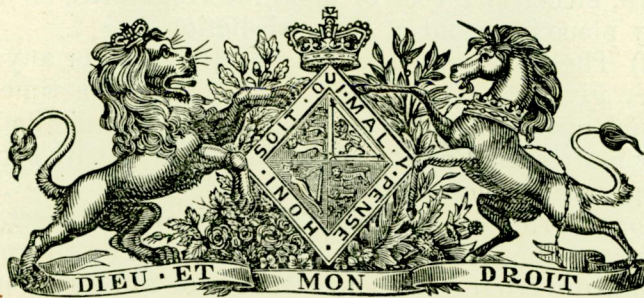


I Certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Legislative Council Chamber,
Sydney, 6th September, 1900.* }

JOHN J. CALVERT,
Clerk of the Parliaments.

New South Wales.



ANNO SEXAGESIMO QUARTO

VICTORIÆ REGINÆ.

Act No. 34, 1900.

An Act to consolidate enactments relating to the examination of witnesses and production of documents in certain cases. [Assented to, 19th October, 1900.]

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:—

1. This Act may be cited as the "Witnesses Examination Act, Short title. 1900."
2. The Acts mentioned in the Schedule to this Act are, to the Repeal. extent therein expressed, hereby repealed. Schedule.
3. In this Act, unless the context or subject-matter otherwise Interpretation. indicates or requires,—
"the Court" means the Supreme Court;
"Judge" means a Judge of the Court.

Witnesses Examination.

Examinations on commission, &c., in civil proceedings.

1 Wm. IV, c. 22, s. 4.
4 Vic. No. 22, s. 14.
5 Vic. No. 9, s. 15.
18 Vic. No. 13, s. 2.
36 Vic. No. 9, s. 12.
44 Vic. No. 18, s. 44.
54 Vic. No. 25, s. 98.

4. (1) In any action, suit, or other proceeding in the Court in any jurisdiction, except a criminal proceeding, at any stage thereof, and upon the application of any party thereto, the Court or a Judge may by rule or order direct—

- (a) that any witness within the jurisdiction of the Court be examined on oath, either *vivá voce* or upon interrogatories or otherwise, before an officer of the Court or other person to be named in the rule or order; or
- (b) that a commission do issue for the examination of witnesses on oath, either *vivá voce* or upon interrogatories or otherwise, at any place in or out of the jurisdiction.

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

Parties.

18 Vic. No. 13, s. 2.

5. No such rule or order shall be made with respect to a witness who is a party to the suit, action, or proceeding, on the ground of his intended departure from New South Wales or to remote parts within the same, unless it be shown to the satisfaction of the Court or Judge that such departure is in fact urgently required by unavoidable circumstances or some unexpected emergency, and that the examination is not sought in order to avoid cross-examination before the Court or a jury.

The like in criminal proceedings.

4 Vic. No. 22, s. 14.

6. In any criminal proceeding, if—

- (a) any witness is out of the jurisdiction of the Court or above two hundred miles from the intended place of trial; or
- (b) any witness is from age or infirmity unable to attend the trial; or
- (c) the testimony of any witness is in danger of being lost, by reason of his age or infirmity, or of his being about to depart out of the jurisdiction or to some place beyond the said distance of two hundred miles,

the Court or a Judge may, on the application or with the consent of the Attorney-General or the Crown prosecutor as well as the prisoner, but not otherwise, make a like rule or order in respect of such witness.

Commanding attendance of witnesses or production of documents.

1 Wm. IV, c. 22, s. 5.

7. (1) When any rule or order is made under the fourth section of this Act—

- (a) for the examination of any witness; or
- (b) for the issue of a commission for an examination of witnesses within the jurisdiction of the Court,

the Court or Judge may by such rule or order, or by any subsequent rule or order, command the attendance of any person named therein for the purpose of being examined, or the production of any writing or other

Witnesses Examination.

other document mentioned therein, and may thereby direct the attendance of such person to be at his own place of abode, or elsewhere, if necessary or convenient so to do.

(2) The wilful disobedience of any such rule or order shall be deemed a contempt of Court, and proceedings may be thereupon had by attachment, if—

Penalty for
disobedience.

- (a) together with or after the service of the rule or order there has been served an appointment of the time and place of attendance in obedience thereto, signed by the person or one or more of the persons appointed to take the examination, and if—
- (b) in the case of a Judge's order the same is made a rule of Court before or at the time of the application for attachment.

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

Payment of expenses,
&c.

(4) No person shall be compelled to produce under any such rule or order any writing or document that he would not be compellable to produce at the hearing.

Proviso as to
documents.

8. (1) Any sheriff, gaoler, or other officer having the custody of any prisoner may take such prisoner for examination under this Act by virtue of a writ of *habeas corpus* to be issued for that purpose.

Examination of
prisoners.

1 Wm. IV, c. 22, s. 6.

(2) Such writ shall be issued by the Court or a Judge in such circumstances and in such manner as the Court or a Judge may now by law issue the writ commonly called a writ of *habeas corpus ad testificandum*.

9. (1) Any person authorised by any rule, order, or commission under this Act to take the examination of any witness, shall take such examination upon the oath of such witness, to be administered by the person so authorised or by a Judge.

Examinations to be
on oath.

Ibid. s. 7.

(2) Any witness who upon such oath wilfully and corruptly gives any false evidence shall be deemed to be guilty of perjury.

10. (1) Any person authorised by any rule, order, or commission under the fourth section of this Act to take an examination within the jurisdiction may, and if need be shall, make a special report to the Court touching such examination and the conduct or absence of any witness or other person thereon or relating thereto.

Report of examiner
as to conduct of
witnesses, &c.

Ibid. s. 8.

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

11. (1) The examination or deposition of any witness taken under this Act may be read in evidence at the hearing, saving all just exceptions.

Reading examina-
tions and depositions
in evidence.

Ibid. s. 10.

4 Vic. No. 22, s. 14.

5 Vic. No. 9, s. 16.

44 Vic. No. 18, s. 44.

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

(3)

Witnesses Examination.

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

Costs.

1 Wm. IV, c. 22, s. 9.

12. The costs of every rule, order, or commission under this Act and of the proceedings thereupon shall, except in a criminal proceeding, be costs in the cause unless otherwise directed by the Court, or by the Judge making such order, or by the Judge before whom the cause is tried.

SCHEDULE.

Reference to Act.	Title or short title.	Extent of repeal.
4 Vic. No. 22 ...	An Act to provide for the more effectual administration of justice in New South Wales and its Dependencies.	Section 14.
5 Vic. No. 9 ...	An Act for the further amendment of the law and for the better advancement of justice.	Sections 15, 16.
18 Vic. No. 13 ...	An Act further to amend the law of evidence	The unrepealed sections.
36 Vic. No. 9 ...	Matrimonial Causes Act	Section 12.
44 Vic. No. 18 ..	Equity Act of 1880	Section 44.
54 Vic. No. 25 ..	Probate Act of 1890	Section 98.

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

*Government House,
Sydney, 19th October, 1900.*

BEAUCHAMP,
Governor.

Memo. and Certificate to accompany the Witnesses Examination Bill.

THIS Bill consolidates parts of the following statutes:—

4 Vic. No. 22 ;
5 Vic. No. 9 ;
18 Vic. No. 13 ;
36 Vic. No. 9 ;
44 Vic. No. 18 ;
54 Vic. No. 25.

Clause 4. The various sections which give powers to the different jurisdictions of the Court to direct evidence to be taken on commission are not all worded alike. Many of the differences are not very material, and it has been necessary to disregard some of them in order to blend the sections and secure uniformity. Thus, this clause combines seven sections, and almost every expression in it represents a compromise. For example, the words "the Court or a Judge" may possibly extend the present powers in the equity and divorce jurisdictions; and the phrase "action, suit, or other proceeding" is put for a variety of other expressions, some of which may not go so far, as, for example, "in every action," "in all cases at law or in equity and in any ecclesiastical proceeding," "every action and suit," "in every case," "in all cases in which a person not a party to the suit, action, or other proceeding," &c.

Clause 5. As the Court can always make the granting of an order of this kind conditional, when the witness to be examined is a party to the suit, some unnecessary words in the original section have been omitted.

Clause 6. The powers given in 4 Vic. No. 22, sec. 14, do not seem to have been extended as to criminal cases by the other Acts, and are here therefore reproduced. It would seem that the original Act referred only to the Supreme Court, and not to Courts of Quarter Sessions.

Clause 9. The reference to affirmation has been omitted as no longer necessary. See Interpretation Act, sec. 21, and Hume-Williams on Evidence on Commission, p. 121.

Clause 10. It is a pity that this valuable provision cannot be extended to examinations in criminal matters, but such an amendment has been thought to be beyond the authority of the Commission.

Clause 11 (1). "Saving all just exceptions." This appears, in somewhat different words, in 18 Vic. No. 13, sec. 2.

Clause 12. As in other parts of the Bill this provision has been made general, criminal proceedings only being excepted.

I certify that, save as aforesaid, this Bill solely consolidates and in no way alters, adds to, or amends the law as contained in the enactments therein consolidated.

CHAS. G. HEYDON,
Commissioner for the Consolidation of the Statute Law.

Witnesses Examination Bill.

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

Sections of Repealed Acts.	Section of Consolidated Act.	Remarks.	
1 WILLIAM IV, c. 22. (See note to 5 Vic. No. 9, s. 15, <i>infra</i> .)			
1-3	Omitted as not being within the scope of 5 Vic. No. 9, s. 15.	
4	4		
5	7		
6	8		
7	9		
8	10		
9	12		
10	11		
11		Omitted. See note to ss. 1-3.
4 VICTORIA No. 22.			
14	4, 6, 11		
5 VICTORIA No. 9.			
15	4	This section adopts the procedure under 1 Wm. IV, c. 22, <i>supra</i> .	
16	11		
18 VICTORIA No. 13.			
2	4		
3	5		
36 VICTORIA No. 9.			
12	4		
44 VICTORIA No. 18.			
44	4, 11		
54 VICTORIA No. 25.			
98	4		

Comparative Table showing how the provisions of the sections consolidated in

Section of Act.	4 Vic. No. 22, s. 14.	1 Wm. IV, c. 22, s. 4, adopted by 5 Vic. No. 9, s. 15.	18 Vic. No. 13, s. 2.
In what proceedings examination of witnesses may be directed.	In all cases whether at law or in equity or in any ecclesiastical proceeding, and in any criminal case.	In every action and suit in the Supreme Court of New South Wales.	In all cases in which any person not being a party to the suit, action, or proceeding may be examined as a witness de bene esse or under a commission.
At what stage of the proceedings.	At any stage of the case.		
Upon whose application.	In criminal cases on the application or with the consent of both the Crown and the prisoner.	Upon the application of any of the parties.	
In whom the power to make the order is vested.	Each of the Judges of the Supreme Court of New South Wales resident at Sydney.	Each of the Judges of the Supreme Court of New South Wales resident at Sydney.	The Court or a Judge.
Persons who may be ordered to be examined, and circumstances under which persons may be ordered to be examined.	Any witness who is (a) beyond the seas, or (b) at a greater distance than 200 miles from the intended place of trial, or (c) from age or infirmity unable to attend the trial, or, where from any of such causes, or from his being about to depart beyond sea or to some place beyond the said distance of 200 miles, the testimony of such witness is in danger of being lost.	Any witness whether within or without the jurisdiction of the Court where the action is depending.	Any party to the suit, action, or proceeding.
How the examination is to be made.	Either viva voce or upon interrogatories as the Judge shall think fit to direct.	On oath upon interrogatories or otherwise.	
Before whom the examination is to be held.	Such person or such commissioner or other officer of the Court as the Judge shall for that purpose appoint.	The master or prothonotary of the Supreme Court or other person or persons to be named in the order (this applies only to the examination of witnesses within the jurisdiction of the Court).	

section 4 of the "Witnesses Examination Act, 1899" have been dealt with.

36 Vic. No. 9, s. 12.	44 Vic. No. 18, s. 44.	54 Vic. No. 25, s. 98.	Consolidated Act, ss. 4, 9, and 11 (1).
	In every case where the Court (<i>i.e.</i> , the Chief Judge in Equity. See 44 Vic. No. 18, s. 3) shall deem it expedient to do so.		In any action, suit, or proceeding in the Court (<i>i.e.</i> , in the Supreme Court. See s. 3 of the Consolidated Act) in any jurisdiction, except a criminal proceeding. (As to criminal proceedings see s. 6 of the Consolidated Act.)
	At any stage of the case.		At any stage thereof.
			Upon the application of any party.
The Court (<i>i.e.</i> , the Chief Justice or the Judge appointed or nominated to sit alone and adjudicate under the Act 36 Vic. No. 9. See s. 49 of that Act.)	The Court (<i>i.e.</i> , the Chief Judge in Equity or the Judge acting for him. See ss. 1-3 of 44 Vic. No. 18.)	The Court (<i>i.e.</i> , the Probate Judge or any Judge acting for him. See s. 4 of 54 Vic. No. 25.)	The Court or a Judge (<i>i.e.</i> , the Supreme Court or a Judge of the Supreme Court. See s. 3 of the Consolidated Act).
Any witness out of the jurisdiction of the Court, or whereby reason of his illness or from other circumstances the Court shall not think fit to enforce the attendance of witnesses in open Court.	Any witness.	Any witness in a contested matter who is out of the jurisdiction of the Court, or where by reason of his illness or otherwise the Court shall not think fit to enforce the attendance of the witness in open Court.	Any witness whether within or without the jurisdiction of the Court.
Upon interrogatories or otherwise.	Either orally or upon interrogatories as the Court shall think fit.	On oath upon interrogatories or otherwise.	On oath, either <i>viva voce</i> or upon interrogatories or otherwise.
Before any officer of the Court or other person to be named in the order.	Before such person or officer of the Court as it shall for that purpose appoint.	Before any officer of the Court or other person to be named in the order (this applies only to witnesses within the jurisdiction of the Court).	Before an officer of the Court or other person to be named in the rule or order (this applies only to witnesses within the jurisdiction of the Court).

Comparative Table showing how the provisions of the sections consolidated in

Section of Act.	4 Vic. No. 22, s. 14.	1 Wm. IV, c. 22, s. 4, adopted by 5 Vic. No. 9, s. 15.	18 Vic. No. 13, s. 2.
How the examination is directed or authorised; whether by order or commission.	By order or commission.	By order if the witness is within the jurisdiction of the Court, by commission if the witness is out of the jurisdiction of the Court.	
Directions which may be given, and terms which may be imposed.		All such directions touching the time, place, and manner of the examination, whether within the jurisdiction of the Court wherein the action shall be depending or without, and all other matters and circumstances connected with such examination as may appear reasonable and just.	Such terms in all respects as the Court or Judge may think reasonable.
How the results of such examination may be used.	Every such examination being duly taken and returned shall be allowed and read at the trial or hearing accordingly.		Every examination thereupon taken, if the same would have been admissible in the case of an ordinary witness, may be read in evidence at the trial or hearing accordingly.
Powers conferred on persons before whom examinations are to be held.			
Powers conferred upon Courts in respect of the examination of witnesses.			

section 4 of the "Witnesses Examination Act, 1899" have been dealt with—*continued.*

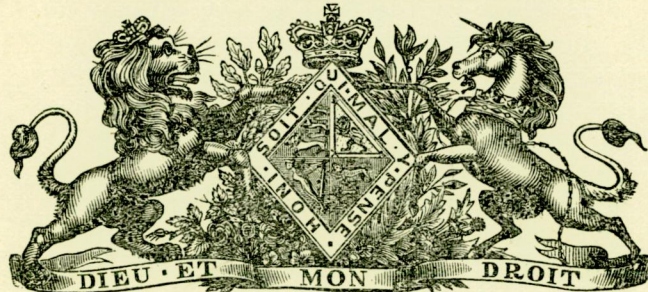
36 Vic. No. 9, s. 12.	44 Vic. No. 18, s. 44.	54 Vic. No. 25, s. 98.	Consolidated Act, ss. 4, 9, and 11 (1).
By commission.	By commission or order, but a commission need not be sued out for the examination of any witness within the jurisdiction of the Court.	By commission, or if the witness is within the jurisdiction of the Court by order.	By rule or order if the witness is within the jurisdiction of the Court; by commission whether the witness is in or out of the jurisdiction of the Court.
			All such directions touching the time, place, and manner of the examination as well within the jurisdiction as without, and all other matters and circumstances connected with the examination as appear reasonable and just.
	Every such examination being duly taken and returned may be read in evidence at the trial or hearing accordingly.		The examination or deposition of any witness taken under this Act may be read in evidence at the hearing, saving all just exceptions. (See s. 11 (1) of the Consolidated Act.)
	Every officer or person appointed to examine any witnesses by order of the Court shall have the power of administering oaths and also such other powers as by the order appointing him may be directed.		Any person authorised by any rule, order, or commission under this Act to take the examination of any witness shall take such examination upon the oath of such witness, to be administered by the persons so authorised or by a Judge. (See s. 9 of the Consolidated Act, which consolidates s. 7 of 1 Wm. IV, c. 22.)
All the powers enabling the Court to issue commissions and give orders for the examination of witnesses in actions depending in such Court and to enforce such examination, and all the provisions of any Acts for enforcing or otherwise applicable to such examination, and the witnesses examined shall extend and be applicable to the examination of witnesses under commissions and orders of the Court and to the witnesses examined for all purposes of this Act (<i>i.e.</i> , 36 Vic. No. 9) in like manner as if such Court were trying an action at law pending in such Court.		All the powers now vested in the Supreme Court in its equitable jurisdiction with reference to the issuing of commissions and ordering the examination of witnesses and generally in connection therewith shall extend to and be applicable to the Court in its probate jurisdiction.	NOTE.—The effect of these provisions is preserved by the consolidation in this Act of the sections in which such provisions are contained.

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, 30th August, 1900. }*

JOHN J. CALVERT,
Clerk of the Parliaments.

New South Wales.



ANNO SEXAGESIMO QUARTO

VICTORIÆ REGINÆ.

Act No. , 1900.

An Act to consolidate enactments relating to the examination of witnesses and production of documents in certain cases.

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:—

1. This Act may be cited as the "Witnesses Examination Act, Short title. 1900."

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

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

"the Court" means the Supreme Court;

"Judge" means a Judge of the Court.

Witnesses Examination.

4. (1) In any action, suit, or other proceeding in the Court in any jurisdiction, except a criminal proceeding, at any stage thereof, and upon the application of any party thereto, the Court or a Judge may by rule or order direct—

- (a) that any witness within the jurisdiction of the Court be examined on oath, either *vivá voce* or upon interrogatories or otherwise, before an officer of the Court or other person to be named in the rule or order; or
- (b) that a commission do issue for the examination of witnesses on oath, either *vivá voce* or upon interrogatories or otherwise, at any place in or out of the jurisdiction.

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

5. No such rule or order shall be made with respect to a witness who is a party to the suit, action, or proceeding, on the ground of his intended departure from New South Wales or to remote parts within the same, unless it be shown to the satisfaction of the Court or Judge that such departure is in fact urgently required by unavoidable circumstances or some unexpected emergency, and that the examination is not sought in order to avoid cross-examination before the Court or a jury.

6. In any criminal proceeding, if—

- (a) any witness is out of the jurisdiction of the Court or above two hundred miles from the intended place of trial; or
- (b) any witness is from age or infirmity unable to attend the trial; or
- (c) the testimony of any witness is in danger of being lost, by reason of his age or infirmity, or of his being about to depart out of the jurisdiction or to some place beyond the said distance of two hundred miles,

the Court or a Judge may, on the application or with the consent of the Attorney-General or the Crown prosecutor as well as the prisoner, but not otherwise, make a like rule or order in respect of such witness.

7. (1) When any rule or order is made under the fourth section of this Act—

- (a) for the examination of any witness; or
- (b) for the issue of a commission for an examination of witnesses within the jurisdiction of the Court,

the Court or Judge may by such rule or order, or by any subsequent rule or order, command the attendance of any person named therein for the purpose of being examined, or the production of any writing or other

Examinations on commission, &c., in civil proceedings.

1 Wm. IV, c. 22, s. 4.

4 Vic. No. 22, s. 14.

5 Vic. No. 9, s. 15.

18 Vic. No. 13, s. 2.

36 Vic. No. 9, s. 12.

44 Vic. No. 18, s. 44.

54 Vic. No. 25, s. 98.

Parties.

18 Vic. No. 13, s. 2.

The like in criminal proceedings.

4 Vic. No. 22, s. 14.

Commanding attendance of witnesses or production of documents.

1 Wm. IV, c. 22, s. 5.

Witnesses Examination.

other document mentioned therein, and may thereby direct the attendance of such person to be at his own place of abode, or elsewhere, if necessary or convenient so to do.

(2) The wilful disobedience of any such rule or order shall be deemed a contempt of Court, and proceedings may be thereupon had by attachment, if—

Penalty for disobedience.

(a) together with or after the service of the rule or order there has been served an appointment of the time and place of attendance in obedience thereto, signed by the person or one or more of the persons appointed to take the examination, and if—

(b) in the case of a Judge's order the same is made a rule of Court before or at the time of the application for attachment.

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

Payment of expenses, &c.

(4) No person shall be compelled to produce under any such rule or order any writing or document that he would not be compellable to produce at the hearing.

Proviso as to documents.

8. (1) Any sheriff, gaoler, or other officer having the custody of any prisoner may take such prisoner for examination under this Act by virtue of a writ of *habeas corpus* to be issued for that purpose.

Examination of prisoners.

1 Wm. IV, c. 22, s. 6.

(2) Such writ shall be issued by the Court or a Judge in such circumstances and in such manner as the Court or a Judge may now by law issue the writ commonly called a writ of *habeas corpus ad testificandum*.

9. (1) Any person authorised by any rule, order, or commission under this Act to take the examination of any witness, shall take such examination upon the oath of such witness, to be administered by the person so authorised or by a Judge.

Examinations to be on oath.

Ibid. s. 7.

(2) Any witness who upon such oath wilfully and corruptly gives any false evidence shall be deemed to be guilty of perjury.

10. (1) Any person authorised by any rule, order, or commission under the fourth section of this Act to take an examination within the jurisdiction may, and if need be shall, make a special report to the Court touching such examination and the conduct or absence of any witness or other person thereon or relating thereto.

Report of examiner as to conduct of witnesses, &c.

Ibid. s. 8.

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

11. (1) The examination or deposition of any witness taken under this Act may be read in evidence at the hearing, saving all just exceptions.

Reading examinations and depositions in evidence.

Ibid. s. 10.

4 Vic. No. 22, s. 14.

5 Vic. No. 9, s. 16.

44 Vic. No. 18, s. 44.

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

(3)

Witnesses Examination.

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

12. The costs of every rule, order, or commission under this Act and of the proceedings thereupon shall, except in a criminal proceeding, be costs in the cause unless otherwise directed by the Court, or by the Judge making such order, or by the Judge before whom the cause is tried. ^{Costs.} 1 Wm. IV, c. 22, s. 9.

SCHEDULE.

Reference to Act.	Title or short title.	Extent of repeal.
4 Vic. No. 22 ...	An Act to provide for the more effectual administration of justice in New South Wales and its Dependencies.	Section 14.
5 Vic. No. 9 ...	An Act for the further amendment of the law and for the better advancement of justice.	Sections 15, 16.
18 Vic. No. 13 ...	An Act further to amend the law of evidence	The unrepealed sections.
36 Vic. No. 9 ...	Matrimonial Causes Act	Section 12.
44 Vic. No. 18 ..	Equity Act of 1880	Section 44.
54 Vic. No. 25 ..	Probate Act of 1890	Section 98.

Memo. and Certificate to accompany the Witnesses Examination Bill.

THIS Bill consolidates parts of the following statutes:—

4 Vic. No. 22 ;
5 Vic. No. 9 ;
18 Vic. No. 13 ;
36 Vic. No. 9 ;
44 Vic. No. 18 ;
54 Vic. No. 25.

Clause 4. The various sections which give powers to the different jurisdictions of the Court to direct evidence to be taken on commission are not all worded alike. Many of the differences are not very material, and it has been necessary to disregard some of them in order to blend the sections and secure uniformity. Thus, this clause combines seven sections, and almost every expression in it represents a compromise. For example, the words "the Court or a Judge" may possibly extend the present powers in the equity and divorce jurisdictions; and the phrase "action, suit, or other proceeding" is put for a variety of other expressions, some of which may not go so far, as, for example, "in every action," "in all cases at law or in equity and in any ecclesiastical proceeding," "every action and suit," "in every case," "in all cases in which a person not a party to the suit, action, or other proceeding," &c.

Clause 5. As the Court can always make the granting of an order of this kind conditional, when the witness to be examined is a party to the suit, some unnecessary words in the original section have been omitted.

Clause 6. The powers given in 4 Vic. No. 22, sec. 14, do not seem to have been extended as to criminal cases by the other Acts, and are here therefore reproduced. It would seem that the original Act referred only to the Supreme Court, and not to Courts of Quarter Sessions.

Clause 9. The reference to affirmation has been omitted as no longer necessary. See Interpretation Act, sec. 21, and Hume-Williams on Evidence on Commission, p. 121.

Clause 10. It is a pity that this valuable provision cannot be extended to examinations in criminal matters, but such an amendment has been thought to be beyond the authority of the Commission.

Clause 11 (1). "Saving all just exceptions." This appears, in somewhat different words, in 18 Vic. No. 13, sec. 2.

Clause 12. As in other parts of the Bill this provision has been made general, criminal proceedings only being excepted.

I certify that, save as aforesaid, this Bill solely consolidates and in no way alters, adds to, or amends the law as contained in the enactments therein consolidated.

CHAS. G. HEYDON,
Commissioner for the Consolidation of the Statute Law.

Memorandum of Understanding

Between

_____ and _____

Witnesses Examination Bill.

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

Sections of Repealed Acts.	Section of Consolidated Act.	Remarks.	
1 WILLIAM IV, c. 22. (See note to 5 Vic. No. 9, s. 15, <i>infra</i> .)			
1-3	Omitted as not being within the scope of 5 Vic. No. 9, s. 15.	
4	4		
5	7		
6	8		
7	9		
8	10		
9	12		
10	11		
11		Omitted. See note to ss. 1-3.
4 VICTORIA No. 22.			
14	4, 6, 11		
5 VICTORIA No. 9.			
15	4	This section adopts the procedure under 1 Wm. IV, c. 22, <i>supra</i> .	
16	11		
18 VICTORIA No. 13.			
2	4		
3	5		
36 VICTORIA No. 9.			
12	4		
44 VICTORIA No. 18.			
44	4, 11		
54 VICTORIA No. 25.			
98	4		

Comparative Table showing how the provisions of the sections consolidated in

Section of Act.	4 Vic. No. 22, s. 14.	1 Wm. IV, c. 22, s. 4, adopted by 5 Vic. No. 9, s. 15.	18 Vic. No. 13, s. 2.
In what proceedings examination of witnesses may be directed.	In all cases whether at law or in equity or in any ecclesiastical proceeding, and in any criminal case.	In every action and suit in the Supreme Court of New South Wales.	In all cases in which any person not being a party to the suit, action, or proceeding may be examined as a witness <i>de bene esse</i> or under a commission.
At what stage of the proceedings.	At any stage of the case.		
Upon whose application.	In criminal cases on the application or with the consent of both the Crown and the prisoner.	Upon the application of any of the parties.	
In whom the power to make the order is vested.	Each of the Judges of the Supreme Court of New South Wales resident at Sydney.	Each of the Judges of the Supreme Court of New South Wales resident at Sydney.	The Court or a Judge.
Persons who may be ordered to be examined, and circumstances under which persons may be ordered to be examined.	Any witness who is (a) beyond the seas, or (b) at a greater distance than 200 miles from the intended place of trial, or (c) from age or infirmity unable to attend the trial, or, where from any of such causes, or from his being about to depart beyond sea or to some place beyond the said distance of 200 miles, the testimony of such witness is in danger of being lost.	Any witness whether within or without the jurisdiction of the Court where the action is depending.	Any party to the suit, action, or proceeding.
How the examination is to be made.	Either <i>viva voce</i> or upon interrogatories as the Judge shall think fit to direct.	On oath upon interrogatories or otherwise.	
Before whom the examination is to be held.	Such person or such commissioner or other officer of the Court as the Judge shall for that purpose appoint.	The master or prothonotary of the Supreme Court or other person or persons to be named in the order (this applies only to the examination of witnesses within the jurisdiction of the Court).	

section 4 of the "Witnesses Examination Act, 1899" have been dealt with.

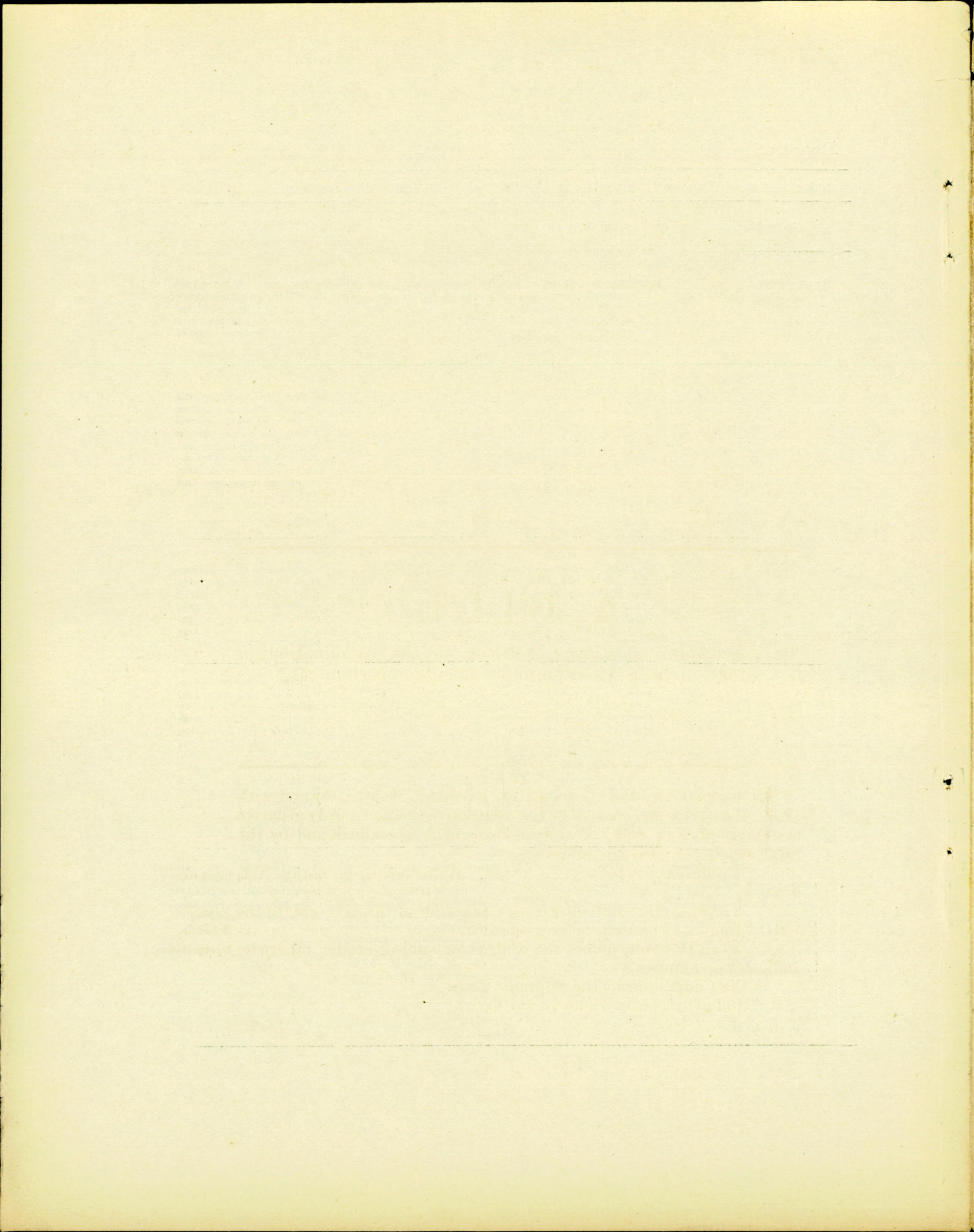
36 Vic. No. 9, s 12.	44 Vic. No. 18, s. 44.	54 Vic. No. 25, s. 93.	Consolidated Act, ss. 4, 9, and 11 (1).
	In every case where the Court (<i>i.e.</i> , the Chief Judge in Equity. See 44 Vic. No. 18, s. 3) shall deem it expedient to do so.		In any action, suit, or proceeding in the Court (<i>i.e.</i> , in the Supreme Court. See s. 3 of the Consolidated Act) in any jurisdiction, except a criminal proceeding. (As to criminal proceedings see s. 6 of the Consolidated Act.)
	At any stage of the case.		At any stage thereof.
			Upon the application of any party.
The Court (<i>i.e.</i> , the Chief Justice or the Judge appointed or nominated to sit alone and adjudicate under the Act 36 Vic. No. 9. See s. 49 of that Act.)	The Court (<i>i.e.</i> , the Chief Judge in Equity or the Judge acting for him. See ss. 1-3 of 44 Vic. No. 18.)	The Court (<i>i.e.</i> , the Probate Judge or any Judge acting for him. See s. 4 of 54 Vic. No. 25.)	The Court or a Judge (<i>i.e.</i> , the Supreme Court or a Judge of the Supreme Court. See s. 3 of the Consolidated Act).
Any witness out of the jurisdiction of the Court, or where by reason of his illness or from other circumstances the Court shall not think fit to enforce the attendance of witnesses in open Court.	Any witness.	Any witness in a contested matter who is out of the jurisdiction of the Court, or where by reason of his illness or otherwise the Court shall not think fit to enforce the attendance of the witness in open Court.	Any witness whether within or without the jurisdiction of the Court.
Upon interrogatories or otherwise.	Either orally or upon interrogatories as the Court shall think fit.	On oath upon interrogatories or otherwise.	On oath, either viva voce or upon interrogatories or otherwise.
Before any officer of the Court or other person to be named in the order.	Before such person or officer of the Court as it shall for that purpose appoint.	Before any officer of the Court or other person to be named in the order (this applies only to witnesses within the jurisdiction of the Court).	Before an officer of the Court or other person to be named in the rule or order (this applies only to witnesses within the jurisdiction of the Court).

Comparative Table showing how the provisions of the sections consolidated in

Section of Act.	4 Vic. No. 22, s. 14.	1 Wm. IV, c. 22, s. 4, adopted by 5 Vic. No. 9, s. 15.	18 Vic. No. 13, s. 2.
How the examination is directed or authorised; whether by order or commission.	By order or commission.	By order if the witness is within the jurisdiction of the Court, by commission if the witness is out of the jurisdiction of the Court.	
Directions which may be given, and terms which may be imposed.		All such directions touching the time, place, and manner of the examination, whether within the jurisdiction of the Court wherein the action shall be depending or without, and all other matters and circumstances connected with such examination as may appear reasonable and just.	Such terms in all respects as the Court or Judge may think reasonable.
How the results of such examination may be used.	Every such examination being duly taken and returned shall be allowed and read at the trial or hearing accordingly.		Every examination thereupon taken, if the same would have been admissible in the case of an ordinary witness, may be read in evidence at the trial or hearing accordingly.
Powers conferred on persons before whom examinations are to be held.			
Powers conferred upon Courts in respect of the examination of witnesses.			

section 4 of the "Witnesses Examination Act, 1899" have been dealt with—*continued.*

36 Vic. No. 9, s. 12.	44 Vic. No. 18, s. 44.	54 Vic. No. 25, s. 98.	Consolidated Act, ss. 4, 9, and 11 (1).
By commission.	By commission or order, but a commission need not be sued out for the examination of any witness within the jurisdiction of the Court.	By commission, or if the witness is within the jurisdiction of the Court by order.	By rule or order if the witness is within the jurisdiction of the Court; by commission whether the witness is in or out of the jurisdiction of the Court.
			All such directions touching the time, place, and manner of the examination as well within the jurisdiction as without, and all other matters and circumstances connected with the examination as appear reasonable and just.
	Every such examination being duly taken and returned may be read in evidence at the trial or hearing accordingly.		The examination or deposition of any witness taken under this Act may be read in evidence at the hearing, saving all just exceptions. (See s. 11 (1) of the Consolidated Act.)
	Every officer or person appointed to examine any witnesses by order of the Court shall have the power of administering oaths and also such other powers as by the order appointing him may be directed.		Any person authorised by any rule, order, or commission under this Act to take the examination of any witness shall take such examination upon the oath of such witness, to be administered by the persons so authorised or by a Judge. (See s. 9 of the Consolidated Act, which consolidates s. 7 of 1 Wm. IV, c. 22.)
All the powers enabling the Court to issue commissions and give orders for the examination of witnesses in actions depending in such Court and to enforce such examination, and all the provisions of any Acts for enforcing or otherwise applicable to such examination, and the witnesses examined shall extend and be applicable to the examination of witnesses under commissions and orders of the Court and to the witnesses examined for all purposes of this Act (<i>i.e.</i> , 36 Vic. No. 9) in like manner as if such Court were trying an action at law pending in such Court.		All the powers now vested in the Supreme Court in its equitable jurisdiction with reference to the issuing of commissions and ordering the examination of witnesses and generally in connection therewith shall extend to and be applicable to the Court in its probate jurisdiction.	NOTE.—The effect of these provisions is preserved by the consolidation in this Act of the sections in which such provisions are contained.



Legislative Council.

No. , 1900.

A BILL

To consolidate enactments relating to the examination of witnesses and production of documents in certain cases.

[MR. F. B. SUTTON;—23 August, 1900.]

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:—

1. This Act may be cited as the "Witnesses Examination Act, Short title. 1900."

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

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

"the Court" means the Supreme Court;

"Judge" means a Judge of the Court.

c 60—

4.

Examinations on commission, &c., in civil proceedings.

1 Wm. IV, c. 22, s. 4.

4 Vic. No. 22, s. 14.

5 Vic. No. 9, s. 15.

18 Vic. No. 13, s. 2.

36 Vic. No. 9, s. 12.

44 Vic. No. 18, s. 44.

54 Vic. No. 25, s. 98.

4. (1) In any action, suit, or other proceeding in the Court in any jurisdiction, except a criminal proceeding, at any stage thereof, and upon the application of any party thereto, the Court or a Judge may by rule or order direct—

(a) that any witness within the jurisdiction of the Court be examined on oath, either *vivá voce* or upon interrogatories or otherwise, before an officer of the Court or other person to be named in the rule or order; or

(b) that a commission do issue for the examination of witnesses on oath, either *vivá voce* or upon interrogatories or otherwise, at any place in or out of the jurisdiction.

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

Parties.

18 Vic. No. 13, s. 2.

5. No such rule or order shall be made with respect to a witness who is a party to the suit, action, or proceeding, on the ground of his intended departure from New South Wales or to remote parts within the same, unless it be shown to the satisfaction of the Court or Judge that such departure is in fact urgently required by unavoidable circumstances or some unexpected emergency, and that the examination is not sought in order to avoid cross-examination before the Court or a jury.

The like in criminal proceedings.

4 Vic. No. 22, s. 14.

6. In any criminal proceeding, if—

(a) any witness is out of the jurisdiction of the Court or above two hundred miles from the intended place of trial; or

(b) any witness is from age or infirmity unable to attend the trial; or

(c) the testimony of any witness is in danger of being lost, by reason of his age or infirmity, or of his being about to depart out of the jurisdiction or to some place beyond the said distance of two hundred miles,

the Court or a Judge may, on the application or with the consent of the Attorney-General or the Crown prosecutor as well as the prisoner, but not otherwise, make a like rule or order in respect of such witness.

Commanding attendance of witnesses or production of documents.

1 Wm. IV, c. 22, s. 5.

7. (1) When any rule or order is made under the fourth section of this Act—

(a) for the examination of any witness; or

(b) for the issue of a commission for an examination of witnesses within the jurisdiction of the Court,

the Court or Judge may by such rule or order, or by any subsequent rule or order, command the attendance of any person named therein for the purpose of being examined, or the production of any writing or other

other document mentioned therein, and may thereby direct the attendance of such person to be at his own place of abode, or elsewhere, if necessary or convenient so to do.

(2) The wilful disobedience of any such rule or order shall be deemed a contempt of Court, and proceedings may be thereupon had by attachment, if—

Penalty for disobedience.

(a) together with or after the service of the rule or order there has been served an appointment of the time and place of attendance in obedience thereto, signed by the person or one or more of the persons appointed to take the examination, and if—

(b) in the case of a Judge's order the same is made a rule of Court before or at the time of the application for attachment.

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

Payment of expenses, &c.

(4) No person shall be compelled to produce under any such rule or order any writing or document that he would not be compellable to produce at the hearing.

Proviso as to documents.

8. (1) Any sheriff, gaoler, or other officer having the custody of any prisoner may take such prisoner for examination under this Act by virtue of a writ of *habeas corpus* to be issued for that purpose.

Examination of prisoners.
1 Wm. IV, c. 22, s. 6.

(2) Such writ shall be issued by the Court or a Judge in such circumstances and in such manner as the Court or a Judge may now by law issue the writ commonly called a writ of *habeas corpus ad testificandum*.

9. (1) Any person authorised by any rule, order, or commission under this Act to take the examination of any witness, shall take such examination upon the oath of such witness, to be administered by the person so authorised or by a Judge.

Examinations to be on oath.
Ibid. s. 7.

(2) Any witness who upon such oath wilfully and corruptly gives any false evidence shall be deemed to be guilty of perjury.

10. (1) Any person authorised by any rule, order, or commission under the fourth section of this Act to take an examination within the jurisdiction may, and if need be shall, make a special report to the Court touching such examination and the conduct or absence of any witness or other person thereon or relating thereto.

Report of examiner as to conduct of witnesses, &c.
Ibid. s. 8.

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

11. (1) The examination or deposition of any witness taken under this Act may be read in evidence at the hearing, saving all just exceptions.

Reading examinations and depositions in evidence.

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

Ibid. s. 10.
4 Vic. No. 22, s. 14.
5 Vic. No. 9, s. 16.
44 Vic. No. 18, s. 44.

(3)

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

Costs.

1 Wm. IV, c. 22, s. 9. **12.** The costs of every rule, order, or commission under this Act and of the proceedings thereupon shall, except in a criminal proceeding, be costs in the cause unless otherwise directed by the Court, or by the Judge making such order, or by the Judge before whom the cause is tried.

SCHEDULE.

Reference to Act.	Title or short title.	Extent of repeal.
4 Vic. No. 22 ...	An Act to provide for the more effectual administration of justice in New South Wales and its Dependencies.	Section 14.
5 Vic. No. 9 ...	An Act for the further amendment of the law and for the better advancement of justice.	Sections 15, 16.
18 Vic. No. 13 ...	An Act further to amend the law of evidence	The unrepealed sections.
36 Vic. No. 9 ...	Matrimonial Causes Act	Section 12.
44 Vic. No. 18 ..	Equity Act of 1880	Section 44.
54 Vic. No. 25 ..	Probate Act of 1890	Section 98.