

This PUBLIC BILL originated in the HOUSE OF REPRESENTATIVES, and, having this day passed as now printed, is transmitted to the LEGISLATIVE COUNCIL for its concurrence.

House of Representatives,

7th November, 1945.

Hon. Mr. Mason

EVIDENCE AMENDMENT

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A BILL INTITULED

AN ACT to amend the Evidence Act, 1908.

Title.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

Short Title and commencement.

See Reprint of Statutes, Vol. III, p. 106

1. (1) This Act may be cited as the Evidence Amendment Act, 1945, and shall be read together with and deemed part of the Evidence Act, 1908 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the first day of January, nineteen hundred and forty-six. 5

PART I

DOCUMENTARY EVIDENCE

Interpretation and savings.

Cf. Evidence Act, 1938 (1 and 2 Geo. VI, c. 28), s. 6 (Imp.)

2. (1) In this Part of this Act—

“ Document ” includes books, maps, plans, drawings, and photographs: 10

“ Statement ” includes any representation of fact, whether made in words or otherwise:

“ Proceedings ” includes arbitrations and references, and “ Court ” shall be construed accordingly. 15

(2) Nothing in this Part of this Act shall—

(a) Prejudice the admissibility of any evidence which would, apart from the provisions of this Part, be admissible; or 20

(b) Enable documentary evidence to be given as to any declaration relating to a matter of pedigree, if that declaration would not have been admissible as evidence if this Part had not been passed. 25

Admissibility of documentary evidence as to facts in issue. *Cf. Evidence Act, 1938, s. 1 (Imp.)*

3. (1) In any civil proceedings where direct oral evidence of a fact would be admissible, any statement made by a person in a document and tending to establish that fact shall, on production of the original document, be admissible as evidence of that fact if the following conditions are satisfied, that is to say— 30

(a) If the maker of the statement either—

(i) Had personal knowledge of the matters dealt with by the statement; or

(ii) Where the document in question is or forms part of a record purporting to be a continuous record, made the statement (in so far as the matters dealt with thereby are not within his personal knowledge) in the performance of a duty to record information supplied to him by a person who had, or might reasonably be supposed to have, personal knowledge of those matters; and 40

(b) If the maker of the statement is called as a witness in the proceedings:

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

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

(a) Notwithstanding that the maker of the statement is available but is not called as a witness:

20 (b) Notwithstanding that the original document is not produced, if in lieu thereof there is produced a copy of the original document or of the material part thereof certified to be a true copy in such manner as may be specified in
25 the order or as the Court may approve, as the case may be.

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

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

(5) For the purpose of deciding whether or not a
40 statement is admissible as evidence by virtue of the foregoing provisions, the Court may draw any reasonable inference from the form or contents of the document in which the statement is contained, or from

any other circumstances, and may, in deciding whether or not a person is fit to attend as a witness, act on a certificate purporting to be the certificate of a registered medical practitioner, and where the proceedings are with a jury, the Court may in its discretion reject the statement, notwithstanding that the requirements of this section are satisfied with respect thereto, if for any reason it appears to it to be inexpedient in the interests of justice that the statement should be admitted. 5

Weight to be attached to evidence.
Cf. Evidence Act, 1938, s. 2 (Imp.)

4. (1) In estimating the weight, if any, to be attached to a statement rendered admissible as evidence by this Part of this Act, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement, and in particular to the question whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not the maker of the statement had any incentive to conceal or misrepresent facts. 15

(2) For the purpose of any rule of law or practice requiring evidence to be corroborated or regulating the manner in which uncorroborated evidence is to be treated, a statement rendered admissible as evidence by this Part of this Act shall not be treated as corroboration of evidence given by the maker of the statement. 20 25

Proof of instrument to validity of which attestation is necessary.
Ibid., s. 3 (Imp.)

5. Subject as hereinafter provided, in any proceedings, whether civil or criminal, an instrument to the validity of which attestation is requisite may, instead of being proved by an attesting witness, be proved in the manner in which it might be proved if no attesting witness were alive: 30

Provided that nothing in this section shall apply to the proof of wills or other testamentary documents.

Presumption as to documents twenty years old.
Ibid., s. 4 (Imp.)

6. (1) In any proceedings, whether civil or criminal, there shall, in the case of a document proved or purporting to be not less than twenty years old, be made any presumption which immediately before the commencement of this Act would have been made in the case of a document of like character proved or purporting to be not less than thirty years old. 35 40

See Reprint of Statutes, Vol. VII, p. 1133

(2) Section one hundred and twenty of the Property Law Act, 1908, is hereby amended by omitting the words "after such instrument has been on the register for thirty years or more a copy thereof, certified as aforesaid". 45

PART II

AFFIDAVITS AND DOCUMENTS OF SERVICEMEN OVERSEAS

7. In this Part of this Act, unless the context otherwise requires,— Interpretation.

5 “Affidavit” includes an affirmation and a statutory or other declaration:

“Member”, in relation to any of His Majesty’s Naval, Military, or Air Forces, includes any person who by the law of the country to which the Force belongs is subject to the naval, military, or air force law thereof:

10 “Oath” includes an affirmation and a declaration; and also includes, as well as evidentiary oaths, any promissory oath, including, in particular, any oath of allegiance (whether required for the purposes of the British Nationality and Status of Aliens (in New Zealand) Act, 1928, or of any other enactment or for any other purpose):

See Reprint of Statutes, Vol. I, p. 159

20 “Swear” includes affirm and declare.

8. (1) Any officer of any of His Majesty’s Naval, Military, or Air Forces, whether raised in New Zealand or elsewhere, who holds a rank not below that of Lieutenant-Commander, Major, or Squadron Leader, or an equivalent rank, or who holds an appointment as a Legal Staff Officer may, while serving outside New Zealand, administer oaths to, and take affidavits from, any member of any of the said Forces, and every oath or affidavit administered by or sworn before any such officer as aforesaid shall be as effectual as if duly administered by or sworn before any lawful authority in New Zealand.

Certain officers may administer oaths to servicemen outside New Zealand.

35 (2) An officer who administers an oath or takes an affidavit by virtue of the powers conferred by this section shall state, in the jurat or attestation to the document in respect of which the power is being exercised or after his signature, the date on which the oath or affidavit is administered or sworn, and the name and rank of the officer, and (if his rank is below 40 that of Lieutenant-Commander, Major, or Squadron Leader) the fact that he is a Legal Staff Officer; and it shall not be necessary to state the place where the oath or affidavit is administered or sworn.

(3) Any document purporting to have subscribed thereto the signature of any officer in testimony of any oath or affidavit being administered or sworn before him (whether before or after the commencement of this Act) shall be admitted in evidence without proof of the rank or appointment of the officer and without proof that the signature is the signature of the officer or that the officer was, on the date on which the oath or affidavit was administered or sworn, serving outside New Zealand. 5 10

Verification of documents executed by servicemen outside New Zealand.

9. (1) Every document of any kind duly executed outside New Zealand (whether before or after the commencement of this Act) by a member of any of His Majesty's Naval, Military, or Air Forces, whether raised in New Zealand or elsewhere, shall, so far as regards the execution thereof, be admissible in evidence in any Court in New Zealand, or before any person acting judicially— 15

(a) If it purports to have been executed outside New Zealand before an officer of any of the said Forces who holds a rank not below that of Lieutenant-Commander, Major, or Squadron Leader, or an equivalent rank, or who holds an appointment as a Legal Staff Officer; or 20 25

(b) If there is endorsed thereon or annexed thereto a declaration of the due execution thereof outside New Zealand purporting to be made by an attesting witness before any such officer as aforesaid. 30

(2) It shall be presumed that any signature subscribed to any document tendered in evidence under this section is genuine, and that any person appearing to have attested the document had in fact authority to attest it, unless the party objecting to the admission of the document proves the contrary. 35

(3) The provisions of this section shall be in addition to and not in derogation of the provisions of section one hundred and nineteen of the Property Law Act, 1908, or section one hundred and seventy-six of the Land Transfer Act, 1915, or any other enactment. 40

See Reprint of Statutes, Vol. VII, pp. 1182, 1218

10. The following regulations are hereby revoked as from the commencement of this Act, namely:—
- (a) The Evidence Emergency Regulations 1941:
- (b) The Evidence Emergency Regulations 1941, Amendment No. 1:
- (c) The Evidence Emergency Regulations 1941, Amendment No. 2.
- Revocation of
Evidence
Emergency
Regulations
1941.
Serial numbers
1941/114,
1943/157,
1944/165

PART III

MISCELLANEOUS

10 *Proof of Official Documents, &c.*

11. (1) All Courts and persons acting judicially shall take judicial notice of the signature of any of the following persons when attached or appended to any official or judicial document, namely:—
- 15 (a) The Governor-General:
- (b) Any responsible Minister of the Crown in New Zealand, being a member of the Executive Council:
- 20 (c) Any Judge of the Supreme Court or of any other Court in New Zealand:
- (d) Any Judge of any Superior Court in any other part of His Majesty's dominions:
- (e) The Solicitor-General:
- 25 (f) Any Magistrate, and any Justice of the Peace sitting in Court.
- (2) This section is in substitution for section forty-five of the principal Act, and that section is hereby accordingly repealed.
- Judicial
notice of
signatures of
Governor-
General,
Ministers,
Judges, &c.
- Repeal.
12. *Prima facie* evidence of the making or issue of any official document purporting to be made or issued by any person purporting to be authorized or empowered in that behalf by or under any Act may be given in all Courts and in all legal proceedings in any of the following modes, that is to say:—
- 30 (a) By the production of the original document, or of one of two or more originals, purporting to be signed by the person who made or issued it:
- 35 (b) By the production of a copy of the *Gazette* purporting to contain a copy of the document:
- 40
- Evidence of
official
documents.

(c) By the production of a copy of the document purporting to be printed by the Government Printer:

(d) By the production of a written copy or extract purporting to be certified by the person who made or issued the document or by any other person purporting to possess the powers under which the document was made or issued. 5

Gazette notice to be evidence of official act.

13. Section forty-six of the principal Act is hereby amended by inserting, after the words "Executive Council", the words "or any other person". 10

Evidence of Royal Proclamations, Orders of the Privy Council, &c.

14. Section thirty-five of the principal Act is hereby amended by omitting the words "as an extract from the *London Gazette*", and substituting the words "or by the production of a copy of such Proclamation, Order of the Privy Council, order, regulation, despatch, or other instrument purporting to be printed by the Government Printer". 15

Evidence by Husband or Wife

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Evidence of non-access. Cf. Evidence Act, 1910, s. 95A, from Evidence Act, 1943 (7 Geo. VI, No. 40), s. 2, II (Tasmania)

15. (1) In any proceedings, whether civil or criminal, either of two spouses may give evidence proving or tending to prove that the spouses did not have sexual relations with each other at any particular time, notwithstanding that the evidence would tend to show that any child born to the wife during marriage was illegitimate. 25

(2) Nothing in this section shall affect the operation of section six or section seven of the principal Act.