

LAWS OF TRINIDAD AND TOBAGO

EVIDENCE ACT

CHAPTER 7:02

Act
*4 of 1848
Amended by
*12 of 1855
*12 of 1898
*23 of 1905
7 of 1912
31 of 1918
29 of 1925
12 of 1942
39 of 1947
20 of 1953
7 of 1955
16 of 1973
52 of 1976
36 of 1978
45 of 1979
**24 of 1981
2 of 1983

*See Note on Commencement Dates on page 2

**See Note on Amendment on page 2

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**Note
on
Subsidiary Legislation**

This Chapter contains no subsidiary legislation.

Note on Omission

For Notification declaring holders of public offices to be "Government experts" under section 19(4)(e), see L.N. 158/1983.

Note on Commencement Dates

This Act is a consolidation of several independent enactments relating to evidence. The first enactment was Ordinance 4 of 1848 which came into operation on 10th March, 1848.

The second enactment was Ordinance 12 of 1855 which came into operation on 15th June 1855 and appeared as Chapter 70 in the 1925 Edition. This enactment was amended by 7 of 1912, 31 of 1918 and 29 of 1925.

The third enactment was Ordinance 12 of 1898 which came into operation on 22nd June 1898 and appeared as Chapter 71 in the 1925 Edition.

The fourth enactment was Ordinance 23 of 1905 which came into operation on 14th September 1905 and appeared as Chapter 30 in the 1925 Edition.

In the 1940 Edition Chapter 30, 70 and 71 were consolidated and appeared as the Evidence Ordinance (Chapter 7 No. 9) showing the three respective dates of commencement. This procedure was followed in the 1950 Edition and has been followed in this edition.

In the first page all the enactments incorporated in this Act are set out in strict chronological order.

Note on Adaptation

Under paragraph 6 of the Second Schedule to the Law Revision Act (Ch. 3:03) the Commission amended certain references to public officers in this Chapter. The Minister's approval of the amendments was signified by L.N. 120/1980, but no marginal reference is made to this Notice where any such amendment is made in the text.

Note on Amendment

Act No. 24 of 1981 has amended section 31 of, and the Second Schedule to, this Act, but Act No. 24 of 1981 had not, up to the date of the last revision of this Act (i.e. 31st December 1985) been brought into operation.

Corrigenda

- (a) At page 18, in section 35(3), in line 3, for the words "rules of Court" substitute the words "Rules of Court".
- (b) At page 21, in section 40(1), in line 2, for the words "rules of Court" substitute the words "Rules of Court".

CHAPTER 7:02

EVIDENCE ACT

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FIRST SCHEDULE.

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CHAPTER 7:02

EVIDENCE

An Act relating to the law of Evidence.1950 Ed.
Ch. 7. No. 9.23 of 1905.
Commencement.

[14TH SEPTEMBER 1905]

[15TH JUNE 1855]

[22ND JUNE 1898]

1. This Act may be cited as the Evidence Act.

Short title.

PART I

GENERAL

2. Whenever any question arises in any action, suit, information, or other proceeding in or before any Court of justice, or before any person having by law or by consent of parties authority to hear, receive, and examine evidence touching the admissibility or the sufficiency of any evidence, or the competency or obligation of any witness to give evidence, or the swearing of any witness, or the form of oath or of affirmation to be used by any witness, or the admissibility of any question put to any witness, or the admissibility or sufficiency of any document, writing, matter, or thing tendered in evidence, every such question shall be decided according to the law in force in England on 30th August 1962.

English law of
evidence to be
observed.
[45 of 1979].

3. A Court shall take judicial notice of any statutory instrument made under a written law of Trinidad and Tobago if the statutory instrument has been published in the *Gazette* or in the revised Edition of the *Laws of Trinidad and Tobago*.

Judicial Notice
of statutory
instrument.
[45 of 1979].

Proof of
Commonwealth
enactment.
[45 of 1979].

4. The written laws of the legislature of any Commonwealth territory may be proved by copies thereof purporting to be printed by the authority of the legislature or the Government of that country.

Credit of
witness not to
be impeached
by general
evidence of bad
character.

5. A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may, in case the witness in the opinion of the Judge proves adverse, contradict him by other evidence, or by leave of the Judge, prove that he had made at other times a statement inconsistent with his present testimony; but before such last mentioned proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

Proof may be
given of
testimony being
inconsistent
with former
statement.

6. If a witness, upon cross-examination as to a former statement made by him relative to the subject matter of the indictment or proceeding and inconsistent with his present testimony, does not distinctly admit that he did make the statement, proof may be given that he did in fact make it; but before such proof is given, the circumstances of the supposed statement, sufficient to designate the particular occasion, shall be mentioned to the witness, and he shall be asked whether or not he made the statement.

Cross-examination
as to previous
statements in
writing.

7. 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 the writing being shown to him; but if it is intended to contradict the witness by the writing, his attention must, before such contradictory proof is given, be called to those parts of the writing which are to be used for the purpose of so contradicting him; but the Judge, at any time during the trial, may require the production of the writing for his inspection, and may make such use of it for the purposes of the trial as he thinks fit.

Previous
conviction of
witness.
[45 of 1979].

8. 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 the conviction; and a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for such offence, purporting to be signed by the Registrar or Clerk of the Court, or other officer having the custody of the records of the Court where the offender was convicted, or by the deputy of such Clerk or

officer, is, upon proof of the identity of the person, sufficient evidence of the conviction, without proof of the signature or official character of the person appearing to have signed the same.

9. It is not necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite, and the instrument may be proved as if there had been no attesting witness.

Instruments may be proved without an attesting witness.

10. Comparison of a disputed writing with any writing proved to the satisfaction of the Judge to be genuine is permitted to be made by witnesses; and such writing, and the evidence of witnesses respecting it, may be submitted to the Court and jury as evidence of the genuineness or otherwise of the writing in dispute.

Disputed writings may be compared with writing proved genuine.

11. This Part shall apply to all Courts of justice, criminal as well as all others, and to all persons having, by law or by consent of parties, authority to hear, receive, and examine evidence.

Application of previous sections.

12. (1) A husband or wife is not in any proceeding, whether civil or criminal, compellable to disclose any communication made to him or her by his or her spouse during the marriage.

Admissibility of evidence by husband or wife. [16 of 1973].

(2) The evidence of a husband or wife is admissible in proceedings, whether civil or criminal to prove that marital intercourse did or did not take place between them during any period; but a husband or wife shall not be compelled in any such proceedings to give evidence of the matters aforesaid.

PART II

EVIDENCE IN CRIMINAL CASES

13. (1) Subject to section 12, every person charged with an offence, and the wife or husband, of the person so charged, is a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person; but—

Competency of accused and husband or wife as witness in criminal cases. [16 of 1973].

(a) a person so charged shall not be called as a witness in pursuance of this section except upon his own application;

Own application.

No comment if not called as witness.

(b) the failure of any person charged with an offence, or of the wife or husband, of the person so charged, to give evidence shall not be made the subject of any comment by the prosecution;

Spouses.

(c) the wife or husband of the person charged shall not, save as in this section mentioned, be called as a witness in pursuance of this section except upon the application of the person so charged.

Cross-examination.

(2) A person charged and being a witness in pursuance of this section may be asked any question in cross-examination, notwithstanding that it would tend to criminate him, as to the offence charged.

No question to show commission of offence not charged.

(3) A person charged and called as a witness in pursuance of this section shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than that wherewith he is then charged, or is of bad character, unless—

Exceptions.

(a) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged; or

(b) he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution; or

(c) he has given evidence against any other person charged with the same offence.

Evidence from box.

(4) A person called as a witness in pursuance of this section shall, unless otherwise ordered by the Court, give his evidence from the witness box or other place from which the other witnesses give their evidence.

Statement by person charged. Ch. 12:01.

(5) Nothing in this section affects section 17 of the Indictable Offences (Preliminary Enquiry) Act, or any right of the person charged to make a statement without being sworn.

Calling of wife or husband in certain cases. First Schedule.

(6) The wife or husband of a person charged with an offence under any written law mentioned in the First Schedule may be called as a witness either for the prosecution or defence and without the consent of the person charged.

(7) Nothing in this section affects a case where the wife or husband of a person charged with an offence may at Common Law be called as a witness without the consent of that person.

14. (1) In this section—

“statement” includes any representation of fact, whether made in words or otherwise;

“document” includes any device by means of which information is recorded or stored; and

“business” includes every kind of business, profession, occupation, calling, operation or activity, whether carried on for profit or otherwise.

Admissibility of
certain trade or
business
records.
[36 of 1978].

(2) In any criminal proceeding where direct oral evidence of a fact would be admissible, any statement contained in a document and tending to establish that fact shall, on production of the document, be admissible as evidence of that fact if—

(a) the document is, or forms part of, a record relating to any trade or business and compiled, in the course of that trade or business, from information supplied (whether directly or indirectly) by persons who have, or may reasonably be supposed to have, personal knowledge of the matters dealt with in the information they supply; and

(b) the person who supplied the information recorded in the statement in question is dead, or beyond the seas, or unfit by reason of his bodily or mental condition to attend as a witness, or cannot with reasonable diligence be identified or found, or cannot reasonably be expected (having regard to the time which has elapsed since he supplied the information and to all the circumstances) to have any recollection of the matters dealt with in the information he supplied.

(3) For the purpose of deciding whether or not a statement is admissible as evidence by virtue of this section, the Court may draw any reasonable inference from the form or content of the document in which the statement is contained, and may, in deciding whether or not a person is fit to attend as a witness, act on a certificate purporting to be a certificate of a registered medical practitioner.

(4) In determining the weight, if any, to be attached to a statement admissible as evidence by virtue of this section 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 person who supplied the information recorded in the statement did so contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not that person, or any person concerned with making or keeping the record containing the statement, had any incentive to conceal or misrepresent the facts.

(5) Nothing in this section affects the admissibility of any evidence that would be admissible apart from this section, or makes admissible any statement or document that is privileged.

Evidence of person charged, if only witness called.

15. (1) Where the only witness to the facts of the case called by the defence is the person charged, he shall be called as a witness immediately after the close of the evidence for the prosecution.

Right of reply.

(2) In cases where the right of reply depends upon the question whether evidence has been called for the defence, the fact that the person charged has been called as a witness shall not of itself confer on the prosecution the right of reply.

PART III

EVIDENCE IN PARTICULAR CASES

Breach of promise.

16. The parties to any action for breach of promise of marriage are competent to give evidence in such action; but no plaintiff in any action for breach of promise of marriage may recover a verdict unless his or her testimony is corroborated by some other material evidence in support of such promise.

Adultery.

17. The parties to any proceeding instituted in consequence of adultery, and their husbands and wives are competent to give evidence in such proceeding, but no witness in any proceeding, whether a party to the suit or not, shall be liable to be asked or bound to answer any question tending to show that he or she has been guilty of adultery, unless such witness has already given evidence in the same proceeding in disproof of his or her alleged adultery.

Revenue cases.

18. The parties to any information or proceeding in the High Court for the recovery of any penalty for the breach of any law relating to the revenue are competent to give evidence in any such information or proceeding.

19. (1) A document purporting to have affixed, impressed, or subscribed thereon or thereto the seal and signature of any diplomatic agent of Trinidad and Tobago in any foreign country, or any consular officer of Trinidad and Tobago in any foreign place, in testimony of any oath, affidavit, or act administered, taken, or done by or before any such person shall be admitted in evidence in any Court of Trinidad and Tobago without proof of his seal or signature or of his official character.

Admission in evidence of certain documents. [16 of 1973 2 of 1983].

(2) In any criminal proceeding any document purporting to be a certificate or report under the hand of a Government expert on any matter or thing which has been submitted to him for examination, analysis or report is admissible as evidence of the facts stated in it without proof of the signature or appointment of the Government expert, unless the Court, acting *ex proprio motu* or at the request of a party to the proceeding requires the expert to be called as a witness. The Court is not bound to require the attendance of the expert as a witness if the Court is of opinion that the request for such attendance is made for the purpose of vexation, delay or defeating the ends of justice.

Reports and certificates admissible in evidence in certain circumstances.

(2A) Where medical evidence is contained in a report signed by—

(a) a District Medical Officer, and the evidence—

(i) relates to a fatality; and

(ii) is being led in criminal proceedings or in an inquest; or

(b) a registered medical practitioner and the evidence does not relate to a fatality, the report shall be admitted as if it were the report of a Government expert within the meaning of this section.

(3) In any inquest held by a Coroner any such certificate or report is likewise admissible as evidence of the facts stated in it unless the Coroner requires the expert to be called as a witness.

(4) In this section—

“Government expert” means the following public officers:

(a) Senior Pathologist;

(b) Pathologist;

- (c) Government Chemist;
- (d) Armourer; and
- (e) the holder of any other office declared by the President by Notification published in the *Gazette* to be an officer to which this section applies;

“report” includes a post mortem report.

PART IV

EVIDENCE RELATING TO BIRTHS, DEATHS AND MARRIAGES

Certified copies of entries in registers admissible in evidence.

20. (1) A certified copy of an entry in any register of births, deaths, or marriages purporting to bear the signature of the person having legal custody of such register, or of some person legally authorised to sign such copy at the time of its issue, and authenticated as provided below is, in the case of any register kept at any place in Commonwealth countries subject to all just exceptions, *prima facie* evidence for all purposes of the fact of the birth or death or the legal solemnization of the marriage thereby certified.

Necessary authentication of copies of entries.

(2) A certified copy shall bear the signature of a person describing himself as holding some office, benefice, or position entitling him to the custody of the register, or to sign such copy at the time of so certifying, and the authentication of such signature shall be under the hand and seal of a Notary Public, or under the hand of the Registrar General, or Superintendent Registrar of Births and Deaths, or Registrar of Marriages of the Commonwealth country within which such certificate purports to have been issued, or under the hand of a member of the High Court or Supreme Court of such Commonwealth country, or under the seal of a Court of civil jurisdiction in the district in which the certified copy was issued.

Evidence of identity of person named in copy of entry.

(3) At the preliminary examination in respect of or at any trial for any indictable offence, where it becomes necessary either for the prosecution or the defence to establish the fact of any birth, death, or marriage in any Commonwealth country, the person charged, or the wife or husband of the person charged, may give evidence of

the identity of any person with any person named in the certificate; but nothing contained in this Act shall be construed to make it compulsory on any person accused, or on his or her wife or husband, to give any such evidence if he or she is unwilling to do so.

(4) A birth, death, or marriage in the United Kingdom and the Republic of Ireland or in Trinidad and Tobago shall, saving all just exceptions, be proved in the manner provided in this section, any written law to the contrary notwithstanding.

Proof of births, etc., in Trinidad and Tobago and in United Kingdom and Republic of Ireland.

PART V

DOCUMENTARY EVIDENCE IN CERTAIN CASES

21. In this Part—

“Government Printer” means and includes any printer purporting to be the printer authorised to print the Acts and other documents of the Government;

Interpretation.

“document” means and includes proclamations, orders, bye-laws, rules, regulations, warrants, circulars, lists, assessment rolls, minutes, certificates, notices, requisitions, letters, decrees, and all other records and writings whatsoever of a public character pertaining to the several departments of the Government in the first column of the Second Schedule;

Second Schedule.

“bankers’ books” means and includes ledgers, day books, cash books, account books, and all other books used in the ordinary business of a bank;

“legal proceeding” means any civil or criminal proceeding or enquiry in which evidence is or may be given before any Court of Justice, Judge, Magistrate or Justice, Arbitrator, Commissioner or person or persons authorised by the Supreme Court to take evidence;

“Judge” means a Judge of the Supreme Court, or of a Petty Civil Court;

“bank” and “banker” means and includes—

- (a) any person or persons, partnership or company, carrying on the business of bankers in Trinidad and Tobago, or the manager;

- (b) any person or persons, partnership or company, who may hereafter carry on the business of bankers in Trinidad and Tobago and who hereafter, under the authority of any Act may establish a banking association in Trinidad and Tobago, or the manager;
- (c) the Post Office Savings Bank established under the Post Office Savings Bank Act. In the case of the said Savings Bank, "banker" means the Postmaster General.

Ch. 79:04.

Certified copies
of documents
admissible in
evidence.

22. (1) Every document issued—

- (a) by the President;
- (b) under the authority of the President;
- (c) by or under the authority of any department of the Government or officer mentioned in the first column of the Second Schedule; or
- (d) being a record in any such department of the Government,

Second
Schedule.

may be received in evidence in all Courts of Justice, and in all legal proceedings whatsoever, in every case in which the original document would be admissible in evidence in all or any of the following modes:

- (i) by production of a copy of the *Gazette* purporting to contain the document;
- (ii) by production of a copy of the document purporting to be printed by the Government Printer;
- (iii) by production (in the case of any document issued by the President or under the authority of the President) of a copy or extract purporting to be certified by the Minister, Secretary to the Cabinet or any Permanent Secretary; and
- (iv) by production (in the case of any document issued by or under the authority of any of the departments or officer, or being a record in any such department of the Government) of a copy or extract purporting to be certified

to be true by the person or persons specified in the second column of the said Second Schedule in connection with such department or officer.

Any copy or extract made in pursuance of this Part may be in print or in writing, or partly in print and partly in writing.

No proof shall be required of the handwriting or official position of any person certifying in pursuance of this Part to the truth of any copy of or extract from any document.

(2) In this section "Minister" means the Minister responsible for the subject matter in respect of which the document was issued and "Permanent Secretary" means the Permanent Secretary to the Minister.

23. No officer of any of the several public departments specified in the first column of the Second Schedule is, in any legal proceedings to which the State or he is not a party, compellable to produce any document the contents of which can be proved under this Act or to appear as a witness to prove the matters, transactions, and things recorded in it unless by order of a Judge made for special cause.

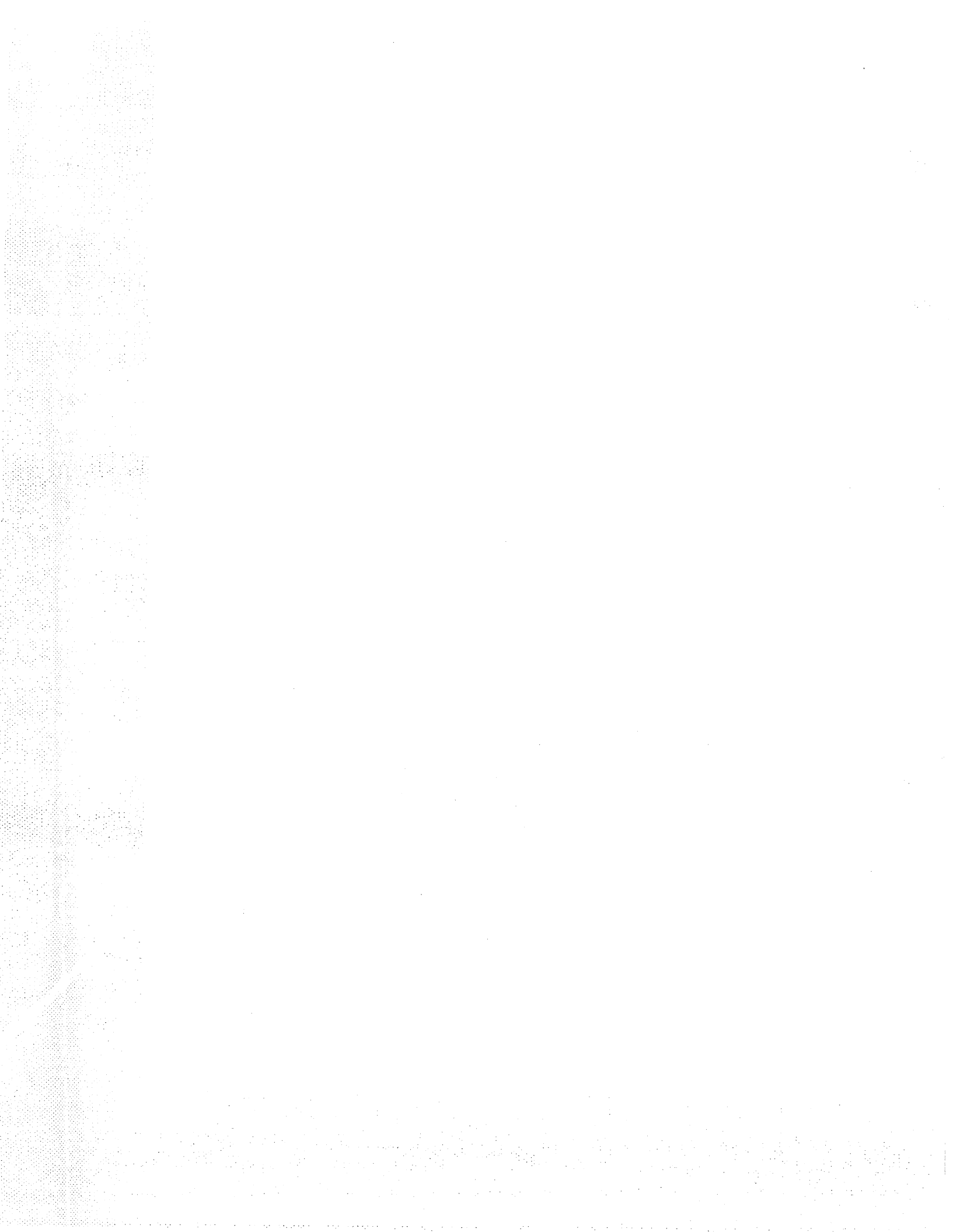
Officer not compellable to appear as witness unless party to the suit.
Second Schedule.

24. Any person who prints any enactment or document which falsely purports to have been printed by the Government Printer, or by the authority of the legislation or the Government of any Commonwealth territory or tenders in evidence any document which falsely purports to have been so printed knowing that the same was not so printed is liable to imprisonment for five years.

Printing or tendering false document.
[45 of 1979].

25. Section 22 shall be deemed to be in addition to and not in derogation of any powers of proving documents given by any Act or law for the time being in force in Trinidad and Tobago.

Saving former rights.



26. Subject to this Act, a copy of any entry in a banker's book shall, in all legal proceedings be received as *prima facie* evidence of such entry, and of the matters, transactions, and accounts therein recorded.

Mode of proof of entry in banker's books.

27. (1) A copy of an entry in a banker's book shall not be received in evidence under this Act unless it is first proved that the book was, at the time of the making of the entry, one of the ordinary books of the bank, and that the entry was made in the usual and ordinary course of business, and that the book is in the custody or control of the bank.

Proof that book is a banker's book.

(2) Such proof may be given by the manager or accountant of the bank, and in the case of the Post Office Savings Bank by the Postmaster General or any person authorised by him.

(3) Such proof may be given orally, or by affidavit sworn, or statutory declaration made, before any Commissioner or person authorised to take affidavits or statutory declarations.

28. A copy of an entry in a banker's book shall not be received in evidence under this Act unless it be further proved that the copy has been examined with the original entry and is correct; such proof shall be given by some person who has examined the copy with the original entry, and may be given either orally, or by an affidavit sworn, or statutory declaration made, before any Commissioner or person authorised to take affidavits or statutory declarations.

Verification of copy.

29. The manager or accountant of a bank, and in the case of the Post Office Savings Bank the Postmaster General and any person employed in connection with the Post Office Savings Bank, are not, in any legal proceeding to which the bank is not a party, compellable to produce any banker's book, the contents of which can be proved under this Act or to appear as a witness to prove the matters, transactions, and accounts recorded in it, unless by order of a Judge made for special cause.

When banker not compellable to produce book, etc.

30. On the application of any party to a legal proceeding, a Court or Judge may order that the party be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of the proceedings. An order under this section may be made either with or without summoning the bank or any other party, and shall be served on the bank three clear days, exclusive of Sundays and public holidays, before it is to be obeyed, unless the Court or Judge otherwise directs.

Court or Judge may order inspection, etc.

Fees to be paid.
Second
Schedule.

31. There shall be paid to and taken by the officers of the departments in the Second Schedule mentioned, except the Registrar General's department, the following fees, that is to say:

| | \$ | £. |
|--|----|----|
| For every copy of any document, for every 90 words | 0 | 12 |
| For a certificate of correctness of such copy .. | 1 | 20 |

All fees under this Act shall be paid to the Comptroller of Accounts.

Proof of instrument as to validity of which attestation is necessary.
[16 of 1973].

32. (1) In any proceeding, whether civil or criminal, an instrument as 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.

(2) In this section "proceedings" includes an arbitration or reference whether under any written law or not.

(3) Nothing in this section shall apply to the proof of wills or other testamentary documents.

Presumption as to document twenty years old.
[16 of 1973].

33. In any proceedings, whether civil or criminal, there shall, in the case of documents proved, or purporting, to be not less than twenty years old be made any presumption which immediately before 1st September 1938 would have been made in the case of a document of like character proved, or purporting, to be not less than thirty years old.

Saving.
[16 of 1973].

34. Nothing in section 32 or 33 shall prejudice the admissibility of any evidence which would, apart from the provisions of those sections, be admissible.

PART VI

EVIDENCE IN CIVIL PROCEEDINGS

Interpretation.
[16 of 1973].

35. (1) In this Part—
"civil proceedings" includes, in addition to civil proceedings in any of the ordinary Courts of Law—

- (a) civil proceedings before any other tribunal, being proceedings in relation to which the strict rules of evidence apply; and

(b) an arbitration or reference, whether under a written law or not,

but does not include civil proceedings in relation to which the strict rules of evidence do not apply;

“computer” has the meaning assigned by section 40;

“Court” does not include a Court-martial, and, in relation to an arbitration or reference, means the arbitrator or umpire and, in relation to proceedings before a tribunal (not being one of the ordinary Courts of Law), means the tribunal;

“document” includes, in addition to a document in writing—

(a) any map, plan, graph or drawing;

(b) any photograph;

(c) any disc, tape, sound track or other device in which sounds or other data, not being visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and

(d) any film, negative, tape or other device in which one or more visual images are embodied so as to be capable (as mentioned above) of being reproduced therefrom;

“film” includes a microfilm;

“legal proceedings” includes an arbitration or reference, whether under a written law or not;

“statement” includes any representation of fact, whether made in words or otherwise.

(2) In this Part any reference to a copy of a document includes—

(a) in the case of a document falling within paragraph (c) but not (d) of the definition of “document” in subsection (1), a transcript of the sounds or other data embodied therein;

(b) in the case of a document falling within paragraph (d) but not (c) of that definition, a reproduction or still reproduction of the image or images embodied therein, whether enlarged or not;

(c) in the case of a document falling within both those paragraphs, such a transcript together with such a still reproduction; and

(d) in the case of a document not falling within the said paragraph (d) of which a visual image is embodied in

a document falling within that paragraph, a reproduction of that image, whether enlarged or not, and any reference to a copy of the material part of a document shall be construed accordingly.

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(3) For the purposes of the application of this Part in relation to any such civil proceedings as are mentioned in subsection (1), any rules of Court made for the purposes of this Act under sections 77 and 78 of the Supreme Court of Judicature Act, shall (except in so far as their operation is excluded by agreement) apply, subject to such modifications as may be appropriate, in like manner as they apply in relation to civil proceedings in the High Court of Justice.

(4) If any question arises as to what are, for the purposes of any such civil proceedings as are mentioned in subsection (1), the appropriate modifications of any such rule of court as is mentioned in subsection (3), that question shall, in default of agreement, be determined by the tribunal or the arbitrator or umpire, as the case may be.

(5) Any reference in this Part to any other written law includes a reference thereto as applied, by or under any other written law.

(6) Nothing in this Part prejudices the operation of any written law which provides (in whatever words) that any answer or evidence given by a person in specified circumstances is not admissible in evidence against him or some other person in any proceedings or class of proceedings (however described).

(7) In subsection (6) the reference to giving evidence is a reference to giving evidence in any manner, whether by furnishing information, making discovery, producing documents or otherwise.

(8) Nothing in this Part prejudices—

- (a) any power of a court, in any legal proceeding, to exclude evidence (whether by preventing questions from being put or otherwise) at its discretion; or
- (b) the operation of any agreement (whenever made) between the parties to any legal proceedings as to the evidence which is to be admissible (whether generally or for any particular purpose) in those proceedings.

(9) Where, by reason of any defect of speech or hearing from which he is suffering, a person called as a witness in any

legal proceeding gives his evidence in writing or by signs, that evidence is to be treated for the purposes of this Part as being given orally.

36. (1) In any civil proceedings a statement other than one made by a person while giving oral evidence in those proceedings is admissible as evidence of any fact stated therein to the extent that it is so admissible by virtue of any provision of this Part or by virtue of any other statutory provision or by agreement of the parties, but not otherwise.

Hearsay evidence to be admissible only by virtue of this Act and other statutory provisions, or by agreement. [16 of 1973].

(2) In this section "statutory provision" means any provision contained in, or in an instrument made under, this or any other Act including any Act passed after the commencement of the Evidence (Amendment) Act 1973 (that is, 15th November 1973).

37. (1) In any civil proceedings a statement made, whether orally or in a document or otherwise, by any person, whether called as a witness in those proceedings or not, shall, subject to this section and to Rules of Court, be admissible as evidence of any fact stated therein of which direct oral evidence by him would be admissible.

Admissibility of out-of-Court statements as evidence of facts stated. [16 of 1973].

(2) Where in any civil proceedings a party desiring to give a statement in evidence by virtue of this section has called or intends to call as a witness in the proceedings the person by whom the statement was made, the statement—

(a) shall not be given in evidence by virtue of this section on behalf of that party without the leave of the Court; and

(b) without prejudice to paragraph (a), shall not be given in evidence by virtue of this section on behalf of that party before the conclusion of the examination-in-chief of the person by whom it was made, except—

(i) where before that person is called the Court allows evidence of the making of the statement to be given on behalf of that party by some other person; or

(ii) in so far as the Court allows the person by whom the statement was made to narrate it in the course of his examination-in-chief on the ground that to prevent him from doing so would adversely affect the intelligibility of his evidence.

(3) Where in any civil proceedings a statement which was made otherwise than in a document is admissible by virtue of this section, no evidence other than direct oral evidence by the person who made the statement or any person who heard or otherwise perceived it being made shall be admissible for the purpose of proving it, but so however, that if the statement in question was made by a person while giving oral evidence in some other legal proceedings (whether civil or criminal), it may be proved in any manner authorised by the Court.

Witness's previous statement, if proved, to be evidence of facts stated. [16 of 1973 2 of 1983].

38. (1) Where in any civil proceedings—

- (a) a previous inconsistent or contradictory statement made by a person called as a witness in those proceedings is proved by virtue of section 5, 6 or 7;
- (b) a previous statement made by a person called as aforesaid is proved for the purpose of rebutting a suggestion that his evidence has been fabricated,

that statement shall by virtue of this subsection be admissible as evidence of any fact stated therein of which direct oral evidence by him would be admissible.

(2) Nothing in this Part shall affect any of the rules of law relating to the circumstances in which, where a person called as a witness in any civil proceedings is cross-examined on a document used by him to refresh his memory, that document may be made evidence in those proceedings; and where a document or any part of a document is received in evidence in any such proceedings by virtue of any such rule of law, any statement made in that document or part by the person using the document to refresh his memory shall by virtue of this subsection be admissible as evidence of any fact stated therein of which direct oral evidence by him would be admissible.

Admissibility of certain records as evidence of facts stated. [16 of 1973].

39. (1) Without prejudice to section 40, in any civil proceedings a statement contained in a document shall, subject to this section and to Rules of Court, be admissible as evidence of any fact stated therein of which direct oral evidence would be admissible, if the document is, or forms part of, a record compiled by a person acting under a duty from information which was supplied by a person (whether acting under a duty or not) who had, or may reasonably be supposed to have had personal knowledge of the

matters dealt with in that information and which, if not supplied by that person to the compiler of the record, directly, was supplied by him to the compiler, of the record indirectly through one or more intermediaries, each acting under a duty.

(2) Where in any civil proceedings a party desiring to give a statement in evidence by virtue of this section has called or intends to call as a witness in the proceedings the person who originally supplied the information from which the record containing the statement was compiled, the statement—

- (a) shall not be given in evidence by virtue of this section on behalf of that party without the leave of the Court; and
- (b) without prejudice to paragraph (a), shall not, without the leave of the Court, be given in evidence by virtue of this section on behalf of that party before the conclusion of the examination-in-chief of the person who originally supplied the said information.

(3) Any reference in this section to a person acting under a duty includes a reference to a person acting in the course of any trade, business, profession or other occupation in which he is engaged or employed or for the purposes of any paid or unpaid office held by him.

40. (1) In any civil proceedings a statement contained in a document produced by a computer shall, subject to rules of court, be admissible as evidence of any fact stated therein of which direct oral evidence would be admissible, if it is shown that the conditions mentioned in subsection (2) are satisfied in relation to the statement and computer in question.

Admissibility of
statements
produced by
computers.
[16 of 1973].

(2) The said conditions are—

- (a) that the document containing the statement was produced by the computer during a period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period, whether for profit or not, by any body, whether corporate or not, or by any individual;
- (b) that over that period there was regularly supplied to the computer in the ordinary course of those activities information of the kind contained in the statement or of the kind from which the information so contained in the statement or of the kind from which the information so contained is derived;

- (c) that throughout the material part of that period the computer was operating properly or, if not, that any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of its contents; and
- (d) that the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of those activities.

(3) Where over a period the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in subsection (2)(a) was regularly performed by computers, whether—

- (a) by a combination of computers operating over that period;
- (b) by different computers operating in succession over that period;
- (c) by different combinations of computers operating in succession over that period; or
- (d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers.

all the computers used for that purpose during that period shall be treated for the purposes of this Part as constituting a single computer; and references in this Part to a computer shall be construed accordingly.

(4) In any civil proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say—

- (a) identifying the document containing the statement and describing the manner in which it was produced;
- (b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;
- (c) dealing with any of the matters to which the conditions mentioned in subsection (2) relate,

and purporting to be signed by a person occupying a responsible position in relation to the operation of the relevant device or the

management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this Part—

- (a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;
- (b) where, in the course of activities carried on by any individual or body, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;
- (c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

(6) Subject to subsection (3) in this Part “computer” means any device for storing and processing information, and any reference to information being derived from other information is a reference to its being derived therefrom by calculation, comparison or any other process.

41. (1) Without prejudice to the generality of section 22, where in any civil proceedings a statement contained in a document is proposed to be given in evidence by virtue of section 37, 39 or 40 it may, subject to any Rules of Court, be proved by the production of that document or (whether or not that document is still in existence) by the production of a copy of that document, or of the material part thereof, authenticated in such manner as the Court may approve.

Provisions
supplementary
to sections 37 to
40.
[16 of 1973].

(2) For the purpose of deciding whether or not a statement is admissible in evidence by virtue of section 37, 39 or 40 the Court may draw any reasonable inference from the circumstances in which the statement was made or otherwise came into being or from any other circumstances, including, in the case of a statement contained in a document the form and contents of that document.

(3) In estimating the weight, if any, to be attached to a statement admissible in evidence by virtue of section 37, 38, 39 or 40 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—

- (a) in the case of a statement falling within section 37(1) or 38(1) or (2), 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 the facts;
- (b) in the case of a statement falling within section 39(1), to the question whether or not the person who originally supplied the information from which the record containing the statement was compiled did so contemporaneously with the occurrence or existence of the facts dealt with in that information, and to the question whether or not that person, or any person concerned with compiling or keeping the record containing the statement, had any incentive to conceal or misrepresent the facts; and
- (c) in the case of a statement falling within section 40(1) to the question whether or not the information which the information contained in the statement reproduces or is derived from was supplied to the relevant computer, or recorded for the purpose of being supplied thereto, contemporaneously with the occurrence or existence of the facts dealt with in that information, and to the question whether or not any person concerned with the supply of information to that computer, or with the operation of that computer or any equipment by means of which the document containing the statement was produced by it, had any incentive to conceal or misrepresent the facts.

(4) For the purpose of any written law or rule of law or practice requiring evidence to be corroborated or regulating the manner in which uncorroborated evidence is to be treated—

- (a) a statement which is admissible in evidence by virtue of section 37 or 38 shall not be capable of corroborating evidence given by the maker of the statement; and

(b) a statement which is admissible in evidence by virtue of section 8 shall not be capable of corroborating evidence given by the person who originally supplied the information from which the record containing the statement was compiled.

(5) Any person who, in a certificate tendered in evidence in civil proceedings by virtue of section 40(4), wilfully makes a statement material in those proceedings which he knows to be false or does not believe to be true is liable on conviction on indictment to a fine and to imprisonment for two years.

42. (1) Subject to Rules of Court, where in any civil proceedings a statement made by a person who is not called as a witness in those proceedings is given in evidence by virtue of section 37—

Admissibility of evidence as to credibility of maker, etc. of statement admitted under section 37 or 39. [16 of 1973].

(a) any evidence which, if that person had been so called, would be admissible for the purpose of destroying or supporting his credibility as a witness shall be admissible for that purpose in those proceedings; and

(b) evidence tending to prove that, whether before or after he made that statement, that person made (whether orally or in a document or otherwise) another statement inconsistent therewith shall be admissible for the purpose of showing that that person has contradicted himself.

(2) Nothing in subsection (1) shall enable evidence to be given of any matter of which, if the person in question had been called as a witness and had denied that matter in cross-examination, evidence could not have been adduced by the cross-examining party.

(3) Subsection (1) shall apply in relation to a statement given in evidence by virtue of section 39 as it applies in relation to a statement given in evidence by virtue of section 37, except that references to the person who made the statement and to his making the statement shall be construed, respectively, as references to the person who originally supplied the information from which the record containing the statement was compiled and to his supplying that information.

(4) Section 38(1) shall apply to any statement proved by virtue of subsection (1)(b) as it applies to a previous inconsistent or contradictory statement made by a person called as a witness which is proved as mentioned in paragraph (a) of the said section 38(1).

Rules of Court.
[16 of 1973].

43. (1) Provision shall be made by Rules of Court as to the procedure which, subject to any exceptions provided for in the rules, must be followed and the other conditions which, subject as aforesaid, must be fulfilled before a statement can be given in evidence in civil proceedings by virtue of section 37, 39 or 40.

(2) Rules of Court made in pursuance of subsection (1) shall in particular, subject to such exceptions (if any) as may be provided for in the rules—

(a) require a party to any civil proceedings who desires to give in evidence any such statement as is mentioned in that subsection to give to every other party to the proceedings such notice of his desire to do so and such particulars of or relating to the statement as may be specified in the rules, including particulars of such one or more of the persons connected with the making or recording of the statement or, in the case of a statement falling within section 37(1), such one or more of the persons concerned as mentioned in section 41(3)(c) as the rules may in any case require; and

(b) enable any party who receives such notice as aforesaid by counter-notice to require any person of whom particulars were given with the notice to be called as a witness in the proceedings; unless that person is dead, or beyond the seas, or unfit by reason of his bodily or mental condition to attend as a witness, or cannot with reasonable diligence be identified or found, or cannot reasonably be expected (having regard to the time which has elapsed since he was connected or concerned as aforesaid and to all the circumstances) to have any recollection of matters relevant to the accuracy or otherwise of the statement.

(3) Rules of Court made in pursuance of subsection (1)—

(a) may confer on the Court in any civil proceedings a discretion to allow a statement falling within section 37(1), 39(1) or 40(1) to be given in evidence notwithstanding that any requirement of the rules affecting the admissibility of that statement has not been complied with; except in pursuance of paragraph (b), Rules of Court may not confer on the Court a discretion to exclude such a statement where

the requirements of the rules affecting its admissibility have been complied with;

- (b) may confer on the Court power, where a party to any civil proceedings has given notice that he desires to give in evidence—
- (i) a statement falling within section 37(1) that was made by a person, whether orally or in a document, in the course of giving evidence in some other legal proceedings (whether civil or criminal); or
 - (ii) a statement falling within section 39(1) that is contained in a record of any direct oral evidence given in some other legal proceedings (whether civil or criminal), to give directions on the application of any party to the proceedings as to whether, and if so on what conditions, the party desiring to give the statement in evidence will be permitted to do so (where applicable) as to the manner in which that statement and any other evidence given in those other proceedings is to be proved; and
- (c) may make different provision for different circumstances, and in particular may make different provisions with respect to statements falling within sections 37(1), 39(1) and 40(1), respectively,

and any discretion conferred on the Court by Rules of Court made in accordance with this section may be either a general discretion or a discretion exercisable only in such circumstances as may be specified in the rules.

(4) Rules of Court may make provision for preventing a party to any civil proceedings (subject to any exceptions provided for in the rules) from adducing in relation to a person who is not called as a witness in those proceedings any evidence that could otherwise be adduced by him by virtue of section 42, unless that party has in pursuance of the rules given in respect of that person such a counter-notice as is mentioned in subsection (2)(b).

(5) In deciding for the purposes of any Rules of Court made in pursuance of this section whether or not a person is fit to attend as a witness, a Court may act on a certificate purporting to be a certificate of a registered medical practitioner.

(6) Nothing in the foregoing provisions of this section shall prejudice the generality of section 76 of the Supreme Court of

Ch. 4:01. Judicature Act, or any other written law conferring power to make Rules of Court; and nothing in any enactment restricting the matters with respect to which Rules of Court may be made shall prejudice the making of Rules of Court with respect to any matter mentioned in the foregoing provisions of this section or the operation of any Rules of Court made with respect to any such matter.

Admissibility of certain hearsay evidence formerly admissible at common law. [16 of 1973].

44. (1) In any civil proceedings a statement which, if this Part had not been passed, would by virtue of any rule of law mentioned in subsection (2) have been admissible as evidence of any fact stated therein shall be admissible as evidence of that fact by virtue of this subsection.

(2) The rules of law referred to in subsection (1) are the following, that is to say any rule of law—

- (a) whereby in any civil proceedings an admission adverse to a party to the proceedings, whether made by that party or by another person, may be given in evidence against that party for the purpose of proving any fact stated in the admission;
- (b) whereby in any civil proceedings published works dealing with matters of a public nature (for example, histories, scientific works, dictionaries and maps) are admissible as evidence of facts of a public nature stated therein;
- (c) whereby in any civil proceedings public documents (for example, public registers, and returns made under public authority with respect to matters of public interest) are admissible as evidence of facts stated therein; or
- (d) whereby in any civil proceedings records (for example, the records of certain Courts, treaties, State grants, pardons and commissions) are admissible as evidence of facts stated therein.

In this subsection “admission” includes any representation of fact, whether made in words or otherwise.

(3) In any civil proceedings a statement which tends to establish reputation or family tradition with respect to any matter and which, if this Part had not been passed, would have been admissible in evidence by virtue of any rule of law mentioned in subsection (4)—

(a) shall be admissible in evidence by virtue of this paragraph in so far as it is not capable of being rendered admissible under section 37 or 39; and

(b) if given in evidence under this Act (whether by virtue of paragraph (a) or otherwise) shall by virtue of this paragraph be admissible as evidence of the matter reputed or handed down,

and, without prejudice to paragraph (b), reputation shall for the purposes of this Act be treated as a fact and not as a statement or multiplicity of statements dealing with the matter reputed.

(4) The rules of law referred to in subsection (3) are the following, that is to say any rule of law—

(a) whereby in any civil proceedings evidence of a person's reputation is admissible for the purpose of establishing his good or bad character;

(b) whereby in any civil proceedings involving a question of pedigree or in which the existence of a marriage is in issue, evidence of reputation or family tradition is admissible for the purpose of proving or disproving pedigree or the existence of the marriage, as the case may be; or

(c) whereby in any civil proceedings evidence of reputation or family tradition is admissible for the purpose of proving or disproving the existence of any public or general right or of identifying any person or thing.

(5) It is hereby declared that in so far as any statement is admissible in any civil proceedings by virtue of subsection (1) or (3)(a), it may be given in evidence of those proceedings notwithstanding anything in sections 37 to 42 or in any Rules of Court made in pursuance of section 43.

(6) The words in which any rules of law mentioned in subsection (2) or (4) is there described are intended only to identify the rule in question and shall not be construed as altering that rule in any way.

45. (1) In any civil proceedings—

(a) the fact that a person has been found guilty of, or to have committed, adultery in any matrimonial proceedings; and

(b) the fact that a person has been adjudged to be the father of a child in affiliation proceedings before any Court in Trinidad and Tobago,

Findings of adultery and paternity as evidence in civil proceedings. [16 of 1973].

shall (subject to subsection (3)) be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in those civil proceedings, that he committed the adultery to which the finding relates, or, as the case may be, is (or was) the father of that child, whether or not he offered any defence to the allegation of adultery or paternity and whether or not he is a party to the civil proceedings; but no finding or adjudication other than a subsisting one shall be admissible in evidence by virtue of this section.

(2) In any civil proceedings in which by virtue of this section a person is proved to have been found guilty of, or to have committed, adultery as mentioned in subsection (1)(a) or to have been adjudged to be the father of a child as mentioned in subsection (1)(b)—

- (a) he shall be taken to have committed the adultery to which the finding relates or, as the case may be, to be (or have been) the father of that child, unless the contrary is proved; and
- (b) without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the finding or adjudication was based, the contents of any document which was before the Court or which contains any pronouncement of the Court, in the matrimonial or affiliation proceedings in question shall be admissible in evidence for that purpose.

(3) Nothing in this section shall prejudice the operation of any enactment whereby a finding of fact in any matrimonial or affiliation proceedings is for the purposes of any other proceedings made conclusive evidence of any fact.

Abolition of
certain
privileges.
[16 of 1973].

46. (1) Subject to section 12, the following rules of law are hereby abrogated except in relation to criminal proceedings, that is to say—

- (a) the rule whereby, in any legal proceedings, a person cannot be compelled to answer any question or produce any document or thing if to do so would tend to expose him to a forfeiture; and
- (b) the rule whereby, in any legal proceedings, a person other than a party to the proceedings cannot be compelled to produce any deed or other document relating to his title to any land.

(2) Subject to section 12, the rule of law whereby, in any

civil proceedings, a party to the proceedings cannot be compelled to produce any document relating solely to his own case and in no way tending to impeach that case or support the case of any opposing party is hereby abrogated.

47. This Act binds the State.

Act binds the State.

**PART VII
GENERAL AND MISCELLANEOUS**

FIRST SCHEDULE

| | |
|--------------------------------------|--|
| The Offences Against the Persons Act | Sections 31, 34, 35, 36, 37, 38, 39, 40, 45, 46, 47, 48, 49, 55, and 61 |
| The Summary Offences Act | Section 45(a) |

Section 13(6).
[52/1976
16/1973].

SECOND SCHEDULE

| COLUMN I <i>Name of Ministry, Department or Office</i> | COLUMN II <i>Name of title of Office or Certifying Officers</i> |
|--|--|
| All Ministries | Permanent Secretary of each Ministry |
| Ministry of Agriculture, Lands and Fisheries | Sub-Intendant Director of Surveys |
| Ministry of Education | Chief Education Officer |
| Ministry of Finance (Customs and Excise Department) | Comptroller of Customs and Excise Customs and Excise Supervisor (Tobago) |
| (Inland Revenue Department) | Commissioner of Inland Revenue Revenue Officer (Tobago) |
| Ministry of Health and Housing (Medical Department) | Chief Medical Officer Principal Medical Officer |
| Ministry of Legal Affairs | Solicitor-General Chief Parliamentary Counsel Chief State Solicitor |
| (Registrar General Department) | Registrar General Deputy Registrar General Delegate of the Registrar General (Tobago) |
| Ministry of National Security (Immigration) | Chief Immigration Officer |
| (Police Department) | Commissioner of Police Deputy Commissioner of Police |
| (Prison Department) | Commissioner of Prisons Deputy Commissioner of Prisons |
| Personnel Department | Chief Personnel Officer |
| Ministry of Petroleum and Mines | Chief Petroleum Engineer |
| Ministry of Public Utilities (Post Office Department) | Postmaster General General Postal Supervisor (Tobago) |
| Port Authority | General Manager Harbour Master |
| Registrar of Friendly Societies | Registrar of Friendly Societies |
| Service Commissions Department | Director of Personnel Administration |
| Ministry of Works | Transport Commissioner Licensing Officer (Tobago). |

Sections 22, 23.
[16 of 1973].