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CHAPTER 7. No. 9.

EVIDENCE.

Ordinances
Ch. 7. No. 9—
1940.
No. 12-1942.
„ 39-1947.
Commence-
ment.

AN ORDINANCE RELATING TO THE LAW OF EVIDENCE.

[14th September, 1905.]

[15th June, 1855.]

[22nd June, 1898.]

Short title.

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

PART I.

GENERAL.

English law
of evidence
to be
observed.

2. Whenever any question shall arise in any action, suit, information, or other proceeding whatsoever 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 of England for the time being in force.

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

3. 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 shall, in the opinion of the Judge, prove adverse, contradict him by other evidence, or, by leave of the Judge, prove that he had made at

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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.

4. 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 has made such statement, proof may be given that he did in fact make it; but before such proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he made such statement.

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

5. 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 which are to be used for the purpose of so contradicting him: Provided always, that it shall be competent for the Judge, at any time during the trial, to require the production of the writing for his inspection, and he may thereupon make such use of it for the purposes of the trial as he may think fit.

Cross-examination as to previous statements in writing.

6. A witness may be questioned as to whether he has been convicted of any felony or misdemeanor, and upon being so questioned, if he either denies or does not admit the fact, or refuses to answer, it shall be lawful for the cross-examining party to prove such 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, shall, upon proof of the identity of the person, be sufficient evidence of the said

Previous conviction of witness.

conviction, without proof of the signature or official character of the person appearing to have signed the same.

Instruments may be proved without an attesting witness.

7. It shall not be 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.

Disputed writings may be compared with writing proved genuine.

8. Comparison of a disputed writing with any writing proved to the satisfaction of the Judge to be genuine shall be permitted to be made by witnesses; and such writings, and the evidence 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.

Application of previous sections.

9. This Part of this Ordinance shall apply to all courts of justice, as well criminal as all others; and to all persons having, by law or by consent of parties, authority to hear, receive, and examine evidence.

PART II.

EVIDENCE IN CRIMINAL CASES.

Competency of accused and husband or wife as witness in criminal cases.

10. (1) Every person charged with an offence, and the wife or husband, as the case may be, of the person so charged, shall be 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: Provided that—

Own application.

(a) a person so charged shall not be called as a witness in pursuance of this section except upon his 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, as the case may be, 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;

Communication during marriage.

(d) nothing in this section shall make a husband

compellable to disclose any communication made to him by his wife during the marriage, or a wife compellable to disclose any communication made to her by her husband during the marriage.

(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. Cross-examination.

(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— No question to show commission of offence not charged.

(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 Exceptions.

(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.

(4) Every 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. Evidence from box.

(5) Nothing in this section shall affect the provisions of section 17 of the Indictable Offences (Preliminary Enquiry) Ordinance, or any right of the person charged to make a statement without being sworn. Statement by person charged.

(6) The wife or husband of a person charged with an offence under any enactment mentioned in the First Schedule hereto may be called as a witness either for the prosecution or defence and without the consent of the person charged. Calling of wife or husband in certain cases. 1st Schedule.

(7) Nothing in this section shall affect 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.

Evidence of person charged, if only witness called.

11. (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.

Application of sections 10 and 11.

12. Sections 10 and 11 shall apply to all criminal proceedings but shall not apply to proceedings in Courts Martial—

(a) under the Local Forces Ordinance;

29 & 30 Vic. c. 109.

(b) under the Naval Discipline Act, unless so applied by general orders made in pursuance of section 65 of that Act;

44 & 45 Vic. c. 58.

(c) under the Army Act, unless so applied by rules made in pursuance of section 70 of that Act;

7 & 8 Geo. 5.

(d) under the Air Force Act, unless so applied by rules made in pursuance of section 70 of that Act.

PART III.

EVIDENCE IN PARTICULAR CASES.

Breach of promise.

13. The parties to any action for breach of promise of marriage shall be competent to give evidence in such action: Provided that no plaintiff in any action for breach of promise of marriage shall recover a verdict unless his or her testimony shall be corroborated by some other material evidence in support of such promise.

Adultery.

14. The parties to any proceeding instituted in consequence of adultery, and the husbands and wives of such parties, shall be competent to give evidence in such

proceeding: Provided that 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 shall have already given evidence in the same proceeding in disproof of his or her alleged adultery.

15. The parties to any information or proceeding in the Supreme Court for the recovery of any penalty for the breach of any law relating to the revenue shall be competent to give evidence in any such information or proceeding.

Revenue cases.

16. (1) Any document purporting to have affixed, impressed, or subscribed thereon or thereto the seal and signature of any of the following persons, namely, any British ambassador, envoy, minister, chargé d'affaires, or any secretary of embassy or legation exercising his functions in any foreign country, or any British consul-general, consul, vice-consul, pro-consul, and consular agent exercising his functions in any foreign place, in testimony of any oath, affidavit, or act administered, taken, or done by or before any such person as aforesaid, shall be admitted in evidence in any court of the Colony without proof of the seal or signature of any such person, or of his official character.

Admission in evidence of certain documents

(2) In any criminal proceeding, not being a proceeding in any such Court Martial as is referred to in section 12, 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 shall be admissible as evidence of the facts stated therein without proof of the signature or appointment of such Government expert, unless the Court, acting *ex proprio motu* or at the request of a party to the proceeding requires any such expert to be called as a witness. The Court shall not be bound to require the attendance of such 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.

Ord. 12-1942

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

(4) In this section the expression "Government expert" refers to the officers from time to time holding the following appointments in the public service of the Colony or acting in such appointments:—

(a) Senior Pathologist;

(b) Pathologist;

(c) Government Chemist;

(d) any other appointment as pathologist, bacteriologist or chemist declared by the Governor in Council by notification published in the *Royal Gazette* to be an appointment to which this section applies.

PART IV.

EVIDENCE RELATING TO BIRTHS, DEATHS AND MARRIAGES.

Certified copies of entries in registers admissible in evidence.

17. (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 such copy being issued, and authenticated as hereinafter provided, shall, in the case of any register kept at any place in Commonwealth countries subject to all just exceptions, be *primâ 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) Such copy shall purport to bear the signature of a person describing himself as holding some office, benefice, or position entitling him to the custody of such 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 some 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 shall purport to have been issued, or under the hand of some member of the High Court or Supreme Court of such Commonwealth country, or under the seal of some court of civil jurisdiction in the district in which the same shall have been issued.

(3) At the preliminary examination in respect of or at any trial for any indictable offence whatever, 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, it shall be competent for the person charged, or for the wife or husband of the person charged, as the case may be, to give evidence of the identity of any person with any person named in such certificate:

Evidence of identity of person named in copy of entry.

Provided, however, that nothing herein contained 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 so to do.

(4) A birth, death, or marriage in the United Kingdom and the Republic of Ireland or in the Colony shall, saving all just exceptions, be susceptible of proof in manner in this section provided, any Ordinance to the contrary notwithstanding.

Proof of births, etc., in the Colony and in United Kingdom and Republic of Ireland.

PART V.

DOCUMENTARY EVIDENCE IN CERTAIN CASES.

18. In this Part of this Ordinance—

Interpretation.

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

“ 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 appertaining to the several departments of the Government in the first column of the Second Schedule to this Ordinance mentioned;

2nd 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 the Colony, or the manager;

(b) any person or persons, partnership or company, who may hereafter carry on the business of bankers in the Colony and who hereafter, under the authority of any Ordinance passed by the Legislature of the Colony and allowed by His Majesty, may establish a banking association in the Colony, or the manager;

(c) the Post Office Savings Bank established under the Post Office Savings Bank Ordinance: In the case of the said Savings Bank, “ banker ” means the Postmaster General.

Certified
copies of
documents
admissible
in evidence.
2nd Schedule.

19. Every document issued—

(a) by the Governor; or

(b) under the authority of the Governor; or

(c) by or under the authority of any such department of the Government or officer as is mentioned in the first column of the Second Schedule hereto; or

(d) being a record in any such department of the Government,

shall 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 modes hereinafter mentioned, that is to say—

(i) by production of a copy of the *Royal Gazette* purporting to contain such document;

(ii) by production of a copy of such document purporting to be printed by the Government Printer;

(iii) by production (in the case of any document issued by the Governor or under the authority of the Governor) of a copy or extract purporting to be certified

by the Colonial Secretary, the Under Secretary or any Assistant Secretary; and

(iv) by production (in the case of any document issued by or under the authority of any of the said 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 of this Ordinance 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 of this Ordinance to the truth of any copy of or extract from any document.

20. No officer of any of the several public departments which are specified in the first column of the Second Schedule hereto shall, in any legal proceeding to which the Crown or he is not a party, be compellable to produce any document the contents of which can be proved under this Ordinance, or to appear as a witness to prove the matters, transactions, and things therein recorded unless by order of a Judge made for special cause.

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

21. If any person prints any document which falsely purports to have been printed by the Government Printer, or tenders in evidence any document which falsely purports to have been printed as aforesaid knowing that the same was not so printed, he shall be guilty of felony and liable to be imprisoned for five years.

Printing or tendering false document.

22. The provisions of section 19 shall be deemed to be in addition to and not in derogation of any powers of proving documents given by any Ordinance or law for the time being in force in the Colony.

Saving former rights.

23. Subject to the provisions of this Ordinance, a copy of any entry in a banker's book shall, in all legal proceedings,

Mode of proof of entry in bankers' books.

be received as *primâ facie* evidence of such entry, and of the matters, transactions, and accounts therein recorded.

Proof that
book is a
banker's
book.

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

(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.

Verification
of copy.

25. A copy of an entry in a banker's book shall not be received in evidence under this Ordinance 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.

When
banker not
compellable
to produce
book, etc.

26. 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 therewith, shall not, in any legal proceeding to which the bank is not a party, be compellable to produce any banker's book, the contents of which can be proved under this Ordinance, or to appear as a witness to prove the matters, transactions, and accounts therein recorded, unless by order of a Judge made for special cause.

Court or
Judge may
order
inspection,
etc.

27. On the application of any party to a legal proceeding, a Court or Judge may order that such party be at liberty to

inspect and take copies of any entries in a banker's book for any of the purposes of such 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 the same is to be obeyed, unless the Court or Judge otherwise directs.

28. 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:—

Fees to be paid.

	\$	c.
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 Ordinance shall be paid into the Treasury for the use of the Colony.

SCHEDULES.

FIRST SCHEDULE.

(Section 10 (6).)

The Offences against the Person Ordinance	Sections 35, 36, 37, 38, 39, 40, 41, 42, 46, 47, 48, 49, 50 and 62.
The Married Women's Property Ordinance	Sections 15 and 19.
The Summary Offences Ordinance...	Paragraph (a) of section 50.

SECOND SCHEDULE.

(Sections 18 —20.)

COLUMN I. Name of Department or Office.	COLUMN II. Name or Title of Office or Certifying Officers.
Accountant General's Department ...	Accountant General. Deputy Accountant General. Assistant Accountant General.
Audit Department	Director of Audit. Senior Auditor.
Secretariat	Colonial Secretary. Financial Secretary. Under Secretary. Assistant Secretaries.

SECOND SCHEDULE—*continued.*

COLUMN I. Name of Department or Office.	COLUMN II. Name or Title of Office or Certifying Officers.
Crown Lands Department	Sub-Intendant.
Customs and Excise Department (in Trinidad)	Comptroller of Customs and Excise. Deputy Comptroller. Assistant Comptroller.
Customs and Excise Department (in Tobago)	Officer in Charge.
Education Department	Director of Education. Secretary of Education Board.
Immigration (Indian) Department ...	Protector of Immigrants.
Licensing Authority	Licensing Authority. Licensing Officer and Inspecting Engineer.
Medical Department	Director of Medical Services. Deputy Director of Medical Services.
Oil and Water Board	Chairman.
Petroleum Department	Petroleum Technologist.
Police Department	Commissioner of Police. Deputy Commissioner of Police.
Port Services	General Manager. Deputy General Manager. Harbour Engineer. Harbour Master and Superintendent of Lighthouses. Wharf Superintendent.
Post Office Department (in Trinidad) ...	Postmaster General.
" " " (in Tobago) ...	Deputy Postmaster General. Postmaster.
Prisons Department	Inspector of Prisons. Superintendent of Prisons. Deputy Superintendent of Prisons. Assistant Superintendents.
Railway Department	General Manager of Railways. Operating Superintendent.
Registrar of Friendly Societies	Registrar of Friendly Societies.
Registrar General's Department (in Trinidad)	Registrar General. Deputy Registrar General.
" " " (in Tobago)	Delegate of the Registrar General.
Survey Department	Director of Surveys. Deputy Director of Surveys.
Wardens' Departments	Wardens.
Works and Hydraulics Department ...	Director of Works and Hydraulics.