

CHAPTER 30.

CRIMINAL EVIDENCE.

*Ordinance
No. 23 of 1905.*

AN ORDINANCE RELATING TO EVIDENCE IN CRIMINAL CASES.

[14th September, 1905.]

Short title.

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

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

2. 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 as follows:—

Own application.

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

No comment if not called as witness.

(2) 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.

(3) The wife or husband of the person charged shall not, save as in this Ordinance mentioned, be called as a witness in pursuance of this Ordinance except upon the application of the person so charged;

Communication during marriage.

(4) Nothing in this Ordinance 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;

Cross-examination.

(5) A person charged and being a witness in pursuance of this Ordinance may be asked any question in

cross-examination, notwithstanding that it would tend to criminate him, as to the offence charged;

- (6) A person charged and called as a witness in pursuance of this Ordinance 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—
- (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;
- (7) Every person called as a witness in pursuance of this Ordinance 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;
- (8) Nothing in this Ordinance 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.

No question to show commission of offence not charged.

Exceptions.

Evidence from box.

Statement by person charged. Cap. 23.

3. 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.

Evidence of person charged, if only witness called.

4. 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

Right of reply.

witness shall not of itself confer on the prosecution the right of reply.

Calling of
wife or
husband in
certain cases.

5. (1) The wife or husband of a person charged with an offence under any enactment mentioned in the Schedule to this Ordinance may be called as a witness either for the prosecution or defence and without the consent of the person charged.

(2) Nothing in this Ordinance 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.

Application
of Ordinance.

6. (1) This Ordinance shall apply to all criminal proceedings, notwithstanding any enactment in force at the commencement of this Ordinance.

(2) But this Ordinance shall not apply to proceedings in Courts Martial unless so applied—

29 & 30 Vic.
c. 109.

(a) as to Courts Martial under the Naval Discipline Act, by general orders made in pursuance of section 65 of that Act; and

44 & 45 Vic.
c. 58.

(b) as to Courts Martial under the Army Act, by rules made in pursuance of section 70 of that Act.

Cap. 86.

(3) This Ordinance shall not apply to proceedings in Courts Martial under the Local Forces Ordinance.

SCHEDULE.

(Section 5.)

Cap. 8.	The Offences against the Person Ordinance	{ Sections 35, 36, 37, 38, 39, 40, 41, 42, 46, 47, 48, 49, 50 and 62.
Cap. 53.	The Married Women's Property Ordinance	... Sections 15 and 19.
Cap. 25.	The Summary Conviction Offences Ordinance	... Paragraph (1) of Section 50.