in such office, if produced by the Registrar-General or deputy registrar, or any clerk in such office appointed by the Registrar-General for that purpose; or
- (b) an office copy of such certified copy, if reasonable notice in writing has been given to the adverse party by the party producing the same.

(2)

Evidence.

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

29. (1) The probate of any will or letters of administration with the will annexed shall be evidence of the due execution of such will upon all questions concerning real estate in the same manner and to the same extent as heretofore concerning personal estate.

Probate and letters
of administration.
7 Vic. No. 16, ss. 13,
24.
54 Vic. No. 25, ss. 1,
21.

(2) The copy attached or annexed to such probate or letters of administration, purporting to be a copy of such will, shall be evidence of the contents of such will.

(3) Where any will has been registered in the office of the Registrar-General under the provisions of any Act, the certified copy of such will filed in such office, if produced by the Registrar-General or deputy-registrar, or any clerk in such office appointed by the Registrar-General for that purpose, shall be secondary evidence of the contents of such will.

(4) The probate of any will or letters of administration shall be evidence of the death and the date of the death of the testator or intestate.

(5) In this section, the expression "probate of any will or letters of administration" includes—

- (a) an exemplification of probate or of letters of administration; and
- (b) any document accepted as sufficient in lieu of such exemplification by the Supreme Court in its probate jurisdiction, or by the Probate Judge under any law for the time being; and
- (c) an order to collect granted to the curator of intestate estates.

30. (1) (a) A copy of a register, or of an entry in a register, certified under the hand of the Registrar-General or any deputy or district registrar; or

Births, marriages,
and deaths.
19 Vic. No. 30, s. 16.
19 Vic. No. 34, ss. 10,
19.
55 Vic. No. 5, s. 8.

(b) a certificate under the hand of such Registrar-General or deputy or district registrar, and sealed or stamped with the seal or stamp of his office,

relating to any birth, marriage, or death, shall be evidence—

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

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

(3)

Evidence.

- Lost and destroyed registers.
19 Vic. No. 34, s. 10.
- (3) A certificate under the hand of the Registrar-General that any original register of births, marriages, or deaths for any specified period and for any particular district is lost or destroyed shall be conclusive evidence of that fact.
- Bigamy.
46 Vic. No. 17, s. 354.
31. On the prosecution of a person for bigamy, the first marriage shall not be proved by the evidence of the wife or husband of such marriage alone.
- Companies, incorporation, registration, &c.
55 Vic. No. 5, s. 10.
- 52 Vic. No. 14, s. 6.
32. (1) Evidence of the incorporation or registration of any trading society or company, whether foreign or otherwise, may be given by proof that such society or company carried on business within New South Wales or elsewhere, as the case may be, under a certain name or style.
- (2) Any copy of or extract from any document kept and registered at any office for the registration of joint stock companies in England, Scotland, or Ireland, or in any of the Australasian Colonies, certified under the hand of the registrar or an assistant registrar, shall be evidence of equal validity with the original document.
- Ship's articles and register.
11 Vic. No. 46, s. 3.
33. When any ship or vessel has been arrested under any process issuing out of the Vice-Admiralty Court, a copy proved to be a true copy of—
- (a) the ship's articles of such ship or vessel and the signatures thereto; or of
- (b) the register of such ship or vessel
- shall be evidence in any legal proceeding of the contents of such articles and the signatures thereto, or of such register, as the case may be.
- Machine copies.
22 Vic. No. 7, s. 6.
34. When any writing has been copied by means of any machine or press which produces a fac-simile impression or copy of such writing, such impression or copy shall, upon proof to the satisfaction of the Court that the same was taken or made from the original writing by means of such machine or press as aforesaid, be evidence of such writing without any proof that such impression or copy was compared with the said original, and without any notice to produce such original.
- Attesting witnesses.
20 Vic. No. 31, s. 14.
22 Vic. No. 7, s. 1.
46 Vic. No. 17, s. 360.
35. It shall not be necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite. Such instrument may be proved by admission or otherwise as if there had been no attesting witness thereto.
- Comparison of disputed writing.
20 Vic. No. 31, s. 15.
22 Vic. No. 7, s. 1.
46 Vic. No. 17, s. 360.
36. Where any writing or signature is in dispute, the same may be compared with any other writing or signature, proved to the satisfaction of the Court to be genuine; and such last-mentioned writing or signature, together with the evidence of witnesses respecting the same shall be evidence of the genuineness or otherwise of the writing or signature in dispute.
- Depositions on one charge admissible on trial of another.
46 Vic. No. 17, s. 352.
37. Depositions taken on the preliminary or other investigation of any charge of felony or misdemeanour may be read as evidence on the trial of the accused for any other offence although of a higher or different

Evidence.

different nature, if they would be admissible on his trial for the offence in respect of which they were taken; and such depositions may be proved in the same manner as if the accused were on trial for that offence.

38. (1) No confession, admission, or statement shall be received in evidence against an accused person in any criminal proceeding if it has been induced—

- (a) by any untrue representation made to him; or
 (b) by any threat or promise held out to him by the prosecutor or some person in authority.

(2) Every confession, admission, or statement made after any such representation or threat or promise shall be deemed to have been induced thereby unless the contrary be shown.

(3) Provided that no confession, admission, or statement by the accused shall be rejected by reason of his having been told by a person in authority that whatever he should say might be given in evidence for or against him.

39. No criminating statement by the accused, offered in evidence in any criminal proceeding, if the same was made voluntarily, and before any charge of felony or misdemeanour preferred against him, shall be rejected because of the statement having been on oath.

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

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

41. (1) Every witness examined in any criminal proceeding as to character, whether of the accused or of any other person, may give evidence, not only as to the general repute of such person, but also as to the witness's own knowledge of his habits, disposition, and conduct.

(2) But no witness in any such proceeding shall be allowed to state that he would not believe another on his oath.

(3) Evidence to the character of the accused shall in all cases be received and dealt with as evidence on the question of his guilt.

42. 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.

43. When any document is received in evidence by virtue of this Act, the Court admitting the same may, on the request of any party against whom the same has been so received, direct that the same shall be impounded and be kept in the custody of some officer of the Court or other proper person for such period and subject to such conditions as such Court thinks fit.

Confessions, &c.
22 Vic. No. 7, s. 11.
46 Vic. No. 17, s. 357.

Criminating statements on oath.
Ibid. s. 361.

Dying declarations.
46 Vic. No. 17, s. 361.

Witnesses of character.
Ibid. s. 348.

Actions for breach of promise of marriage
40 Vic. No. 8, s. 1.

Impounding documents.
13 Vic. No. 16, s. 5.
16 Vic. No. 14, s. 11.

Evidence.

PART IV.

Bankers' books.

Entries in bankers' books.

55 Vic. No. 4, s. 3.

Proof that book is a banker's book.

Ibid. s. 4.

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

45. (1) A copy of an entry in a banker's book shall not be received in evidence under this part of this Act, unless it be 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.

55 Vic. No. 4, s. 5.

46. (1) A copy of an entry in a banker's book shall not be received in evidence under this part of this Act unless it be 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.

Affidavits when admissible in evidence.

Ibid. s. 6.

47. Any affidavit to be used under the provisions of this part of this Act shall be admissible in evidence if it purport to be sworn before a commissioner or other person authorised to take affidavits.

Criminal proceedings.

46 Vic. No. 17, s. 353.

48. In any criminal proceeding in which it is necessary to prove—

- (a) the state of an account in the books of a banking corporation or company; 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 by any officer or clerk of such corporation or company who has examined such books.

Cases in which banker, &c., not compellable to produce book, &c.

55 Vic. No. 4, s. 7.

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

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

Evidence.

50. (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 bankers' books. 55 Vic. No. 4, s. 8.

(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 two clear days before the same is to be obeyed, unless the Court or Judge otherwise directs.

51. (1) The costs of—

(a) any application to a Court or Judge under or for the purposes of this part of this Act; or of Costs. Ibid. s. 9.

(b) anything done or to be done under an order of a Court or Judge made under or for the purposes of this part of this Act, 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.

52. The Chairman of a Court of Quarter Sessions, or the Judge of a District Court may, with respect to any proceedings in any Court of Quarter Sessions or in any District Court, exercise the powers of a Judge of the Supreme Court under this part of this Act. District Courts, &c. Ibid. s. 2.

PART V.

Examination and cross-examination of witnesses.

53. A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may if the witness in the opinion of the Court proves adverse— How far a party may discredit his own witness. 20 Vic. No. 31, s. 11. 22 Vic. No. 7, s. 1.

(a) contradict him by other evidence; or

(b) by leave of the Court prove that he has made at other times a statement inconsistent with his present testimony;

but before such last-mentioned proof can be given, the circumstances of the supposed statement sufficient to designate the particular occasion must be mentioned to the witness, and he must be asked whether or not he has made such statement.

54. If a witness upon cross-examination as to a former statement made by him relative to the subject-matter of the cause or proceeding, and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make it. Contradicting statements of adverse witness. 20 Vic. No. 31, s. 12. 22 Vic. No. 7, s. 1.

But

Evidence.

But before such proof can be given, the circumstances of the supposed statement sufficient to designate the particular occasion must be mentioned to the witness, and he must be asked whether or not he has made such statement.

Cross-examination as to previous statements in writing or deposition.
 20 Vic. No. 31, s. 13.
 22 Vic. No. 7, s. 1.
 46 Vic. No. 17,
 s. 350.

55. A witness may be cross-examined 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 always that the Court may at any time during the trial require the production of the writing or deposition for inspection by the Court, and may thereupon make such use of it for the purposes of the trial as the Court thinks fit.

SCHEDULE.

Reference to Act.	Title or short title.	Extent of repeal.
5 Vic. No. 9 ...	An Act for the further amendment of the law and for the better advancement of justice.	Section 25.
7 Vic. No. 16 ...	An Act to consolidate and amend the laws relating to the registration of deeds and other instruments in that part of the Colony of New South Wales not comprehending the district of Port Phillip.	The unrepealed part of section 13, and sections 24 and 30.
8 Vic. No. 1 ...	An Act for improving the law of evidence...	The whole.
11 Vic. No. 38 ...	An Act to facilitate the proof of letters patent or deeds of grant from the Crown.	The whole.
11 Vic. No. 46 ...	An Act to prevent frivolous and vexatious arrests of ships and vessels or the masters or commanders thereof by process issuing out of the Vice-Admiralty Court of New South Wales.	Section 3.
13 Vic. No. 16 ...	An Act to amend the law of evidence, and to facilitate the admission as evidence of certain official and other documents, and to give protection to persons employed in the printing and publication of papers by the order or authority of the Legislative Council or a committee thereof.	Sections 1, 2, 3, 4, and part of section 5, from "Provided also" to the end of the section inclusive.

Evidence.

Reference to Act.	Title or short title.	Extent of repeal.
16 Vic. No. 14 ...	An Act to amend the law of evidence ...	Sections 1, 2, 3, 4, 5, 7, 8, 9, part of section 11 from "and whenever" to "seem meet" inclusive, and section 12.
17 Vic. No. 39 ...	The Justices Act Amendment Act of 1853...	Part of section 12, from "and the words justice of the peace" to the end of the section inclusive.
18 Vic. No. 13 ...	An Act further to amend the law of evidence	Section 1.
19 Vic. No. 30 ...	An Act to amend and consolidate the laws affecting the solemnisation of marriage.	Section 16.
19 Vic. No. 34 ...	An Act for registering births, deaths, and marriages.	Part of section 10 from "and all certificates or certified copies so sealed" to the end of the section inclusive; and section 19.
20 Vic. No. 31 ...	The Common Law Procedure Act of 1857...	Sections 11, 12, 13, 14, and 15.
22 Vic. No. 7 ...	An Act for the further amendment of the law of evidence.	The whole, except so much of section 1 as refers to the tenth section of the Common Law Procedure Act of 1857; and except section 10.
24 Vic. No. 16 ...	Proof by Declaration Abolition Act of 1861	The whole.
36 Vic. No. 9 ...	Matrimonial Causes Act	Sections 11, 13, 14, and 37.
40 Vic. No. 8 ...	Evidence Further Amendment Act, 1876 ...	Section 1.
46 Vic. No. 3 ...	Evidence in Summary Convictions Act ...	The whole.
46 Vic. No. 17 ...	Criminal Law Amendment Act of 1883 ...	Sections 348, 350, the proviso to section 351, sections 352, 353, 354, 357, 358, so much of section 359 as relates to the custody of records during the sitting of a Circuit Court, sections 360, 361, part of section 442 from "and whenever" to the end of the section inclusive, and section 472.
51 Vic. No. 19 ...	Bankruptcy Act, 1887	Section 146.
52 Vic. No. 14 ...	Companies Act of 1888	Part of section 6 from "and any copy" to the end of the section inclusive.

Act No. 11, 1898.

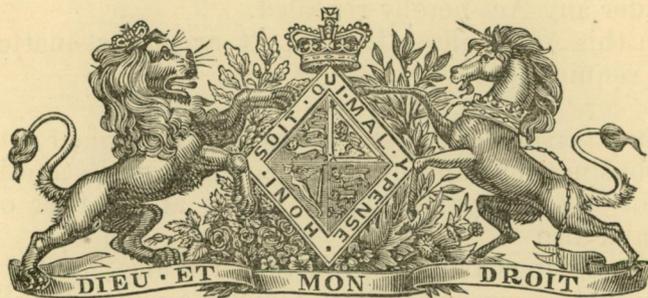
Evidence.

Reference to Act.	Title or short title.	Extent of Repeal.
54 Vic. No. 25 ...	Probate Act of 1890 ...	Section 21.
55 Vic. No. 4 ...	Bankers' Books Evidence Act, 1891 ...	The whole.
55 Vic. No. 5 ...	Criminal Law and Evidence Amendment Act of 1891.	Sections 6, 8, part of section 9 down to and including the words "signed the same," and sections 10 and 11.
55 Vic. No. 30 ...	Children's Protection Act, 1892 ...	Section 23.
56 Vic. No. 36 ...	Matrimonial Causes Procedure Amendment Act.	Section 9.

By Authority : Reprinted by WILLIAM APPLIGATE GULLICK, Government Printer, Sydney, 1911.

[1s.]

New South Wales.



ANNO SEXAGESIMO SECUNDO

VICTORIÆ REGINÆ.

Act No. 11, 1898.

An Act to consolidate the statute law relating to Evidence.
[Assented to, 27th July, 1898.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

Preliminary.

1. This Act may be cited as the "Evidence Act, 1898," and is divided into Parts, as follows:—

Short title and division.

PART I.—*Preliminary*—ss. 1-4.

PART II.—*Competency and compellability of witnesses*—ss. 5-14.

PART

Evidence.

PART III.—*Means of proof and admissibility of evidence—*
ss. 15-43.

PART IV.—*Bankers' Books—ss. 44-52.*

PART V.—*Examination and cross-examination of witnesses—*
ss. 53-55.

Repeal.
 Schedule.

2. The Acts mentioned in the Schedule to this Act are, to the extent therein expressed, hereby repealed:

Provided that this repeal shall not render inadmissible in evidence any certificate, entry, copy, extract, or document in existence at the time of the passing of this Act, which would have been admissible in evidence under any Act hereby repealed.

Interpretation.

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

55 Vic. No. 4, s. 2.

“Bank” or “banker” means—

(a) any person, partnership, or company engaged in the ordinary business of banking by receiving deposits and issuing bills or notes payable to the bearer at sight or on demand; and also

(b) the Savings Bank of New South Wales; and

(c) any Government or Post Office Savings Bank, established under any law in force for the time being.

Expressions relating to “bankers’ books” include ledgers, day-books, cash-books, and other account books used in the ordinary business of the bank.

“Court” means the Court, Judge, justice, arbitrator, or person before whom a legal proceeding is held or taken.

“Justice” means justice of the peace.

“Legal proceeding” means any civil or criminal proceeding or inquiry in which evidence is or may be given, and includes an arbitration.

4. All the provisions of this Act, except where the contrary intention appears, shall apply to every legal proceeding.

PART II.

Competency and compellability of witnesses.

Competency.

8 Vic. No. 1, s. 1
 16 Vic. No. 14, ss. 1, 2, 4.
 18 Vic. No. 13, s. 1.
 22 Vic. No. 7, s. 2.
 36 Vic. No. 9, ss. 11, 13, 14.
 40 Vic. No. 8, s. 1.
 46 Vic. No. 3, s. 1.
 48 Vic. No. 17, ss. 351, 354.
 55 Vic. No. 5, s. 6.
 55 Vic. No. 30, s. 23.
 56 Vic. No. 36, s. 9.

Compellability.

16 Vic. No. 14, s. 2.
 18 Vic. No. 13, s. 1.
 22 Vic. No. 7, s. 2.
 36 Vic. No. 9 ss. 11, 13.

5. No person offered as a witness shall be incompetent to give evidence by reason of incapacity from crime or interest.

6. In any legal proceeding in which witnesses are compellable to give evidence, every person offered as a witness and competent to give evidence shall, except as hereinafter provided, be compellable to give evidence.

Evidence.

7. No accused person in a criminal proceeding, or husband or wife of any such accused, shall be compellable to give evidence in such proceeding.

Defendants in criminal proceedings and their husbands or wives.

No accused person in a criminal proceeding charged with an indictable offence shall be liable—

16 Vic. No. 14, s. 3.
22 Vic. No. 7, s. 3.
46 Vic. No. 17, s. 354.
55 Vic. No. 5, s. 6.
55 Vic. No. 30, s. 23.

(a) to be called as a witness on behalf of the prosecution; or

(b) to be questioned on cross-examination as to his previous character or antecedents without the leave of the Judge:

Provided that this section shall not apply to any person who, but for this Act, would be at common law or by any Act or Imperial Act compellable to give evidence in such proceeding.

8. In any legal proceeding in the Supreme Court in its matrimonial causes jurisdiction the Court may order the attendance of the petitioner, and may examine him or her, or permit him or her to be examined or cross-examined on oath on the hearing of the petition.

Parties to matrimonial suits.
36 Vic. No. 9, s. 37.

9. Nothing in this Act shall render any person compellable to answer any question tending to criminate himself.

Questions tending to criminate.
16 Vic. No. 14, s. 3.

10. No witness in any proceeding in the Supreme Court in its matrimonial causes jurisdiction, whether a party to the suit or not, shall be liable to be asked or bound to answer any question tending to show that he has been guilty of adultery, unless he has already given evidence in the same proceeding in disproof of his alleged adultery.

Questions tending to show adultery.
36 Vic. No. 9, ss. 14, 37.
56 Vic. No. 36, s. 9.

11. No husband shall be competent to disclose any communication made to him by his wife during the marriage, and no wife shall be competent to disclose any communication made to her by her husband during the marriage:

Communications during marriage.
22 Vic. No. 7, s. 4.

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

Jones v. Jones,
7 N.S.W.R. (Div.) 9.

12. 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.
Ibid. s. 5.

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

Witnesses failing to attend trial.
Ibid. s. 13.

(a) upon proof of such recognisance or of his having been duly served with such subpoena, call upon him to show cause why execution upon such recognisance or an attachment for disobedience to such subpoena should not be issued against him; or

(b)

Evidence.

(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.

22 Vic. No. 7, s. 14.

Procedure.

Ibid.

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

14. (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.

PART III.

Means of proof and admissibility of evidence.

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

13 Vic. No. 16, s. 2.

15. Whenever by this or any other Act now or hereafter 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 of any particular in any legal proceeding, a document purporting to be such certificate, document, proceeding, copy, or extract shall be admitted in evidence, 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—

(e) of the seal or stamp, where a seal or stamp is necessary; or

(f) of the signature; or

(g) of the official character of the person appearing to have signed the same,

and without any further proof thereof.

Public books and documents.

16 Vic. No. 14, s. 9.

16. (1) Whenever 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, and no Act exists which renders its contents provable

Evidence.

provable by means of a copy, a copy thereof or extract therefrom shall be admissible in evidence, if it is—

- (a) proved to be an examined copy or extract; or
- (b) certified under the hand of the officer to whose custody the original is intrusted.

(2) Such officer shall furnish such certified copy or extract to any person applying at a reasonable time for the same upon payment of a reasonable sum for the same not exceeding fourpence for every folio of ninety words.

17. Evidence of any proclamation, treaty, or other act of State Acts of State. of any part of the British dominions, or of any foreign State, may 16 Vic. No. 14, s. 7. be given by the production of a copy thereof, either—

- (a) proved to be an examined copy thereof; or
- (b) sealed with the seal of such part of the British dominions or of such foreign State.

18. Evidence of—

(a) any private Act; or
(b) any proclamation or commission issued by the Governor, may be given 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.

Private Acts, proclamations, and commissions.

13 Vic. No. 16, s. 4.

19. (1) Evidence of any statute, code, or other written law Foreign law. of any part of the British dominions other than New South Wales, 55 Vic. No. 5, s. 11. or of any foreign State, may be given by the production of a printed copy in a volume of such statute, code, or law, either—

- (a) purporting to be published by the authority of the Government of such part of the said dominions, or of such State; or
- (b) proved to the satisfaction of the Court to be commonly admitted as evidence in the Courts and judicial tribunals of such part of the said dominions, or of such State.

(2) Evidence of the unwritten or common law of any such part of the said dominions, or any such State, may be given by the production of a book of reports of cases adjudged in the Courts thereof, purporting or proved to the satisfaction of the Court to be authorised reports.

20. (1) Evidence of any judgment, decree, rule, order, or other judicial proceeding of the Supreme Court or a Judge thereof in any jurisdiction may be given by the production of a copy thereof certified under the hand of the proper officer of such Court in such jurisdiction. Judgments, &c., of Supreme Court. 13 Vic. No. 16, s. 1.

(2) The proper officer within the meaning of this section—

- (a) in the equitable jurisdiction of such Court is the master or deputy registrar in equity;
- (b)

Evidence.

- (b) in the bankruptcy jurisdiction of such Court is the registrar or chief clerk in bankruptcy;
- (c) in the matrimonial causes jurisdiction of such Court is the registrar or deputy registrar in divorce;
- (d) in the probate jurisdiction of such Court is the registrar or deputy registrar of probates; and
- (e) in every other case is the prothonotary or chief clerk of such Court.

Judgments, &c., of
British, colonial, and
foreign Courts.
16 Vic. No. 14, s. 7.

21. Evidence of—

- (a) any judgment, decree, rule, order, or other judicial proceeding of any Court of justice out of New South Wales; or
- (b) any affidavit, pleading, or other legal document filed or deposited in any such Court,

may be given by the production of a copy thereof—

- (c) proved to be an examined copy thereof; or
- (d) sealed with the seal of such Court; or
- (e) signed by a Judge of such Court, with a statement in writing attached by him to his signature on such copy that such Court has no seal, and without any proof of his judicial character or of the truth of such statement.

Proceedings in
bankruptcy.
51 Vic. No. 19, s. 146.

- 22.** (a) Any petition or copy of a petition in bankruptcy; or
- (b) any order or certificate or copy of an order or certificate made by any Court having jurisdiction in bankruptcy; or
- (c) any instrument or copy of an instrument, affidavit, or document made or used in the course of any bankruptcy proceeding, or other proceedings had under the Bankruptcy Act 1887, or any Act amending the same,

shall be admissible in evidence if it is

- (d) sealed with the seal of any Court having jurisdiction in bankruptcy; or
- (e) signed by any Judge thereof; or
- (f) certified under the hand of any Registrar thereof.

23. (1) Where it is necessary to prove any of the following

Convictions,
acquittals, and other
judicial proceedings.
16 Vic. No. 14, s. 8.
22 Vic. No. 7, ss. 7,
8, 9.
46 Vic. No. 17, ss. 358,
359, 442.

facts—

- (a) the conviction or acquittal before or by any Court or Judge or justice of any person charged with any offence; or
- (b) that any person was sentenced to any punishment or pecuniary fine by any Court or Judge or justice; or
- (c) that any person was ordered by any Court or Judge or justice to pay any sum of money; or
- (d) the pendency or existence at any time before any Court, Judge, justice, or other official person, of any suit, action, trial, proceeding, inquiry, charge, or matter, civil or criminal,

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

- (e) any such Judge or justice or official person; or
- (f)

Evidence.

- (f) the clerk of such Court ; or
- (g) the officer having ordinarily the custody of the records, or documents, or proceedings, or minutes of such Court or Judge or justice ; or
- (h) the officer having ordinarily the custody of the records of a Court of Quarter Sessions, in the case of any conviction which has been transmitted by any justices to such Court ; or
- (i) the deputy of such clerk or officer,

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

Provided that the time and place of such conviction, acquittal, sentence, or order, or of such suit, action, trial, proceeding, inquiry, charge, or matter are stated in such certificate, with the title of such Court or the name of the Judge or justice or official person before or by whom it was had, or passed, or made, or pending, or existing.

(2) During the sitting of any Circuit Court, the Judge's associate, or other officer there acting as clerk of assize, shall, in respect of all proceedings at such sitting, be deemed for the purposes of this section to be the officer having ordinarily the custody of the records of such Court.

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

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

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

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

(7) Every summary conviction shall be presumed not to have been appealed from until the contrary is shown.

24. Judicial notice shall be taken of the signature of—

- (a) any Judge of the Supreme Court ; or
- (b) the prothonotary or chief clerk of such Court ; or
- (c) the master or deputy registrar in equity ; or

Presumption as to
summary convictions.
46 Vic. No. 17, s. 358.
Signatures of judges
and officers of
Supreme Court.
13 Vic. No. 16, s. 3.

(d)

Evidence.

- (d) the registrar or chief clerk in bankruptcy; or
 (e) the registrar or deputy registrar in divorce; or
 (f) the registrar or deputy registrar of probates:

Provided such signature purports to be attached or appended to any decree, order, certificate, or other judicial or official document.

Justices of the peace.
 17 Vic. No. 39, s. 12.

25. The words "justice of the peace" or the letters "J.P." after the signature to any magisterial act shall be evidence that the person whose signature it purports to be is in fact a justice of the peace.

Letters patent and
 Crown grants.
 11 Vic. No. 38,
 preamble, and s. 1.

26. (1) Every entry or copy—

- (a) kept as of record or for public or official purposes in the office of the Colonial Secretary or of the Registrar-General; and
 (b) purporting to be an entry or copy of any letters patent or deed of grant from the Crown by which any land in New South Wales has been granted to any person for any estate or interest,

shall, if such letters patent or deed of grant be not produced in evidence, be deemed and taken to be of the same force and effect as the original letters patent or deed of grant under the seal of the Colony duly recorded and signed by the Governor.

(2) A copy of any such entry or copy, certified under the hand of the Colonial Secretary or the Registrar-General, shall have the same force and effect for the purposes of evidence to all intents and purposes whatsoever as if the original letters patent or deed of grant had been produced in evidence.

Ibid. s. 2.

(3) For every such certified copy, a fee at the rate of one shilling and threepence for every folio of seventy-two words shall be charged previously to the delivery of the same.

By-laws and
 regulations.

46 Vic. No. 17, s. 472.

27. Where by any Act, power to make by-laws or regulations is conferred upon any person or body, any printed paper purporting to be such by-laws or regulations, and to be printed by the Government Printer, shall in any criminal proceeding 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, if they appear by such paper to have been so approved of or confirmed.

Registered deeds,
 memorials, and wills.
 7 Vic. No. 16, ss. 13,
 24, 30.

28. (1) Secondary evidence of any deed registered in the office of the Registrar-General under the provisions of any Act may be given by the production of—

- (a) the certified copy of such deed filed in such office, if produced by the Registrar-General or deputy registrar, or any clerk in such office appointed by the Registrar-General for that purpose; or
 (b) an office copy of such certified copy, if reasonable notice in writing has been given to the adverse party by the party producing the same. (2)

Evidence.

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

29. (1) The probate of any will or letters of administration with the will annexed shall be evidence of the due execution of such will upon all questions concerning real estate in the same manner and to the same extent as heretofore concerning personal estate.

Probate and letters
of administration.

7 Vic. No. 16, ss. 13,
24.

54 Vic. No. 25, ss. 1,
21.

(2) The copy attached or annexed to such probate or letters of administration, purporting to be a copy of such will, shall be evidence of the contents of such will.

(3) Where any will has been registered in the office of the Registrar-General under the provisions of any Act, the certified copy of such will filed in such office, if produced by the Registrar-General or deputy-registrar, or any clerk in such office appointed by the Registrar-General for that purpose, shall be secondary evidence of the contents of such will.

(4) The probate of any will or letters of administration shall be evidence of the death and the date of the death of the testator or intestate.

(5) In this section, the expression "probate of any will or letters of administration" includes—

- (a) an exemplification of probate or of letters of administration; and
- (b) any document accepted as sufficient in lieu of such exemplification by the Supreme Court in its probate jurisdiction, or by the Probate Judge under any law for the time being; and
- (c) an order to collect granted to the curator of intestate estates.

30. (1) (a) A copy of a register, or of an entry in a register, certified under the hand of the Registrar-General or any deputy or district registrar; or

Births, marriages,
and deaths.

19 Vic. No. 30, s. 16.

19 Vic. No. 34, ss. 10,

19.

55 Vic. No. 5, s. 8.

- (b) a certificate under the hand of such Registrar-General or deputy or district registrar, and sealed or stamped with the seal or stamp of his office,

relating to any birth, marriage, or death, shall be evidence—

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

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

55 Vic. No. 5, s. 9.

Evidence.

Lost and destroyed registers.
19 Vic. No. 34, s. 10.

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

Bigamy.
46 Vic. No. 17, s. 354.

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

Companies, incorporation, registration, &c.
55 Vic. No. 5, s. 10.

32. (1) Evidence of the incorporation or registration of any trading society or company, whether foreign or otherwise, may be given by proof that such society or company carried on business within New South Wales or elsewhere, as the case may be, under a certain name or style.

52 Vic. No. 14, s. 6.

(2) Any copy of or extract from any document kept and registered at any office for the registration of joint stock companies in England, Scotland, or Ireland, or in any of the Australasian Colonies, certified under the hand of the registrar or an assistant registrar, shall be evidence of equal validity with the original document.

Ship's articles and register.
11 Vic. No. 46, s. 3.

33. When any ship or vessel has been arrested under any process issuing out of the Vice-Admiralty Court, a copy proved to be a true copy of—

(a) the ship's articles of such ship or vessel and the signatures thereto; or of

(b) the register of such ship or vessel

shall be evidence in any legal proceeding of the contents of such articles and the signatures thereto, or of such register, as the case may be.

Machine copies.
22 Vic. No. 7, s. 6.

34. When any writing has been copied by means of any machine or press which produces a fac-simile impression or copy of such writing, such impression or copy shall, upon proof to the satisfaction of the Court that the same was taken or made from the original writing by means of such machine or press as aforesaid, be evidence of such writing without any proof that such impression or copy was compared with the said original, and without any notice to produce such original.

Attesting witnesses.
20 Vic. No. 31, s. 14.
22 Vic. No. 7, s. 1.
46 Vic. No. 17, s. 360.

35. It shall not be necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite. Such instrument may be proved by admission or otherwise as if there had been no attesting witness thereto.

Comparison of disputed writing.
20 Vic. No. 31, s. 15.
22 Vic. No. 7, s. 1.
46 Vic. No. 17, s. 360.

36. Where any writing or signature is in dispute, the same may be compared with any other writing or signature, proved to the satisfaction of the Court to be genuine; and such last-mentioned writing or signature, together with the evidence of witnesses respecting the same shall be evidence of the genuineness or otherwise of the writing or signature in dispute.

Depositions on one charge admissible on trial of another.
46 Vic. No. 17, s. 352.

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

in

Evidence.

in respect of which they were taken; and such depositions may be proved in the same manner as if the accused were on trial for that offence.

38. (1) No confession, admission, or statement shall be received in evidence against an accused person in any criminal proceeding if it has been induced—

Confessions, &c.
22 Vic. No. 7, s. 11.
46 Vic. No. 17, s. 357.

(a) by any untrue representation made to him; or

(b) by any threat or promise held out to him by the prosecutor or some person in authority.

(2) Every confession, admission, or statement made after any such representation or threat or promise shall be deemed to have been induced thereby unless the contrary be shown.

(3) Provided that no confession, admission, or statement by the accused shall be rejected by reason of his having been told by a person in authority that whatever he should say might be given in evidence for or against him.

39. No criminating statement by the accused, offered in evidence in any criminal proceeding, if the same was made voluntarily, and before any charge of felony or misdemeanour preferred against him, shall be rejected because of the statement having been on oath.

Criminating statements on oath.
Ibid. s. 361.

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

Dying declarations.
46 Vic. No. 17, s. 361.

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

41. (1) Every witness examined in any criminal proceeding as to character, whether of the accused or of any other person, may give evidence, not only as to the general repute of such person, but also as to the witness's own knowledge of his habits, disposition, and conduct.

Witnesses of character.
Ibid. s. 348.

(2) But no witness in any such proceeding shall be allowed to state that he would not believe another on his oath.

(3) Evidence to the character of the accused shall in all cases be received and dealt with as evidence on the question of his guilt.

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

Actions for breach of promise of marriage
40 Vic. No. 8, s. 1.

43. When any document is received in evidence by virtue of this Act, the Court admitting the same may, on the request of any party against whom the same has been so received, direct that the same shall be impounded and be kept in the custody of some officer of the Court or other proper person for such period and subject to such conditions as such Court thinks fit.

Impounding documents.
13 Vic. No. 16, s. 5.
16 Vic. No. 14, s. 11.

Evidence.

PART IV.

Bankers' books.

Entries in bankers' books.
55 Vic. No. 4, s. 3.

Proof that book is a banker's book.
Ibid. s. 4.

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

45. (1) A copy of an entry in a banker's book shall not be received in evidence under this part of this Act, unless it be 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.
55 Vic. No. 4, s. 5.

46. (1) A copy of an entry in a banker's book shall not be received in evidence under this part of this Act unless it be 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.

Affidavits when admissible in evidence.

Ibid. s. 6.

Criminal proceedings.

46 Vic. No. 17, s. 353.

47. Any affidavit to be used under the provisions of this part of this Act shall be admissible in evidence if it purport to be sworn before a commissioner or other person authorised to take affidavits.

48. In any criminal proceeding in which it is necessary to prove—

- (a) the state of an account in the books of a banking corporation or company; 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 by any officer or clerk of such corporation or company who has examined such books.

Cases in which banker, &c., not compellable to produce book, &c.

55 Vic. No. 4, s. 7.

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

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

Evidence.

50. (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
bankers' books.
55 Vic. No. 4, s. 8.

(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 two clear days before the same is to be obeyed, unless the Court or Judge otherwise directs.

51. (1) The costs of—

Costs.

(a) any application to a Court or Judge under or for the purposes of this part of this Act; or of

Ibid. s. 9.

(b) anything done or to be done under an order of a Court or Judge made under or for the purposes of this part of this Act, 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.

52. The Chairman of a Court of Quarter Sessions, or the Judge of a District Court may, with respect to any proceedings in any Court of Quarter Sessions or in any District Court, exercise the powers of a Judge of the Supreme Court under this part of this Act.

District Courts, &c.
55 Vic. No. 4, s. 2.

 PART V.

Examination and cross-examination of witnesses.

53. A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may if the witness in the opinion of the Court proves adverse—

How far a party may
discredit his own
witness.

(a) contradict him by other evidence; or

20 Vic. No. 31, s. 11.

(b) by leave of the Court prove that he has made at other times a statement inconsistent with his present testimony;

22 Vic. No. 7, s. 1.

but before such last-mentioned proof can be given, the circumstances of the supposed statement sufficient to designate the particular occasion must be mentioned to the witness, and he must be asked whether or not he has made such statement.

54. If a witness upon cross-examination as to a former statement made by him relative to the subject-matter of the cause or proceeding, and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make it.

Contradicting state-
ments of adverse
witness.

20 Vic. No. 31, s. 12.

22 Vic. No. 7, s. 1.

But

Evidence.

But before such proof can be given, the circumstances of the supposed statement sufficient to designate the particular occasion must be mentioned to the witness, and he must be asked whether or not he has made such statement.

Cross-examination as to previous statements in writing or deposition.

20 Vic. No. 31, s. 13.

22 Vic. No. 7, s. 1.

46 Vic. No. 17,

s. 350.

55. A witness may be cross-examined 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 always that the Court may at any time during the trial require the production of the writing or deposition for inspection by the Court, and may thereupon make such use of it for the purposes of the trial as the Court thinks fit.

SCHEDULE.

Reference to Act.	Title or short title.	Extent of repeal.
5 Vic. No. 9 ...	An Act for the further amendment of the law and for the better advancement of justice.	Section 25.
7 Vic. No. 16 ...	An Act to consolidate and amend the laws relating to the registration of deeds and other instruments in that part of the Colony of New South Wales not comprehending the district of Port Phillip.	The unrepealed part of section 13, and sections 24 and 30.
8 Vic. No. 1 ...	An Act for improving the law of evidence...	The whole.
11 Vic. No. 38 ...	An Act to facilitate the proof of letters patent or deeds of grant from the Crown.	The whole.
11 Vic. No. 46 ...	An Act to prevent frivolous and vexatious arrests of ships and vessels or the masters or commanders thereof by process issuing out of the Vice-Admiralty Court of New South Wales.	Section 3.
13 Vic. No. 16 ...	An Act to amend the law of evidence, and to facilitate the admission as evidence of certain official and other documents, and to give protection to persons employed in the printing and publication of papers by the order or authority of the Legislative Council or a committee thereof.	Sections 1, 2, 3, 4, and part of section 5, from "Provided also" to the end of the section inclusive.

Evidence.

Reference to Act.	Title or short title.	Extent of repeal.
16 Vic. No. 14 ...	An Act to amend the law of evidence ...	Sections 1, 2, 3, 4, 5, 7, 8, 9, part of section 11 from "and whenever" to "seem meet" inclusive, and section 12.
17 Vic. No. 39 ...	The Justices Act Amendment Act of 1853...	Part of section 12, from "and the words justice of the peace" to the end of the section inclusive.
18 Vic. No. 13 ...	An Act further to amend the law of evidence	Section 1.
19 Vic. No. 30 ...	An Act to amend and consolidate the laws affecting the solemnisation of marriage.	Section 16.
19 Vic. No. 34 ...	An Act for registering births, deaths, and marriages.	Part of section 10 from "and all certificates or certified copies so sealed" to the end of the section inclusive; and section 19.
20 Vic. No. 31 ...	The Common Law Procedure Act of 1857...	Sections 11, 12, 13, 14, and 15.
22 Vic. No. 7 ...	An Act for the further amendment of the law of evidence.	The whole, except so much of section 1 as as refers to the tenth section of the Common Law Procedure Act of 1857, and except section 10.
24 Vic. No. 16 ...	Proof by Declaration Abolition Act of 1861	The whole.
36 Vic. No. 9 ...	Matrimonial Causes Act	Sections 11, 13, 14, and 37.
40 Vic. No. 8 ...	Evidence Further Amendment Act, 1876 ...	Section 1.
46 Vic. No. 3 ...	Evidence in Summary Convictions Act ...	The whole.
46 Vic. No. 17 ...	Criminal Law Amendment Act of 1883 ...	Sections 348, 350, the proviso to section 351, sections 352, 353, 354, 357, 358, so much of section 359 as relates to the custody of records during the sitting of a Circuit Court, sections 360, 361, part of section 442 from "and whenever" to the end of the section inclusive, and section 472.
51 Vic. No. 19 ...	Bankruptcy Act, 1887	Section 146.
52 Vic. No. 14 ...	Companies Act of 1888	Part of section 6 from "and any copy" to the end of the section inclusive.

Act No. 11, 1898.

Evidence.

Reference to Act.	Title or short title.	Extent of repeal.
54 Vic. No. 25 ...	Probate Act of 1890	Section 21.
55 Vic. No. 4 ...	Bankers' Books Evidence Act, 1891 ...	The whole.
55 Vic. No. 5 ...	Criminal Law and Evidence Amendment Act of 1891.	Sections 6, 8, part of section 9 down to and including the words "signed the same," and sections 10 and 11.
55 Vic. No. 30 ...	Children's Protection Act, 1892	Section 23.
56 Vic. No. 36 ...	Matrimonial Causes Procedure Amendment Act.	Section 9.

By Authority: WILLIAM APPLIGATE GULLICK, Government Printer, Sydney, 1898.

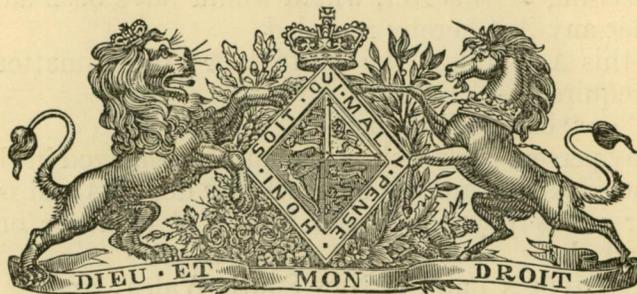
[1s.]

I Certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

Legislative Council Chamber,
Sydney, 6th July, 1898. }

JOHN J. CALVERT,
Clerk of the Parliaments.

New South Wales.



ANNO SEXAGESIMO SECUNDO

VICTORIÆ REGINÆ.

Act No. 11, 1898.

An Act to consolidate the statute law relating to Evidence.
[Assented to, 27th July, 1898.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

Preliminary.

1. This Act may be cited as the "Evidence Act, 1898," and is divided into Parts, as follows:—

Short title and
division. ;

PART I.—*Preliminary*—ss. 1-4.

PART II.—*Competency and compellability of witnesses*—ss. 5-14.

PART

Evidence.

PART III.—*Means of proof and admissibility of evidence—*
ss. 15-43.

PART IV.—*Bankers' Books—ss. 44-52.*

PART V.—*Examination and cross-examination of witnesses—*
ss. 53-55.

Repeal.
 Schedule.

2. The Acts mentioned in the Schedule to this Act are, to the extent therein expressed, hereby repealed:

Provided that this repeal shall not render inadmissible in evidence any certificate, entry, copy, extract, or document in existence at the time of the passing of this Act, which would have been admissible in evidence under any Act hereby repealed.

Interpretation.

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

55 Vic. No. 4, s. 2.

“Bank” or “banker” means—

(a) any person, partnership, or company engaged in the ordinary business of banking by receiving deposits and issuing bills or notes payable to the bearer at sight or on demand; and also

(b) the Savings Bank of New South Wales; and

(c) any Government or Post Office Savings Bank, established under any law in force for the time being.

Expressions relating to “bankers’ books” include ledgers, day-books, cash-books, and other account books used in the ordinary business of the bank.

“Court” means the Court, Judge, justice, arbitrator, or person before whom a legal proceeding is held or taken.

“Justice” means justice of the peace.

“Legal proceeding” means any civil or criminal proceeding or inquiry in which evidence is or may be given, and includes an arbitration.

4. All the provisions of this Act, except where the contrary intention appears, shall apply to every legal proceeding.

 PART II.

Competency and compellability of witnesses.

Competency.

8 Vic. No. 1, s. 1
 16 Vic. No. 14, ss. 1, 2, 4.
 18 Vic. No. 13, s. 1.
 22 Vic. No. 7, s. 2.
 36 Vic. No. 9, ss. 11, 13, 14.
 40 Vic. No. 8, s. 1.
 46 Vic. No. 3, s. 1.
 46 Vic. No. 17, ss. 351, 354.
 55 Vic. No. 5, s. 6.
 55 Vic. No. 30, s. 23.
 56 Vic. No. 36, s. 9.

5. No person offered as a witness shall be incompetent to give evidence by reason of incapacity from crime or interest.

Compellability.

16 Vic. No. 14, s. 2.
 18 Vic. No. 13, s. 1.
 22 Vic. No. 7, s. 2.
 36 Vic. No. 9 ss. 11, 13.

6. In any legal proceeding in which witnesses are compellable to give evidence, every person offered as a witness and competent to give evidence shall, except as hereinafter provided, be compellable to give evidence.

Evidence.

7. No accused person in a criminal proceeding, or husband or wife of any such accused, shall be compellable to give evidence in such proceeding.

Defendants in criminal proceedings and their husbands or wives.

No accused person in a criminal proceeding charged with an indictable offence shall be liable—

16 Vic. No. 14, s. 3.
22 Vic. No. 7, s. 3.
46 Vic. No. 17, s. 354.
55 Vic. No. 5, s. 6.
55 Vic. No. 30, s. 23.

(a) to be called as a witness on behalf of the prosecution; or

(b) to be questioned on cross-examination as to his previous character or antecedents without the leave of the Judge:

Provided that this section shall not apply to any person who, but for this Act, would be at common law or by any Act or Imperial Act compellable to give evidence in such proceeding.

8. In any legal proceeding in the Supreme Court in its matrimonial causes jurisdiction the Court may order the attendance of the petitioner, and may examine him or her, or permit him or her to be examined or cross-examined on oath on the hearing of the petition.

Parties to matrimonial suits.
36 Vic. No. 9, s. 37.

9. Nothing in this Act shall render any person compellable to answer any question tending to criminate himself.

Questions tending to criminate.
16 Vic. No. 14, s. 3.

10. No witness in any proceeding in the Supreme Court in its matrimonial causes jurisdiction, whether a party to the suit or not, shall be liable to be asked or bound to answer any question tending to show that he has been guilty of adultery, unless he has already given evidence in the same proceeding in disproof of his alleged adultery.

Questions tending to show adultery.
36 Vic. No. 9, ss. 14, 37.
56 Vic. No. 36, s. 9.

11. No husband shall be competent to disclose any communication made to him by his wife during the marriage, and no wife shall be competent to disclose any communication made to her by her husband during the marriage:

Communications during marriage.
22 Vic. No. 7, s. 4.

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

Jones v. Jones,
7 N.S.W.R. (Div.) 9.

12. 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.
Ibid. s. 5.

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

Witnesses failing to attend trial.
Ibid. s. 13.

(a) upon proof of such recognisance or of his having been duly served with such subpoena, call upon him to show cause why execution upon such recognisance or an attachment for disobedience to such subpoena should not be issued against him; or

(b)

Evidence.

(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.

22 Vic. No. 7, s. 14.
Procedure.
Ibid.

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

14. (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.

PART III.

Means of proof and admissibility of evidence.

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

13 Vic. No. 16, s. 2.

15. Whenever by this or any other Act now or hereafter 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 of any particular in any legal proceeding, a document purporting to be such certificate, document, proceeding, copy, or extract shall be admitted in evidence, 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—

(e) of the seal or stamp, where a seal or stamp is necessary; or

(f) of the signature; or

(g) of the official character of the person appearing to have signed the same,

and without any further proof thereof.

Public books and documents.

16 Vic. No. 14, s. 9.

16. (1) Whenever 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, and no Act exists which renders its contents provable

Evidence.

provable by means of a copy, a copy thereof or extract therefrom shall be admissible in evidence, if it is—

- (a) proved to be an examined copy or extract; or
- (b) certified under the hand of the officer to whose custody the original is intrusted.

(2) Such officer shall furnish such certified copy or extract to any person applying at a reasonable time for the same upon payment of a reasonable sum for the same not exceeding fourpence for every folio of ninety words.

17. Evidence of any proclamation, treaty, or other act of State Acts of State. of any part of the British dominions, or of any foreign State, may 16 Vic. No. 14, s. 7. be given by the production of a copy thereof, either—

- (a) proved to be an examined copy thereof; or
- (b) sealed with the seal of such part of the British dominions or of such foreign State.

18. Evidence of—

(a) any private Act; or
(b) any proclamation or commission issued by the Governor, Private Acts, proclamations, and commissions. 13 Vic. No. 16, s. 4. may be given 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.

19. (1) Evidence of any statute, code, or other written law Foreign law. of any part of the British dominions other than New South Wales, 55 Vic. No. 5, s. 11. or of any foreign State, may be given by the production of a printed copy in a volume of such statute, code, or law, either—

- (a) purporting to be published by the authority of the Government of such part of the said dominions, or of such State; or
- (b) proved to the satisfaction of the Court to be commonly admitted as evidence in the Courts and judicial tribunals of such part of the said dominions, or of such State.

(2) Evidence of the unwritten or common law of any such part of the said dominions, or any such State, may be given by the production of a book of reports of cases adjudged in the Courts thereof, purporting or proved to the satisfaction of the Court to be authorised reports.

20. (1) Evidence of any judgment, decree, rule, order, or other Judgments, &c., of Supreme Court. 13 Vic. No. 16, s. 1. judicial proceeding of the Supreme Court or a Judge thereof in any jurisdiction may be given by the production of a copy thereof certified under the hand of the proper officer of such Court in such jurisdiction.

- (2) The proper officer within the meaning of this section—
- (a) in the equitable jurisdiction of such Court is the master or deputy registrar in equity;
 - (b)

Evidence.

- (b) in the bankruptcy jurisdiction of such Court is the registrar or chief clerk in bankruptcy;
- (c) in the matrimonial causes jurisdiction of such Court is the registrar or deputy registrar in divorce;
- (d) in the probate jurisdiction of such Court is the registrar or deputy registrar of probates; and
- (e) in every other case is the prothonotary or chief clerk of such Court.

Judgments, &c., of
British, colonial, and
foreign Courts.
16 Vic. No. 14, s. 7.

21. Evidence of—

- (a) any judgment, decree, rule, order, or other judicial proceeding of any Court of justice out of New South Wales; or
 - (b) any affidavit, pleading, or other legal document filed or deposited in any such Court,
- may be given by the production of a copy thereof—
- (c) proved to be an examined copy thereof; or
 - (d) sealed with the seal of such Court; or
 - (e) signed by a Judge of such Court, with a statement in writing attached by him to his signature on such copy that such Court has no seal, and without any proof of his judicial character or of the truth of such statement.

Proceedings in
bankruptcy.
51 Vic. No. 19, s. 146.

- 22. (a)** Any petition or copy of a petition in bankruptcy; or
- (b) any order or certificate or copy of an order or certificate made by any Court having jurisdiction in bankruptcy; or
- (c) any instrument or copy of an instrument, affidavit, or document made or used in the course of any bankruptcy proceeding, or other proceedings had under the Bankruptcy Act 1887, or any Act amending the same,

shall be admissible in evidence if it is

- (d) sealed with the seal of any Court having jurisdiction in bankruptcy; or
- (e) signed by any Judge thereof; or
- (f) certified under the hand of any Registrar thereof.

Convictions,
acquittals, and other
judicial proceedings.
16 Vic. No. 14, s. 8.
22 Vic. No. 7, ss. 7,
8, 9.
46 Vic. No. 17, ss. 358,
359, 442.

- 23. (1)** Where it is necessary to prove any of the following

facts—

- (a) the conviction or acquittal before or by any Court or Judge or justice of any person charged with any offence; or
 - (b) that any person was sentenced to any punishment or pecuniary fine by any Court or Judge or justice; or
 - (c) that any person was ordered by any Court or Judge or justice to pay any sum of money; or
 - (d) the pendency or existence at any time before any Court, Judge, justice, or other official person, of any suit, action, trial, proceeding, inquiry, charge, or matter, civil or criminal,
- evidence of such fact may be given by the production of a certificate under the hand of—

- (e) any such Judge or justice or official person; or (f)

Evidence.

(*f*) the clerk of such Court; or
 (*g*) the officer having ordinarily the custody of the records, or documents, or proceedings, or minutes of such Court or Judge or justice; or
 (*h*) the officer having ordinarily the custody of the records of a Court of Quarter Sessions, in the case of any conviction which has been transmitted by any justices to such Court; or
 (*i*) the deputy of such clerk or officer,
 showing such fact, or purporting to contain the substance, omitting the formal parts, of the record, indictment, conviction, acquittal, sentence, or order, or of the proceeding, inquiry, charge, or matter in question.

Provided that the time and place of such conviction, acquittal, sentence, or order, or of such suit, action, trial, proceeding, inquiry, charge, or matter are stated in such certificate, with the title of such Court or the name of the Judge or justice or official person before or by whom it was had, or passed, or made, or pending, or existing.

(2) During the sitting of any Circuit Court, the Judge's associate, or other officer there acting as clerk of assize, shall, in respect of all proceedings at such sitting, be deemed for the purposes of this section to be the officer having ordinarily the custody of the records of such Court.

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

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

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

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

(7) Every summary conviction shall be presumed not to have been appealed from until the contrary is shown.

24. Judicial notice shall be taken of the signature of—

- (*a*) any Judge of the Supreme Court; or
 (*b*) the prothonotary or chief clerk of such Court; or
 (*c*) the master or deputy registrar in equity; or

Presumption as to
summary convictions.
46 Vic. No. 17, s. 358.

Signatures of judges
and officers of
Supreme Court.

13 Vic. No. 16, s. 3.

(*d*)

Evidence.

- (d) the registrar or chief clerk in bankruptcy; or
- (e) the registrar or deputy registrar in divorce; or
- (f) the registrar or deputy registrar of probates:

Provided such signature purports to be attached or appended to any decree, order, certificate, or other judicial or official document.

Justices of the peace.
17 Vic. No. 39, s. 12.

25. The words "justice of the peace" or the letters "J.P." after the signature to any magisterial act shall be evidence that the person whose signature it purports to be is in fact a justice of the peace.

Letters patent and
Crown grants.
11 Vic. No. 38,
preamble, and s. 1.

26. (1) Every entry or copy—

- (a) kept as of record or for public or official purposes in the office of the Colonial Secretary or of the Registrar-General; and
- (b) purporting to be an entry or copy of any letters patent or deed of grant from the Crown by which any land in New South Wales has been granted to any person for any estate or interest,

shall, if such letters patent or deed of grant be not produced in evidence, be deemed and taken to be of the same force and effect as the original letters patent or deed of grant under the seal of the Colony duly recorded and signed by the Governor.

(2) A copy of any such entry or copy, certified under the hand of the Colonial Secretary or the Registrar-General, shall have the same force and effect for the purposes of evidence to all intents and purposes whatsoever as if the original letters patent or deed of grant had been produced in evidence.

Ibid. s. 2.

(3) For every such certified copy, a fee at the rate of one shilling and threepence for every folio of seventy-two words shall be charged previously to the delivery of the same.

By-laws and
regulations.
46 Vic. No. 17, s. 472.

27. Where by any Act, power to make by-laws or regulations is conferred upon any person or body, any printed paper purporting to be such by-laws or regulations, and to be printed by the Government Printer, shall in any criminal proceeding 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, if they appear by such paper to have been so approved of or confirmed.

Registered deeds,
memorials, and wills.
7 Vic. No. 16, ss. 13,
24, 30.

28. (1) Secondary evidence of any deed registered in the office of the Registrar-General under the provisions of any Act may be given by the production of—

- (a) the certified copy of such deed filed in such office, if produced by the Registrar-General or deputy registrar, or any clerk in such office appointed by the Registrar-General for that purpose; or
- (b) an office copy of such certified copy, if reasonable notice in writing has been given to the adverse party by the party producing the same.

(2)

Evidence.

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

29. (1) The probate of any will or letters of administration with the will annexed shall be evidence of the due execution of such will upon all questions concerning real estate in the same manner and to the same extent as heretofore concerning personal estate.

Probate and letters
of administration.

7 Vic. No. 16, ss. 13,
24.

54 Vic. No. 25, ss. 1,
21.

(2) The copy attached or annexed to such probate or letters of administration, purporting to be a copy of such will, shall be evidence of the contents of such will.

(3) Where any will has been registered in the office of the Registrar-General under the provisions of any Act, the certified copy of such will filed in such office, if produced by the Registrar-General or deputy-registrar, or any clerk in such office appointed by the Registrar-General for that purpose, shall be secondary evidence of the contents of such will.

(4) The probate of any will or letters of administration shall be evidence of the death and the date of the death of the testator or intestate.

(5) In this section, the expression "probate of any will or letters of administration" includes—

- (a) an exemplification of probate or of letters of administration; and
- (b) any document accepted as sufficient in lieu of such exemplification by the Supreme Court in its probate jurisdiction, or by the Probate Judge under any law for the time being; and
- (c) an order to collect granted to the curator of intestate estates.

30. (1) (a) A copy of a register, or of an entry in a register, certified under the hand of the Registrar-General or any deputy or district registrar; or

Births, marriages,
and deaths.

19 Vic. No. 30, s. 16.

19 Vic. No. 34, ss. 10,

19.

55 Vic. No. 5, s. 8.

- (b) a certificate under the hand of such Registrar-General or deputy or district registrar, and sealed or stamped with the seal or stamp of his office,

relating to any birth, marriage, or death, shall be evidence—

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

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

55 Vic. No. 5, s. 9.

Evidence.

Lost and destroyed registers.

19 Vic. No. 34, s. 10.

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

Bigamy.

46 Vic. No. 17, s. 354.

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

Companies, incorporation, registration, &c.

55 Vic. No. 5, s. 10.

32. (1) Evidence of the incorporation or registration of any trading society or company, whether foreign or otherwise, may be given by proof that such society or company carried on business within New South Wales or elsewhere, as the case may be, under a certain name or style.

52 Vic. No. 14, s. 6.

(2) Any copy of or extract from any document kept and registered at any office for the registration of joint stock companies in England, Scotland, or Ireland, or in any of the Australasian Colonies, certified under the hand of the registrar or an assistant registrar, shall be evidence of equal validity with the original document.

Ship's articles and register.

11 Vic. No. 46, s. 3.

33. When any ship or vessel has been arrested under any process issuing out of the Vice-Admiralty Court, a copy proved to be a true copy of—

(a) the ship's articles of such ship or vessel and the signatures thereto; or of

(b) the register of such ship or vessel

shall be evidence in any legal proceeding of the contents of such articles and the signatures thereto, or of such register, as the case may be.

Machine copies.

22 Vic. No. 7, s. 6.

34. When any writing has been copied by means of any machine or press which produces a fac-simile impression or copy of such writing, such impression or copy shall, upon proof to the satisfaction of the Court that the same was taken or made from the original writing by means of such machine or press as aforesaid, be evidence of such writing without any proof that such impression or copy was compared with the said original, and without any notice to produce such original.

Attesting witnesses.

20 Vic. No. 31, s. 14.

22 Vic. No. 7, s. 1.

46 Vic. No. 17, s. 360.

35. It shall not be necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite. Such instrument may be proved by admission or otherwise as if there had been no attesting witness thereto.

Comparison of disputed writing.

20 Vic. No. 31, s. 15.

22 Vic. No. 7, s. 1.

46 Vic. No. 17, s. 360.

36. Where any writing or signature is in dispute, the same may be compared with any other writing or signature, proved to the satisfaction of the Court to be genuine; and such last-mentioned writing or signature, together with the evidence of witnesses respecting the same shall be evidence of the genuineness or otherwise of the writing or signature in dispute.

Depositions on one charge admissible on trial of another.

46 Vic. No. 17, s. 352.

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

in

Evidence.

in respect of which they were taken; and such depositions may be proved in the same manner as if the accused were on trial for that offence.

38. (1) No confession, admission, or statement shall be received in evidence against an accused person in any criminal proceeding if it has been induced—

- (a) by any untrue representation made to him; or
 (b) by any threat or promise held out to him by the prosecutor or some person in authority.

(2) Every confession, admission, or statement made after any such representation or threat or promise shall be deemed to have been induced thereby unless the contrary be shown.

(3) Provided that no confession, admission, or statement by the accused shall be rejected by reason of his having been told by a person in authority that whatever he should say might be given in evidence for or against him.

39. No criminating statement by the accused, offered in evidence in any criminal proceeding, if the same was made voluntarily, and before any charge of felony or misdemeanour preferred against him, shall be rejected because of the statement having been on oath.

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

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

41. (1) Every witness examined in any criminal proceeding as to character, whether of the accused or of any other person, may give evidence, not only as to the general repute of such person, but also as to the witness's own knowledge of his habits, disposition, and conduct.

(2) But no witness in any such proceeding shall be allowed to state that he would not believe another on his oath.

(3) Evidence to the character of the accused shall in all cases be received and dealt with as evidence on the question of his guilt.

42. 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.

43. When any document is received in evidence by virtue of this Act, the Court admitting the same may, on the request of any party against whom the same has been so received, direct that the same shall be impounded and be kept in the custody of some officer of the Court or other proper person for such period and subject to such conditions as such Court thinks fit.

Evidence.

PART IV.

Bankers' books.

Entries in bankers' books.

55 Vic. No. 4, s. 3.

Proof that book is a banker's book.

Ibid. s. 4.

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

45. (1) A copy of an entry in a banker's book shall not be received in evidence under this part of this Act, unless it be 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.

55 Vic. No. 4, s. 5.

46. (1) A copy of an entry in a banker's book shall not be received in evidence under this part of this Act unless it be 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.

Affidavits when admissible in evidence.

Ibid. s. 6.

Criminal proceedings.

46 Vic. No. 17, s. 353.

47. Any affidavit to be used under the provisions of this part of this Act shall be admissible in evidence if it purport to be sworn before a commissioner or other person authorised to take affidavits.

48. In any criminal proceeding in which it is necessary to prove—

- (a) the state of an account in the books of a banking corporation or company; 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 by any officer or clerk of such corporation or company who has examined such books.

Cases in which banker, &c., not compellable to produce book, &c.

55 Vic. No. 4, s. 7.

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

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

Evidence.

50. (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
bankers' books.
55 Vic. No. 4, s. 8.

(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 two clear days before the same is to be obeyed, unless the Court or Judge otherwise directs.

51. (1) The costs of—

Costs.

(a) any application to a Court or Judge under or for the purposes of this part of this Act; or of

Ibid. s. 9.

(b) anything done or to be done under an order of a Court or Judge made under or for the purposes of this part of this Act, 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.

52. The Chairman of a Court of Quarter Sessions, or the Judge of a District Court may, with respect to any proceedings in any Court of Quarter Sessions or in any District Court, exercise the powers of a Judge of the Supreme Court under this part of this Act.

District Courts, &c.
55 Vic. No. 4, s. 2.

PART V.

Examination and cross-examination of witnesses.

53. A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may if the witness in the opinion of the Court proves adverse—

How far a party may
discredit his own
witness.

(a) contradict him by other evidence; or

20 Vic. No. 31, s. 11.

(b) by leave of the Court prove that he has made at other times a statement inconsistent with his present testimony;

22 Vic. No. 7, s. 1.

but before such last-mentioned proof can be given, the circumstances of the supposed statement sufficient to designate the particular occasion must be mentioned to the witness, and he must be asked whether or not he has made such statement.

54. If a witness upon cross-examination as to a former statement made by him relative to the subject-matter of the cause or proceeding, and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make it.

Contradicting state-
ments of adverse
witness.

20 Vic. No. 31, s. 12.

22 Vic. No. 7, s. 1.

But

Evidence.

But before such proof can be given, the circumstances of the supposed statement sufficient to designate the particular occasion must be mentioned to the witness, and he must be asked whether or not he has made such statement.

Cross-examination as to previous statements in writing or deposition.

20 Vic. No. 31, s. 13.

22 Vic. No. 7, s. 1.

46 Vic. No. 17,

s. 350.

55. A witness may be cross-examined 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 always that the Court may at any time during the trial require the production of the writing or deposition for inspection by the Court, and may thereupon make such use of it for the purposes of the trial as the Court thinks fit.

SCHEDULE.

Reference to Act.	Title or short title.	Extent of repeal.
5 Vic. No. 9 ...	An Act for the further amendment of the law and for the better advancement of justice.	Section 25.
7 Vic. No. 16 ...	An Act to consolidate and amend the laws relating to the registration of deeds and other instruments in that part of the Colony of New South Wales not comprehending the district of Port Phillip.	The unrepealed part of section 13, and sections 24 and 30.
8 Vic. No. 1 ...	An Act for improving the law of evidence...	The whole.
11 Vic. No. 38 ...	An Act to facilitate the proof of letters patent or deeds of grant from the Crown.	The whole.
11 Vic. No. 46 ...	An Act to prevent frivolous and vexatious arrests of ships and vessels or the masters or commanders thereof by process issuing out of the Vice-Admiralty Court of New South Wales.	Section 3.
13 Vic. No. 16 ...	An Act to amend the law of evidence, and to facilitate the admission as evidence of certain official and other documents, and to give protection to persons employed in the printing and publication of papers by the order or authority of the Legislative Council or a committee thereof.	Sections 1, 2, 3, 4, and part of section 5, from "Provided also" to the end of the section inclusive.

Evidence.

Reference to Act.	Title or short title.	Extent of repeal.
16 Vic. No. 14 ...	An Act to amend the law of evidence ...	Sections 1, 2, 3, 4, 5, 7, 8, 9, part of section 11 from "and whenever" to "seem meet" inclusive, and section 12.
17 Vic. No. 39 ...	The Justices Act Amendment Act of 1853...	Part of section 12, from "and the words justice of the peace" to the end of the section inclusive.
18 Vic. No. 13 ...	An Act further to amend the law of evidence	Section 1.
19 Vic. No. 30 ...	An Act to amend and consolidate the laws affecting the solemnisation of marriage.	Section 16.
19 Vic. No. 34 ...	An Act for registering births, deaths, and marriages.	Part of section 10 from "and all certificates or certified copies so sealed" to the end of the section inclusive; and section 19.
20 Vic. No. 31 ...	The Common Law Procedure Act of 1857...	Sections 11, 12, 13, 14, and 15.
22 Vic. No. 7 ...	An Act for the further amendment of the law of evidence.	The whole, except so much of section 1 as as refers to the tenth section of the Common Law Procedure Act of 1857, and except section 10.
24 Vic. No. 16 ...	Proof by Declaration Abolition Act of 1861	The whole.
36 Vic. No. 9 ...	Matrimonial Causes Act	Sections 11, 13, 14, and 37.
40 Vic. No. 8 ...	Evidence Further Amendment Act, 1876 ...	Section 1.
46 Vic. No. 3 ...	Evidence in Summary Convictions Act ...	The whole.
46 Vic. No. 17 ...	Criminal Law Amendment Act of 1883 ...	Sections 348, 350, the proviso to section 351, sections 352, 353, 354, 357, 358, so much of section 359 as relates to the custody of records during the sitting of a Circuit Court, sections 360, 361, part of section 442 from "and whenever" to the end of the section inclusive, and section 472.
51 Vic. No. 19 ...	Bankruptcy Act, 1887	Section 146.
52 Vic. No. 14 ...	Companies Act of 1888	Part of section 6 from "and any copy" to the end of the section inclusive.

Evidence.

Reference to Act.	Title or short title.	Extent of repeal.
54 Vic. No. 25 ...	Probate Act of 1890	Section 21.
55 Vic. No. 4 ...	Bankers' Books Evidence Act, 1891 ...	The whole.
55 Vic. No. 5 ...	Criminal Law and Evidence Amendment Act of 1891.	Sections 6, 8, part of section 9 down to and including the words "signed the same," and sections 10 and 11.
55 Vic. No. 30 ...	Children's Protection Act, 1892	Section 23.
56 Vic. No. 36 ...	Matrimonial Causes Procedure Amendment Act.	Section 9.

In the name and on the behalf of Her Majesty I assent to this Act.

HAMPDEN,

*Government House,
Sydney, 27th July, 1898.*

Governor.

Memo. and Certificate to accompany the Evidence Bill.

THIS Bill consolidates the whole or portions of the following twenty-five Statutes:—

5 Vic. No. 9 ;
7 Vic. No. 16 ;
8 Vic. No. 1 ;
11 Vic. No. 38 ;
11 Vic. No. 46 ;
13 Vic. No. 16 ;
16 Vic. No. 14 ;
17 Vic. No. 39 ;
18 Vic. No. 13 ;
19 Vic. No. 30 ;
19 Vic. No. 34 ;
20 Vic. No. 31 ;
22 Vic. No. 7 ;
24 Vic. No. 16 ;
36 Vic. No. 9 ;
40 Vic. No. 8 ;
46 Vic. No. 3 ;
46 Vic. No. 17 ;
51 Vic. No. 19 ;
52 Vic. No. 14 ;
54 Vic. No. 25 ;
55 Vic. No. 4 ;
55 Vic. No. 5 ;
55 Vic. No. 30 ;
56 Vic. No. 36.

The statutory law of evidence is contained in a large number of Acts which amend, repeal, impliedly amend, impliedly repeal, vary, and overlie each other, and whose confused provisions it has been found a difficult and delicate task to reduce to a clear, simple, and orderly form, without running too great a risk of altering the law.

In consolidating not only what are properly known as the Evidence Acts, but also a number of sections relating to evidence taken from Acts dealing with other matters, it has not always been easy to decide whether a particular section should be taken or not. As a general rule the principle of selection adopted has been to take only those provisions which are of general application, and which are complete in themselves—*i. e.*, which do not require for their interpretation reference to any other Acts. Thus, when a section in any Act makes provisions as to evidence in proceedings under that Act, or as to the means of proving compliance with the requirements of that Act, it has been thought better not to deal with such a section in this Bill. In cases where there was any doubt as to the application of this principle, regard has been had to the question of practical convenience.

Clause 2. The proviso is intended to meet cases which may possibly arise under (for example) the provisions relating to Port Phillip in 11 Vic. No. 38, sec. 1, 13 Vic. No. 16, secs. 1, 3, &c. If a certificate obtained before the separation of Victoria is admissible in evidence under the present law, this clause will preserve the right.

Clause 3. This is taken principally from the Banker's Books Evidence Act. The expressions "legal proceeding" and "court" as defined here are substituted throughout the Bill for expressions such as—

"the trial of any issue joined or any matter or question or inquiry arising in any suit, action, or other proceeding,"
and
"any court of justice or any person having by law or by consent of parties authority to hear, receive, and examine evidence."

Clause 5. This is considered to present the net result of the numerous sections noted in the margin. It is unnecessary here to trace these sections in detail and to show how they have modified and affected each other. One troublesome question may, however, be mentioned. There is a doubt whether, under the terms of the 55 Vic. No. 5, sec. 6, a person charged with an indictable offence, or the husband or wife of such person, is now competent to give evidence on the preliminary hearing before a magistrate. The point has never apparently been decided by any court, but, as the safer course, the practice has been adopted of not allowing such evidence. The point is very arguable, but there seems no reason why an accused person should not have the right of at once calling all his evidence and telling his own story on oath, if he so wishes. By doing so he may, perhaps, prevent his trial by influencing the Attorney-General to file no bill. Instead of consolidating the doubt it has been resolved in favour of competency.

Clauses 6 and 7. Many difficult questions have arisen through the want of a uniform phraseology in the successive Acts dealing with the compellability of witnesses. Take, for example, the following classes of persons, all of whom were at common law incompetent—and *a fortiori* not compellable—to give evidence:—

- | | |
|---|---|
| A. A person not a party to the proceedings but interested in the result | “may and shall be <i>admitted</i> ” to give evidence.
(8 Vic. No. 1, s. 1.) |
| B. A convict undergoing sentence | “may and shall be <i>admitted</i> ” to give evidence.
(8 Vic. No. 1, s. 1.) |
| C. A party to an action for breach of promise of marriage | “shall be <i>competent</i> ” to give evidence.
(40 Vic. No. 8, s. 1.) |
| D. A person charged with an offence punishable on summary conviction. | “It shall be <i>lawful</i> ” for him to give evidence.
(46 Vic. No. 3, s. 1.) |
| E. A person charged with an indictable offence | “shall be <i>competent but not compellable</i> to give evidence.”
(55 Vic. No. 5, s. 6.) |

Are A, B, C, and D all, or is any of them, compellable to give evidence? Does “admitted” mean the same as “competent,” and does either, or do both, of them mean the same as “lawful”? It may be mentioned that C, D, and E were all in terms excepted from the provisions of 16 Vic. No. 14, making parties “competent and compellable” to give evidence. Unless some distinction is drawn between the expressions used as to A and D, then either a person can refuse to give evidence in an action in the result of which he is interested, or a person charged with a non-indictable offence can be compelled to give evidence on his trial. It has been decided, as to A and B, that “admitted” means “competent and compellable”; as to C, that “competent” means “competent and compellable”; and as to D, that “lawful” means “competent” but not “compellable.”

Clauses 8 and 10. In the Matrimonial Causes Jurisdiction, the matter is further complicated. Under the law as it stood at the time of the establishment of this jurisdiction in New South Wales, the parties to all legal proceedings were competent and compellable witnesses, except

1. Defendants in criminal proceedings,
2. Parties to proceedings instituted in consequence of adultery,
3. Parties to actions for breach of promise of marriage.

The Matrimonial Causes Act, 36 Vic. No. 9, sec. 13, repealed the exception as to proceedings in consequence of adultery. This would clearly have made the parties in all matrimonial suits competent and compellable witnesses; but in the same Act it was provided

- (a) by sec. 11—that in suits by the wife for judicial separation on grounds of *adultery, or cruelty, or desertion*, the parties should be *competent and compellable* witnesses as to such *cruelty or desertion*;

- (b) by sec. 14—that the parties to any proceedings under the Act should be *competent* witnesses ;
- (c) by sec. 37—that the Court might order the attendance of the petitioner for examination or cross-examination.

These provisions were taken from various English Acts, passed at different times, where they stood as successive modifications of the common law rule of the incompetency of parties. By throwing them together, higgledy-piggledy, into one measure, a new difficulty was added to their interpretation. After much consideration the question was resolved in favour of compellability, which appears to accord with the law as it now is in England.

Clause 7, Proviso. See, for example, the Deserted Wives and Children's Act (22 Vic. No. 6), s. 8, and the Customs Regulation Act (42 Vic. No. 19), s. 192.

Clause 11. "or compellable" is omitted after "competent" as superfluous. As to the proviso, see the case of *Jones v. Jones*, 7. N.S.W. R. (Div.) 9. Under the English Act 16 and 17 Vic., c. 83, s. 3, husbands and wives are competent but not compellable. The question to be considered under this clause was how far, if at all, the provisions of the 22 Vic. No. 7, s. 4, that husbands and wives cannot disclose communications during marriage, have been impliedly repealed by the later Acts. It seemed clear that in matrimonial causes the husband and wife could, when they were hostile parties, disclose communications made to one another, and this appears to have been the invariable practice in the Matrimonial Causes Court. But where they are not hostile parties the prohibition would appear to be still in force, *e.g.*, the wife of a co-respondent could not be called to testify to communications made to her by him. Except in matrimonial causes no reason could be found for deciding that this statutory provision had ceased in any way to be effective.

Clause 15. The present section was originally copied from an English Act, and by an obvious inadvertence the words "or sealed and signed, or signed alone as required or impressed with a stamp" were omitted by the copyist. They have been restored in the clause, omitting only "as required." Some alterations have been made in this clause, which require careful consideration in connection with the later clauses more particularly affected by it. By its aid the phrase, so continually repeated, "purporting to be," has been almost entirely dispensed with. Some doubt was felt whether these words could safely be omitted from clauses 17, 21, and 22, but this was dispelled by a consideration of the use of the word "document" in sec. 7 of 16 Vic. No. 14.

Clause 16 (b). "Certified under the hand of" is a phrase uniformly used through the Bill in substitution for various equivalent expressions.

Clauses 17, 19, 21. The expressions "British dominions" and "out of New South Wales" are more comprehensive than those used at present, and remove some anomalies.

Clause 18. In this clause and throughout the Bill, "*prima facie*" has been omitted as superfluous.

Clause 20. This clause has been extended to the more recently created jurisdictions of the Court, and some consequential alterations have been made, and the phraseology of this and the next clause has been made more uniform.

Clause 23. In this clause several different sections, all dealing with the same subject and all differing to some extent from each other, have been blended. This could only be done by making some changes,—none however, important.

Clause 24. The provisions of the present section are in this clause extended to every jurisdiction of the Court, and the respective registrars and deputy-registrars have been taken to stand in positions corresponding to those of the prothonotary and chief-clerk.

Clause 26. (1) The wording in (b) departs a little from that of the original section, and follows that of the preamble, which seems to mean the same but is more specific and clear. No attempt has been made to decide whether "letters patent" means only letters referring to land.

(2) The words "upon proof made that such certificate has been signed" &c., have been omitted, it appearing clear that a certified copy of an entry or copy of letters patent, or a deed of grant is a certified copy of a "document" or "entry in a register or other book" in sec. 2, of 13 Vic. No. 16.

Clause 27. This has reluctantly been limited to criminal proceedings, because the Act from which it is taken was purely a Criminal Law Amendment Act. The same remark applies to clauses 41 (1) and 48.

Clause 28. (b) "or his attorney" has been omitted as superfluous.

Clause 30. The proviso to s. 19 of 19 Vic. No. 34 has been treated as being impliedly repealed by 55 Vic. No. 5, s. 8. In other respects this clause blends four sections and tries to correct their overlappings and inconsistencies.

Clause 32. (2) "Australian" has here been altered to "Australasian."

Clause 33. This has been treated as applicable to all courts.

Clauses 36 and 38. The phraseology of the Criminal Law Amendment Act has been followed. *R. v. Summerell*, 8 S.C.R., p. 214.

Clause 43. At present the power of impounding is expressly given as to documents admitted by virtue of the Acts in the margin. It is now applied to this Act. It is not thought that this is any real extension of the law; it certainly is not of the practice.

Clause 55. The phraseology of the Common Law Procedure Act has been adopted with some modifications in conformity with the section of the Criminal Law Amendment Act.

Except so far as the matters hereinbefore stated may be considered to be alterations of the law, I certify that this Bill solely consolidates, and in no way alters, adds to, or amends the law as contained in the Acts thereby consolidated.

CHAS. G. HEYDON,

Commissioner for the Consolidation of the Statute Law.

Evidence Bill.

TABLE showing how the sections of the Acts consolidated have been dealt with.

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
5 VICTORIA No. 9.		
25	.....	] Obsolete.
7 VICTORIA No. 16.		
13	28, 29	Part of section already consolidated in Registration of Deeds Act, 1897.
24	28, 29	
30	28	
8 VICTORIA No. 1.		
1	5	Spent.
2	.....
11 VICTORIA No. 38.		
1	26	As to application of fees, <i>see</i> Public Officers' Fees Act, 1896.
2	26	
11 VICTORIA No. 46.		
3	33	
13 VICTORIA No. 16.		
1	20	Unrepealed part to be dealt with in Criminal Law Bill.
2	15	
3	24	
4	18	
5	43	
16 VICTORIA No. 14.		
1	5	Omitted as unnecessary. To be dealt with in Common Law Procedure Bill.
2	5, 6	
3	7, 9	
4	5	
5	.....
6	.....
7	17, 21	To be dealt with in Criminal Law Bill.
8	23	
9	16	Unrepealed part to be dealt with in Criminal Law Bill.
10	.....
11	43	
12	.....	Date of commencement.

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
		17 VICTORIA No. 39.
12	25	Unrepealed part to be dealt with in Justices Bill.
		18 VICTORIA No. 13.
1	5, 6	
		19 VICTORIA No. 30.
16	30	
		19 VICTORIA No. 34.
10	30	Unrepealed part to be dealt with in another Bill.
19	30	Proviso omitted, as impliedly repealed by 55 Vic. No. 5, s. 8.
		20 VICTORIA No. 31.
11	53	
12	54	
13	55	
14	35	
15	36	
		22 VICTORIA No. 7.
1	4, 35, 36, 53, 54, 55	Unrepealed part to be dealt with in Oaths Bill.
2	5, 6	
3	7	
4	11	
5	12	
6	34	
7	23	
8	23	
9	23	
10	.....	To be dealt with in Criminal Law Bill.
11	38	
12	.....	Omitted as unnecessary.
13	13	
14	13, 14	
		24 VICTORIA No. 16.
1	.....	Repealing section.
2	.....	Saving clause.
3	.....	Short title.
		36 VICTORIA No. 9.
11	5, 6	
13	5, 6	
14	5, 10	
37	8, 10	
		40 VICTORIA No. 8.
1	5, 42	
		46 VICTORIA No. 3.
1	5	
2	.....	Short title.

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
46 VICTORIA No. 17.		
348	41	Unrepealed part to be dealt with in Criminal Law Bill.
350	55	
351	5	
352	37	
353	48	
354	5, 7, 31	
357	33	
358	23	
359	23	
360	35, 36		Unrepealed part to be dealt with in Supreme Court Bill.
361	39, 40	
442	23	
472	27	
51 VICTORIA No. 19.		
146	22	
52 VICTORIA No. 14.		
6	32	Unrepealed part to be dealt with in Companies Bill.
54 VICTORIA No. 25.		
21	29	
55 VICTORIA No. 4.		
1	.....	Short title.
2	3, 52	
3	44	
4	45	
5	46	
6	47	
7	49	
8	50	
9	51	
55 VICTORIA No. 5.		
6	5, 7	Unrepealed part to be dealt with in Criminal Law Bill.
8	29	
9	30	
10	32	
11	19	
55 VICTORIA No. 30.		
23	5, 7	
56 VICTORIA No. 36.		
9	5, 10	

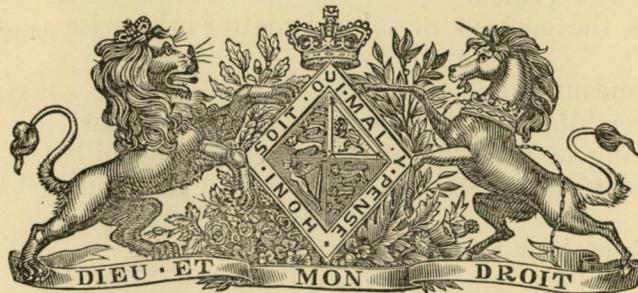
Page No.	Page No.	Page No.
41	41	41
42	42	42
43	43	43
44	44	44
45	45	45
46	46	46
47	47	47
48	48	48
49	49	49
50	50	50
51	51	51
52	52	52
53	53	53
54	54	54
55	55	55
56	56	56
57	57	57
58	58	58
59	59	59
60	60	60
61	61	61
62	62	62
63	63	63
64	64	64
65	65	65
66	66	66
67	67	67
68	68	68
69	69	69
70	70	70
71	71	71
72	72	72
73	73	73
74	74	74
75	75	75
76	76	76
77	77	77
78	78	78
79	79	79
80	80	80
81	81	81
82	82	82
83	83	83
84	84	84
85	85	85
86	86	86
87	87	87
88	88	88
89	89	89
90	90	90
91	91	91
92	92	92
93	93	93
94	94	94
95	95	95
96	96	96
97	97	97
98	98	98
99	99	99
100	100	100

This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.

Legislative Council Chamber,
Sydney, 5th July, 1898. }

JOHN J. CALVERT,
Clerk of the Parliam^{nts}.

New South Wales.



ANNO SEXAGESIMO SECUNDO

VICTORIÆ REGINÆ.

Act No. , 1898.

An Act to consolidate the statute law relating to Evidence.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

Preliminary.

1. This Act may be cited as the "Evidence Act, 1898," and is divided into Parts, as follows:— Short title and division.

PART I.—*Preliminary*—ss. 1-4.

PART II.—*Competency and compellability of witnesses*—ss. 5-14.

c 11—A

PART

Evidence.

PART III.—*Means of proof and admissibility of evidence—*
 ss. 15-43.

PART IV.—*Bankers' Books—*ss. 44-52.

PART V.—*Examination and cross-examination of witnesses—*
 ss. 53-55.

2. The Acts mentioned in the Schedule to this Act are, to the extent therein expressed, hereby repealed: Repeal.
Schedule.

Provided that this repeal shall not render inadmissible in evidence any certificate, entry, copy, extract, or document in existence at the time of the passing of this Act, which would have been admissible in evidence under any Act hereby repealed.

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

“Bank” or “banker” means— 55 Vic. No. 4, s. 2.

(a) any person, partnership, or company engaged in the ordinary business of banking by receiving deposits and issuing bills or notes payable to the bearer at sight or on demand; and also

(b) the Savings Bank of New South Wales; and

(c) any Government or Post Office Savings Bank, established under any law in force for the time being.

Expressions relating to “bankers' books” include ledgers, day-books, cash-books, and other account books used in the ordinary business of the bank.

“Court” means the Court, Judge, justice, arbitrator, or person before whom a legal proceeding is held or taken.

“Justice” means justice of the peace.

“Legal proceeding” means any civil or criminal proceeding or inquiry in which evidence is or may be given, and includes an arbitration.

4. All the provisions of this Act, except where the contrary intention appears, shall apply to every legal proceeding.

PART II.

Competency and compellability of witnesses.

5. No person offered as a witness shall be incompetent to give evidence by reason of incapacity from crime or interest.

6. In any legal proceeding in which witnesses are compellable to give evidence, every person offered as a witness and competent to give evidence shall, except as hereinafter provided, be compellable to give evidence. 7.

Competency.

8 Vic. No. 1, s. 1
 16 Vic. No. 14, ss. 1, 2, 4.
 18 Vic. No. 13, s. 1.
 22 Vic. No. 7, s. 2.
 36 Vic. No. 9, ss. 11, 13, 14.
 40 Vic. No. 8, s. 1.
 46 Vic. No. 3, s. 1.
 46 Vic. No. 17, ss. 351, 354.
 55 Vic. No. 5, s. 6.
 55 Vic. No. 30, s. 23.
 56 Vic. No. 36, s. 9.

Compellability.

16 Vic. No. 14, s. 2.
 18 Vic. No. 13, s. 1.
 22 Vic. No. 7, s. 2.
 36 Vic. No. 9, ss. 11, 13.

Evidence.

7. No accused person in a criminal proceeding, or husband or wife of any such accused, shall be compellable to give evidence in such proceeding.

No accused person in a criminal proceeding charged with an indictable offence shall be liable—

- (a) to be called as a witness on behalf of the prosecution; or
(b) to be questioned on cross-examination as to his previous character or antecedents without the leave of the Judge:

Provided that this section shall not apply to any person who, but for this Act, would be at common law or by any Act or Imperial Act compellable to give evidence in such proceeding.

8. In any legal proceeding in the Supreme Court in its matrimonial causes jurisdiction the Court may order the attendance of the petitioner, and may examine him or her, or permit him or her to be examined or cross-examined on oath on the hearing of the petition.

9. Nothing in this Act shall render any person compellable to answer any question tending to criminate himself.

10. No witness in any proceeding in the Supreme Court in its matrimonial causes jurisdiction, whether a party to the suit or not, shall be liable to be asked or bound to answer any question tending to show that he has been guilty of adultery, unless he has already given evidence in the same proceeding in disproof of his alleged adultery.

11. No husband shall be competent to disclose any communication made to him by his wife during the marriage, and no wife shall be competent 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 matrimonial causes jurisdiction, to any husband and wife who are both parties to such proceeding.

12. 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.

13. (1) Where any person duly bound by recognisance or served with a subpoena 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, call upon him to show cause why execution upon such recognisance or an attachment for disobedience to such subpoena should not be issued against him; or
(b)

Defendants in criminal proceedings and their husbands or wives.

16 Vic. No. 14, s. 3.
22 Vic. No. 7, s. 3.
46 Vic. No. 17, s. 354.
55 Vic. No. 5, s. 6.
55 Vic. No. 30, s. 23.

Parties to matrimonial suits.
36 Vic. No. 9, s. 37.

Questions tending to criminate.
16 Vic. No. 14, s. 3.
Questions tending to show adultery.
36 Vic. No. 9, ss. 14, 37.
56 Vic. No. 36, s. 9.

Communications during marriage.
22 Vic. No. 7, s. 4.

Jones v. Jones,
7 N.S.W.R. (Div.) 9.

Persons may be examined without a subpoena.
Ibid., s. 5.

Witnesses failing to attend trial.
Ibid., s. 13.

Evidence.

(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. 22 Vic. No. 7, s. 14.

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

(a) be made returnable before the Court itself at the then sittings Ibid. 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.

PART III.

Means of proof and admissibility of evidence.

15. Whenever by this or any other Act now or hereafter in force— Proof of seal, signature, and official character dispensed with.

(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 of any particular in any legal proceeding, a document purporting to be such certificate, document, proceeding, copy, or extract shall be admitted in evidence, 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—

(e) of the seal or stamp, where a seal or stamp is necessary; or

(f) of the signature; or

(g) of the official character of the person appearing to have signed the same,

and without any further proof thereof.

16. (1) Whenever 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, and no Act exists which renders its contents Public books and documents. 16 Vic. No. 14, s. 9. provable

Evidence.

provable by means of a copy, a copy thereof or extract therefrom shall be admissible in evidence, if it is—

- (a) proved to be an examined copy or extract ; or
- (b) certified under the hand of the officer to whose custody the original is intrusted.

(2) Such officer shall furnish such certified copy or extract to any person applying at a reasonable time for the same upon payment of a reasonable sum for the same not exceeding fourpence for every folio of ninety words.

17. Evidence of any proclamation, treaty, or other act of State Acts of State. of any part of the British dominions, or of any foreign State, may 16 Vic. No. 14, s. 7. be given by the production of a copy thereof, either—

- (a) proved to be an examined copy thereof ; or
- (b) sealed with the seal of such part of the British dominions or of such foreign State.

18. Evidence of—

(a) any private Act ; or Private Acts, proclamations, and commissions.
 (b) any proclamation or commission issued by the Governor, 13 Vic. No. 16, s. 4. may be given 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.

19. (1) Evidence of any statute, code, or other written law Foreign law. of any part of the British dominions other than New South Wales, 55 Vic. No. 5, s. 11. or of any foreign State, may be given by the production of a printed copy in a volume of such statute, code, or law, either—

- (a) purporting to be published by the authority of the Government of such part of the said dominions, or of such State ; or
- (b) proved to the satisfaction of the Court to be commonly admitted as evidence in the Courts and judicial tribunals of such part of the said dominions, or of such State.

(2) Evidence of the unwritten or common law of any such part of the said dominions, or any such State, may be given by the production of a book of reports of cases adjudged in the Courts thereof, purporting or proved to the satisfaction of the Court to be authorised reports.

20. (1) Evidence of any judgment, decree, rule, order, or other Judgments, &c., of Supreme Court. judicial proceeding of the Supreme Court or a Judge thereof in any 13 Vic. No. 16, s. 1. jurisdiction may be given by the production of a copy thereof certified under the hand of the proper officer of such Court in such jurisdiction.

- (2) The proper officer within the meaning of this section—
- (a) in the equitable jurisdiction of such Court is the master or deputy registrar in equity ;
 - (b)

Evidence.

- (b) in the bankruptcy jurisdiction of such Court is the registrar or chief clerk in bankruptcy;
- (c) in the matrimonial causes jurisdiction of such Court is the registrar or deputy registrar in divorce;
- (d) in the probate jurisdiction of such Court is the registrar or deputy registrar of probates; and
- (e) in every other case is the prothonotary or chief clerk of such Court.

21. Evidence of—

- (a) any judgment, decree, rule, order, or other judicial proceeding of any Court of justice out of New South Wales; or
 - (b) any affidavit, pleading, or other legal document filed or deposited in any such Court,
- may be given by the production of a copy thereof—
- (c) proved to be an examined copy thereof; or
 - (d) sealed with the seal of such Court; or
 - (e) signed by a Judge of such Court, with a statement in writing attached by him to his signature on such copy that such Court has no seal, and without any proof of his judicial character or of the truth of such statement.

Judgments, &c., of
British, colonial, and
foreign Courts.
16 Vic. No. 14, s. 7.

- 22. (a)** Any petition or copy of a petition in bankruptcy; or
- (b) any order or certificate or copy of an order or certificate made by any Court having jurisdiction in bankruptcy; or
- (c) any instrument or copy of an instrument, affidavit, or document made or used in the course of any bankruptcy proceeding, or other proceedings had under the Bankruptcy Act 1887, or any Act amending the same,

Proceedings in
bankruptcy.
51 Vic. No. 19, s. 146.

shall be admissible in evidence if it is

- (d) sealed with the seal of any Court having jurisdiction in bankruptcy; or
- (e) signed by any Judge thereof; or
- (f) certified under the hand of any Registrar thereof.

23. (1) Where it is necessary to prove any of the following

facts—

- (a) the conviction or acquittal before or by any Court or Judge or justice of any person charged with any offence; or
- (b) that any person was sentenced to any punishment or pecuniary fine by any Court or Judge or justice; or
- (c) that any person was ordered by any Court or Judge or justice to pay any sum of money; or
- (d) the pendency or existence at any time before any Court, Judge, justice, or other official person, of any suit, action, trial, proceeding, inquiry, charge, or matter, civil or criminal,

Convictions,
acquittals, and other
judicial proceedings.
16 Vic. No. 14, s. 8.
22 Vic. No. 7, ss. 7,
8, 9.
46 Vic. No. 17, ss. 358,
359, 442.

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

- (e) any such Judge or justice or official person; or (f)

Evidence.

(*f*) the clerk of such Court ; or
 (*g*) the officer having ordinarily the custody of the records, or documents, or proceedings, or minutes of such Court or Judge or justice ; or
 (*h*) the officer having ordinarily the custody of the records of a Court of Quarter Sessions, in the case of any conviction which has been transmitted by any justices to such Court; or
 (*i*) the deputy of such clerk or officer,
 showing such fact, or purporting to contain the substance, omitting the formal parts, of the record, indictment, conviction, acquittal, sentence, or order, or of the proceeding, inquiry, charge, or matter in question.

Provided that the time and place of such conviction, acquittal, sentence, or order, or of such suit, action, trial, proceeding, inquiry, charge, or matter are stated in such certificate, with the title of such Court or the name of the Judge or justice or official person before or by whom it was had, or passed, or made, or pending, or existing.

(2) During the sitting of any Circuit Court, the Judge's associate, or other officer there acting as clerk of assize, shall, in respect of all proceedings at such sitting, be deemed for the purposes of this section to be the officer having ordinarily the custody of the records of such Court.

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

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

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

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

(7) Every summary conviction shall be presumed not to have been appealed from until the contrary is shown.

24. Judicial notice shall be taken of the signature of—

- (*a*) any Judge of the Supreme Court ; or
 (*b*) the prothonotary or chief clerk of such Court ; or
 (*c*) the master or deputy registrar in equity ; or

Presumption as to
 summary convictions.
 46 Vic. No. 17, s. 358.
 Signatures of judges
 and officers of
 Supreme Court.
 13 Vic. No. 16, s. 3.

(*d*)

Evidence.

- (d) the registrar or chief clerk in bankruptcy; or
 (e) the registrar or deputy registrar in divorce; or
 (f) the registrar or deputy registrar of probates:

Provided such signature purports to be attached or appended to any decree, order, certificate, or other judicial or official document.

25. The words "justice of the peace" or the letters "J.P." Justices of the peace. after the signature to any magisterial act shall be evidence that the 17 Vic. No. 39, s. 12. person whose signature it purports to be is in fact a justice of the peace.

26. (1) Every entry or copy—

- (a) kept as of record or for public or official purposes in the office of the Colonial Secretary or of the Registrar-General; and Letters patent and Crown grants. 11 Vic. No. 38, preamble, and s. 1.
 (b) purporting to be an entry or copy of any letters patent or deed of grant from the Crown by which any land in New South Wales has been granted to any person for any estate or interest,

shall, if such letters patent or deed of grant be not produced in evidence, be deemed and taken to be of the same force and effect as the original letters patent or deed of grant under the seal of the Colony duly recorded and signed by the Governor.

(2) A copy of any such entry or copy, certified under the hand of the Colonial Secretary or the Registrar-General, shall have the same force and effect for the purposes of evidence to all intents and purposes whatsoever as if the original letters patent or deed of grant had been produced in evidence.

(3) For every such certified copy, a fee at the rate of one Ibid. s. 2. shilling and threepence for every folio of seventy-two words shall be charged previously to the delivery of the same.

27. Where by any Act, power to make by-laws or regulations By-laws and regulations. is conferred upon any person or body, any printed paper purporting to be such by-laws or regulations, and to be printed by the Government 46 Vic. No. 17, s. 472. Printer, shall in any criminal proceeding 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, if they appear by such paper to have been so approved of or confirmed.

28. (1) Secondary evidence of any deed registered in the office of the Registrar-General under the provisions of any Act may be given Registered deeds, memorials, and wills. 7 Vic. No. 16, ss. 13, 24, 30. by the production of—

- (a) the certified copy of such deed filed in such office, if produced by the Registrar-General or deputy registrar, or any clerk in such office appointed by the Registrar-General for that purpose; or
 (b) an office copy of such certified copy, if reasonable notice in writing has been given to the adverse party by the party producing the same.

(2)

Evidence.

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

29. (1) The probate of any will or letters of administration with the will annexed shall be evidence of the due execution of such will upon all questions concerning real estate in the same manner and to the same extent as heretofore concerning personal estate.

Probate and letters
of administration.
7 Vic. No. 16, ss. 13,
24.

54 Vic. No. 25, ss. 1,
21.

(2) The copy attached or annexed to such probate or letters of administration, purporting to be a copy of such will, shall be evidence of the contents of such will.

(3) Where any will has been registered in the office of the Registrar-General under the provisions of any Act, the certified copy of such will filed in such office, if produced by the Registrar-General or deputy-registrar, or any clerk in such office appointed by the Registrar-General for that purpose, shall be secondary evidence of the contents of such will.

(4) The probate of any will or letters of administration shall be evidence of the death and the date of the death of the testator or intestate.

(5) In this section, the expression "probate of any will or letters of administration" includes—

- (a) an exemplification of probate or of letters of administration; and
- (b) any document accepted as sufficient in lieu of such exemplification by the Supreme Court in its probate jurisdiction, or by the Probate Judge under any law for the time being; and
- (c) an order to collect granted to the curator of intestate estates.

30. (1) (a) A copy of a register, or of an entry in a register, certified under the hand of the Registrar-General or any deputy or district registrar; or

Births, marriages,
and deaths.
19 Vic. No. 30, s. 16.
19 Vic. No. 34, ss. 10,
19.
55 Vic. No. 5, s. 8.

(b) a certificate under the hand of such Registrar-General or deputy or district registrar, and sealed or stamped with the seal or stamp of his office,

relating to any birth, marriage, or death, shall be evidence—

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

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

55 Vic. No. 5, s. 9.

Evidence.

(3) A certificate under the hand of the Registrar-General that any original register of births, marriages, or deaths for any specified period and for any particular district is lost or destroyed shall be conclusive evidence of that fact. Lost and destroyed registers. 19 Vic. No. 34, s. 10.

31. On the prosecution of a person for bigamy, the first marriage shall not be proved by the evidence of the wife or husband of such marriage alone. Bigamy. 46 Vic. No. 17, s. 354.

32. (1) Evidence of the incorporation or registration of any trading society or company, whether foreign or otherwise, may be given by proof that such society or company carried on business within New South Wales or elsewhere, as the case may be, under a certain name or style. Companies, incorporation, registration, &c. 55 Vic. No. 5, s. 10.

(2) Any copy of or extract from any document kept and registered at any office for the registration of joint stock companies in England, Scotland, or Ireland, or in any of the Australasian Colonies, certified under the hand of the registrar or an assistant registrar, shall be evidence of equal validity with the original document. 52 Vic. No. 14, s. 6.

33. When any ship or vessel has been arrested under any process issuing out of the Vice-Admiralty Court, a copy proved to be a true copy of— Ship's articles and register. 11 Vic. No. 46, s. 3.

(a) the ship's articles of such ship or vessel and the signatures thereto; or of

(b) the register of such ship or vessel shall be evidence in any legal proceeding of the contents of such articles and the signatures thereto, or of such register, as the case may be.

34. When any writing has been copied by means of any machine or press which produces a fac-simile impression or copy of such writing, such impression or copy shall, upon proof to the satisfaction of the Court that the same was taken or made from the original writing by means of such machine or press as aforesaid, be evidence of such writing without any proof that such impression or copy was compared with the said original, and without any notice to produce such original. Machine copies. 22 Vic. No. 7, s. 6.

35. It shall not be necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite. Such instrument may be proved by admission or otherwise as if there had been no attesting witness thereto. Attesting witnesses. 20 Vic. No. 31, s. 14. 22 Vic. No. 7, s. 1. 46 Vic. No. 17, s. 360.

36. Where any writing or signature is in dispute, the same may be compared with any other writing or signature, proved to the satisfaction of the Court to be genuine; and such last-mentioned writing or signature, together with the evidence of witnesses respecting the same shall be evidence of the genuineness or otherwise of the writing or signature in dispute. Comparison of disputed writing. 20 Vic. No. 31, s. 15. 22 Vic. No. 7, s. 1. 46 Vic. No. 17, s. 360.

37. Depositions taken on the preliminary or other investigation of any charge of felony or misdemeanour may be read as evidence on the trial of the accused for any other offence although of a higher or different nature, if they would be admissible on his trial for the offence Depositions on one charge admissible on trial of another. 46 Vic. No. 17, s. 352.

in

Evidence.

in respect of which they were taken; and such depositions may be proved in the same manner as if the accused were on trial for that offence.

38. (1) No confession, admission, or statement shall be received in evidence against an accused person in any criminal proceeding if it has been induced—

Confessions, &c.
22 Vic. No. 7, s. 11.
46 Vic. No. 17, s. 357.

(a) by any untrue representation made to him; or

(b) by any threat or promise held out to him by the prosecutor or some person in authority.

(2) Every confession, admission, or statement made after any such representation or threat or promise shall be deemed to have been induced thereby unless the contrary be shown.

(3) Provided that no confession, admission, or statement by the accused shall be rejected by reason of his having been told by a person in authority that whatever he should say might be given in evidence for or against him.

39. No criminating statement by the accused, offered in evidence in any criminal proceeding, if the same was made voluntarily, and before any charge of felony or misdemeanour preferred against him, shall be rejected because of the statement having been on oath.

Criminating statements on oath.
Ibid. s. 361.

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

Dying declarations.
46 Vic. No. 17, s. 361.

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

41. (1) Every witness examined in any criminal proceeding as to character, whether of the accused or of any other person, may give evidence, not only as to the general repute of such person, but also as to the witness's own knowledge of his habits, disposition, and conduct.

Witnesses of character.
Ibid. s. 348.

(2) But no witness in any such proceeding shall be allowed to state that he would not believe another on his oath.

(3) Evidence to the character of the accused shall in all cases be received and dealt with as evidence on the question of his guilt.

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

Actions for breach of promise of marriage
40 Vic. No. 8, s. 1.

43. When any document is received in evidence by virtue of this Act, the Court admitting the same may, on the request of any party against whom the same has been so received, direct that the same shall be impounded and be kept in the custody of some officer of the Court or other proper person for such period and subject to such conditions as such Court thinks fit.

Impounding documents.
13 Vic. No. 16, s. 5.
16 Vic. No. 14, s. 11.

Evidence.

PART IV.

Bankers' books.

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

Entries in bankers' books.
55 Vic. No. 4, s. 3.

45. (1) A copy of an entry in a banker's book shall not be received in evidence under this part of this Act, unless it be first proved—

Proof that book is a banker's book.
Ibid. s. 4.

- (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.

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

Verification of copy.
55 Vic. No. 4, s. 5.

(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.

47. Any affidavit to be used under the provisions of this part of this Act shall be admissible in evidence if it purport to be sworn before a commissioner or other person authorised to take affidavits.

Affidavits when admissible in evidence.
Ibid. s. 6.

48. In any criminal proceeding in which it is necessary to prove—

Criminal proceedings.

- (a) the state of an account in the books of a banking corporation or company; or
- (b) that any person had not an account or any funds to his credit in such books,

46 Vic. No. 17, s. 353.

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

49. 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, &c., not compellable to produce book, &c.
55 Vic. No. 4, s. 7.

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

Evidence.

50. (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
bankers' books.
55 Vic. No. 4, s. 8.*

(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 two clear days before the same is to be obeyed, unless the Court or Judge otherwise directs.

51. (1) The costs of—

Costs.

(a) any application to a Court or Judge under or for the purposes of this part of this Act; or of

Ibid. s. 9.

(b) anything done or to be done under an order of a Court or Judge made under or for the purposes of this part of this Act, 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.

52. The Chairman of a Court of Quarter Sessions, or the Judge of a District Court may, with respect to any proceedings in any Court of Quarter Sessions or in any District Court, exercise the powers of a Judge of the Supreme Court under this part of this Act.

*District Courts, &c.
55 Vic. No. 4, s. 2.*

PART V.

Examination and cross-examination of witnesses.

53. A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may if the witness in the opinion of the Court proves adverse—

*How far a party may
discredit his own
witness.*

(a) contradict him by other evidence; or

20 Vic. No. 31, s. 11.

(b) by leave of the Court prove that he has made at other times a statement inconsistent with his present testimony;

22 Vic. No. 7, s. 1.

but before such last-mentioned proof can be given, the circumstances of the supposed statement sufficient to designate the particular occasion must be mentioned to the witness, and he must be asked whether or not he has made such statement.

54. If a witness upon cross-examination as to a former statement made by him relative to the subject-matter of the cause or proceeding, and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make it.

*Contradicting state-
ments of adverse
witness.*

20 Vic. No. 31, s. 12.

22 Vic. No. 7, s. 1.

But

Evidence.

But before such proof can be given, the circumstances of the supposed statement sufficient to designate the particular occasion must be mentioned to the witness, and he must be asked whether or not he has made such statement.

55. A witness may be cross-examined 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 always that the Court may at any time during the trial require the production of the writing or deposition for inspection by the Court, and may thereupon make such use of it for the purposes of the trial as the Court thinks fit.

Cross-examination as to previous statements in writing or deposition.

20 Vic. No. 31, s. 13.

22 Vic. No. 7, s. 1.

46 Vic. No. 17,

s. 350.

SCHEDULE.

Reference to Act.	Title or short title.	Extent of repeal.
5 Vic. No. 9 ...	An Act for the further amendment of the law and for the better advancement of justice.	Section 25.
7 Vic. No. 16 ...	An Act to consolidate and amend the laws relating to the registration of deeds and other instruments in that part of the Colony of New South Wales not comprehending the district of Port Phillip.	The unrepealed part of section 13, and sections 24 and 30.
8 Vic. No. 1 ...	An Act for improving the law of evidence...	The whole.
11 Vic. No. 38 ...	An Act to facilitate the proof of letters patent or deeds of grant from the Crown.	The whole.
11 Vic. No. 46 ...	An Act to prevent frivolous and vexatious arrests of ships and vessels or the masters or commanders thereof by process issuing out of the Vice-Admiralty Court of New South Wales.	Section 3.
13 Vic. No. 16 ...	An Act to amend the law of evidence, and to facilitate the admission as evidence of certain official and other documents, and to give protection to persons employed in the printing and publication of papers by the order or authority of the Legislative Council or a committee thereof.	Sections 1, 2, 3, 4, and part of section 5, from "Provided also" to the end of the section inclusive.

Evidence.

Reference to Act.	Title or short title.	Extent of repeal.
16 Vic. No. 14 ...	An Act to amend the law of evidence ...	Sections 1, 2, 3, 4, 5, 7, 8, 9, part of section 11 from "and whenever" to "seem meet" inclusive, and section 12.
17 Vic. No. 39 ...	The Justices Act Amendment Act of 1853...	Part of section 12, from "and the words justice of the peace" to the end of the section inclusive.
18 Vic. No. 13 ...	An Act further to amend the law of evidence	Section 1.
19 Vic. No. 30 ...	An Act to amend and consolidate the laws affecting the solemnisation of marriage.	Section 16.
19 Vic. No. 34 ...	An Act for registering births, deaths, and marriages.	Part of section 10 from "and all certificates or certified copies so sealed" to the end of the section inclusive; and section 19.
20 Vic. No. 31 ...	The Common Law Procedure Act of 1857...	Sections 11, 12, 13, 14, and 15.
22 Vic. No. 7 ...	An Act for the further amendment of the law of evidence.	The whole, except so much of section 1 as as refers to the tenth section of the Common Law Procedure Act of 1857, and except section 10.
24 Vic. No. 16 ...	Proof by Declaration Abolition Act of 1861	The whole.
36 Vic. No. 9 ...	Matrimonial Causes Act	Sections 11, 13, 14, and 37.
40 Vic. No. 8 ...	Evidence Further Amendment Act, 1876 ...	Section 1.
46 Vic. No. 3 ...	Evidence in Summary Convictions Act ...	The whole.
46 Vic. No. 17 ...	Criminal Law Amendment Act of 1883 ...	Sections 348, 350, the proviso to section 351, sections 352, 353, 354, 357, 358, so much of section 359 as relates to the custody of records during the sitting of a Circuit Court, sections 360, 361, part of section 442 from "and whenever" to the end of the section inclusive, and section 472.
51 Vic. No. 19 ...	Bankruptcy Act, 1887	Section 146.
52 Vic. No. 14 ...	Companies Act of 1888	Part of section 6 from "and any copy" to the end of the section inclusive.

Evidence.

Reference to Act.	Title or short title.	Extent of repeal.
54 Vic. No. 25 ...	Probate Act of 1890	Section 21.
55 Vic. No. 4 ...	Bankers' Books Evidence Act, 1891 ...	The whole.
55 Vic. No. 5 ...	Criminal Law and Evidence Amendment Act of 1891.	Sections 6, 8, part of section 9 down to and including the words "signed the same," and sections 10 and 11.
55 Vic. No. 30 ...	Children's Protection Act, 1892	Section 23.
56 Vic. No. 36 ...	Matrimonial Causes Procedure Amendment Act.	Section 9.

Sydney : William Applegate Gullick, Government Printer.—1898.

[1s. 3d.]

Memo. and Certificate to accompany the Evidence Bill.

This Bill consolidates the whole or portions of the following twenty-five Statutes:—

5 Vic. No. 9 ;
7 Vic. No. 16 ;
8 Vic. No. 1 ;
11 Vic. No. 38 ;
11 Vic. No. 46 ;
13 Vic. No. 16 ;
16 Vic. No. 14 ;
17 Vic. No. 39 ;
18 Vic. No. 13 ;
19 Vic. No. 30 ;
19 Vic. No. 34 ;
20 Vic. No. 31 ;
22 Vic. No. 7 ;
24 Vic. No. 16 ;
36 Vic. No. 9 ;
40 Vic. No. 8 ;
46 Vic. No. 3 ;
46 Vic. No. 17 ;
51 Vic. No. 19 ;
52 Vic. No. 14 ;
54 Vic. No. 25 ;
55 Vic. No. 4 ;
55 Vic. No. 5 ;
55 Vic. No. 30 ;
56 Vic. No. 36.

The statutory law of evidence is contained in a large number of Acts which amend, repeal, impliedly amend, impliedly repeal, vary, and overlies each other, and whose confused provisions it has been found a difficult and delicate task to reduce to a clear, simple, and orderly form, without running too great a risk of altering the law.

In consolidating not only what are properly known as the Evidence Acts, but also a number of sections relating to evidence taken from Acts dealing with other matters, it has not always been easy to decide whether a particular section should be taken or not. As a general rule the principle of selection adopted has been to take only those provisions which are of general application, and which are complete in themselves—*i. e.*, which do not require for their interpretation reference to any other Acts. Thus, when a section in any Act makes provisions as to evidence in proceedings under that Act, or as to the means of proving compliance with the requirements of that Act, it has been thought better not to deal with such a section in this Bill. In cases where there was any doubt as to the application of this principle, regard has been had to the question of practical convenience.

Clause 2. The proviso is intended to meet cases which may possibly arise under (for example) the provisions relating to Port Phillip in 11 Vic. No. 38, sec. 1, 13 Vic. No. 16, secs. 1, 3, &c. If a certificate obtained before the separation of Victoria is admissible in evidence under the present law, this clause will preserve the right.

Clause 3. This is taken principally from the Banker's Books Evidence Act. The expressions "legal proceeding" and "court" as defined here are substituted throughout the Bill for expressions such as—

"the trial of any issue joined or any matter or question or inquiry arising in any suit, action, or other proceeding,"

and

"any court of justice or any person having by law or by consent of parties authority to hear, receive, and examine evidence."

Clause 5. This is considered to present the net result of the numerous sections noted in the margin. It is unnecessary here to trace these sections in detail and to show how they have modified and affected each other. One troublesome question may, however, be mentioned. There is a doubt whether, under the terms of the 55 Vic. No. 5, sec. 6, a person charged with an indictable offence, or the husband or wife of such person, is now competent to give evidence on the preliminary hearing before a magistrate. The point has never apparently been decided by any court, but, as the safer course, the practice has been adopted of not allowing such evidence. The point is very arguable, but there seems no reason why an accused person should not have the right of at once calling all his evidence and telling his own story on oath, if he so wishes. By doing so he may, perhaps, prevent his trial by influencing the Attorney-General to file no bill. Instead of consolidating the doubt it has been resolved in favour of competency.

Clauses 6 and 7. Many difficult questions have arisen through the want of a uniform phraseology in the successive Acts dealing with the compellability of witnesses. Take, for example, the following classes of persons, all of whom were at common law incompetent—and *a fortiori* not compellable—to give evidence:—

- | | |
|---|---|
| A. A person not a party to the proceedings but interested in the result | “may and shall be <i>admitted</i> ” to give evidence.
(8 Vic. No. 1, s. 1.) |
| B. A convict undergoing sentence | “may and shall be <i>admitted</i> ” to give evidence.
(8 Vic. No. 1, s. 1.) |
| C. A party to an action for breach of promise of marriage | “shall be <i>competent</i> ” to give evidence.
(40 Vic. No. 8, s. 1.) |
| D. A person charged with an offence punishable on summary conviction. | “It shall be <i>lawful</i> ” for him to give evidence.
(46 Vic. No. 3, s. 1.) |
| E. A person charged with an indictable offence | “shall be <i>competent but not compellable</i> to give evidence.”
(55 Vic. No. 5, s. 6.) |

Are A, B, C, and D all, or is any of them, compellable to give evidence? Does “admitted” mean the same as “competent,” and does either, or do both, of them mean the same as “lawful”? It may be mentioned that C, D, and E were all in terms excepted from the provisions of 16 Vic. No. 14, making parties “competent and compellable” to give evidence. Unless some distinction is drawn between the expressions used as to A and D, then either a person can refuse to give evidence in an action in the result of which he is interested, or a person charged with a non-indictable offence can be compelled to give evidence on his trial. It has been decided, as to A and B, that “admitted” means “competent and compellable”; as to C, that “competent” means “competent and compellable”; and as to D, that “lawful” means “competent” but not “compellable.”

Clauses 8 and 10. In the Matrimonial Causes Jurisdiction, the matter is further complicated. Under the law as it stood at the time of the establishment of this jurisdiction in New South Wales, the parties to all legal proceedings were competent and compellable witnesses, except

1. Defendants in criminal proceedings,
2. Parties to proceedings instituted in consequence of adultery,
3. Parties to actions for breach of promise of marriage.

The Matrimonial Causes Act, 36 Vic. No. 9, sec. 13, repealed the exception as to proceedings in consequence of adultery. This would clearly have made the parties in all matrimonial suits competent and compellable witnesses; but in the same Act it was provided

- (a) by sec. 11—that in suits by the wife for judicial separation on grounds of *adultery*, or *cruelty*, or *desertion*, the parties should be *competent and compellable* witnesses as to such *cruelty* or *desertion*;

- (b) by sec. 14—that the parties to any proceedings under the Act should be *competent* witnesses;
- (c) by sec. 37—that the Court might order the attendance of the petitioner for examination or cross-examination.

These provisions were taken from various English Acts, passed at different times, where they stood as successive modifications of the common law rule of the incompetency of parties. By throwing them together, higgledy-piggledy, into one measure, a new difficulty was added to their interpretation. After much consideration the question was resolved in favour of compellability, which appears to accord with the law as it now is in England.

Clause 7, Proviso. See, for example, the Deserted Wives and Children's Act (22 Vic. No. 6), s. 8, and the Customs Regulation Act (42 Vic. No. 19), s. 192.

Clause 11. "or compellable" is omitted after "competent" as superfluous. As to the proviso, see the case of *Jones v. Jones*, 7. N.S.W. R. (Div.) 9. Under the English Act 16 and 17 Vic., c. 83, s. 3, husbands and wives are competent but not compellable. The question to be considered under this clause was how far, if at all, the provisions of the 22 Vic. No. 7, s. 4, that husbands and wives cannot disclose communications during marriage, have been impliedly repealed by the later Acts. It seemed clear that in matrimonial causes the husband and wife could, when they were hostile parties, disclose communications made to one another, and this appears to have been the invariable practice in the Matrimonial Causes Court. But where they are not hostile parties the prohibition would appear to be still in force, *e.g.*, the wife of a co-respondent could not be called to testify to communications made to her by him. Except in matrimonial causes no reason could be found for deciding that this statutory provision had ceased in any way to be effective.

Clause 15. The present section was originally copied from an English Act, and by an obvious inadvertence the words "or sealed and signed, or signed alone as required or impressed with a stamp" were omitted by the copyist. They have been restored in the clause, omitting only "as required." Some alterations have been made in this clause, which require careful consideration in connection with the later clauses more particularly affected by it. By its aid the phrase, so continually repeated, "purporting to be," has been almost entirely dispensed with. Some doubt was felt whether these words could safely be omitted from clauses 17, 21, and 22, but this was dispelled by a consideration of the use of the word "document" in sec. 7 of 16 Vic. No. 14.

Clause 16 (b). "Certified under the hand of" is a phrase uniformly used through the Bill in substitution for various equivalent expressions.

Clauses 17, 19, 21. The expressions "British dominions" and "out of New South Wales" are more comprehensive than those used at present, and remove some anomalies.

Clause 18. In this clause and throughout the Bill, "*prima facie*" has been omitted as superfluous.

Clause 20. This clause has been extended to the more recently created jurisdictions of the Court, and some consequential alterations have been made, and the phraseology of this and the next clause has been made more uniform.

Clause 23. In this clause several different sections, all dealing with the same subject and all differing to some extent from each other, have been blended. This could only be done by making some changes,—none however, important.

Clause 24. The provisions of the present section are in this clause extended to every jurisdiction of the Court, and the respective registrars and deputy-registrars have been taken to stand in positions corresponding to those of the prothonotary and chief-clerk.

Clause 26. (1) The wording in (b) departs a little from that of the original section, and follows that of the preamble, which seems to mean the same but is more specific and clear. No attempt has been made to decide whether "letters patent" means only letters referring to land.

(2) The words "upon proof made that such certificate has been signed" &c., have been omitted, it appearing clear that a certified copy of an entry or copy of letters patent, or a deed of grant is a certified copy of a "document" or "entry in a register or other book" in sec. 2, of 13 Vic. No. 16.

Clause 27. This has reluctantly been limited to criminal proceedings, because the Act from which it is taken was purely a Criminal Law Amendment Act. The same remark applies to clauses 41 (1) and 48.

Clause 28. (b) "or his attorney" has been omitted as superfluous.

Clause 30. The proviso to s. 19 of 19 Vic. No. 34 has been treated as being impliedly repealed by 55 Vic. No. 5, s. 8. In other respects this clause blends four sections and tries to correct their overlappings and inconsistencies.

Clause 32. (2) "Australian" has here been altered to "Australasian."

Clause 33. This has been treated as applicable to all courts.

Clauses 36 and 38. The phraseology of the Criminal Law Amendment Act has been followed. *R. v. Summerell*, 8 S.C.R., p. 214.

Clause 43. At present the power of impounding is expressly given as to documents admitted by virtue of the Acts in the margin. It is now applied to this Act. It is not thought that this is any real extension of the law; it certainly is not of the practice.

Clause 55. The phraseology of the Common Law Procedure Act has been adopted with some modifications in conformity with the section of the Criminal Law Amendment Act.

Except so far as the matters hereinbefore stated may be considered to be alterations of the law, I certify that this Bill solely consolidates, and in no way alters, adds to, or amends the law as contained in the Acts thereby consolidated.

CHAS. G. HEYDON,

Commissioner for the Consolidation of the Statute Law.

Evidence Bill.

TABLE showing how the sections of the Acts consolidated have been dealt with.

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
5 VICTORIA No. 9.		
25	Obsolete.
7 VICTORIA No. 16.		
13	28, 29	| Part of section already consolidated in Registration of Deeds Act, 1897.
24	28, 29	
30	28	
8 VICTORIA No. 1.		
1	5	| Spent.
2	.....
11 VICTORIA No. 38.		
1	26	| As to application of fees, <i>see</i> Public Officers' Fees Act, 1896.
2	26	
11 VICTORIA No. 46.		
3	33	|
13 VICTORIA No. 16.		
1	20	| Unrepealed part to be dealt with in Criminal Law Bill.
2	15	
3	24	
4	18	
5	43	
16 VICTORIA No. 14.		
1	5	| Omitted as unnecessary. To be dealt with in Common Law Pro- cedure Bill.
2	5, 6	
3	7, 9	
4	5	
5	.....
6	.....
7	17, 21	| To be dealt with in Criminal Law Bill. Unrepealed part to be dealt with in Criminal Law Bill. Date of commencement.
8	23	
9	16	
10	.....
11	43	
12	.....

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
		17 VICTORIA No. 39.
12	25	Unrepealed part to be dealt with in Justices Bill.
		18 VICTORIA No. 13.
1	5, 6	
		19 VICTORIA No. 30.
16	30	
		19 VICTORIA No. 34.
10	30	Unrepealed part to be dealt with in another Bill.
19	30	Proviso omitted, as impliedly repealed by 55 Vic. No. 5, s. 8.
		20 VICTORIA No. 31.
11	53	
12	54	
13	55	
14	35	
15	36	
		22 VICTORIA No. 7.
1	4, 35, 36, 53, 54, 55	Unrepealed part to be dealt with in Oaths Bill.
2	5, 6	
3	7	
4	11	
5	12	
6	34	
7	23	
8	23	
9	23	
10	.....	To be dealt with in Criminal Law Bill.
11	38	
12	.....	Omitted as unnecessary.
13	13	
14	13, 14	
		24 VICTORIA No. 16.
1	.....	Repealing section.
2	.....	Saving clause.
3	.....	Short title.
		36 VICTORIA No. 9.
11	5, 6	
13	5, 6	
14	5, 10	
37	8, 10	
		40 VICTORIA No. 8.
1	5, 42	
		46 VICTORIA No. 3.
1	5	
2	.....	Short title.

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
46 VICTORIA No. 17.		
348	41	Unrepealed part to be dealt with in Criminal Law Bill.
350	55	
351	5	
352	37	
353	48	
354	5, 7, 31	
357	33	
358	23	
359	23	
360	35, 36		Unrepealed part to be dealt with in Supreme Court Bill.
361	39, 40	
442	23	
472	27	
51 VICTORIA No. 19.		
146	22	
52 VICTORIA No. 14.		
6	32	Unrepealed part to be dealt with in Companies Bill.
54 VICTORIA No. 25.		
21	29	
55 VICTORIA No. 4.		
1	.....	Short title.
2	3, 52	
3	44	
4	45	
5	46	
6	47	
7	49	
8	50	
9	51	
55 VICTORIA No. 5.		
6	5, 7	Unrepealed part to be dealt with in Criminal Law Bill.
8	29	
9	30	
10	32	
11	19	
55 VICTORIA No. 30.		
23	5, 7	
56 VICTORIA No. 36.		
9	5, 10	

Legislative Council.

No. , 1898.

A BILL

To consolidate the statute law relating to Evidence.

[MR. WANT;—30 June, 1898.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

Preliminary.

1. This Act may be cited as the "Evidence Act, 1898," and is divided into Parts, as follows:—

Short title and
division.

PART I.—*Preliminary*—ss. 1-4.

PART II.—*Competency and compellability of witnesses*—ss.
5-14.

c 11—A

PART

PART III.—*Means of proof and admissibility of evidence—*
ss. 15-43.

PART IV.—*Bankers' Books—ss. 44-52.*

PART V.—*Examination and cross-examination of witnesses—*
ss. 53-55.

Repeal.
 Schedule.

2. The Acts mentioned in the Schedule to this Act are, to the extent therein expressed, hereby repealed:

Provided that this repeal shall not render inadmissible in evidence any certificate, entry, copy, extract, or document in existence at the time of the passing of this Act, which would have been admissible in evidence under any Act hereby repealed.

Interpretation.

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

55 Vic. No. 4, s. 2.

“Bank” or “banker” means—

- (a) any person, partnership, or company engaged in the ordinary business of banking by receiving deposits and issuing bills or notes payable to the bearer at sight or on demand; and also
- (b) the Savings Bank of New South Wales; and
- (c) any Government or Post Office Savings Bank, established under any law in force for the time being.

Expressions relating to “bankers’ books” include ledgers, day-books, cash-books, and other account books used in the ordinary business of the bank.

“Court” means the Court, Judge, justice, arbitrator, or person before whom a legal proceeding is held or taken.

“Justice” means justice of the peace.

“Legal proceeding” means any civil or criminal proceeding or inquiry in which evidence is or may be given, and includes an arbitration.

4. All the provisions of this Act, except where the contrary intention appears, shall apply to every legal proceeding.

PART II.

Competency and compellability of witnesses.

Competency.

8 Vic. No. 1, s. 1
 16 Vic. No. 14, ss. 1, 2, 4.
 18 Vic. No. 13, s. 1.
 22 Vic. No. 7, s. 2.
 36 Vic. No. 9, ss. 11, 13, 14.
 40 Vic. No. 8, s. 1.
 46 Vic. No. 3, s. 1.
 46 Vic. No. 17, ss. 351, 354.
 55 Vic. No. 5, s. 6.
 55 Vic. No. 30, s. 23.
 56 Vic. No. 36, s. 9.

5. No person offered as a witness shall be incompetent to give evidence by reason of incapacity from crime or interest.

Compellability.

16 Vic. No. 14, s. 2.
 18 Vic. No. 13, s. 1.
 22 Vic. No. 7, s. 2.
 36 Vic. No. 9, ss. 11, 13.

6. In any legal proceeding in which witnesses are compellable to give evidence, every person offered as a witness and competent to give evidence shall, except as hereinafter provided, be compellable to give evidence.

7.

7. No accused person in a criminal proceeding, or husband or wife of any such accused, shall be compellable to give evidence in such proceeding.

Defendants in criminal proceedings and their husbands or wives.

No accused person in a criminal proceeding charged with an indictable offence shall be liable—

16 Nic. No. 14, s. 3.
22 Vic. No. 7, s. 3.
46 Vic. No. 17, s. 354.
55 Vic. No. 5, s. 6.
55 Vic. No. 30, s. 23.

- (a) to be called as a witness on behalf of the prosecution; or
- (b) to be questioned on cross-examination as to his previous character or antecedents without the leave of the Judge:

Provided that this section shall not apply to any person who, but for this Act, would be at common law or by any Act or Imperial Act compellable to give evidence in such proceeding.

8. In any legal proceeding in the Supreme Court in its matrimonial causes jurisdiction the Court may order the attendance of the petitioner, and may examine him or her, or permit him or her to be examined or cross-examined on oath on the hearing of the petition.

Parties to matrimonial suits.
36 Vic. No. 9, s. 37.

9. Nothing in this Act shall render any person compellable to answer any question tending to criminate himself.

Questions tending to criminate.
16 Vic. No. 14, s. 3.

10. No witness in any proceeding in the Supreme Court in its matrimonial causes jurisdiction, whether a party to the suit or not, shall be liable to be asked or bound to answer any question tending to show that he has been guilty of adultery, unless he has already given evidence in the same proceeding in disproof of his alleged adultery.

Questions tending to show adultery.
36 Vic. No. 9, ss. 14, 37.
56 Vic. No. 36, s. 9.

11. No husband shall be competent to disclose any communication made to him by his wife during the marriage, and no wife shall be competent to disclose any communication made to her by her husband during the marriage:

Communications during marriage.
22 Vic. No. 7, s. 4.

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

Jones v. Jones,
7 N.S.W.R. (Div.) 9.

12. 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.
Ibid. s. 5.

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

Witnesses failing to attend trial.
Ibid. s. 13.

- (a) upon proof of such recognisance or of his having been duly served with such subpoena, call upon him to show cause why execution upon such recognisance or an attachment for disobedience to such subpoena should not be issued against him; or
- (b)

22 Vic. No. 7, s. 14.
 Procedure.
Ibid.

(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.

14. (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.

PART III.

Means of proof and admissibility of evidence.

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

13 Vic. No. 16, s. 2.

15. Whenever by this or any other Act now or hereafter 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 of any particular in any legal proceeding, a document purporting to be such certificate, document, proceeding, copy, or extract shall be admitted in evidence, 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—

(e) of the seal or stamp, where a seal or stamp is necessary; or

(f) of the signature; or

(g) of the official character of the person appearing to have signed the same,

and without any further proof thereof.

Public books and documents.

16 Vic. No. 14, s. 9.

16. (1) Whenever 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, and no Act exists which renders its contents provable

provable by means of a copy, a copy thereof or extract therefrom shall be admissible in evidence, if it is—

- (a) proved to be an examined copy or extract ; or
- (b) certified under the hand of the officer to whose custody the original is intrusted.

(2) Such officer shall furnish such certified copy or extract to any person applying at a reasonable time for the same upon payment of a reasonable sum for the same not exceeding fourpence for every folio of ninety words.

17. Evidence of any proclamation, treaty, or other act of State Acts of State. of any part of the British dominions, or of any foreign State, may 16 Vic. No. 14, s. 7. be given by the production of a copy thereof, either—

- (a) proved to be an examined copy thereof; or
- (b) sealed with the seal of such part of the British dominions or of such foreign State.

18. Evidence of—

(a) any private Act ; or
(b) any proclamation or commission issued by the Governor, Private Acts, proclamations, and commissions. 13 Vic. No. 16, s. 4. may be given 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.

19. (1) Evidence of any statute, code, or other written law Foreign law. of any part of the British dominions other than New South Wales, 55 Vic. No. 5, s. 11. or of any foreign State, may be given by the production of a printed copy in a volume of such statute, code, or law, either—

- (a) purporting to be published by the authority of the Government of such part of the said dominions, or of such State ; or
- (b) proved to the satisfaction of the Court to be commonly admitted as evidence in the Courts and judicial tribunals of such part of the said dominions, or of such State.

(2) Evidence of the unwritten or common law of any such part of the said dominions, or any such State, may be given by the production of a book of reports of cases adjudged in the Courts thereof, purporting or proved to the satisfaction of the Court to be authorised reports.

20. (1) Evidence of any judgment, decree, rule, order, or other Judgments, &c., of Supreme Court. judicial proceeding of the Supreme Court or a Judge thereof in any 13 Vic. No. 16, s. 1. jurisdiction may be given by the production of a copy thereof certified under the hand of the proper officer of such Court in such jurisdiction.

- (2) The proper officer within the meaning of this section—
- (a) in the equitable jurisdiction of such Court is the master or deputy registrar in equity ;
 - (b)

- (b) in the bankruptcy jurisdiction of such Court is the registrar or chief clerk in bankruptcy;
- (c) in the matrimonial causes jurisdiction of such Court is the registrar or deputy registrar in divorce;
- (d) in the probate jurisdiction of such Court is the registrar or deputy registrar of probates; and
- (e) in every other case is the prothonotary or chief clerk of such Court.

Judgments, &c., of
British, colonial, and
foreign Courts.
16 Vic. No. 14, s. 7.

21. Evidence of—

- (a) any judgment, decree, rule, order, or other judicial proceeding of any Court of justice out of New South Wales; or
- (b) any affidavit, pleading, or other legal document filed or deposited in any such Court,

may be given by the production of a copy thereof—

- (c) proved to be an examined copy thereof; or
- (d) sealed with the seal of such Court; or
- (e) signed by a Judge of such Court, with a statement in writing attached by him to his signature on such copy that such Court has no seal, and without any proof of his judicial character or of the truth of such statement.

Proceedings in
bankruptcy.
51 Vic. No. 19, s. 146.

- 22. (a)** Any petition or copy of a petition in bankruptcy; or
(b) any order or certificate or copy of an order or certificate made by any Court having jurisdiction in bankruptcy; or
(c) any instrument or copy of an instrument, affidavit, or document made or used in the course of any bankruptcy proceeding, or other proceedings had under the Bankruptcy Act 1887, or any Act amending the same,

shall be admissible in evidence if it is

- (d) sealed with the seal of any Court having jurisdiction in bankruptcy; or
- (e) signed by any Judge thereof; or
- (f) certified under the hand of any Registrar thereof.

23. (1) Where it is necessary to prove any of the following

Convictions,
acquittals, and other
judicial proceedings.
16 Vic. No. 14, s. 8.
22 Vic. No. 7, ss. 7,
8, 9.
46 Vic. No. 17, ss. 358,
359, 442.

- facts—
- (a) the conviction or acquittal before or by any Court or Judge or justice of any person charged with any offence; or
 - (b) that any person was sentenced to any punishment or pecuniary fine by any Court or Judge or justice; or
 - (c) that any person was ordered by any Court or Judge or justice to pay any sum of money; or
 - (d) the pendency or existence at any time before any Court, Judge, justice, or other official person, of any suit, action, trial, proceeding, inquiry, charge, or matter, civil or criminal,
- evidence of such fact may be given by the production of a certificate under the hand of—

- (e) any such Judge or justice or official person; or
- (f)

- (f) the clerk of such Court ; or
 - (g) the officer having ordinarily the custody of the records, or documents, or proceedings, or minutes of such Court or Judge or justice ; or
 - (h) the officer having ordinarily the custody of the records of a Court of Quarter Sessions, in the case of any conviction which has been transmitted by any justices to such Court; or
 - (i) the deputy of such clerk or officer,
- showing such fact, or purporting to contain the substance, omitting the formal parts, of the record, indictment, conviction, acquittal, sentence, or order, or of the proceeding, inquiry, charge, or matter in question.

Provided that the time and place of such conviction, acquittal, sentence, or order, or of such suit, action, trial, proceeding, inquiry, charge, or matter are stated in such certificate, with the title of such Court or the name of the Judge or justice or official person before or by whom it was had, or passed, or made, or pending, or existing.

(2) During the sitting of any Circuit Court, the Judge's associate, or other officer there acting as clerk of assize, shall, in respect of all proceedings at such sitting, be deemed for the purposes of this section to be the officer having ordinarily the custody of the records of such Court.

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

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

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

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

(7) Every summary conviction shall be presumed not to have been appealed from until the contrary is shown.

24. Judicial notice shall be taken of the signature of—

- (a) any Judge of the Supreme Court ; or
- (b) the prothonotary or chief clerk of such Court ; or
- (c) the master or deputy registrar in equity ; or

Presumption as to summary convictions. 46 Vic. No. 17, s. 358.

Signatures of judges and officers of Supreme Court.

13 Vic. No. 16, s. 3.

(d)

(d) the registrar or chief clerk in bankruptcy; or

(e) the registrar or deputy registrar in divorce; or

(f) the registrar or deputy registrar of probates:

Provided such signature purports to be attached or appended to any decree, order, certificate, or other judicial or official document.

Justices of the peace.

17 Vic. No. 39, s. 12.

25. The words "justice of the peace" or the letters "J.P." after the signature to any magisterial act shall be evidence that the person whose signature it purports to be is in fact a justice of the peace.

Letters patent and Crown grants.

11 Vic. No. 38, preamble, and s. 1.

26. (1) Every entry or copy—

(a) kept as of record or for public or official purposes in the office of the Colonial Secretary or of the Registrar-General; and

(b) purporting to be an entry or copy of any letters patent or deed of grant from the Crown by which any land in New South Wales has been granted to any person for any estate or interest,

shall, if such letters patent or deed of grant be not produced in evidence, be deemed and taken to be of the same force and effect as the original letters patent or deed of grant under the seal of the Colony duly recorded and signed by the Governor.

(2) A copy of any such entry or copy, certified under the hand of the Colonial Secretary or the Registrar-General, shall have the same force and effect for the purposes of evidence to all intents and purposes whatsoever as if the original letters patent or deed of grant had been produced in evidence.

Ibid. s. 2.

(3) For every such certified copy, a fee at the rate of one shilling and threepence for every folio of seventy-two words shall be charged previously to the delivery of the same.

By-laws and regulations.

46 Vic. No. 17, s. 472.

27. Where by any Act, power to make by-laws or regulations is conferred upon any person or body, any printed paper purporting to be such by-laws or regulations, and to be printed by the Government Printer, shall in any criminal proceeding 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, if they appear by such paper to have been so approved of or confirmed.

Registered deeds, memorials, and wills.

7 Vic. No. 16, ss. 13, 24, 30.

28. (1) Secondary evidence of any deed registered in the office of the Registrar-General under the provisions of any Act may be given by the production of—

(a) the certified copy of such deed filed in such office, if produced by the Registrar-General or deputy registrar, or any clerk in such office appointed by the Registrar-General for that purpose; or

(b) an office copy of such certified copy, if reasonable notice in writing has been given to the adverse party by the party producing the same.

(2)

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

29. (1) The probate of any will or letters of administration with the will annexed shall be evidence of the due execution of such will upon all questions concerning real estate in the same manner and to the same extent as heretofore concerning personal estate.

Probate and letters of administration.
7 Vic. No. 16, ss. 13, 24.
54 Vic. No. 25, ss. 1, 21.

(2) The copy attached or annexed to such probate or letters of administration, purporting to be a copy of such will, shall be evidence of the contents of such will.

(3) Where any will has been registered in the office of the Registrar-General under the provisions of any Act, the certified copy of such will filed in such office, if produced by the Registrar-General or deputy-registrar, or any clerk in such office appointed by the Registrar-General for that purpose, shall be secondary evidence of the contents of such will.

(4) The probate of any will or letters of administration shall be evidence of the death and the date of the death of the testator or intestate.

(5) In this section, the expression "probate of any will or letters of administration" includes—

- (a) an exemplification of probate or of letters of administration; and
- (b) any document accepted as sufficient in lieu of such exemplification by the Supreme Court in its probate jurisdiction, or by the Probate Judge under any law for the time being; and
- (c) an order to collect granted to the curator of intestate estates.

30. (1) (a) A copy of a register, or of an entry in a register, certified under the hand of the Registrar-General or any deputy or district registrar; or

Births, marriages, and deaths.
19 Vic. No. 30, s. 16.
19 Vic. No. 34, ss. 10, 19.
55 Vic. No. 5, s. 8.

(b) a certificate under the hand of such Registrar-General or deputy or district registrar, and sealed or stamped with the seal or stamp of his office,

relating to any birth, marriage, or death, shall be evidence—

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

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

55 Vic. No. 5, s. 9.

Lost and destroyed registers.
19 Vic. No. 34, s. 10.

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

Bigamy.
46 Vic. No. 17, s. 354.

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

Companies, incorporation, registration, &c.
55 Vic. No. 5, s. 10.

32. (1) Evidence of the incorporation or registration of any trading society or company, whether foreign or otherwise, may be given by proof that such society or company carried on business within New South Wales or elsewhere, as the case may be, under a certain name or style.

52 Vic. No. 14, s. 6.

(2) Any copy of or extract from any document kept and registered at any office for the registration of joint stock companies in England, Scotland, or Ireland, or in any of the Australasian Colonies, certified under the hand of the registrar or an assistant registrar, shall be evidence of equal validity with the original document.

Ship's articles and register.
11 Vic. No. 46, s. 3.

33. When any ship or vessel has been arrested under any process issuing out of the Vice-Admiralty Court, a copy proved to be a true copy of—

(a) the ship's articles of such ship or vessel and the signatures thereto; or of

(b) the register of such ship or vessel

shall be evidence in any legal proceeding of the contents of such articles and the signatures thereto, or of such register, as the case may be.

Machine copies.
22 Vic. No. 7, s. 6.

34. When any writing has been copied by means of any machine or press which produces a fac-simile impression or copy of such writing, such impression or copy shall, upon proof to the satisfaction of the Court that the same was taken or made from the original writing by means of such machine or press as aforesaid, be evidence of such writing without any proof that such impression or copy was compared with the said original, and without any notice to produce such original.

Attesting witnesses.
20 Vic. No. 31, s. 14.
22 Vic. No. 7, s. 1.
46 Vic. No. 17, s. 360.

35. It shall not be necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite. Such instrument may be proved by admission or otherwise as if there had been no attesting witness thereto.

Comparison of disputed writing.
20 Vic. No. 31, s. 15.
22 Vic. No. 7, s. 1.
46 Vic. No. 17, s. 360.

36. Where any writing or signature is in dispute, the same may be compared with any other writing or signature, proved to the satisfaction of the Court to be genuine; and such last-mentioned writing or signature, together with the evidence of witnesses respecting the same shall be evidence of the genuineness or otherwise of the writing or signature in dispute.

Depositions on one charge admissible on trial of another.
46 Vic. No. 17, s. 352.

37. Depositions taken on the preliminary or other investigation of any charge of felony or misdemeanour may be read as evidence on the trial of the accused for any other offence although of a higher or different nature, if they would be admissible on his trial for the offence in respect of which they were taken; and such depositions may be proved in the same manner as if the accused were on trial for that offence.

38. (1) No confession, admission, or statement shall be received in evidence against an accused person in any criminal proceeding if it has been induced—

- (a) by any untrue representation made to him ; or
 (b) by any threat or promise held out to him by the prosecutor or some person in authority.

(2) Every confession, admission, or statement made after any such representation or threat or promise shall be deemed to have been induced thereby unless the contrary be shown.

(3) Provided that no confession, admission, or statement by the accused shall be rejected by reason of his having been told by a person in authority that whatever he should say might be given in evidence for or against him.

39. No criminating statement by the accused, offered in evidence in any criminal proceeding, if the same was made voluntarily, and before any charge of felony or misdemeanour preferred against him, shall be rejected because of the statement having been on oath.

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

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

41. (1) Every witness examined in any criminal proceeding as to character, whether of the accused or of any other person, may give evidence, not only as to the general repute of such person, but also as to the witness's own knowledge of his habits, disposition, and conduct.

(2) But no witness in any such proceeding shall be allowed to state that he would not believe another on his oath.

(3) Evidence to the character of the accused shall in all cases be received and dealt with as evidence on the question of his guilt.

42. 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.

43. When any document is received in evidence by virtue of this Act, the Court admitting the same may, on the request of any party against whom the same has been so received, direct that the same shall be impounded and be kept in the custody of some officer of the Court or other proper person for such period and subject to such conditions as such Court thinks fit.

Confessions, &c.
22 Vic. No. 7, s. 11.
46 Vic. No. 17, s. 357.

Criminating statements on oath.
Ibid. s. 361.

Dying declarations.
46 Vic. No. 17, s. 361.

Witnesses of character.
Ibid. s. 348.

Actions for breach of promise of marriage
40 Vic. No. 8, s. 1.

Impounding documents.
13 Vic. No. 16, s. 5.
16 Vic. No. 14, s. 11.

PART IV.

Bankers' books.

Entries in bankers' books.

55 Vic. No. 4, s. 3.

Proof that book is a banker's book.

Ibid. s. 4.

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

45. (1) A copy of an entry in a banker's book shall not be received in evidence under this part of this Act, unless it be 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.

55 Vic. No. 4, s. 5.

46. (1) A copy of an entry in a banker's book shall not be received in evidence under this part of this Act unless it be 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.

Affidavits when admissible in evidence.

Ibid. s. 6.

Criminal proceedings.

46 Vic. No. 17, s. 353.

47. Any affidavit to be used under the provisions of this part of this Act shall be admissible in evidence if it purport to be sworn before a commissioner or other person authorised to take affidavits.

48. In any criminal proceeding in which it is necessary to prove—

- (a) the state of an account in the books of a banking corporation or company; 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 by any officer or clerk of such corporation or company who has examined such books.

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

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

Cases in which banker, &c., not compellable to produce book, &c.

55 Vic. No. 4, s. 7.

50. (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
bankers' books.
55 Vic. No. 4, s. 8.

(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 two clear days before the same is to be obeyed, unless the Court or Judge otherwise directs.

51. (1) The costs of—

Costs.

(a) any application to a Court or Judge under or for the purposes of this part of this Act; or of

Ibid. s. 9.

(b) anything done or to be done under an order of a Court or Judge made under or for the purposes of this part of this Act, 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.

52. The Chairman of a Court of Quarter Sessions, or the Judge of a District Court may, with respect to any proceedings in any Court of Quarter Sessions or in any District Court, exercise the powers of a Judge of the Supreme Court under this part of this Act.

District Courts, &c.
55 Vic. No. 4, s. 2

PART V.

Examination and cross-examination of witnesses.

53. A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may if the witness in the opinion of the Court proves adverse—

How far a party may
discredit his own
witness.

(a) contradict him by other evidence; or

20 Vic. No. 31, s. 11.

(b) by leave of the Court prove that he has made at other times a statement inconsistent with his present testimony;

22 Vic. No. 7, s. 1.

but before such last-mentioned proof can be given, the circumstances of the supposed statement sufficient to designate the particular occasion must be mentioned to the witness, and he must be asked whether or not he has made such statement.

54. If a witness upon cross-examination as to a former statement made by him relative to the subject-matter of the cause or proceeding, and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make it.

Contradicting state-
ments of adverse
witness.

20 Vic. No. 31, s. 12.

22 Vic. No. 7, s. 1.

But

But before such proof can be given, the circumstances of the supposed statement sufficient to designate the particular occasion must be mentioned to the witness, and he must be asked whether or not he has made such statement.

Cross-examination as to previous statements in writing or deposition.

20 Vic. No. 31, s. 13.

22 Vic. No. 7, s. 1.

46 Vic. No. 17,

s. 350.

55. A witness may be cross-examined 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 always that the Court may at any time during the trial require the production of the writing or deposition for inspection by the Court, and may thereupon make such use of it for the purposes of the trial as the Court thinks fit.

SCHEDULE.

Reference to Act.	Title or short title.	Extent of repeal.
5 Vic. No. 9 ...	An Act for the further amendment of the law and for the better advancement of justice.	Section 25.
7 Vic. No. 16 ...	An Act to consolidate and amend the laws relating to the registration of deeds and other instruments in that part of the Colony of New South Wales not comprehending the district of Port Phillip.	The unrepealed part of section 13, and sections 24 and 30.
8 Vic. No. 1 ...	An Act for improving the law of evidence...	The whole.
11 Vic. No. 38 ...	An Act to facilitate the proof of letters patent or deeds of grant from the Crown.	The whole.
11 Vic. No. 46 ...	An Act to prevent frivolous and vexatious arrests of ships and vessels or the masters or commanders thereof by process issuing out of the Vice-Admiralty Court of New South Wales.	Section 3.
13 Vic. No. 16 ...	An Act to amend the law of evidence, and to facilitate the admission as evidence of certain official and other documents, and to give protection to persons employed in the printing and publication of papers by the order or authority of the Legislative Council or a committee thereof.	Sections 1, 2, 3, 4, and part of section 5, from "Provided also" to the end of the section inclusive.

Reference to Act.	Title or short title.	Extent of repeal.
16 Vic. No. 14 ...	An Act to amend the law of evidence ...	Sections 1, 2, 3, 4, 5, 7, 8, 9, part of section 11 from "and whenever" to "seem meet" inclusive, and section 12.
17 Vic. No. 39 ...	The Justices Act Amendment Act of 1853...	Part of section 12, from "and the words justice of the peace" to the end of the section inclusive.
18 Vic. No. 13 ...	An Act further to amend the law of evidence	Section 1.
19 Vic. No. 30 ...	An Act to amend and consolidate the laws affecting the solemnisation of marriage.	Section 16.
19 Vic. No. 34 ...	An Act for registering births, deaths, and marriages.	Part of section 10 from "and all certificates or certified copies so sealed" to the end of the section inclusive; and section 19.
20 Vic. No. 31 ...	The Common Law Procedure Act of 1857...	Sections 11, 12, 13, 14, and 15.
22 Vic. No. 7 ...	An Act for the further amendment of the law of evidence.	The whole, except so much of section 1 as as refers to the tenth section of the Common Law Procedure Act of 1857, and except section 10.
24 Vic. No. 16 ...	Proof by Declaration Abolition Act of 1861	The whole.
36 Vic. No. 9 ...	Matrimonial Causes Act	Sections 11, 13, 14, and 37.
40 Vic. No. 8 ...	Evidence Further Amendment Act, 1876 ...	Section 1.
46 Vic. No. 3 ...	Evidence in Summary Convictions Act ...	The whole.
46 Vic. No. 17 ...	Criminal Law Amendment Act of 1883 ...	Sections 348, 350, the proviso to section 351, sections 352, 353, 354, 357, 358, so much of section 359 as relates to the custody of records during the sitting of a Circuit Court, sections 360, 361, part of section 442 from "and whenever" to the end of the section inclusive, and section 472.
51 Vic. No. 19 ...	Bankruptcy Act, 1887	Section 146.
52 Vic. No. 14 ...	Companies Act of 1888	Part of section 6 from "and any copy" to the end of the section inclusive. }

Evidence.

Reference to Act.	Title or short title.	Extent of repeal.
54 Vic. No. 25 ...	Probate Act of 1890 ...	Section 21.
55 Vic. No. 4 ...	Bankers' Books Evidence Act, 1891 ...	The whole.
55 Vic. No. 5 ...	Criminal Law and Evidence Amendment Act of 1891.	Sections 6, 8, part of section 9 down to and including the words "signed the same," and sections 10 and 11.
55 Vic. No. 30 ...	Children's Protection Act, 1892 ...	Section 23.
56 Vic. No. 36 ...	Matrimonial Causes Procedure Amendment Act.	Section 9.

Sydney : William Applegate Gullick, Government Printer.—1893.

[1s. 3d.]