

**EVIDENCE ACT, 1929-1933.**

BEING

EVIDENCE ACT, 1929, No. 1907 OF 1929 [ASSENTED TO 30TH OCTOBER,  
1929.]

AS AMENDED BY

EVIDENCE ACT AMENDMENT ACT, 1933, No. 2110 OF 1933 [ASSENTED  
TO 31ST AUGUST, 1933.]**An Act to consolidate certain Acts relating to evidence.**

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

**PART I.****PART I.****PRELIMINARY.**

1. This Act may be cited as the "Evidence Act, 1929-1933." Short title.

2. This Act is divided as follows:--

PART I.—Preliminary.

PART II.—Witnesses.

PART III.—Miscellaneous Rules of Evidence.

PART IV.—Public Acts and Documents.

PART V.—Banker's Books.

PART VI.—Telegraphic Messages.

PART VII.—General Provisions.

PART VIII.—Publication of Evidence.

3. This Act is a consolidation of certain provisions contained in the Acts mentioned in the first schedule, and the said Acts are hereby repealed to the extent expressed in the said schedule.

Consolidation  
and repeal.

4. In this Act, unless some other intention is expressed, or implied by the context—

Interpretation.  
Of U.K.  
42 & 43 Vict.  
c. 11, ss. 9,  
10.

"bank" and "banker" mean any person, partnership, or company carrying on the ordinary business of

banking, and also any savings bank or banking institution established in South Australia under or pursuant to the statute law of the State or of the Commonwealth:

“banker’s book” includes any ledger, day book, cash book, diary, account book, or other book used in the ordinary business of the bank:

“court” includes any court, judge, magistrate, or justice, and any arbitrator or person having authority by law or by consent of parties to hear, receive, and examine evidence:

“judge” includes the member or members of any court having authority to admit evidence:

“legal proceeding” or “proceeding” includes any action, trial, inquiry, cause, or matter, whether civil or criminal, in which evidence is or may be given and includes an arbitration:

“electric telegraph” means any telegraphic line the property and under the control of the Commonwealth Government, and worked by electricity within the Commonwealth:

“telegraphic message” means any message or other communication transmitted, or intended for transmission, or purporting to have been transmitted, by electric telegraph:

“telegraph station” means any station appointed by the Commonwealth Government for the receipt and transmission of telegraphic messages.

Application  
of Act  
(*prima facie*)  
to all courts  
and enabling  
only.

5. The provisions of this Act, unless an intention to the contrary is expressed, or appears or is implied by the context—

- (a) apply to every proceeding before any court whatever; and
- (b) are in addition to, and not in derogation of, any rules of evidence, or power, or right, or duty in relation to procedure or evidence, whether existing at common law, or provided for by any law, at any time, in force in the State.

## PART II.

## PART II.

## WITNESSES.

6. Subject to the provisions of this Act, and unless the person to whom an oath is administered requests that the oath be administered in some other manner, an oath, whether in judicial proceedings or otherwise, shall be administered and taken in the following manner, namely:—

Ordinary manner of taking oath.  
1056, 1911, s. 3.  
Of U.K. 9 Edw. 7 c. 39, s. 2.

The person taking the oath shall, standing up, hold a copy of the Bible (New Testament or Old Testament) in his hand, and, after the oath has been tendered by the officer administering the same, shall utter the words "I swear":

Provided that no oath shall be deemed illegal or invalid by reason of any breach of this section.

7. Notwithstanding anything in this Act or any other Act or law—

Oaths may be taken in other forms.  
1056, 1911, s. 4.

i. An oath, whether in judicial proceedings or otherwise, may be administered and taken in any form and in any manner which would have been lawful if this Act had not been passed:

ii. Every such oath shall be binding for all purposes if it is administered and taken in any form and in any manner which the person taking the same declares to be binding:

Of U.K. 51 & 52 Vict. c. 46, s. 5.

iii. Where any such oath has been administered and taken, the fact that the person taking the same had at the time no religious belief shall not for any purpose affect the legality or validity of the oath.

8. (1) Every person upon objecting to be sworn, and stating, as the ground of such objection either—

Affirmation in lieu of oath.  
1669, 1925, s. 4.

(a) that he has no religious belief; or

(b) that the taking of an oath is contrary to his religious belief, or to his conscience,

Of U.K. 51 & 52 Vict. c. 46, s. 1.

shall be permitted to make his solemn affirmation instead of taking an oath in all places and for all purposes where an oath is required by law.

(2) Every such affirmation shall be of the same force and effect as if the oath had been taken, and if any person making any such affirmation shall falsely affirm any matter or thing he shall be liable to prosecution, indictment, sentence, and punishment, as if he had taken the oath.

## PART II.

Cf. U.K.  
51 & 52 Vict.  
c. 46, s. 2.

(3) Every such affirmation shall be as follows, or to the effect following:—

“I, A.B., do solemnly and truly declare and affirm”  
and then proceed with the words of the oath prescribed by law, omitting any words of imprecation or calling to witness.

Aborigines  
may give  
evidence with-  
out oath in  
certain cases.  
3, 1848, ss. 2,  
7, 10.

9. (1) Any aboriginal native of Australia, whether of full blood or half-caste, or mixed breed, who is uncivilised and appears on examination not to believe either in a God or a future state of reward and punishment, and who further appears not to understand the obligation of an oath, may give evidence without an oath and without any formality.

(2) Before the judge receives such testimony, he shall cause it to be explained to such uncivilised person that he is required to tell what he knows about the matter to which his testimony relates.

(3) The judge may receive the testimony of any such uncivilised person by means of the interpretation of another such uncivilised person without administering to him any oath duly to interpret such testimony: Provided that the judge shall be satisfied of the ability of the person offered as interpreter duly to interpret the same.

(4) The testimony of any such uncivilised person if reduced to writing and verified by the judge in like manner as testimony under section 11 is required to be verified shall be receivable as evidence if under the circumstances the written affidavit or deposition upon oath of any person might be lawfully read and received.

Complaint or  
information  
without oath  
in like cases.  
3, 1848, s. 4.

10. A justice may take the complaint or information of any such aboriginal without administering any form of oath, and without formality, and any complaint or information so taken shall be reduced to writing and verified by the signature of the justice, and all further acts and proceedings may be done and had thereupon as if it had been taken upon oath.

Deposition of  
unsworn  
aboriginal.  
3, 1848, ss.  
3 and 5.

11. (1) The deposition of every aboriginal who gives unsworn testimony upon any proceeding in the nature of a preliminary inquiry shall be reduced into writing by or in the presence of the magistrate, justice, or coroner who shall verify such deposition by his certificate thereon according to the form in the second schedule.

(2) Upon any trial or hearing (whether civil or criminal) the deposition, so verified, shall be receivable as evidence if, under the circumstances, the written affidavit or deposition upon oath of any person might be lawfully read or received.

## PART II.

12. In every prosecution for any offence where the testimony of a child under the age of ten years may be required, the judge shall receive such testimony without administering any form of oath, and without any formality, except that he shall, before receiving such testimony, explain to such child that he or she is required to truthfully tell what he or she knows about the matter to which his or her testimony relates; and the testimony so taken shall be available as evidence for all purposes whatsoever: Provided that if such testimony, is taken by a coroner, or justice of the peace, it shall be reduced to writing, and be certified under the hand of such coroner or justice.

Unsworn testimony of children may be received in certain cases.

38, 1876, s. 377.  
1669, 1925, s. 6.  
Of. U.K.  
8 Edw. 7  
c. 67, ss. 28, 30.  
Of. U.K.  
23 Geo. 5  
c. 12, s. 38.

13. Such weight and credibility shall be given to the unsworn evidence of an aboriginal or a child as ought to be attached thereto as evidence given without the sanction of an oath.

Effect of the evidence so given.

3, 1848, s. 6.  
38, 1876, s. 378.

14. If any uncivilised person mentioned in section 9 shall, in giving his information or testimony in manner in such section mentioned, wilfully make any false statement which if made upon oath would subject him to the penalties of perjury, he shall be deemed guilty of a misdemeanour, and be liable to be imprisoned for any term not exceeding two years, and further to be once, twice, or thrice publicly or privately whipped.

Aboriginal wilfully making false statement not on oath.

3, 1848, s. 8.  
Of. U.K.  
8 Edw. 7  
c. 67, s. 30, proviso (b).

15. No person shall be excluded from giving evidence on the ground—

Witness not disqualified by interest or crime.

(a) that he has or may have an interest in the matter in question or in the event of the proceeding, or

Of. U.K.  
6 & 7 Vict.  
c. 85, s. 1 (part).  
2, 1852, s. 1.

s. 12. THE QUEEN v. MONTANA (1885) 19 S.A.L.R. 4; 6 A.L.T. 232; 5 Austn. Digest 826. Where a child stated that she did not know the difference between truth and falsehood held that her evidence was not admissible.

SLAPE v. BYRNE (1918) S.A.L.R. 313; 5 Austn. Digest 827. "Misdemeanour" in section 377 of The Criminal Law Consolidation Act, 1876, construed to cover an offence punishable summarily.

R. v. YOUNG (1923) S.A.S.R. 35; 5 Austn. Digest 827; 8 Austn. Digest 479. On a trial for sodomy a boy was sworn and his evidence received after the trial judge had inspected the boy to ascertain his age and the boy had stated that he was ten years of age. On the hearing in the police court he had stated his age was nine years and nine months old. The trial judge treated these statements as evidence, but adopted the course which it was proper to follow on the assumption that the age had not been sufficiently proved by inquiring whether the boy understood the consequences of falsely swearing. The boy's answers being satisfactory he was allowed to give evidence on oath. Held, in the circumstances, that the course adopted by the trial judge was right.

SPOONER v. TAYLOR (1926) S.A.S.R. 396; 5 Austn. Digest 827. The absence of a certificate under section 12 does not in itself invalidate a conviction obtained on the evidence of young children. A child of ten in giving evidence said in cross-examination, "I know I have got to tell the truth. I know where you go when you don't tell the truth: to gaol." Held that this answer was not inconsistent with an understanding of the nature and quality of an oath, although showing no appreciation of reward and punishment in a future state, and that the evidence was admissible.

(b) that he has previously been convicted of any crime or offence.

Parties, their wives and husbands competent and compellable in civil proceedings.

2, 1852, s. 2.  
3, 1867,  
s. 57.  
10, 1869-70,  
s. 1.  
Of. U.K.  
14 & 15 Vict.  
c. 99, s. 2.  
Of. U.K.  
16 & 17 Vict.  
c. 83, s. 1.

**16.** In any proceeding not being a criminal proceeding the parties thereto and the persons on whose behalf such proceeding is brought or defended, and the husbands and wives of such parties or persons respectively, shall, subject to the provisions of this Act, be competent and compellable to give evidence on behalf of either or any of the parties to such proceeding.

Parties and their husbands and wives competent witnesses in suits of adultery.

3, 1867,  
s. 57.  
10, 1869-70,  
s. 3.  
U.K. 32 & 33  
Vict. c. 68,  
s. 3.

**17.** No witness in any proceedings, instituted in consequence of adultery, whether a party to the proceedings 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 the witness has already given evidence in the same proceeding in disproof of his or her alleged adultery.

Accused persons (and wife or husband) competent to give evidence upon application of accused.

1669, 1925,  
s. 12.  
Of. U.K.  
14 & 15 Vict.  
c. 99, s. 3.  
Of. U.K.  
61 & 62 Vict.  
c. 86, s. 1.

**18.** 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:—

- i. A person so charged shall not be called as a witness in pursuance of this Act except upon his own application:
- ii. 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:
- iii. The wife or husband of the person charged shall not, save as herein mentioned, be called as a witness in pursuance of this Act, except upon the application of the person so charged:

s. 16. *DEE v. DALL* (1919) S.A.L.R. 167; 8 Austn. Digest 311. Communications made since marriage between husband and wife are not privileged from discovery.

s. 17. *W—— v. W——* (1926) S.A.S.R. 425. In a suit for nullity a petitioner may be asked and compelled to answer questions tending to show that he has committed adultery.

s. 18. *R. v. LYNCH* (1919) S.A.L.R. 325; 5 Austn. Digest 840. As to comment upon the omission of prisoner to give evidence and as to warning to the jury that the prisoner not to be assumed guilty because of the omission to give evidence. (Since this decision paragraph II. of section 18 above has been enacted and the proviso to section 1 of the Accused Persons Evidence Act, 1882, repealed.)

*R. v. PHILLIPS* (1922) S.A.S.R. 276; 5 Austn. Digest 823. Where a wife was charged with wounding with intent to murder her husband, the husband was held to be a

iv. Nothing herein contained 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:

Of. U.K.  
16 & 17 Vict.  
c. 83, s. 3.

v. A person charged and being a witness in pursuance of this Act may be asked any question in cross-examination notwithstanding that it would tend to criminate him as to the offence charged:

vi. A person charged and called as a witness in pursuance of this Act 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:

s. 18. competent but not a compellable witness against the wife. As to the duty of the judge to caution the witness that he is not obliged to give evidence. Since this decision sections 18 and 21 have been enacted as above.

s. 18. VI. LAMPARD v. WEST (1926) S.A.S.R. 293; 5 Austn. Digest 858. Questions proving the defendant to have been a bookmaker do not tend to show that he has committed or been convicted of or been charged with an offence or that he is of bad character.

R. v. BAXTER (1927) S.A.S.R. 321; 5 Austn. Digest 858. Held that questions not directed to show an accused's bad character, but to prove his guilty knowledge, which was one of the issues, were not inadmissible because they may also tend to show his bad character.

JOHNSON v. NOBLET (1929) S.A.S.R. 385; 5 Austn. Digest 858. There is ground for quashing a conviction where questions are asked about a previous conviction without a foundation being laid as required by paragraph VI.

HEWITT v. LENTHALL (1931) S.A.S.R. 314; 5 Austn. Digest 856. A statement by the defendant that witnesses for the prosecution had told lies does not amount to an imputation on the character of the witnesses for the prosecution.

## PART II.

VII. Every person called as a witness in pursuance of this Act 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:

VIII. Nothing herein contained shall affect the provisions of section 110 of the Justices Act, 1921, or any right of the person charged to make a statement without being sworn.

Accused if only witness to be called on close of case for prosecution.  
1669, 1925,  
s. 18.  
U.K. 61 & 62  
Vict. c. 36,  
s. 2.

19. 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 accused not to give right of reply to prosecution.  
1669, 1925,  
s. 14.  
U.K. 61 & 62  
Vict. c. 36,  
s. 3.

20. 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.

Wife or husband compellable in certain cases.  
1669, 1925,  
s. 15.  
U.K. 61 & 62  
Vict. c. 36,  
s. 4.

21. (1) The wife or husband of a person charged with an offence under any enactment mentioned in the third schedule hereto may be called as a witness either for the prosecution or defence, and without the consent of the person charged and shall only as regards the age or relationship of any child of the husband or wife be compellable.

Amended by  
2110, 1933,  
s. 2.

(2) Nothing herein contained shall affect the operation of any Statute or rule of law in a case where—

(a) the person charged with an offence is compellable to give evidence by virtue of the provisions of any enactment specially applicable to the case; or

(b) the wife or husband of a person charged with an offence may, either under any enactment specially

s. 19. R. v. MYLES FLYNN (1902) S.A.L.R. 57; 5 Austn. Digest 1153. Held that a prisoner defended by counsel had a right to make a statement, but not after the close of the Crown's case in rebuttal.

R. v. GILLEN (1914) S.A.L.R. 195; 5 Austn. Digest 1153. Held that an accused person who is defended by counsel and intends to call witnesses, is entitled to make a statement to the jury but he must do so at the close of his counsel's opening, and before his witnesses are called. If a prisoner is defended by counsel but does not intend to call witnesses his statement should be made before counsel sum up to the jury.

R. v. RICHARDS, McDONALD AND AUNGER (1918) S.A.L.R. 315; 5 Austn. Digest 1153. Where there are other witnesses for the defence, the accused may be called after they have given evidence, but it is desirable that the accused should be the first witness.

s. 20. REX v. PETERSEN (1911) S.A.L.R. 30; 5 Austn. Digest 1153. Held under section 4 of the Accused Persons Evidence Act, 1882, that where the accused gave evidence and called evidence as to character, he did not lose his right of reply.



applicable to the case, or at common law, be called as a witness without the consent of that person.

**22.** In any proceeding in any court, whether civil or criminal, the judge may disallow any questions put in cross-examination of any party or other witness which may appear to him to be vexatious and not relevant to any matter proper to be inquired into in the proceeding.

Certain questions may be disallowed.

435, 1888, s. 2.

**23.** In deciding whether a question affecting the credibility of a witness is relevant, or ought to be allowed, the judge shall have regard to the following considerations:—

Rules as to relevancy.

435, 1888, s. 3.

- I. Such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the court as to the credibility of the witness on the matter to which he testifies:
- II. Such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect only in a slight degree, the opinion of the court as to the credibility of the witness on the matter to which he testifies:
- III. Such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence.

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

Disallowance of certain questions in cross-examination.  
1669, 1925, s. 17.  
Cf. W.A. 28, 1906, s. 25 (1).

(2) In exercising this discretion the court shall have regard to the considerations referred to in section 23.

**25.** The court may forbid any question it regards as—

- (a) indecent or scandalous, although the question may have some bearing on the case before the court, unless the question relates to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed; or
- (b) intended to insult or annoy, or needlessly offensive in form, notwithstanding that the question may be proper in itself.

Disallowance of scandalous and insulting questions.

1669, 1925, s. 18.  
Cf. W.A. 28, 1906, s. 26.

## PART II.

Proof of previous conviction of witness may be given.

24, 1855-6, s. 19.  
13, 1866-7, s. 6.  
Cf. U.K. 28 & 29 Vict. c. 18, s. 6.

How far a party may discredit his own witness.

24, 1855-6, s. 16.  
13, 1866-7, s. 3.  
U.K. 28 & 29 Vict. c. 18, s. 3.

**26.** A witness may, subject to any other provisions of this Act, be questioned as to whether he has been convicted of any felony or misdemeanour, 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.

**27.** A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character; but if the judge is of opinion that the witness is adverse, the party may—

(a) contradict the witness by other evidence; or

(b) by leave of the judge, prove that the witness has made, at any other time, a statement inconsistent with his present testimony: Provided that, before giving such last-mentioned proof, 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 the statement.

Proof of contradictory statements of adverse witness.

24, 1855-6, s. 17.  
13, 1866-7, s. 4.  
Cf. U.K. 28 & 29 Vict. c. 18, s. 4.

**28.** If any witness, upon cross-examination as to a former statement made by him, relative to the subject matter of the cause, and inconsistent with his present testimony, does not distinctly admit that he has made the 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 has made the statement.

Cross-examination as to previous statements in writing.

24, 1855-6, s. 18.  
13, 1866-7, s. 5.  
Cf. U.K. 28 & 29 Vict. c. 18, s. 5.

**29.** 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 cause, 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 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 the judge, at any time during the trial, may require the production of the writing for his inspection; and may thereupon make such use of it, for the purposes of the trial, as he thinks fit.

## PART III.

## MISCELLANEOUS RULES OF EVIDENCE.

**30.** 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 as evidence of the genuineness or otherwise of the writing in dispute.

As to comparison of disputed writing.  
24, 1855-6, s. 21.  
13, 1866-7, s. 8.  
U.K. 28 & 29 Vict. c. 18, s. 8.

**31.** 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 by admission or otherwise, as if there had been no attesting witness thereto.

Attesting witness need not be called in certain cases.  
24, 1855-6, s. 20.  
13, 1866-7, s. 7.  
U.K. 28 & 29 Vict. c. 18, s. 7.

**32.** 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.

Plaintiff's evidence of promise to marry requires corroboration.  
10, 1869-70, s. 2.  
U.K. 32 & 33 Vict. c. 68, s. 2.

**33.** In any action for damages arising out of the publication of any alleged libel and upon any application for discovery, as to any matter relating to the fact of publication as alleged, the defendant shall not be entitled to object to answer upon the ground of tendency to criminate, but shall be compellable to make discovery, unless it appears that there is a reasonable probability of criminal proceedings being instituted against him: Provided always that such discovery shall not be made use of as evidence or otherwise in any other action or proceedings against the defendant.

Discoveries in actions for libel.  
1669, 1925, s. 26.

**34.** A person may admit on his trial any fact alleged or sought to be proved against him, and such admission shall be sufficient proof of the fact without other evidence: Provided that the admission shall be made by the accused either personally or by his counsel or solicitor in his presence, or, in the case of a body corporate, by its counsel or solicitor.

Admissions by accused persons.  
1669, 1925, s. 16.  
Cf. U.K. 23 & 24 Geo. 5 c. 41, s. 20.

s. 33. BECKER v. SMITH'S NEWSPAPER LIMITED AND ANOTHER (No. 1) (1931) S.A.S.R. 1, Affirmed by BECKER v. SMITH'S NEWSPAPERS LIMITED (No. 2) (1931) S.A.S.R. 137; 7 Austn. Digest 523. Held that section 33 is not merely declaratory of the law, but makes a uniform rule for all trials of libel, that the defendant cannot object to give discovery as regards any matter relating to the fact of publication unless there is a reasonable probability of criminal proceedings being instituted against him. "Application for discovery" means the application to the defendant which is implied when an order for discovery of documents or interrogatories for his examination is or are served upon him. A "reasonable probability" must be real and substantial likelihood that criminal proceedings will be instituted against the defendant. The onus of establishing that probability rests on the person objecting to give discovery. Evidence directed to establishing this proba-

## PART IV.

## PART IV.

## PUBLIC ACTS AND DOCUMENTS.

Proof of act  
done by  
Governor or  
Minister.  
1669, 1925,  
s. 19.

**35.** Where by any law at any time in force the Governor or a Minister of the Crown is authorised or empowered to do any act whatsoever, production of the *Government Gazette* purporting to contain a copy or notification of any such act shall be evidence of such act having been duly done.

Proof of votes  
and proceed-  
ings of Parlia-  
ment.  
1669, 1925,  
s. 9.  
Cf. U.K.  
45 & 46 Vict.  
c. 9, s. 2.

**36.** All documents purporting to be copies of the votes and proceedings or journals or minutes of either House of Parliament, or of papers presented to either House of Parliament, if purporting to be printed by the Government Printer, shall on their mere production be admitted as evidence thereof.

*Gazette* evi-  
dence of all  
notifications  
directed to be  
published  
therein.  
9, 1872,  
s. 31.  
Cf. U.K.  
31 & 32 Vict.  
c. 37, s. 2.

**37.** Every proclamation or order by the Governor in Council, and every act, matter, or thing which is directed to be notified or published in the *Government Gazette*, when so published, shall be judicially taken notice of without further evidence than the production of a copy of the *Government Gazette*.

Foreign and  
Colonial Acts  
of State,  
judgments,  
etc., provable  
by copies.  
2, 1852, s. 5.  
1669, 1925,  
s. 3.  
Cf. U.K.  
31 & 32 Vict.  
c. 37, s. 2.  
Cf. U.K.  
23 Geo. 5  
c. 4.

**38.** (1) Evidence of any proclamation, treaty, or other act of State, of any foreign State, or in any part of His Majesty's Dominions outside the Commonwealth and other than the United Kingdom, may be given by the production of a document, purporting to be a copy thereof and—

(a) proved to be an examined copy thereof; or

(b) purporting to be sealed with the seal of the foreign State or of the said part of His Majesty's Dominions.

(2) Evidence of any judgment, decree, order or other judicial proceeding of any court of justice in the United Kingdom or in any foreign State or part of His Majesty's Dominions outside the Commonwealth and other than the United Kingdom (including any affidavit, pleading, or other legal document filed or deposited in the court) may be given by the production of a document purporting to be a copy thereof; and

(a) proved to be an examined copy thereof; or

s. 33. bility need not necessarily be adduced; the nature of the libel, circumstances  
(*contd.*) previously given in evidence, and arguments founded on these may establish the reasonable probability.

s. 35. FOX v. ALLCHURCH (1927) S.A.S.R. 328. Affirming FOX v. ALLCHURCH (1926) S.A.S.R. 384. Affirmed by FOX v. ALLCHURCH (1927) 40 C.L.R. 135. Section 35 applies only to acts of the Governor or a Minister of the Crown and not to an act of the Board of Governors of the Botanic Garden even though a Minister gives the notification of the act.

(b) purporting to be sealed with the seal of such court;  
or

(c) purporting to be signed by a judge of such court with a statement in writing attached by him to his signature that such court has no seal, and without proof of his judicial character, or of the truth of such statement.

(3) If any such document as aforesaid purports to be sealed or signed as aforesaid it shall be admissible without proof of the seal or of the signature as the case may be.

**39.** (1) Whenever any book or other document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, and no Act exists which renders its contents provable by means of a copy, any copy thereof or extract therefrom shall be admissible in evidence,

Public documents provable by examined or certified copy.  
2, 1852, s. 8.  
U.K. 14 & 15  
Vict. c. 99,  
s. 14.

(a) if it is proved to be an examined copy or extract; or

(b) it purports to be signed and certified as a true copy or extract by the officer to whose custody the original is entrusted.

(2) Every such officer is hereby required to furnish such certified copy or extract to any person applying for the same at a reasonable time, upon payment of a reasonable sum for the same, not exceeding sixpence for every folio of ninety words.

**40.** Whenever any book, or other document, in the United Kingdom, or in any part of His Majesty's Dominions outside the Commonwealth and other than the United Kingdom, is provable (according to the law of England, or of the said part of His Majesty's Dominions) by means of a copy, any copy thereof or extract therefrom shall be admissible in evidence if it—

Proof of documents by examined or certified copies.  
2, 1852  
s. 9.  
1669, 1925,  
s. 3.  
U.K. 14 & 15  
Vict. c. 99,  
s. 14.  
Of U.K.  
23 Geo. 5  
c. 4.

(a) is proved to be an examined copy or extract; or

(b) purports to be signed and certified as a true copy or extract by some officer who shall further certify that he is the officer to whose custody the original is entrusted.

**41.** If any officer authorised or required by this Act to furnish any certified copy or extract shall wilfully certify any document as being a true copy or extract, knowing that the same is not a true copy or extract, as the case may be,

Certifying a false document a misdemeanour.  
2, 1852,  
s. 10.  
Of U.K.  
14 & 15 Vict  
c. 99, s. 15.

s. 39. PRICE V. PRICE (1889) 23 S.A.L.R. 121. Held that section 39 applies to documents registered under The Real Property Act, 1886. As to the form of certificate in such cases.

he shall be guilty of a misdemeanour, and be liable, on conviction, to imprisonment with hard labour for any term not less than eighteen months or more than three years.

Proof of conviction or acquittal of an indictable offence.

2, 1852,  
s. 7.  
38, 1876,  
s. 380.  
791, 1902,  
s. 3.  
Cf. U.K.  
28 & 29 Vict.  
c. 18, s. 6  
(part).  
Cf. U.K.  
14 & 15 Vict.  
c. 99, s. 13.

**42.** (1) The information, trial, and conviction, or acquittal of any person for an indictable offence may be proved by a certificate purporting to be under the hand of the Chief Clerk of the Supreme Court or the associate or other officer having the custody of the records of the court where such conviction, or acquittal took place, or of the deputy of such associate or other officer.

(2) The certificate may set forth the substance and effect of the record omitting the formal parts thereof.

(3) A conviction for a felony committed in any other State of the Commonwealth may be proved by a like certificate.

(4) No proof shall be required of the handwriting or official position of any person certifying in pursuance of this section.

(5) The mode of proof authorised by this section shall be in addition to and not to the exclusion of any other authorised mode of proof.

Proof of convictions and orders of courts of summary jurisdiction.

1669, 1925,  
s. 8.  
Cf. U.K.  
4 & 5 Geo. 5  
c. 58, s. 28.

**43.** (1) Any conviction, order of dismissal or other order made by a court of summary jurisdiction may be proved in any court whatever by the production of a copy of such conviction, order of dismissal or other order, purporting to be certified by the clerk of the court by which such conviction, order of dismissal or other order was made, or by the deputy of such clerk.

(2) No proof shall be required of the signature or official character of the person appearing to have signed any such copy as aforesaid.

(3) This section shall apply to any conviction, order of dismissal or other order made before or after the commencement of this Act.

Registers of British vessels and certificates of registry admissible as *prima facie* evidence of their contents.

2, 1852, s. 6.

**44.** (1) Every register of vessels kept under any of the Acts of the Imperial Parliament relating to the registry of British vessels, may be proved either by the production of the original or by an examined copy thereof, or by a copy thereof purporting to be certified under the hand of the person having the charge of the original.

(2) Every such register, or such copy of a register, and also every certificate of registry granted under any of the said Acts relating to the registry of British vessels, and purporting to be signed as required by law, shall be received in

evidence as *prima facie* proof of all the matters contained or recited in such register when the register or such copy thereof as aforesaid is produced, and of all matters contained or recited in or endorsed on such certificate of registry when the said certificate is produced.

45. (1) Any apparently genuine document which purports to be a bill of lading and to relate to any property which is, or has been, shipped shall be—

Proof of ship-  
ping docu-  
ments and  
matters con-  
nected there-  
with.  
1669, 1925,  
s. 20.

(a) admissible in evidence on production without further proof; and

(b) evidence that the ownership of the property referred to in the document is in the consignee named in the document or his assignee and of the particular facts stated or referred to in the bill of lading.

(2) Evidence of the description of any property which has been shipped, or of any writing, printing, or mark upon any such property, or on any package containing the same shall be receivable (without producing the original writing, printing, or mark, or requiring the production thereof by notice or otherwise) for the purpose of raising an inference as to the identity of such property with that referred to in any bill of lading.

(3) For the purposes of this section regard shall be had to any relevant circumstances including the source from which the bill of lading is produced, and the circumstances of its receipt or custody by the person producing it or by any person from whom it has been obtained for the purposes of production.

(4) In this section—

“bill of lading” includes manifest shipping receipt, consignment note, delivery order, or invoice, and any specification, schedule, or packing list annexed thereto or incorporated by reference therein:

“shipped” means shipped or carried or received for shipment or carriage by water or rail, to or from any port, railway station, or place in the Commonwealth.

## PART V.

## PART V.

## BANKER'S BOOKS.

Copy of entry in banker's book, *prima facie* evidence.

162, 1879, s. 2.  
U.K. 42 & 43 Vict. c. 11, s. 3.

Proof that entry is in a "banker's book."

162, 1879, s. 3.  
Of U.K. 42 & 43 Vict. c. 11, s. 4.

**46.** Subject to the provisions of this Part of 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.

**47.** (1) The copy of an entry in a banker's book shall not be received in evidence under this Part unless it is first proved—

- (a) that the book was, at the time of the making of the entry, one of the ordinary books of the bank; and
- (b) that the entry was made in the usual and ordinary course of business; and
- (c) that the book is in the custody or control of the bank.

(2) Such proof may be given by any partner or officer of the bank, and may be given orally or by an affidavit.

Copy of entry to be examined.

162, 1879, s. 4.  
Of U.K. 42 & 43 Vict. c. 11, s. 5.

**48.** (1) The copy of an entry shall not be received in evidence under this Part unless it is further proved that the copy has been examined with the original entry and is correct.

(2) Such proof may be given by any person who has examined the copy with the original entry, and may be given either orally or by an affidavit.

Power under order of judge to inspect books and take copies.

162, 1879, ss. 6 and 9.  
Of U.K. 42 & 43 Vict. c. 11, s. 7.

**49.** (1) On the application of any party to a legal proceeding a 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.

(2) 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 before the same is to be obeyed, unless the judge otherwise directs. Any Sunday or public holiday shall be excluded from the computation of time under this section.

Banker not compellable to produce his books unless under order.

162, 1879, s. 5.  
U.K. 42 & 43 Vict. c. 11, s. 6.

**50.** A banker or officer of a bank shall not in any legal proceeding to which the bank is not a party be compellable—

- (a) to produce any banker's book, the contents of which can be proved under this Act; or
- (b) to appear as a witness to prove the matters, transactions, and accounts recorded in a banker's book,

unless by order of a judge made for special cause.

s. 46. R. v. HOWELL, 7th October, 1898, S.A. *Register* (newspr.); 8 Austn. Digest 393. A diary kept by a bank manager is not a banker's book.



## PART V.

## 51. The costs of—

- (a) any application to a judge, under or for the purposes of this Part of this Act; or
- (b) anything done or to be done under an order of a judge made under or for the purposes of this Part of this Act,

shall be in the discretion of the judge, who may order the same or any part thereof to be paid to any party by the bank, where the same have been occasioned by any default or delay on the part of the bank.

(2) Any such order against a bank may be enforced as if the bank were a party to the proceedings in aid of which the application is made.

Costs in discretion of court.  
162, 1879, s. 7.  
Cf. U.K. 42 & 43 Vict. c. 11, s. 8.

## 52. In this Part of this Act "judge" means—

- (a) Judge of the Supreme Court; and
- (b) any person who is authorised by law to exercise in relation to the proceeding in question the powers of a Judge of the Supreme Court with respect to the trial of any cause or matter or issue of fact; and
- (c) the Judge in Insolvency in relation to any cause or matter pending in the Court of Insolvency; and
- (d) any local court judge or special magistrate in relation to any proceedings pending before a local court or before justices.

Meaning of judge in this Part.  
1669, 1925, s. 7 (b).  
Cf. U.K. 42 & 43 Vict. c. 11, s. 10.

## PART VI.

## PART VI.

## TELEGRAPHIC MESSAGES.

53. (1) Any party to any legal proceedings other than criminal proceedings may at any time after the commencement thereof give notice to any other party that he proposes to adduce in evidence at the trial or hearing any telegraphic message that has been sent by electric telegraph from any station in the Commonwealth to any other station within the Commonwealth: Provided that the time between the giving of such notice and the day on which such evidence shall be tendered shall not in any case be less than two days.

(2) Every such notice shall specify the names of the sender and receiver of the message, the subject matter thereof, and the date as nearly as may be.

Party may give notice of intention to adduce telegraphic message in evidence.  
9, 1878, s. 1.  
1669, 1925, s. 5.

And there-  
upon may  
produce mes-  
sage re-  
ceived with  
evidence that  
same received  
from tele-  
graph station.  
3, 1873, s. 2.  
1669, 1925,  
s. 5.

**54.** When such a notice has been given the production of any telegraphic message described in the notice, and purporting to have been sent by any person, together with evidence that the same was duly received from a telegraph station, shall be *prima facie* evidence that such message was signed and sent by the person so purporting to be the sender thereof to the person to whom the same shall be addressed without any further proof of the identity of the sender; but the party against whom any such message shall be given in evidence shall be at liberty, nevertheless, to prove that the same was not in fact sent by the person by whom it purports to have been sent.

After notice,  
sending a  
message may  
be proved by  
production of  
copy message  
and evidence  
of payment  
of fees for  
transmission.  
3, 1873, s. 3.  
1669, 1925,  
s. 5.

**55.** In any legal proceedings other than criminal proceedings, the production of any telegraphic message, or of a machine copy or press copy thereof, or a copy thereof verified on oath together with evidence that such message was duly taken to a telegraph station, and that the fees (if any) for the transmission thereof were duly paid, shall be *prima facie* evidence that such message was duly delivered to the person named therein as the person to whom the same was to be transmitted; and the burden of proving that such message was not in fact received, shall be upon the person against whom such message shall be given in evidence: Provided that the party adducing the same in evidence shall give notice to the other party of his intention so to do in such manner and at such time as the practice of the court requires with respect to a notice to produce documents at the trial or hearing.

Certain docu-  
ments may be  
transmitted by  
electric tele-  
graph under  
restriction.  
3, 1873, s. 4.

**56.** (1) The Governor, any Minister of the Crown, the President of the Legislative Council, the Speaker of the House of Assembly, a Judge of the Supreme Court, the Judge in Insolvency, any special magistrate, and any principal officer of Government, or solicitor, may cause to be transmitted by electric telegraph the contents of any writ, warrant, rule, order, authority, or other communication requiring signature or seal subject to the provisions following, that is to say—

- I. The original document shall be delivered at the telegraph station in the presence and under the inspection of some justice of the peace or notary public:
- II. The person to whom the contents of any such document shall be so sent shall, forthwith and in the presence and under the supervision of a justice of the peace or notary public, cause to be

sent back by electric telegraph, a copy of the message received by him; and in the event of any error appearing therein, the process shall be repeated under the like supervision, until it appears that a true copy of such document has been received by the person to whom it has been sent:

iii. When it appears that such true copy has been so received, such first-mentioned justice, or notary public, shall endorse upon the original document a certificate that a true copy thereof has been sent, under the provisions of this Act, to the person to whom the same has been so sent; and shall forthwith, by electric telegraph, inform such person that such certificate has been so endorsed:

iv. The person so receiving such true copy shall, upon receiving information of such certificate, endorse upon the copy of the original document received by him a certificate that the same has been duly received, under the provisions of this Act, which certificate shall be signed by him and by the justice or notary public so supervising the receipt of such copy as hereinbefore provided.

(2) In this section "any principal officer of Government" includes the Auditor-General, the Under Secretary, the Under Treasurer, and the secretary to any department presided over by a Minister of the Crown, the Clerk of the Legislative Council, the Clerk of the House of Assembly, the Surveyor-General, the President of the Marine Board, the Registrar-General, the Sheriff, the Master of the Supreme Court, the Commissioner of Police, inspectors of police, the Returning Officer for the State; and for the purposes of returns to writs of election, but not otherwise, also includes any returning officer or deputy returning officer of an electoral district.

3, 1873, s. 11  
(part).

57. (1) Every copy so endorsed and certified as aforesaid shall be as valid to all intents and purposes as the original, whereof it purports to be a copy, would have been, and shall be admissible in evidence in any case in which the original would have been so admissible; and any person by whom such copy has been received, or who is thereby authorised, instructed, or commanded, or who is lawfully charged with any duty in respect thereof, shall have and become liable to the same rights and duties in respect thereof as if he had received the original document duly signed and sealed, or signed or sealed, as the case may be.

Copies so  
transmitted  
to be as valid  
and effectual  
as originals.  
3, 1873, s. 5.

(2) In the case of any document intended to be served, or the efficacy or use whereof depends upon service, every such copy shall for the purpose of such service be deemed to be the original document whereof it purports to be a copy.

Penalty for  
false certi-  
ficate of send-  
ing message.  
3, 1873, s. 9.

**58.** Any justice or notary public who wilfully and falsely endorses upon any original document, delivered at a telegraph station for the purpose of being transmitted under the provisions of this Act, a certificate that a true copy thereof has been sent under this Act, or who by telegraph wilfully and falsely informs any person to whom such has been so sent that a certificate under the provisions of this Act has been endorsed thereon, shall forfeit a sum not exceeding one hundred pounds, which may be sued for and recovered by the first person who shall, for his own benefit and without collusion, sue for the same.

Signing false  
certificate  
upon copy to  
be a felony.  
3, 1873, s. 10.

**59.** Any person by this part of this Act required to sign a certificate upon any copy of a document that such copy has been duly received under the provisions of this Act, who shall wilfully sign such certificate, knowing the same to be false, shall be guilty of felony, and, being convicted thereof, shall be liable to be imprisoned for any term not exceeding two years.

#### PART VII.

#### PART VII.

#### GENERAL PROVISIONS.

Sufficiency of  
notice of  
action.  
435, 1888,  
s. 8.

**60.** In any action, suit, or other proceeding in any court of justice in which notice of action is required, such notice shall be deemed sufficient if, in the opinion of the judge, commissioner, stipendiary or special magistrate, or justice of the peace presiding, such notice shall have given the defendant reasonable notice of the cause of such action, and the sufficiency of such notice shall be a question of fact and not of law; and no notice of action shall be held insufficient merely for want of form.

Proceedings  
to facilitate  
or dispense  
with proof of  
identity in  
cases of  
previous con-  
viction in  
courts of  
summary  
jurisdiction.  
1669, 1925,  
s. 10.

**61.** (1) Whenever in a court of summary jurisdiction it becomes proper to inquire as to any previous conviction of the defendant, and the defendant does not appear in person, the court may—

(a) allow evidence to be given of the previous conviction of any person, alleged by the prosecution to be identical with the defendant; and

(b) (such evidence having been given) adjourn the further consideration of the case to a time and place specified by the court in order to enable the defendant to attend in person for the purpose of answering such allegation.

(2) If at the time and place so specified—

(a) it is proved that the defendant has been personally served with notice in writing, requiring him to attend accordingly, and informing him of the purpose for which his personal attendance is required; and

(b) the defendant fails to appear in person; and

(c) no sufficient reason to the contrary is shown to the satisfaction of the court,

the allegation of the identity of the defendant with the person so convicted as aforesaid, shall be deemed to have been proved, and the court shall proceed accordingly: Provided that service of the notice aforesaid shall not be required if the defendant has been represented at the original hearing by any counsel or solicitor who has waived such service.

(3) The further hearing or consideration of the case may be adjourned from time to time as aforesaid to enable the defendant—

(a) to be served as aforesaid; or

(b) to attend in person if the court is satisfied that he intends to do so.

**62.** Whenever in any proceedings before justices, in respect of any offence, it is an essential ingredient of the offence that the place (where any fact or matter occurred or was done) should be a public place, an allegation, in the complaint or information, that the place (specified as that in which the fact or matter charged occurred or was done) was a public place, shall be *prima facie* evidence of that fact. But the court may, if it thinks fit, and at any stage of the proceedings, permit evidence to be called with respect to the said fact.

Proof of  
"public place"  
in certain  
cases.  
1669, 1925,  
s. 11.

**63.** Printed books purporting to contain statutes, ordinances or other written laws in force in any country, although not purporting to have been printed or published by authority, and books purporting to contain reports of decisions of courts or judges in such country, and text books treating of the laws of such country, may be referred to by all courts for the purpose of ascertaining the laws in force in

Proof of  
foreign law.  
1669, 1925,  
s. 21.  
Of. W.A. 28,  
1906, s. 1.

such country; but such courts shall not be bound to accept or act on the statements in any such books as evidence of such laws.

Proof of matters of history, science, &c. 1669, 1925, s. 22. Cf. W.A. 28, 1906, s. 22.

**64.** All courts may, in matters of public history, literature, science, or art, refer, for the purposes of evidence, to such published books, calendars, maps, or charts as such courts consider to be of authority on the subjects to which they respectively relate: Provided that nothing herein contained shall be deemed to require any such court to accept or act upon any such evidence when tendered, unless it thinks fit.

Reference by court to books, etc., or official certificates in certain matters relating to post and telegraph, locality and distance. 1669, 1925, s. 23.

**65.** In any matter relating to—

- (a) the ordinary course of the post between any place within the Commonwealth and any other place, whether within or without the Commonwealth, or to the public business and transactions of the Post and Telegraph Department; or
  - (b) the territorial limits of the area controlled by any municipal or district council or other local governing body, or of any other area designated or proclaimed or appointed by or under any statute or to the inclusion in any such area or the exclusion therefrom of any particular place; or
  - (c) the distance between any two places in the State;
- every court may refer to—
- (i.) any such published book, map, chart, or document as the court considers to be of authority upon the subject to which it relates; or
  - (ii.) any certificate purporting to be signed by some person occupying any official position which, in the opinion of the court, qualifies him to certify to the fact in question:

Provided that nothing herein contained shall be deemed to require any such court to accept or act upon any such evidence when tendered unless it thinks fit.

Taking of affidavits out of the State. 1669, 1925, s. 24. Cf. U.K., 52 & 53 Vict. c. 10, s. 3.

**66.** (1) Any oath or affidavit required for the purpose of any court or matter in the State may be taken or made, in any place out of the State, before—

- (a) a commissioner for taking affidavits in the Supreme Court empowered and authorised to act in that place; or

s. 64. *ARNOLD v. NORRIS* (1936) S.A.S.R. 287. Held that, under section 64, the court could refer to recognised tables setting out the expectation of life.

s. 66. *PITT v. PITT* (1905) S.A.L.R. 130; 8 Austn. Digest 637. As to the necessity of proving the authority of the person administering an oath.

- (b) a British diplomatic or consular agent exercising his function in that place; or
- (c) any person having authority to administer an oath in that place.

(2) Judicial and official notice may be taken—

- (a) of the signature or seal of any such commissioner or agent, or of any person having authority as aforesaid if he purports to have such authority, otherwise than by the law of a foreign country not under the dominion of His Majesty; and
- (b) of the fact that any particular place is under the dominion of His Majesty.

(3) In the case of a person purporting to have such authority by the law of a foreign country not under the dominion of His Majesty, such authority may be verified by any of the persons mentioned in paragraphs (a) and (b) of subsection (1) hereof, or by the certificate of the superior court of such place, and if such authority purports to be so verified the oath or affidavit may be admitted or received without further proof of the signature or seal, or of the judicial, official, or other character of such first mentioned person.

(4) In this section—

“oath” includes affirmation and declaration:

“affidavit” includes any statutory or other declaration, acknowledgment, or examination:

“diplomatic agent” means ambassador, envoy, minister, charge d'affaires, or secretary of embassy or legation:

“consular agent” means consul-general, consul, vice-consul, or consular agent, or acting consul-general, acting consul, acting vice-consul, or acting consular agent.

67. (1) The provisions of section 66 shall, as far as applicable, extend to every attestation, verification, acknowledgment, or signature in relation to any document required, authorised, or permitted by or under any statute or by custom or otherwise to be attested, verified, acknowledged, or signed, and to the doing of all notarial acts as if such provisions had been re-enacted in this section, excluding words relating to the administration of oaths and the taking of affidavits and substituting therefor words relating to attestation, verification, acknowledgment, or signature, as the case may be.

Extension of provisions relating to affidavits to attestation, etc., of other documents.  
1669, 1925,  
s. 25.

## PART VII.

(2) "Notarial act" includes any act, matter, or thing which in South Australia or elsewhere a notary public can attest or verify or otherwise do by or under any Act of Parliament or custom or otherwise for the purpose of being used in the State.

(3) The provisions of this section apply to documents required, authorised, or permitted by or under The Real Property Act, 1886.

## PART VIII.

## PART VIII.

## PUBLICATION OF EVIDENCE.

Interpretation.  
1287, 1917,  
s. 2.

68. In this Part "court" means the court, judge, or magistrate before whom any legal proceeding is held or taken, and also a justice sitting for the preliminary investigation of any matter, a coroner by or before whom an inquest is held, and any person acting judicially.

Court may  
prohibit  
publication of  
evidence and  
names of  
parties and  
witnesses.  
1287, 1917,  
s. 3.  
Cf. U.K.  
23 Geo. 5  
c. 12, s. 37.

69. (1) Where it appears to any court—

- i. that the publication of any evidence given or used or intended to be given or used, in any proceedings before such court, is likely to offend against public decency; or
- ii. that for the furtherance of, or otherwise in the interests of, the administration of justice it is desirable to prohibit the publication of the name of any party or intended party to, or witness or intended witness in, any such proceedings,

the court may, either before or during the course of the proceedings or thereafter, make an order—

- (a) directing that the persons specified (by name or otherwise) by such court, or that all persons except the persons so specified, shall absent themselves from the place wherein such court is being held while such evidence is being given; or
- (b) forbidding the publication of such evidence, or any specified part thereof, or of any report or account of such evidence, or any specified part thereof, either absolutely or subject to such conditions, or in such terms or form, or in such manner, or to such extent, as may be approved by such court; or
- (c) forbidding the publication of the name of such party or witness.



(2) Where the court makes an order under paragraph (c) of subsection (1) hereof, the publication of any reference or allusion to any party or witness the name of whom is by such order forbidden to be published, shall, if such reference or allusion is, in the opinion of the magistrate or justices hearing the complaint for the alleged offence, intended or is sufficient to disclose the identity of such party or witness, be deemed to be a publication of the name of such party or witness.

Of. U.K.  
22 & 23  
Geo. 5 c. 46,  
s. 81;  
28 Geo. 5  
c. 12, s. 39.

(3) When the court makes an order under paragraph (b) or paragraph (c) of subsection (1) hereof, forbidding the publication of any evidence or any report or account of any evidence, or the publication of any name, the court shall report the fact to the Attorney-General, and shall embody in its report a statement of—

- (a) the evidence or name (as the case may be) by such order forbidden to be published; and
- (b) the circumstances in which the order was made.

70. Where in the course of any proceedings before any court witnesses are ordered out of court and it appears to the court that for the furtherance or otherwise in the interests of the administration of justice it is desirable to prohibit for any period the publication of any evidence given or used in such proceedings the court may make an order forbidding, for such period as the court thinks fit, the publication of such evidence or any specified part thereof.

Power to temporarily prohibit publication of evidence where witnesses ordered out of court.  
1287, 1917,  
s. 4.

71. (1) Any person who disobeys any order under paragraph (a) of subsection (1) of section 69 or under section 70, shall be guilty of contempt of court, and shall be punishable accordingly in the same manner as for any other contempt of the court; and if the court has no power to punish for contempt, then the court may punish such contempt in manner provided by section 46 of the Justices Act, 1921, and the provisions of that section shall apply for the purposes of dealing with and punishing such contempt and enforcing the punishment.

Penalty for non-compliance with order.  
1287, 1917,  
s. 5.

(2) Any person who disobeys any order under paragraph (b) or paragraph (c) of subsection (1) of section 69 shall be liable to a penalty of not more than one hundred pounds, or to be imprisoned for any period not exceeding six months.

72. All proceedings in respect of offences against this Part of this Act shall be disposed of summarily.

Proceedings for offences.

## SCHEDULES.

## FIRST SCHEDULE.

Number and Year.	Title of Act.	Extent of Repeal.
Imperial 6 & 7 Vic. c. 85 (adoption by Ordinance 17 of 1846)	An Act for Improving the Law of Evidence	The whole as the same is adopted and subsisting pursuant to Ordinance 17 of 1846.
3 of 1848 . . . .	Ordinance to Facilitate the Admission of the unsworn Testimony of the Aboriginal Inhabitants of South Australia and the parts adjacent	The whole.
4 of 1849 . . . .	Ordinance to amend Ordinance 3 of 1848	The whole.
2 of 1852 . . . .	An Act to amend the Law of Evidence	The whole.
24 of 1855-6 . . .	The Supreme Court Procedure Act, 1855	Sections 16 to 21 inclusive.
13 of 1866-7 . . .	An Act for amending the Law of Evidence and Practice on Criminal trials	Sections 3 to 8 inclusive.
3 of 1867 . . . .	Matrimonial Causes Act, 1867 . . .	Section 57.
10 of 1869-70 . .	Evidence Further Amendment Act, 1869	The whole.
9 of 1872 . . . .	An Act for Shortening and Explaining the Language used in Acts of Parliament, and for other purposes	The whole as unrepealed by 1215 of 1915.
3 of 1873 . . . .	The Telegraphic Messages Act, 1873	The whole.
38 of 1876 . . . .	The Criminal Law Consolidation Act, 1876	Sections 377 and 378
162 of 1879 . . . .	The Bankers Books Evidence Act, 1879	The whole.
435 of 1888 . . . .	Evidence Further Amendment Act, 1888	The whole.
1056 of 1911 . . .	The Oaths and Affirmations Act, 1911	The whole.
1287 of 1917 . . .	Evidence Publication Act, 1917 . . .	The whole.
1669 of 1925 . . .	Evidence Amendment Act, 1925 . . .	The whole.

## SECOND SCHEDULE.

SOUTH AUSTRALIA, { The examination of [*state the name of witness*] an aboriginal  
to wit. } and uncivilised native of South Australia, taken before  
me, A.B. one of His Majesty's Justices of the Peace for the said State, the  
day of , who in the presence and hearing of  
[*state the name of the accused person*] charged before me, the said Justice, for  
[*state the offence*] saith [*set forth the examination*].

I certify that the above writing contains a true statement of the testimony of  
the above-named [*name of native witness*] on his examination before me this day.  
Given under my hand this day of

A.B.

**Second Schedule.** The expression "Province" altered to "State" pursuant to the Acts  
Republication Act, 1934.

## THIRD SCHEDULE.

*Provisions Referred to in Section 21.*

Reference to Act.	Title of Act.	Enactments Referred to.
No. 38 of 1876 ..	The Criminal Law Consolidation Act, 1876	Sections 37, 38, 54, 60, 61, 62, 63, 64, 65, 66, 68, 69, 70, 71, 72, 73, 74, and 77
No. 300 of 1883-4	Married Women's Property Act, 1883-4	Sections 12, 16.
No. 358 of 1885 .	The Criminal Law Consolidation Amendment Act, 1885	Sections 2, 3, 4, 6, 7, 10, 11.
No. 730 of 1894 .	The Children's Protection Act, 1899	Sections 4, 10.
No. 931 of 1907 .	The Suppression of Brothels Act, 1907	Section 3.
No. 1257 of 1916	Police Act, 1916 . . . . .	Section 67 (p).
No. 1334 of 1918	Children's Protection Act Amendment Act, 1918	Section 3.
No. 1442 of 1920	Venereal Diseases Act, 1920 . . .	Sections 5, 14, 17, 22.
No. 1780 of 1926	Maintenance Act, 1926 . . . . .	Sections 46, 50, 51, 75, 94, 105, 142, 188.

**Third Schedule.** Of the enactments mentioned in the schedule the following have been repealed and superseded by other enactments as follows:—

- (a) The sections of The Criminal Law Consolidation Act, 1876, mentioned in the schedule have been superseded respectively by sections 29, 30, 46, 48, 49, 62, 50, 51, 52, 56, 59, 60, 61, 69, 70, 72 (1), 72 (2), and 78 of the Criminal Law Consolidation Act, 1935.
- (b) The sections of the Married Women's Property Act, 1883-4, mentioned in the schedule have been superseded respectively by sections 101 and 102 of the Law of Property Act, 1936.
- (c) The sections of The Criminal Law Consolidation Amendment Act, 1885, mentioned in the schedule have been superseded respectively by sections 63, 64, 55, 65, 66, 68, and 53 of the Criminal Law Consolidation Act, 1935.
- (d) The sections of The Children's Protection Act, 1899, mentioned in the schedule have been superseded respectively by sections 5 and 11 of the Children's Protection Act, 1936.
- (e) Section 3 of The Suppression of Brothels Act, 1907, has been superseded by section 102 of the Police Act, 1936.
- (f) Section 67 (p) of the Police Act, 1916, has been superseded by section 86 (1) (p) of the Police Act, 1936.
- (g) Section 3 of the Children's Protection Act Amendment Act, 1918, has been superseded by section 12 of the Children's Protection Act, 1936.