

Hon. Mr. Pitt.

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A BILL INTITULED

Title.

AN ACT to consolidate and amend the several Acts for the Amendment of the Law of Evidence.

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

Short Title.

Interpretation.

1895, No. 10, sec. 2

1. The Short Title of this Act is "The Evidence Act, 1904."

2. In this Act, if not inconsistent with the context,—

"Act" includes Ordinance:

"Court" includes the Supreme Court and the Court of 10 Appeal, and any District Court and Magistrate's Court:

"Judge" means a Judge of the Supreme Court or the District Court, and includes a Magistrate:

"Minister" means an "Officiating Minister" under "The 15 Marriage Act, 1880":

"Person acting judicially" means any person having in New Zealand by law or by consent of parties authority to hear, receive, and examine evidence:

"Prisoner" means any person confined in prison under any sentence, or commitment for trial, or otherwise: 20

"Proceeding" includes any action, trial, inquiry, cause, or matter, whether civil or criminal, depending or to be inquired of or determined in any Court.

Competency of Witnesses.

Witness interested, or convicted of offence.

6 & 7 Vict., c. 85, sec. 1

3. No person shall be excluded from giving evidence in any 25 proceeding on the ground that he has or may have an interest in the matter in question, or in the result of the proceeding, or on the ground that he has previously been convicted of any offence.

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

14 & 15 Vict., c. 99, sec. 2; 16 & 17 Vict., c. 83, sec. 1

4. In any civil proceeding the parties thereto and the persons 30 on whose behalf such proceeding is brought or defended, and the husbands and wives of such parties or persons respectively, shall, subject to the provisions of this Act, be competent and compellable to give evidence on behalf of either or any of the parties to such proceeding:

14 & 15 Vict., c. 99, sec. 3.

Provided that nothing herein shall render any person com- 35 pellable to answer any question tending to criminate himself.

Evidence of accused, and of husband and wife of accused, in criminal cases.

1893, No. 56, sec. 398
1894, No. 47, sec. 8

5. (1.) Every person charged with any offence shall be a com- 40 petent but not compellable witness for himself upon his trial for such offence; and the wife or husband, as the case may be, of every such accused person shall be a competent witness for him or her upon such trial:

Provided that the wife or husband of an accused person shall not be called as a witness without the consent of the accused, except where such wife or husband is compellable to give evidence, or where either husband or wife is charged with being a party to an offence 45 against the other.

(2.) No such person is liable to be called as a witness by the prosecutor, but every such witness called and giving evidence on behalf of the accused is liable to be cross-examined like any other witness on any matter, though not arising out of his examination in 50 chief.

(3.) So far as the cross-examination relates to any previous conviction of the accused, or to the credit of the accused, the Court may limit such cross-examination as it thinks proper, although the proposed cross-examination might be permissible in the case of any other witness.

Privilege of Witnesses.

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

Communications during marriage. 16 & 17 Vict., c. 83, sec. 3

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

Privilege in suits for adultery. 1875, No. 81, sec. 4

8. (1.) A minister shall not divulge in any proceeding any confession made to him in his professional character, except with the consent of the person who made such confession.

Communications to clergymen and medical men. 1895, No. 10, sec. 9

(2.) A physician or surgeon shall not, without the consent of his patient, divulge in any civil proceeding (unless the sanity of the patient be the matter in dispute) any communication made to him in his professional character by such patient, and necessary to enable him to prescribe or act for such patient.

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

Impeaching Credit of Witnesses.

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

How far witness may be discredited by the party producing him. 1866, No. 1, sec. 4

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

Proof of contradictory statements of witness. Ibid, secs. 4, 5

11. (1.) A witness may be cross-examined as to previous statements made by him in writing or reduced into writing relative to the subject-matter of the indictment or proceeding without such writing being shown to him; but, if it is intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing that are to be used for the purpose of so contradicting him.

Cross examinations as to previous statements in writing. Ibid, sec. 6

(2.) The Judge may at any time during the trial require the writing to be produced for his inspection, and may thereupon make such use of it for the purposes of the trial as he thinks fit.

Proof of previous conviction of witness.
1866, No. 1, sec. 7

12. (1.) A witness may be questioned as to whether he has been convicted of any indictable offence, and, upon being so questioned, if he either denies or does not admit the fact, or refuses to answer, the cross-examining party may prove such conviction.

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

(3.) A fee of five shillings and no more shall be payable for such certificate.

Protection of Witnesses.

Cross-examination as to credit.
1895, No. 10, sec. 11

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

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

When such questions are proper.

(a.) Such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies.

When improper.

(b.) Such questions are improper if the imputation they convey relates to matters so remote in time or of such a character that the truth of the imputation would not affect, or would affect in a slight degree only, the opinion of the Court as to the credibility of the witness on the matter to which he testifies.

Unnecessary imputations improper.

(c.) Such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence.

Saving of existing rights.
Ibid, sec. 12

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

Indecent or scandalous questions.
Ibid, sec. 13

14. The Court shall forbid any question it regards as—

(a.) Indecent or scandalous, although such question may have some bearing on the case before the Court, unless the question relates to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed; or

(b.) Intended to insult or annoy, or needlessly offensive in form, notwithstanding that such question may be proper in itself.

Questions intended to insult or annoy.
Ibid, sec. 14

Prohibited questions not to be published.
Ibid, sec. 15

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

(a.) Has forbidden or disallowed; or

(b.) Has warned the witness he is not obliged to answer, and has ordered shall not be published.

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(2.) Every person who prints or publishes any question in breach of this section commits a contempt of Court.

16. (1.) In any proceeding in any Court, or before any Justices, for the breach of any Act relating to—

Indemnity to witnesses in certain cases.
1901, No. 34, sec. 2

- 5 (a.) Duties of Customs ; or
- (b.) Stamp duties ; or
- (c.) The public revenues ; or
- (d.) The sale of intoxicating liquors ; or
- 10 (e.) Distillation ; or
- (f.) Beer duty ; or
- (g.) Gaming,—

or in any proceeding brought by or on behalf of or against the Crown under or in pursuance of the provisions of any such Act, the Judge or the Justices may require any person to be examined as a witness.

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

1895, No. 10, sec.

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

Penalty for refusal to give evidence
Ibid, sec. 7

25 17. (1.) Every person required to be examined as aforesaid in any Court, or before Justices, touching any such breach as aforesaid, who on such examination makes to the best of his knowledge true and faithful discovery of all matters whereon he is so examined touching such breach, and thereby gives evidence tending to incriminate himself, shall, on application, receive from the Judge or Justices before whom he is examined a certificate in writing under
30 his or their hands that he has made such true and faithful discovery as aforesaid.

Witness making true discovery to be freed from all penalties.
Ibid, sec. 8

35 (2.) If such person receives such certificate (but not otherwise) he shall be freed from all criminal prosecutions and penal actions, and from all penalties, forfeitures, and punishments, to which he was liable for anything done before that time in respect of the matters touching which he is so examined.

General Rules of Evidence.

40 18. (1.) It is not necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite, and such instrument may be proved as if there had been no attesting witness thereto.

Proof by attesting witnesses.
1866, No. 1, sec.

(2.) In any District Court or Magistrate's Court a deed may be proved and given in evidence in the same manner as a document that does not require attestation.

1888, No. 22, sec. 9;
1893, No. 55, sec. 89

45 19. Comparison of a disputed writing with any writing proved to the satisfaction of the Judge to be genuine may be made by witnesses, and such writings and the testimony of witnesses respecting the same may be submitted to the Court and jury as evidence of the genuineness or otherwise of the writing in dispute.

Comparison of disputed handwriting.
1866, No. 1, sec. 9

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

Confession after promise or threat.
1895, No. 10, sec. 17

Rules in Particular Cases.

Actions for breach
of promise.
1875, No. 81, sec. 3

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

Actions for
seduction.
1885, No. 14, sec. 8

22. (1.) In an action to recover damages for seduction brought by a parent of the woman seduced, or by a person standing to her in the place of a parent, it is not necessary to allege or prove that she was in the service of the plaintiff, or that he sustained any loss of service by reason of the seduction. 5

(2.) The plaintiff in such action shall not recover a verdict unless the evidence of the woman seduced is corroborated by some other material evidence of such seduction. 10

Poisoning cases.
1895, No. 10, sec. 16

23. Where, in any criminal proceeding, there is a question whether poison was administered or attempted to be administered by or by the procurement of the accused person, evidence tending to prove the administration or attempted administration by or by the procurement of the accused, whether to the same or to another person, and at the same time as the time when the offence charged was committed, or at any other time or times, shall be deemed to be relevant to the general issue of "Guilty" or "Not guilty," and shall be admissible at any stage of the proceedings, as well for the purpose of proving the administration or attempted administration by or by the procurement of the accused as for the purpose of proving the intent. 15 20

Evidence of Witnesses in Prison.

Judge may order
prisoner to be
brought up as a
witness.
Ibid, sec. 3

24. (1.) On application in that behalf by any person who states on oath that any prisoner can give material evidence in any proceeding before a Court or Judge, the Judge may, by order under his hand, require such prisoner to be brought up for examination as a witness in that proceeding. 25 30

(2.) Such order shall operate and be obeyed in like manner in all things as a writ of *habeas corpus* duly issued out of the Supreme Court.

Expenses of bringing
up prisoner.
Ibid, sec. 4

(3.) In every civil proceeding the Judge shall, and in every other proceeding he may, before making such order, require the applicant to deposit a sum sufficient to pay the expense of bringing up the prisoner, maintaining him while out of prison, and returning him thither, including the expense of his custody from the time he leaves until the time he returns to the prison. 35 40

Proof of Affidavits, &c., made Abroad.

Proof of affidavits,
&c., made abroad.
1892, No. 24, sec.
153 (1); C.C.P.
187A.; Imp. 52 & 53
Vict., c. 10, sec. 6

25. (1.) In this section—

"Affidavit" includes affirmation:

"Consul" includes a Consul-general, Consul, Vice-consul, acting-consul, proconsul, and consular agent:

"Court or person authorised" means any Court, Judge, Notary Public, or person authorised to administer oaths or to receive declarations: 45

"Minister" includes an Ambassador, Envoy, Minister, Chargé d'Affaires, and Secretary of Embassy or Legation.

(2.) An affidavit or declaration sworn or made at any place out of New Zealand may be received in evidence before any Court in 50

New Zealand or person acting judicially therein, if sworn or made—

(a.) In any place in the British dominions, then before any Court or person authorised by the law of that place; and

5 (b.) In any country or place out of the British dominions, then before a British Minister, Consul, or Notary Public exercising his functions in that country or place.

(3.) Where an affidavit or declaration required to be taken in any country or place out of the British dominions cannot for any sufficient reason be sworn or made before a British Minister, Consul, or Notary Public as aforesaid, the same may nevertheless be received in evidence as aforesaid, if taken according to the law of that country or place before a Court or person authorised by that law, provided that the reason why the same could not be sworn or made before a British Minister, Consul, or Notary Public be distinctly stated in the 15 jurat or other attestation thereof.

(4.) Where an affidavit or declaration is receivable in evidence under this section, it shall not be necessary to prove either the authority of the Court or person before which or whom the same purports to have been taken, or the seal or signature of such Court or 20 person impressed, affixed, attached, appended, or subscribed on or to any writing purporting to attest the swearing of the affidavit or the making of the declaration.

Proof of Official Documents, &c.

25 26. Judicial notice shall be taken by all Courts, Judges, Justices, Commissioners, and other persons acting judicially, of the impression of the Public Seal of the Colony, without evidence of such seal having been impressed or any other evidence relating thereto.

Judicial notice of the Seal of the colony. 1860, No. 20, sec. 2

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

And of official seals, &c. Ibid, sec. 3

35 28. Every Act shall, unless it is expressly declared to be a private Act, be deemed to be a public Act, and judicial notice shall be taken thereof by all Courts and persons acting judicially.

All Acts deemed to be public Acts. 1888, No. 15, sec. 15

40 29. Every copy of any public Act, printed under the authority of the Government by the Government Printer, shall be evidence of such Act and of its contents; and every copy of any such Act purporting to be printed as aforesaid shall be deemed to be so printed, unless the contrary be proved.

Copy of public Act printed by Government Printer to be evidence. Ibid, sec. 16

45 30. All copies of private and local and personal Acts, not being public Acts, purporting to be printed under the authority of the Government by the Government Printer, and all copies of the Journals of either House of Parliament, and of Proclamations by the Governor, purporting to be printed by such Printer, shall be admitted as evidence thereof respectively by all Courts and persons acting judicially, without proof being given that such copies were so printed.

Copies of private Acts, &c., printed by Government Printer receivable in evidence. 1860, No. 20, sec. 6

50 31. All copies of Acts or Ordinances made by the Superintendent and Provincial Council of any former province, and all copies of Proclamations and notifications under any Act or

Provincial Ordinances, &c. Ibid, sec. 7

Ordinance of any Legislature made by the Superintendent of any such province, purporting to be printed under the authority of the Government of such province by the printer to such Government, shall be admitted by all Courts and persons acting judicially as evidence of such Acts, Ordinances, Proclamations, and notifications respectively, without proof being given that such copies were so printed. 5

Proclamations,
Orders in Council,
&c.
1888, No. 15, sec. 17

32. *Primâ facie* evidence of any Proclamation, Order in Council, order, regulation, or other instrument heretofore or hereafter made or issued by the Governor or by the Governor in Council, and of any order, regulation, or other instrument heretofore or hereafter made or issued by or under the authority of any Responsible Minister of the Crown in New Zealand, being a member of the Executive Council, may be given in all Courts and in all legal proceedings in any of the following modes, that is to say:— 10 15

- (a.) By the production of a copy of the *Gazette* purporting to contain such Proclamation, Order in Council, order, regulation, or other instrument:
- (b.) By the production of a copy of such Proclamation, Order in Council, order, regulation, or other instrument purporting to be printed by the Government Printer: 20
- (c.) By the production, in the case of any Proclamation, Order in Council, order, regulation, or other instrument made or issued by the Governor or by the Governor in Council, of a written copy or extract purporting to be certified by the Clerk of the Executive Council, and, in the case of any order, regulation, or other instrument made or issued by or under the authority of any Responsible Minister as aforesaid, of a copy or extract purporting to be certified by such Minister or by any other Responsible Minister of the Crown in New Zealand. 25 30

Proof of signature,
&c., not required.
Ibid

33. No proof shall be required of the handwriting or official position of any person certifying in pursuance of the last preceding section to the truth of any copy of or extract from any Proclamation, Order in Council, order, regulation, or other instrument. 35

Private Acts, &c.,
of Imperial Parliament.
8 & 9 Vict., c. 113,
sec. 3

34. All copies of private and local and personal Acts of the Imperial Parliament, not being public Acts, purporting to be printed by the King's printers, and all copies of the Journals of either House of the Imperial Parliament, and of Royal Proclamations, purporting to be printed by the printers to the Crown, or by the printers to either House of the Imperial Parliament, or by any or either of them, shall be admitted as evidence thereof respectively by all Courts and persons acting judicially, without proof being given that such copies were so printed. 40

Royal Proclamations,
Orders of the Privy
Council, &c.
1888, No. 15, sec. 18

35. *Primâ facie* evidence of any Royal Proclamation, Order of His Majesty's Privy Council, order, regulation, despatch, or any other instrument heretofore or hereafter made or issued by His Majesty, or by His Majesty's Privy Council, or by or under the authority of any of His Majesty's Secretaries of State, or any Department of His Majesty's Government in the United Kingdom, may be given in all Courts and in all legal proceedings by the production of a copy of the *New Zealand Gazette* purporting to contain a reprint 45 50

of such Proclamation, Order of the Privy Council, order, regulation, despatch, or other instrument, as an extract from the *London Gazette*.

5 36. Every document admissible in evidence for any purpose in any Court of Justice in the United Kingdom without proof of the seal, or stamp, or signature authenticating the same, or of the judicial or official character of the person appearing to have signed the same, shall be admitted in evidence for the like purpose in any Court in New Zealand, or before any person acting judicially, without proof of the seal, or stamp, or signature authenticating the same, or of the judicial or official character of the person appearing to have signed the same.

Documents admissible in the United Kingdom to be admissible in New Zealand.

14 & 15 Vict., c. 99, sec. 11

15 37. (1.) All Proclamations, treaties, and other Acts of State of any foreign State, or of any British colony, and all judgments, decrees, orders, and other judicial proceedings of any Court of justice in any foreign State, or in any British colony, and all affidavits, pleadings, and other legal documents filed or deposited in any such Court, may be proved in any Court in New Zealand, or before any person acting judicially, either by examined copies or by copies authenticated in manner following, that is to say:—

Manner of proving Acts of State, &c., of any other colony or country.

Ibid sec. 7

20 (a.) If the document sought to be proved be a Proclamation, treaty, or other Act of State, the copy must be sealed with the seal of the foreign State or British colony to which the original document belongs; and

25 (b.) If the document sought to be proved be a judgment, decree, order, or other judicial proceeding of any foreign or colonial Court, or an affidavit, pleading, or other legal document filed or deposited in any such Court, the copy must be sealed with the seal of the Court to which the original document belongs, or, in the event of such Court having no seal, must be signed by one of the Judges of the said Court, who shall attach to his signature a statement in writing on the said copy that the Court whereof he is a Judge has no seal.

30 (2.) Any copy purporting to be sealed or signed as in this section respectively directed shall be admitted in evidence in every case where the original document could have been so admitted, without any proof of the seal where a seal is necessary, or of the signature, or of the truth of the statement attached thereto, where such signature and statement are necessary, or of the judicial character of the person appearing to have made such signature and statement.

35 38. Proclamations, international treaties, Orders in Council, and *Gazettes* of any country, although not proved in the manner provided by the last preceding section, may nevertheless be received in evidence in any Court and by any person acting judicially if such Court or person considers the same to be authentic.

Proclamations, &c., receivable, although not proved by sealed copies.

1885, No. 14, sec. 3

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

Statutes of any country published by authority.

Ibid, s. 2

Certain law-books
may be referred to
as evidence of laws.
1885, No. 14, s. 4

40. Printed books purporting to contain statutes, Ordinances, or other written laws in force in any country although not purporting to have been printed or published by authority as aforesaid, books purporting to contain reports of decisions of Courts or Judges in such country, and text-books treating of the laws of such country, may be referred to by all Courts and persons acting judicially for the purpose of ascertaining the laws in force in such country; but such Courts or persons shall not be bound to accept or act on the statements in any such books as evidence of such laws. 5

"Country" defined.

41. In sections *thirty-eight* to *forty* hereof the word "country" includes Scotland, Ireland, and any British dependency or colony and any foreign country. 10

Standard works in
general literature.
Ibid, s. 5

42. All Courts and persons acting judicially may, in matters of public history, literature, science, or art, refer, for the purposes of evidence, to such published books, maps, or charts as such Courts or persons consider to be of authority on the subjects to which they respectively relate. 15

Public documents
made evidence by
Act, how provable.
1860, No. 20, sec. 5

43. Where by any Act any certificate, official or public document, or document or proceeding of any corporation or company, or any certified copy of any document, by-law, entry in any register or other book, or any other proceeding, is admissible in evidence of any particular in any Court or before any person acting judicially, or before either House of Parliament, or any Committee of either House, or any Joint Committee of both Houses, or in any judicial proceeding, the same shall be admitted in evidence, provided they respectively purport to be sealed, or impressed with a stamp, or sealed and signed, or impressed with a stamp and signed, or signed only, as required by the Act rendering any such copy so receivable, without proof of the seal or stamp, where a seal or stamp is necessary, or of the signature, or of the official character of the person appearing to have signed the same. 20 25 30

Other public
documents, how
provable.
14 & 15 Vict., c. 99,
sec. 14

44. (1.) Where 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, but no Act exists rendering its contents provable by means of a copy, any copy thereof or extract therefrom shall be admissible in evidence in any Court or before any person acting judicially, if it be proved to be an examined copy or extract, or purport to be signed or certified as a true copy or extract by the officer to whose custody the original is intrusted. 35

(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. 40

Judicial notice of
signature of
Governor, &c.
1888, No. 15, sec. 19;
1860, No. 20, sec. 6;
8 & 9 Vict., c. 113,
sec. 2

45. All Courts and persons acting judicially shall take judicial notice of— 45

(a.) The signature of the Governor; and

(b.) The signature of any of the Judges of the Supreme Court, and of any of the Judges of the Supreme Court of Judicature in England, when attached or appended to any decree, order, certificate, or other judicial or official document. 50

46. Where by any Act the Governor, or the Governor in Council, or a Responsible Minister of the Crown in New Zealand, being a Member of the Executive Council, is authorised or empowered to do, exercise, or perform any act, power, function, or duty, any *Gazette* purporting to contain a notice of the doing, exercise, or performance of any such act, power, function, or duty, shall be *prima facie* evidence that the same was lawfully done, exercised, or performed.
47. Where any document has been received in evidence, the Court or person admitting the same may, on the request of any party against whom the same is so received, direct that such document be impounded and kept in the custody of some officer of the Court, or other proper person, until further order.

Gazette notice to be evidence of Act of State.
1888, No. 15, sec. 20

Documents may be impounded.
1860, No. 20, sec. 10

Mode of taking Evidence.

48. Every witness in any civil or criminal proceeding, or in any inquiry or examination before any Court or person acting judicially, shall be entitled, if he so wishes, instead of taking the oath usually administered to witnesses, to have an oath administered to him in the form following, that is to say: The officer or person tendering the oath shall hold up his hand, and say to the witness, "Witness, hold up your hand, and repeat after me.—
"I swear by Almighty God, as I shall answer to God at the great day of judgment, that I will speak the truth, the whole truth, and nothing but the truth."
49. (1.) Every person shall be entitled as of right to make his solemn affirmation, instead of taking an oath, in all places and for all purposes where an oath is required by law, and such affirmation shall be of the same force and effect as an oath.
- (2.) Every such affirmation shall be as follows: "I, A. B., do solemnly, sincerely, and truly declare and affirm," and shall then proceed with the words of the oath prescribed by law, omitting any words of imprecation or calling to witness.
- (3.) Every affirmation in writing shall begin, "I, A. B., of , do solemnly and sincerely affirm;" and the form in lieu of jurat shall be: "Affirmed at , this day of , 19 , before me."
- (4.) Every person commits perjury who makes any false statement on affirmation that would amount to perjury if made on oath.
50. All Courts, Judges, Justices, Officers, Commissioners, Arbitrators, and other persons acting judicially, are hereby empowered to administer an oath to all such witnesses as are lawfully called or voluntarily come before them respectively, or to take the affirmation of any such witness in lieu of such oath.
51. Where an oath has been duly administered and taken, the fact that the person to whom the same was administered had at the time of taking such oath no religious belief shall not for any purpose affect the validity of such oath.

Witnesses may be sworn in Scotch form.
1894, No. 21, sec. 2

Affirmation in lieu of oath.
1890, No. 31, sec. 2

Form of affirmation.
Ibid, sec. 3

Form of affirmation in writing.
Ibid, sec. 5

False affirmation perjury.
Ibid, sec. 2

Who may administer oaths.
Ibid, sec. 6

Oath not affected by want of religious belief.
Ibid, sec. 4

Minors under
twelve may make
declaration,
1894, No. 21, sec. 3

52. All witnesses under the age of twelve years may be examined without oath; but any such witness shall be required, before being so examined, to make the following declaration: "I promise to speak the truth, the whole truth, and nothing but the truth"; and such declaration shall be of the same force and effect as if such witness had taken an oath.

5

Repeals.

53. The enactments mentioned in the Schedule hereto are hereby repealed to the extent therein mentioned.

Schedule.

SCHEDULE.

- 1844, No. 16.—The Unsworn Testimony Ordinance, 1844.
 1845, No. 8.—The English Acts Ordinance, 1845.
 1854, No. 1.—The English Acts Act, 1854, in so far as it adopts the following Imperial Acts:—
 8 & 9 Vict., c. 113: "An Act to facilitate the Admission in Evidence of certain Official and other Documents."
 14 & 15 Vict., c. 99: "An Act to amend the Law of Evidence."
 16 & 17 Vict., c. 83: "An Act to amend an Act of the fourteenth and fifteenth Victoria, chapter ninety-nine."
 1860, No. 20.—The Official Documents Evidence Act, 1860.
 1666, No. 1.—The Criminal Law Procedure Act, 1866.
 1867, No. 93.—The Divorce and Matrimonial Causes Act, 1867: Sections 56 and 57.
 1875, No. 81.—The Evidence Further Amendment Act, 1875.
 1881, No. 10.—The Gaming and Lotteries Act, 1881: Sections 29 to 31.
 1885, No. 12.—The Gaming and Lotteries Act 1881 Amendment Act, 1885: Section 6.
 1885, No. 14.—The Evidence Further Amendment Act, 1885.
 1888, No. 15.—The Interpretation Act, 1888: Sections 15 to 20.
 1890, No. 31.—The Oaths Act, 1890.
 1892, No. 24.—The Bankruptcy Act, 1892: Subsection (1) of section 153.
 1894, No. 21.—The Oaths Act Amendment Act, 1894.
 1895, No. 10.—The Evidence Further Amendment Act, 1895.
 1901, No. 34.—The Evidence Further Amendment Act, 1901.