

EVIDENCE AND DISCOVERY ORDINANCE, 1913. ⁽¹⁾

No. 9 of 1913.

An Ordinance to consolidate and amend Enactments relating to Evidence and Discovery.

BE it enacted by the Lieutenant-Governor of the Territory of Papua with the advice and consent of the Legislative Council thereof as follows:—

1.—(1.) This Ordinance may be cited as the *Evidence and Discovery Ordinance, 1913*⁽¹⁾ and shall come into operation on a day to be fixed by the Lieutenant-Governor by proclamation published in the *Gazette*.⁽¹⁾

Short title.
Commencement.

(2.) It is divided into parts and divisions as follows:—

Division.

Part I.—Preliminary;

Part II.—The Means of Obtaining Evidence and
Discovery;

Division 1.—Examination of Witnesses
upon Interrogatories or
otherwise;

Division 2.—Discovery Inspection and
Notices to Admit and Pro-
duce Documents;

Part III.—The Means of Proof and Admissibility of
Evidence;

Division 1.—Judicial Notice;

Division 2.—Documents and Proceedings
Generally;

Part IV.—Witnesses;

Part V.—General.

(1) Particulars of this Ordinance are as follows:—

Date of assent by Lieut.-Gov.	Date notified in Papua <i>Govt. Gaz.</i> as not disallowed by Gov.-Gen. in Council.	Date on which came into operation.
14.8.1913	4.3.1914	1.5.1914 (<i>Papua Govt. Gaz.</i> of 16.3.1914)

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PART I.—PRELIMINARY.

Repeal.
Schedule.

2. The enactments mentioned in the Schedule to this Ordinance are repealed.

Interpretation.

3. In this Ordinance unless the context otherwise indicates—

“Australasian Colony” means and includes New South Wales Queensland South Australia Victoria Western Australia and Tasmania during such time as such possessions constituted separate colonies; New Zealand and any part of New Zealand during such time as such part constituted a separate colony; Fiji; and any other British possession which may at any time be created within His Majesty’s possessions in Australasia;

“Commonwealth” means the Commonwealth of Australia;

“Court” means the Central Court;⁽²⁾

“Examined Copy” means a copy proved to have been examined with the original and to correspond therewith. The examination may be made either by one person reading both the original and the copy or by two persons one reading the original and the other the copy and it is not necessary that each should alternately read both;

“Gazette” means and includes the *London Gazette* the *Edinburgh Gazette* the *Dublin Gazette* the *Commonwealth of Australia Gazette* and the *Government Gazette Royal Gazette* or other official Gazette of any State Territory or Australasian Colony;

“Government Printer” means and includes the printer to His Majesty and any person printing for the Government of the Commonwealth or of any State Territory or Australasian Colony and any printer purporting to be the printer authorised to print the statutes Ordinances Acts of State or other public Acts of the Legislatures of any Territory or Australasian Colony or otherwise to be the Government Printer of such Territory or Colony;

“Judge” means a Judge of the Central Court;⁽²⁾

“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.

“Person acting judicially” means any person having by law or by consent of parties authority to hear receive and examine evidence or to make an inquiry;

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

“Prisoner” means and includes any person committed to prison for punishment or on remand or for trial safe custody or otherwise;

“State” means a State of the Commonwealth;

“Territory” means any Territory accepted or otherwise acquired by the Commonwealth and includes this Territory;

“This Territory” means the Territory of Papua.

4. All the provisions of this Ordinance except where the contrary intention appears shall apply to every legal proceeding.

Application of Ordinance.
Tas., 1 Geo. V. No. 20, s. 4.

5. The provisions of this Ordinance shall be in addition to and not in derogation of any powers rights or rules of evidence given by any existing statute or Ordinance or existing at common law.

Ordinance not to derogate from existing powers.
Cf. Tas., *Ib.* s. 5.
Cf. Q., 62 Vic. No. 15, s. 14.

PART II.—THE MEANS OF OBTAINING EVIDENCE AND DISCOVERY.

Division 1.—*Examination of Witnesses upon Interrogatories or otherwise.*

6.—(1.) In any proceeding other than a criminal proceeding depending in the Central Court⁽²⁾ in any jurisdiction or depending in any inferior Court at any stage thereof and upon the application of any party thereto the Central Court⁽²⁾ or a Judge may order—

Examinations on commission &c., in civil proceedings.
Cf. N.S.W., 34 of 1900, s. 4.
Cf. Q., 31 Vic. No. 13, ss. 53, 62, 70.
Tas., *Ib.* s. 7.

(a) That any witness within the jurisdiction of the Court be examined on oath either *vivâ voce* or upon interrogatories or otherwise before an officer of the Court or other person to be named in the order; or

(b) That a commission do issue for the examination of witnesses on oath either *vivâ voce* or upon interrogatories or otherwise at any place in or out of the jurisdiction.

(2.) The Court or Judge may by the same or any subsequent order give all such directions touching the time place and manner of such examination as well within the jurisdiction as without and all other matters and circumstances connected with such examination as appear reasonable and just.

7. No such order shall be made with respect to a witness who is a party to the proceeding on the ground of his intended departure from this Territory or to remote parts within the same unless it be shown to the satisfaction of the Court or Judge that such departure is in fact urgently required by unavoidable circumstances or some unexpected emergency and that the examination is not sought in order to avoid cross-examination before the Court or a jury.

Parties.
N.S.W., *Ib.* s. 5.
Cf. Q., *Ib.* s. 71.
Tas., *Ib.* s. 8.

(2) See Section 19(2) of the Ordinance Interpretation Ordinance, 1911-1940.

Examinations in criminal proceedings. N.S.W., 34 of 1900, s. 6. Cf. Q. 31 Vic. No. 13, s. 63.

8. In any criminal proceeding if—

- (a) Any witness is out of the jurisdiction of the Court or above two hundred miles from the intended place of trial; or
- (b) Any witness is from age or infirmity unable to attend the trial; or
- (c) The testimony of any witness is in danger of being lost by reason of his age or infirmity or of his being about to depart out of the jurisdiction or to some place beyond the said distance of two hundred miles

the Court or a Judge may on application or with the consent of the Crown Prosecutor as well as the prisoner but not otherwise make a like order in respect of such witness.

Commanding attendance of witnesses or production of documents. Q., *Ib.* s. 54. N.S.W., *Ib.* s. 7. Tas., 1 Geo. V. No. 20, s. 9.

9.—(1.) When any order is made under the authority of this Ordinance for the examination of any witness within the jurisdiction of the Court the Court or Judge may by such order or by any subsequent order command the attendance of any person named therein for the purpose of being examined or the production of any writing or other document mentioned therein and may thereby direct the attendance of such person to be at his own place of abode or elsewhere if necessary or convenient so to do.

Penalty for disobedience.

(2.) The wilful disobedience of any such order shall be deemed a contempt of Court and proceedings may be thereupon had by attachment if together with or after the service of the order there has been served an appointment of the time and place of attendance in obedience thereto signed by the person or one or more of the persons appointed to take the examination.

Payment of expenses, &c.

(3.) Every person whose attendance is so commanded shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial.

Proviso as to documents.

(4.) No person shall be compelled to produce under any such order any writing or document that he would not be compellable to produce at the hearing.

Examinations to be on oath. Q., *Ib.* s. 56. N.S.W., *Ib.* s. 9. Tas., *Ib.* s. 10.

10. Any person authorised by any order or commission under this Ordinance to take the examination of any witness shall take such examination upon the oath of such witness (or his affirmation in the cases where the same is allowed by law) to be administered by the person so authorised.

Report of examiner as to conduct of witnesses, &c. Q., *Ib.* s. 57. N.S.W., *Ib.* s. 10. Tas., *Ib.* s. 11.

11.—(1.) Any person authorised by any order under this Ordinance to take an examination within the jurisdiction may and if need be shall make a special report to the Court touching such examination and the conduct or absence of any witness or other person thereon or relating thereto.

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(2.) The Court may institute such proceedings and make such order upon such report as justice requires and as may be instituted and made in any case of contempt of Court.

12.—(1.) The examination or deposition of any witness taken under this Ordinance may be read in evidence at the hearing of the proceeding in respect of which the order or commission for examination was made saving all just exceptions.

Reading examinations and depositions in evidence.
Q., 31 Vic. No. 13, ss. 59, 60.
N.S.W., 34 of 1900, s. 11.
Tas., 1 Geo. V. No. 20, s. 13.

(2.) Provided that if it appears to the satisfaction of the Court or Judge or other person acting judicially at such hearing that such witness is within the jurisdiction and able to attend the hearing such examination or deposition shall be rejected.

(3.) Where such examination or deposition appears to be certified under the hand of the person authorised to take the same no proof shall be necessary of the signature of such person.

13. The costs of every order or commission under this Ordinance and of the proceedings thereupon shall except in a criminal proceeding be costs in the cause unless otherwise directed by the Court or by the Judge making such order or by the Judge before whom the cause is tried.

Costs.
Q., *Ib.* s. 58.
N.S.W. *Ib.* s. 12.
Tas., *Ib.* s. 12.

14. Affidavits and affirmations taken under this Ordinance shall and may be received read and made use of in and before any Court in the Territory and the Judges magistrates justices and officers thereof in or in relation to any proceeding in like manner and shall be of the same force and effect as affidavits and affirmations taken in or before such Court or by any person duly commissioned or authorised by such Court to take affidavits or affirmations and shall be filed and dealt with accordingly.

Affidavits taken under this Ordinance may be used in Courts in the Territory.
Q. *Ib.* s. 61.

15.—(1.) In any proceeding in the Central Court⁽²⁾ except a criminal proceeding the plaintiff or defendant by order of the Court or a Judge may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such parties is required to answer: Provided that no party shall deliver more than one set of interrogatories to the same party without a special order for that purpose.

Written interrogatories to opposite party.
Cf. Q., *Ib.* s. 49.
Q., S.C.R. Order 35, rr. 1, 4.

(2.) If any party to such proceeding is a corporation or a joint-stock company or any other body of persons empowered by law to sue and be sued whether in its own name or in the name of any officer or other person any opposite party may apply for an

(3) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

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order allowing him to deliver interrogatories to be answered by some member or officer of such corporation company or body on their behalf and an order may be made accordingly.

Affidavits by party proposing to interrogate and his attorney. Q., 31 Vic. No. 13, s. 50.

16. The application for any such order shall be made upon an affidavit of the party proposing to interrogate and his attorney or agent or in the case of a body corporate of their attorney or agent stating that the deponents or deponent believe or believes that the party proposing to interrogate whether plaintiff or defendant will derive material benefit in the cause from the discovery which he seeks that there is a good cause of action or defence upon the merits and if the application be made on the part of the defendant that the discovery is not sought for the purpose of delay.

If from unavoidable circumstances the plaintiff or defendant cannot join in such affidavit the Court or Judge may if they or he think fit upon affidavit of such circumstances by which the party is prevented from so joining therein allow and order that the interrogatories may be delivered without such affidavit.

Oral examination of parties when to be allowed. Q., 1b. s. 51.

17. In case of omission without just cause to answer sufficiently such written interrogatories the Court or a Judge may at their or his discretion direct an oral examination of the interrogated party as to such points as they or he may direct before a Judge or commissioner and the Court or Judge may by such order or any subsequent order command the attendance of such party or parties before the person appointed to take such examination for the purpose of being orally examined as aforesaid or the production of any writings or other documents to be mentioned in such order and may impose therein such terms as to such examination and the costs of the application and of the proceedings thereon and otherwise as to such Court or Judge shall seem just.

Proceedings upon such order. Q., 1b. s. 52.

18. Such order shall have the same force and effect and may be proceeded upon in like manner as any order made for the examination of persons as witnesses.

Division 2.—Discovery Inspection and Notices to Admit and Produce Documents.

Discovery of documents. Q., 1b. s. 72. N.S.W., 21 of 1899, s. 102.

19.—(1.) Upon the application of either party to any action or other civil proceeding upon an affidavit by such party or his attorney of his belief that any document to the production of which he is entitled for the purpose of discovery or otherwise is in the possession or power of the opposite party the Court or a Judge may order that—

(a) The party against whom such application is made; or

(b) If such party is a body corporate some officer to be named of such body corporate

shall answer on affidavit stating what documents he or they has or have in his or their possession or power relating to the matters in dispute or what he knows as to the custody such documents or any of them are in and whether he or they objects or object to the production of such as are in his or their possession or power and if so on what grounds.

(2.) Upon such affidavit being made the Court or Judge may make such further order thereon as shall be just.

20. Upon the application of either party to any action or other civil proceeding in any case in which before the passing of the Act thirty-first Victoria number thirteen (Queensland adopted)⁽³⁾ a discovery might have been obtained in Queensland by filing a bill or by any other proceeding in a Court of Equity at the instance of such party the Court or a Judge may order the opposite party to allow the party making the application to inspect all documents in the custody or under the control of such opposite party relating to such action or proceeding and if necessary to take examined copies of the same or to procure the same to be duly stamped.

Inspection of documents.
Q., 31 Vic. No. 13, s. 73.
N.S.W., 21 of 1899, s. 103.

21. Upon the application of either party the Court or a Judge may make an order upon such terms as to costs and otherwise as the Court or Judge thinks fit for the inspection by such party or by his witnesses of any real or personal property the inspection of which may be material to the proper determination of the question in dispute.

Inspection of real or personal property.
Q., *Ib.* s. 74.
N.S.W., *Ib.* s. 104.

22.—(1.) Either party to any action or other civil proceeding may call on the other party by notice to admit any document saving all just exceptions.

Notice to admit.
Q., *Ib.* s. 21.
N.S.W., *Ib.* s. 105.

(2.) In case of refusal or neglect to admit the costs of proving the document shall be paid by the party so neglecting or refusing whatever the result of the action may be unless at the trial the Judge certifies that the refusal to admit was reasonable.

(3.) No costs of proving any document shall be allowed unless such notice be given except in cases where the omission to give the notice is in the opinion of the taxing officer a saving of expense.

23. An affidavit of the attorney in the proceeding or his clerk of the due signature of any admissions made in pursuance of such notice and annexed to the affidavit shall be sufficient evidence of such admissions.

Proof of admissions.
Q., *Ib.* s. 22.
N.S.W., *Ib.* s. 106.

(3) The Act thirty-first Victoria number thirteen (Queensland, adopted), is *The Evidence and Discovery Act of 1867* (Queensland, adopted). It was assented to on 23.12.1867 and commenced on 31.12.1867. This Act was repealed and replaced in the Territory of Papua by the present Ordinance.

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Proof of service of notice to produce.

Q., 31 Vic. No. 13, s. 23.
N.S.W., 21 of 1899, s. 107.

24. An affidavit of the attorney in the proceeding or his clerk of the service of any notice to produce in respect of which notice to admit has been given and of the time when it was served with a copy of such notice to produce annexed to such affidavit shall be sufficient evidence of the service of the original of such notice and of the time when it was served.

PART III.—THE MEANS OF PROOF AND ADMISSIBILITY OF EVIDENCE.

Division 1.—Judicial Notice.

25.—(1.) All Courts and all persons acting judicially shall take judicial notice—

- (a) Of the Commonwealth and the States and of every Australasian Colony and of every Territory and of their extent; and
- (b) Of all Acts of the Parliament of the United Kingdom and of the Commonwealth and of any State and of any Australasian Colony and of the Ordinances of any Territory passed before or after the commencement of this Ordinance.

(2.) Any paper purporting to be a copy of any Act of the Parliament of the United Kingdom or of the Commonwealth or of any State or of any Australasian Colony or of any Ordinance of any Territory whether passed before or after the commencement of this Ordinance and purporting to be printed by the Government Printer shall *primâ facie* be deemed to be a correct copy of such Act or Ordinance without any further proof thereof.

The date which appears on any such copy purporting to be the day on which such Act or Ordinance received the Royal assent or was proclaimed to commence shall be received for all purposes as evidence of the date of such assent or commencement.

26. All Courts and all persons acting judicially shall take judicial notice of the impression of the seal of—

- (i) The Commonwealth;
- (ii) Any State;
- (iii) Any Australasian Colony;
- (iv) Any Territory;

without evidence of the seal having been impressed or any other evidence relating thereto.

27. When by any Act or Ordinance any seal or stamp is authorised to be used by the ^(3A) Court officer body corporate or any other person judicial notice shall be taken of the impression of such seal

(3A) The word "the" appeared in the original Ordinance. *Semble*, "any" was intended.

Commonwealth, States, Australasian Colonies and Territories, and their Acts to be judicially noticed.

Cwlth., No. 5 of 1901, s. 3.
Tas., 1 Geo. V. No. 20, s. 44.
Cf. Q., *Ib.* s. 2.
Q., 62 Vic. No. 15, s. 3.

Government Printer's copies of Acts and Ordinances to be deemed *prima facie* evidence.

Judicial notice of the seal of the Commonwealth and States &c.

Cwlth., *Ib.* s. 4.
Cwlth., No. 4 of 1905, s. 3.
Tas., *Ib.* s. 45.
Q., *Ib.* s. 4.

And of official seals.
N.Z., No. 16 of 1905, s. 27.
Tas., *Ib.* s. 46.

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or stamp without evidence of the same having been impressed or any other evidence relating thereto.

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

- (1) The official signature of any person who holds or has held the office of Governor-General Minister of State for the Commonwealth President of the Senate Speaker of the House of Representatives Secretary to the Federal Executive Council Justice of the High Court Principal Registrar Deputy Registrar or District Registrar of the High Court President or Deputy President of the Commonwealth Court of Conciliation and Arbitration Industrial Registrar or Deputy Industrial Registrar or President or Judge or member of any Federal Court or of the Interstate Commission or any office to which the Governor-General by order published in the *Commonwealth Gazette* has declared or hereafter declares section four of the *Evidence Act, 1905*⁽⁴⁾ (Commonwealth Act) shall apply; and

Certain signatures to be judicially noticed.

Tab., 1 Geo. V. No. 20, s. 47. See Cwlth., No. 4 of 1905, s. 4.

(4) By Orders published in the *Commonwealth Gazette*, particulars of which are set out in the following Table, the Governor-General declared Section 4 of the *Evidence Act, 1905-1934*, to apply to the offices specified in the following Table. (See *Commonwealth Gazette*, 1912, p. 1260, Consolidation of Commonwealth Statutory Rules 1901-1927, Vol. IV., pp. 3688-3692 and Commonwealth Statutory Rules 1929, pp. 334 and 335.)

Date on which Order made.	Date on which published in <i>Cwlth. Gaz.</i>	Page of <i>Cwlth. Gaz.</i>	Office to which Section 4 applied.
4.7.1912	13.7.1912	1260	"Commonwealth Statistician under the <i>Census and Statistics Act, 1905</i> ".
2.2.1916	3.2.1916	203	"Secretary to the Department of Defence" and the Commandants of the First, Second, Third, Fourth, Fifth and Sixth Military Districts.
28.9.1916	30.9.1916	2703	"Solicitor-General for the Commonwealth".
8.5.1918	9.5.1918	1044	"Inspector-General of Administration under the <i>Defence Act, 1903-1917</i> ".
28.5.1919	29.5.1919	933	"Chief Electoral Officer for the Commonwealth, Commonwealth Electoral Officer for any State and Divisional Returning Officer for any electoral Division of the Commonwealth under the <i>Commonwealth Electoral Act 1918</i> ".
25.6.1919	3.7.1919	1081	"Commonwealth Meteorologist".
1.12.1926	2.12.1926	2127	"Collector of Customs for any State of the Commonwealth."
21.1.1927	27.1.1927	137	"Divisional Meteorologist in the States of New South Wales, Queensland, South Australia, Western Australia and Tasmania."
23.5.1929	30.5.1929	1317	"Government Resident of North Australia and the office of Government Resident of Central Australia under the <i>Northern Australia Act 1926</i> ".
8.10.1929	17.10.1929	2193	"Deputy Marshal of the High Court in any State of the Commonwealth."

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Tas., 1 Geo. V.
No. 20, s. 47.
Cf. Cwlt., No. 5
of 1901, s. 5.
Cf. Q., 31 Vic.
No. 13, s. 3.
Cf. Q., 62 Vic.
No. 15, s. 10.

(2) The official signature of every person who holds or has held in any State or part or district of any State or in any Australasian Colony or in any Territory or part or district of any Australasian Colony the office of Governor Lieutenant-Governor Administrator Premier Minister of the Crown Judge of the Supreme Court or the Central Court President or Speaker of a House of Legislature Agent-General Solicitor-General Secretary of the Law Department Sheriff Prothonotary Registrar or Chief Clerk of the Supreme Court or the Central Court Registrar of Deeds Commissioner of Titles Recorder or Registrar of Titles Assistant or Deputy Recorder or Registrar of Titles Registrar-General Assistant or Deputy Registrar-General Government Statist or Assistant or Deputy Government Statist Judge Commissioner or Registrar of a Bankruptcy or Insolvency Court Judge presiding magistrate or commissioner of any Country Court or Court of Requests or Local Court Secretary for Mines commissioner or warden or Registrar of a Court of Mines mayor of a city warden of a municipality chairman of any Court of General or Quarter Sessions police or stipendiary or resident or special magistrate Commissioner of Crown Lands Surveyor-General Chief Government Surveyor Secretary for Lands Commissioner of Police Chief Electoral Officer Auditor-General Chief Health Officer Director of Education Commissioner of Taxes Government Printer or justice of the peace or any office corresponding to any of the aforesaid offices or any office to which the Governor may at any time by order⁽⁵⁾ published in the *Gazette* declare this section to apply; and

(3) The seal of every such Court or person; and

(4) The fact that such person holds or has held such office;

if the signature or seal purports to be attached or appended to any certificate or any consent leave or approval in writing or any judicial or official document or memorandum.

Division 2.—Documents and Proceedings Generally.

29. *Primâ facie* evidence of any Royal proclamation Order of His Majesty's Privy Council order regulation despatch or any

Royal
proclamations,
Orders of the
Privy Council,
&c.
Imp. 31 & 32
Vic. c. 37, s. 2.
Q., 52 Vic.
No. 15, s. 5.
Tas., 1 Geo. V.
No. 20, s. 48.

(5) By notice dated 5.1.1917 and published in *Papua Govt. Gaz.* of 7.2.1917 it was "notified, for general information, that His Excellency the Lieutenant-Governor in Council has ordered that Section 28(2) of the *Evidence and Discovery Ordinance*, 1913, shall apply to the Offices of Curator and of Public Trustee".

instrument whatsoever made or issued before or after the commencement of this Ordinance by His Majesty or by His Majesty's Privy Council or by or under the authority of any of His Majesty's Secretaries of State or any Department of His Majesty's Government in the United Kingdom may be given in any Court or before any person acting judicially within the Territory by the production of a copy of the *London Gazette* or of the *Gazette* of this Territory purporting to contain a reprint or copy of such proclamation Order of the Privy Council order regulation despatch or other instrument.

30.—(1.) Evidence of any proclamation Order in Council commission order regulation appointment or other instrument whatsoever made or issued before or after the commencement of this Ordinance by the Governor-General of the Commonwealth or by the Governor or Lieutenant-Governor or Governor or Lieutenant-Governor in Council of any State or of any Australasian Colony or of any Territory or by or under the authority of any Minister of the Crown for the Commonwealth or for any State or Australasian Colony or of any public commission or board or local body or local authority may be given in any Court or before any person acting judicially in any of the following modes that is to say:—

Proclamation,
Order in Council,
&c.
Tas., 1 Geo. V.
No. 20, s. 49.
Cwith., No. 5 of
1901, s. 6.
Cwith., No. 4 of
1905, s. 5.
Cf. Q., 31 Vic.
No. 13, ss. 1, 2.
Cf. Q., 62 Vic.
No. 15, s. 6.

- (a) By the production of a copy of the *Gazette* purporting to contain the same;
- (b) By the production of a document purporting to be a copy thereof and purporting to be printed by the Government Printer or by the authority of the Government;
- (c) By the production (in the case of any proclamation order commission or regulation or appointment issued or made by the Governor-General of the Commonwealth) of a document purporting to be certified by the Secretary to the Federal Executive Council as a true copy thereof or extract therefrom;
- (d) By the production (in the case of any proclamation Order in Council commission order regulation appointment or other instrument whatsoever made or issued by the Governor or Lieutenant-Governor of any State or of any Australasian Colony or of any Territory) of a copy or extract purporting to be certified by the Clerk of the Executive Council of such State or Australasian Colony or Territory;
- (e) By the production (in the case of any proclamation order commission regulation appointment or other instrument made or issued by or under the authority of any Minister of the Crown) of a document purporting to be certified as a true copy thereof or extract therefrom by any Minister of the Crown.

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

Proof of proclamations and acts of State.

Tas., 1 Geo. V. No. 20, s. 50.

Cwlt., No. 5 of 1901, s. 7.

Cf. Q., 31 Vic. No. 13, s. 39.

31. Evidence of any proclamation or other act of State of any State may be given in any Court or before any person acting judicially by the production of a copy thereof either—

(i) Proved to be an examined copy thereof; or

(ii) Purporting to be sealed with the seal of that State.

Documents admissible in His Majesty's dominions to be admissible in this Territory.

Tas., *Ib.* s. 52.

Cwlt., *Ib.* s. 9.

Cf. Q., *Ib.* s. 37.

Cf. Q., 62 Vic. No. 15, s. 7.

32. Every document admissible in evidence for any purpose in any Court of justice in any part of His Majesty's dominions without proof of—

(i) The seal or stamp or signature authenticating the same; or

(ii) Of the judicial or official character of the person appearing to have signed the same;

shall be admitted in evidence to the same extent and for the like purpose in any Court or before any person acting judicially in this Territory without such proof.

Manner of proving acts of State, &c., of any other country.

Tas., *Ib.* s. 53.

Cf. Q., 31 Vic.

No. 13, s. 39.

33.—(1.) All proclamations treaties and other acts of State of any foreign State or of any British possession may be proved in any Court or before any person acting judicially either by examined copies or by copies sealed with the seal of the foreign State or British possession to which the original document belongs.

(2.) Any copy purporting to be sealed as in this section directed shall be admitted in evidence in every case where the original document could have been so admitted without any proof of the seal.

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

Tas., *Ib.* s. 54.

N.Z., No. 16 of 1905, s. 38.

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

Other public documents, how provable.

Tas., *Ib.* s. 55.

Cwlt., *Ib.* s. 10.

Cwlt., No. 4 of 1905, s. 6.

Cf. Q., 31 Vic.

No. 13, s. 41.

Cf. Q., 62 Vic.

No. 15, s. 8.

35.—(1.) Whenever in any part of His Majesty's dominions 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 any copy thereof or extract therefrom shall be admissible in evidence in any Court or before any person acting judicially if—

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

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

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(2.) Every officer to whose custody the original of any book or document of such a public nature as aforesaid is entrusted in this Territory is hereby required to furnish a certified copy of such book or extract therefrom to any person applying at a reasonable time and paying a reasonable sum for the same not exceeding six pence for every folio of seventy-two words.

Custodians to furnish copies.

36. Whenever by this Ordinance or by any Imperial Act or any Act of the Parliament of any State or of any Australasian Colony or any Ordinance of any Territory now or hereafter to be in force—

Proof of seal, signature, and official character dispensed with.

- (i) Any certificate; or
- (ii) Any official or public document; or
- (iii) Any document or proceeding of any corporation or joint stock or other company; or
- (iv) Any copy of or extract from any document or by-law or entry in any register or other book or of or from any other proceeding;

Tas., 1 Geo. V. No. 20, s. 57.
Cf. Q., 31 Vic. No. 13, s. 42.
Cf. Q., 62 Vic. No. 15, s. 11.

is admissible in evidence in any legal proceeding in the United Kingdom or in the particular State or Colony or Territory the same shall respectively be admitted in evidence in all Courts and before all persons acting judicially in this Territory if it purports to be certified or sealed or impressed with a stamp or sealed and signed or signed alone or impressed with a stamp and signed as directed by such Act or Ordinance without any proof—

- (i) Of the seal or stamp where a seal or stamp is necessary; or
- (ii) Of the signature; or
- (iii) Of the official character of the person appearing to have signed the same;

and without any further proof thereof.

37. Secondary evidence of any deed or document filed entered registered recorded or enrolled in the Central Court or in the office of the Registrar of Titles or any other public office under the provisions of any Ordinance may be given by the production of an office copy of such deed or document if reasonable notice in writing has been given to the adverse party by the party producing the same.

Secondary evidence of a deed or document registered, &c.
Cf. Tas., *Ib.* s. 61.

38.—(1.) The probate of a will or codicil or letters of administration with the will or codicil annexed shall be evidence of the original will or codicil upon all questions concerning real and personal estate in like manner as if such original were produced and proved in due course of law.

Probate and letters of administration.
Cf. Tas., *Ib.* s. 62.
Cf. Q., 31 Vic. No. 13, ss. 29, 30.

(2.) Every probate of any will or codicil or letters of administration with the will or codicil annexed shall in all cases be *primâ facie* evidence of the death and the date of the death of the testator or intestate.

(3.) In this section the expression “probate of any will or codicil or letters of administration with the will or codicil annexed” includes—

- (i) An exemplification of probate or of letters of administration; and
- (ii) Any document accepted as sufficient in lieu of such exemplification by the Central Court.⁽²⁾

Births, marriages and deaths.
Cf. Tas. 1 Geo. V. No. 20, s. 64.

39. A certificate of the birth marriage or death of any person in any part of the British dominions other than this Territory if it purports to be issued by the officer authorised by the law in that behalf of such part of the said dominions shall be evidence of the matters stated in such certificate without proof of the seal or stamp or signature or of the official character of the person appearing to have signed the same.

Statutes of any country published by authority.
Tas., *Ib.* s. 65.
Cf. Q., 62 Vic. No. 15, s. 12.

40. Books purporting to have been printed or published whether before or after the commencement of this Ordinance under the authority of the Government of this Commonwealth or of any State or Territory or of any country whatsoever or by the Printer to such Government and purporting to contain Statutes Ordinances or other written laws in force in such Commonwealth State Territory or country shall on production be admitted and received by all Courts and persons acting judicially as *primâ facie* evidence of such laws.

Machine copies to be evidence.
Tas., *Ib.* s. 68.
Cf. Q., 31 Vic. No. 13, s. 26.

41. When any writing whatsoever has been copied by means of any machine or press or operation which produces a *fac simile* impression or copy of such writing such impression or copy shall upon proof to the satisfaction of the Court or person acting judicially that the same was taken or made from the original writing by means of such machine or press or operation as aforesaid be evidence of such writing without any proof that such impression or copy was compared with the said original thereof and without any notice to produce such original.

Wills, deeds, &c., may be verified on declaration.
Q., *Ib.* s. 27.

42.—(1.) Any attesting witness to the execution of any will or codicil deed or instrument in writing and any other competent person may verify and prove the signing sealing publication or delivery of any such will codicil deed or instrument in writing by declaration in writing made under the Oaths Ordinance or any like Ordinance for the time being in force; and every Justice notary or other officer or person by law authorised to administer an oath is hereby authorised and empowered to administer or receive such declaration.

(2) See Section 19(2) of the Ordinance Interpretation Ordinance, 1911-1940.

(2.) The party intending to adduce such verification and proof shall give such notice of such⁽⁶⁾ his intention to give in evidence such declaration as may be required by any general rules and orders made as hereinafter mentioned; otherwise such declaration shall not be admissible.

Party to give notice of intention to use such declaration.
Q., 31 Vic. No. 13, s. 28.

43. Every instrument liable to stamp duty shall be admitted in evidence in any criminal proceeding although it may not have the stamp required by law impressed thereon or affixed thereto.

Instruments admissible as evidence in criminal cases though not properly stamped.
Q., *Ib.* s. 45.

44. Upon the production of any document as evidence at the trial of any proceeding not being a criminal proceeding the officer of the Court whose duty it is to read such document shall call the attention of the judge or person acting judicially in such proceeding to any omission or insufficiency of the stamp; and the document if unstamped or not sufficiently stamped shall not be received in evidence until the whole or the deficiency of the stamp duty and the fine required by this or any Ordinance in that behalf shall have been paid.

Provision as to unstamped documents at any trial not criminal.
Q., *Ib.* s. 46.

45.—(1.) Such officer of the Court shall upon payment to him of such stamp duty and fines give a receipt for the amount of the same and thereupon such document shall be admissible in evidence saving all just exceptions on other grounds and an entry of the fact of such payment and of the amount thereof shall be made in a book kept by such officer who shall at the end of each sittings duly make a return to the officer or person administering the Ordinances relating to stamp duties of any moneys which he has so received by way of duty or fine distinguishing between such moneys and stating the name of the cause and of the parties from whom he received such moneys and the date and description of the document for the purpose of identifying the same; and he shall pay over the said moneys to such officer or person who shall upon request and production of the receipt hereinbefore mentioned cause such document to be stamped with the proper stamp in respect of the sums so paid as aforesaid.

Officers of the Court to receive and account for the duty and fine.
Q., *Ib.* s. 47.

(2.) No conveyance or other instrument affecting real estate within this Territory or power of attorney authorising the execution or registering of any such conveyance or other instrument executed at any place out of this Territory shall be inadmissible in evidence in this Territory by reason of the same not being stamped according to the stamp laws in force at the place where such conveyance or other instrument or power of attorney was executed.

No deed affecting lands in the Territory to require stamp.
Q., *Ib.* s. 48.

(6) The word "such" appeared in the original Ordinance. It has now been omitted by the Second Schedule of the *Ordinances Reprint and Revision Ordinance 1947* of the Territory of Papua-New Guinea.

EVIDENCE—

Impounding of documents and procedure against offenders.
Q., 31 Vic.
No. 13, s. 76.

46. Whenever any document has been tendered or admitted in evidence by virtue of this Ordinance the Court or the person to whom the same has been tendered or who has admitted the same may at the request of any party against whom the same is so tendered or admitted in evidence direct that the same shall be impounded and be kept in the custody of some officer of the Court or other proper person for such period and subject to such conditions as to the said Court or person shall seem meet.

Depositions may be read as evidence for defence.
Q., *Ib.* s. 67.

47. The deposition of any witness called and examined before a justice by and on behalf of any accused who shall be committed for trial may if the accused so require be read as evidence in his defence at the trial whenever—

(a) The witness is dead or so ill as not to be able to travel;
or

(b) The justice who committed the accused or held him to bail has certified before the committal or holding to bail that the evidence of the witness is material and that he is in his belief willing to attend the trial but is unable to bear the expense of attendance:

Provided that no deposition may be so read upon the ground mentioned in paragraph (b) of this section if the witness has in due time before the trial been subpoenaed by the Crown.

Proof of Certain Matters.

Proof of Gazette.
Tas., 1 Geo. V.
No. 20, s. 69.
See Cwlth., No. 5
of 1901, s. 12.
Cwlth., No. 4 of
1905, s. 9.

48. The mere production of a paper purporting to be the *London Gazette* the *Edinburgh Gazette* the *Dublin Gazette* the *Commonwealth of Australia Gazette* or the *Gazette* of any State or of any Australasian Colony or of any Territory shall before all Courts and persons acting judicially be evidence that the paper is such *Gazette* and was published on the day on which it bears date.

Proof of printing by Government Printer.

Tas., *Ib.* s. 70.
See Cwlth., No. 5
of 1901, s. 13.
Cwlth., No. 4 of
1905, s. 9.

49. The mere production of a paper purporting to be printed by the Government Printer or by the authority of the Imperial Government or the Government of the Commonwealth or of any State or of any Australasian Colony or of any Territory shall before all Courts and persons acting judicially be evidence that the paper was printed by the Government Printer or by such authority.

Proof of act done by Governor or Minister.

Tas., *Ib.* s. 72.
See Cwlth., No. 5
of 1901, s. 14.
Cwlth., No. 4 of
1905, s. 10.

50. Where by any law at any time in force the Governor-General or the Governor or Lieutenant-Governor of any State or of any Australasian Colony or of any Territory or any Minister of the Crown for the Commonwealth or a State or any Australasian Colony is authorised or empowered to do any act production of the *Gazette* purporting to contain a copy or notification of any such act shall before all Courts and persons acting judicially be evidence of the act having been duly done.

51. Where by any Act of the Commonwealth or of any State or by any Ordinance of any Territory power to make by-laws rules regulations or orders is conferred upon any person or body corporate or unincorporate any printed paper purporting to be or contain such by-laws rules regulations or orders and to be printed by the Government Printer or by the authority of the Government of the Commonwealth or of the State or Territory shall before all Courts and persons acting judicially be evidence—

By-laws, rules,
and regulations.
Tas., 1 Geo. V.
No. 20, s. 73.
See Cwlt., No.
5 of 1901, s. 15.

- (i) That by-laws rules regulations or orders in the words printed in such paper were duly made by such person or body corporate or unincorporate; and
- (ii) That such by-laws rules regulations or orders have been approved of certified to and confirmed as required by law and that all things necessary to give validity to the same have been duly done and that the same are in force.

52.—(1.) All Courts and persons acting judicially shall admit and receive as evidence of the incorporation of a company incorporated or registered in the United Kingdom or in any State or Australasian Colony or Territory either before or after the commencement of this Ordinance a certificate of the incorporation or registration thereof which purports to have been signed—

Proof of
incorporation of
any company.
Tas., *Ib.* s. 74.
Cwlt., *Ib.*
s. 16.
Cf. Q., 62 Vic.
No. 15, s. 13.

- (i) By the registrar or an assistant or deputy registrar of companies in England Scotland or Ireland or in that State Colony or Territory; or
- (ii) By a person whose authority to give the same shall be verified by a statutory declaration made before any Judge or justice of the peace of England Scotland or Ireland or of such State Colony or Territory of whose signatures such Courts and persons aforesaid shall take judicial notice.

And the date of incorporation or registration mentioned in such certificate shall be evidence of the date on which the company was incorporated or registered.

(2.) Any copy of or extract from any document kept and registered at the office for the registration of companies in the United Kingdom or any part thereof or in any State or Australasian Colony or Territory if certified under the hand of the registrar or an assistant or deputy registrar shall before all Courts and persons acting judicially be admissible in evidence in all cases in which the original document is admissible in evidence and for the same purposes and to the same extent.

Proof of Judicial Proceedings.

Proof of judicial proceedings.

Tas., 1 Geo. V. No. 20, s. 75.

Cwlth., No. 5 of 1901, s. 17.

Cwlth., No. 4 of 1905, s. 11.

Q., 62 Vic.

No. 15, ss. 31, 39.

Cf. Q., 31 Vic.

No. 13, ss. 31, 39.

53. Evidence of any judgment decree rule order petition or other judicial or legal proceeding of any Court in this Territory or in any other part of His Majesty's dominions or in any foreign State or of any Judge or justice of such Court including any affidavit pleading or legal document filed or deposited in any such Court may be given in all Courts and before all persons acting judicially by the production of a document purporting to be a copy thereof and—

- (i) Proved to be an examined copy thereof; or
- (ii) Purporting to be sealed with the seal of the Court; or
- (iii) Purporting to be certified as a true copy by a registrar or chief officer of the Court; or
- (iv) Purporting to be signed by a Judge or justice 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.

Convictions, acquittals, and other judicial proceedings.

Tas., *ib.* s. 76.

Cf. Q., *ib.* ss. 19, 32, 33, 34, 35.

54.—(1.) Where it is necessary to prove any of the following facts:—

- (i) The conviction or acquittal before or by any Court or Judge or justice of any person charged with any offence; or
- (ii) That any person was sentenced to any punishment or pecuniary fine by any Court or Judge or justice; or
- (iii) That any person was ordered by any Court or Judge or justice to pay any sum of money; or
- (iv) The pendency or existence at any time before any Court Judge justice or other official person or person acting judicially of any suit action trial proceeding inquiry charge or matter civil or criminal;

evidence of such fact may be given by the production of a certificate under the hand of—

- (a) Any such Judge or justice or person; or
- (b) The clerk of such Court; or
- (c) The officer having ordinarily the custody of the records or documents or proceedings or minutes of such Court or Judge or justice; or
- (d) The officer having ordinarily the custody of the records of a Court of general or quarter sessions in the case of any conviction which has been transmitted by any justices to such Court; or
- (e) The deputy of such clerk or officer;

showing such fact or purporting to contain the substance omitting the formal parts of the record information conviction acquittal sentence or order or of the proceeding inquiry charge or matter in question :

Provided that the time and place of such conviction acquittal sentence or order or of such suit action trial proceeding inquiry charge or matter are stated in such certificate with the title of such Court or the name of the Judge or justice or person before or by whom it was had or passed or made or pending or existing.

(2.) Any such certificate stating that the person signing the same has ordinarily the custody of the records or documents or proceedings or minutes referred to therein shall be evidence of that fact.

(3.) Any such certificate showing such conviction acquittal sentence or order shall also be evidence of the particular offence or matter in respect of which the same was had or passed or made if stated in such certificate.

(4.) Any such certificate showing the pendency or existence of any such suit action trial proceeding inquiry charge or matter shall also be evidence of the particular nature and occasion or ground and cause thereof if stated in such certificate.

(5.) Any such certificate purporting to contain the substance omitting the formal parts of any record information conviction acquittal sentence or order or of any proceeding inquiry charge or matter as aforesaid shall also be evidence of the matters stated in such certificate.

(6.) A certificate given in pursuance of this section shall be admissible in evidence without proof of the signature or official character of the person appearing to have signed the same.

(7.) A conviction or an acquittal in any part of His Majesty's dominions may be proved under this section in respect of any person and a conviction or an acquittal before the passing of this Ordinance shall be admissible in the same manner as if it had taken place after the passing thereof.

(8.) The mode of proving any fact authorised by this section shall be in addition to and not in exclusion of any other authorised mode of proving such fact.

(9.) A conviction shall be presumed not to have been appealed against or quashed or set aside until the contrary is shown.

EVIDENCE—

PART IV.—WITNESSES.

Competency and Compellability of Witnesses.

55. No person shall be excluded from giving evidence in any proceeding on the ground—

- (i) That he has or may have an interest in the matter in question or in the result of the proceeding; or
- (ii) That he has previously been convicted of an offence.

56. A witness unable to speak or hear is not incompetent but may give his evidence by writing or by signs or in any other manner in which he can make it intelligible; but such writing must be written and such signs made in open court.

Evidence so given is deemed to be oral evidence.

57. In any civil proceedings 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 Ordinance be competent and compellable to give evidence on behalf of either or any of the parties to such proceeding.

The expression “civil proceeding” includes any complaint made to justices upon which they have authority by law to make an order on any person for the payment of money or for doing or refraining from doing any other act.

58.—(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 persons⁽⁷⁾ 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 except upon his own application;
- (ii) The wife or husband of the person charged shall not be called as a witness except on the application of the person so charged;
- (iii) 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;
- (iv) A person charged and being a witness in pursuance of this section may be asked and shall be required to answer any question in cross-examination notwithstanding that it would tend to criminate him as to the offence charged;

(7) The word “persons” appeared in the original Ordinance. *Semble*, “person” was intended.

- (v) 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—
- (a) The proof that he has committed or been convicted of such other offence is admissible in 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;
- (vi) When paragraph (v) (b) or (v) (c) is or becomes applicable to any person charged who gives evidence for the defence it shall be open to the prosecution or to any other person charged against whom he has given evidence to call evidence that such person is of bad character or has been convicted of or charged with any offence other than that with which he then stands charged notwithstanding that the case for the prosecution or of such other person charged may already have been closed;
- (vii) 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;
- (viii) Nothing in this section shall affect the provisions of section ninety-two of the *Justices Ordinance, 1912*,⁽⁸⁾ or any right of the persons charged to make a statement without being sworn.

(2.) 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.
Q., 56 Vic.
No. 3, s. 2.

(8) Now the *Justice Ordinance, 1912-1940.*

Saving.

(3.) Nothing in this Ordinance shall affect a case where the wife or husband of a person charged with an offence may at common law or by statute law be called as a witness without the consent of that person.

Persons present may be examined without a subpoena.

Tas., 1 Geo V. No. 20, s. 90.

59. Any person present at any legal proceedings wherein he might have been compellable to give evidence and produce documents by virtue of a subpoena or other summons or order duly issued and served for that purpose shall be compellable to give evidence and to produce documents then in his possession and power in the same manner and in case of refusal shall be subject to the same penalties and liabilities as if he had been duly subpoenaed or summoned for that purpose.

Privilege of Certain Witnesses.

Communications during marriage.

Tas., *Ib.* s. 94.

Cf. Q., 31 Vic. No. 13, ss. 9, 10.

N.S.W., No. 11 of 1898, s. 11.

Jones v. Jones, 7 N.S.W. R. (Div.) 9.

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

Provided that this section shall not apply in any proceeding in the Central Court⁽²⁾ in its divorce and matrimonial causes jurisdiction to any husband and wife who are both parties to such proceeding.

Impeaching Credit of Witnesses.

How far a party may discredit his own witness.

Tas., *Ib.* s. 97.

Q., *Ib.* s. 16.

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

Cross-examination as to previous statement in writing or deposition.

Tas., *Ib.* s. 98.

Q., *Ib.* ss. 16, 17.

62. Every witness under cross-examination in any proceeding civil or criminal may be asked whether he has made any former statement relative to the subject matter of the proceeding and inconsistent with his present testimony the circumstances of the supposed statement being referred to sufficiently to designate the particular occasion and if he does not distinctly admit that he made such statement proof may be given that he did in fact make it.

The same course may be taken with a witness upon his examination-in-chief if the Judge or other person acting judicially in the proceeding is of opinion that the witness is hostile to the party by whom he was called and permits the question.

Proof of contradictory statements of witness.

Tas., *Ib.* s. 99.

Cf., Q., *Ib.* s. 18.

63. A witness under cross-examination or a witness whom the Judge or person acting judicially under the provisions of the last preceding section has permitted to be examined by the party who

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

called him as to previous statements inconsistent with his present testimony may be questioned as to—

- (i) A previous statement made or supposed to have been made by him in writing or reduced into writing; or
- (ii) Evidence given or supposed to have been given by him before any justice;

without such writing or the deposition of such witness being shown to him.

But if it is intended to contradict him by such writing or deposition his attention must before such contradictory proof can be given be called to those parts of the writing or deposition which are to be used for the purpose of so contradicting him:

Provided that the Judge or person acting judicially may at any time during the trial require the writing or deposition to be produced for his inspection and may thereupon make use of it for the purposes of the trial as he thinks fit.

64. A witness may be questioned as to whether he has been convicted of any crime or misdemeanour; and upon being so questioned if he either denies or does not admit the fact or refuses to answer the cross-examining party may prove such conviction.

Proof of previous conviction of witness.
Tas., 1 Geo. V. No. 20, s. 100.
Q., 31 Vic. No. 13, s. 19.

Protection of Witnesses.

65. —(1.) Except as provided in this Ordinance nothing in this Ordinance shall render any person compellable to answer any question tending to criminate himself.

Questions tending to criminate.
Tas., *Ib.* s. 101.
Q., *Ib.* s. 7.

(2.) But a witness cannot by law refuse to answer a question relevant to the matter in issue the answering of which has no tendency to accuse himself or to expose him to penalty or forfeiture of any nature by reason only or on the sole ground that the answering of such question may establish or tend to establish that he owes a debt or is otherwise subject to a civil proceeding.

Q., *Ib.* s. 20.

General Rules of Evidence.

66. Comparison of a disputed handwriting with any writing proved to the satisfaction of the Judge or person acting judicially to be genuine may be made by witnesses and such writings and the testimony of witnesses respecting the same may be submitted to the Court or such person and the jury or assessors if any as evidence of the genuineness or otherwise of the writing in dispute.

Comparison of disputed handwriting.
Tas., *Ib.* s. 108.
Q., *Ib.* s. 24.

67. 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.

Proof by attesting witness.
Tas., *Ib.* s. 107.
Q., *Ib.* s. 25.

EVIDENCE—

Confessions
obtained by
threats.
Q., 31 Vic.
No. 13, s. 64.
Q., 58 Vic.
No. 23, s. 10.

68. No confession which is tendered in evidence on any criminal proceeding shall be received which has been induced by any threat or promise by some person in authority and every confession made after any such threat or promise shall be deemed to have been induced thereby unless the contrary be shown.

In Action of Breach of Promise.

Actions for
breach of
promise.
Tas., 1 Geo. V.
No. 20, s. 117.
Q., 37 Vic.
No. 9, s. 2.

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

Evidence of Witnesses in Prison.

Examinations
of prisoners.
Q., 31 Vic.
No. 13, s. 55.

70. Any sheriff gaoler or other officer having the custody of any prisoner shall take such prisoner for examination under the authority of this Ordinance by virtue of a writ of *habeas corpus* to be issued for that purpose which writ may be issued by the Central Court⁽²⁾ or a Judge thereof under such circumstances and in such manner as such Court or Judge may now by law issue the writ commonly called a writ of *habeas corpus ad testificandum*.

PART V.—GENERAL.

Witnesses for
prisoner or
defendant to
be sworn.
Q., *Ib.* s. 68.

71. Every person who shall be produced or appear as a witness on behalf of the prisoner or defendant upon any trial for any indictable offence or offence punishable on summary conviction or other offence whatsoever or upon the examination before justices of a prisoner or defendant charged with any indictable offence whatsoever before he be admitted to depose or give any manner of evidence shall first take an oath or bind himself under some other form or ceremony authorised by law to depose the truth the whole truth and nothing but the truth in such a manner as the witnesses for the Crown are by law obliged to do.

Addresses of
counsel.
Q., *Ib.* s. 43.

72. Upon the trial of any civil cause the addresses to the Court or jury shall be regulated as follows:—The party who begins or his counsel shall be allowed in the event of his opponent not announcing at the close of the case of the party who begins his intention to adduce evidence to address the Court or jury a second time at the close of such case for the purpose of summing up the evidence.

And the party on the other side or his counsel shall be allowed to open the case and also to sum up the evidence (if any).

And the right to reply shall be the same as at present.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

Evidence and Discovery Ordinance, 1913.

73. The Chief Judicial Officer⁽⁹⁾ may from time to time make all such rules and orders⁽¹⁰⁾ for the effectual execution of this Ordinance and of the intention and object thereof and for fixing the costs to be allowed for and in respect of the matters herein contained and the performance thereof and for apportioning costs as in his judgment shall be necessary and proper: Provided that nothing herein contained shall be construed to restrain or limit the authority of the Chief Judicial Officer⁽⁹⁾ to make rules of the Central Court:⁽²⁾ Provided also that until such rules are so made the rules of the Central Court⁽²⁾ in force at the commencement of this Ordinance shall so far as they are applicable be deemed to have been made hereunder.

Rules.
Cf. Q., 31 Vic.
No. 13, s. 76.

SCHEDULE.

Section 2.

Reference to Repealed Enactments.	Title or Short Title.	Extent of Repeal.
31 Vic. No. 13 (Queensland adopted)	<i>The Evidence and Discovery Act of 1867.</i>	The whole enactment.
37 Vic. No. 9 (Queensland adopted)	<i>The Evidence Further Amendment Act of 1874.</i>	The whole enactment.
1 of 1905	<i>The Criminal Law (Evidence) Amendment Ordinance of 1905.</i>	The whole enactment.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

(9) See Section 4 of the *Central Court Ordinance, 1925.*

(10) No rules or orders pursuant to Section 73 have been published in *Papua Govt. Gaz.*

EVIDENCE—