

THE EVIDENCE ACT

ARRANGEMENT OF SECTIONS

1. Short title.

PART I. Competency of Witnesses

2. Removal of incapacity to testify from crime or interest.
3. Parties to record may be examined as witnesses.
4. Husbands' and wives' evidence against each other.
Exceptions.
5. Evidence of access.
6. Not compellable to disclose communication made during marriage.
7. In action for breach of promise of marriage, how far parties competent to give evidence.
8. [*Repealed by Act 12 of 1995.*]

Accused Persons' competency to give evidence

9. Accused persons and their wives competent witnesses.
10. Where accused himself is his only witness.
11. Right of reply does not accrue to prosecution because accused has given evidence.
12. When wife or husband of accused may be called as witness for prosecution.
13. Sections 9 to 12 apply to all criminal proceedings.
14. Sections 9 to 12 apply to courts-martial if so provided.

Impeaching Credit, Cross-examination of Witness

15. Impeaching credit of witness when and how allowed to be done by party producing him.

EVIDENCE

16. How and when witness' evidence on cross-examination may be contradicted.
17. Cross-examination as to statements reduced to writing.
18. Questions whether witness has been convicted of felony or misdemeanor allowable.

Proof of Written Instrument and Comparison of Handwriting

19. Proof of instruments in writing.
20. Comparison of handwriting.

Application of Sections

21. Sections 15 to 20 apply to courts of civil and criminal judicature.

Admissibility of various Documents and Copies

22. Official or public documents, etc.
23. Judicial notice to be taken of signature of Judges of Superior Courts.
24. Private Laws and Acts and minutes of Legislature.
25. Acts of State, etc.
26. Registers of ships.
27. Certificate of conviction or acquittal.
28. Examined copies of contents of books of public nature.
29. Power of Court to impound documents.

Penalty for False Certificate

30. Wilfully certifying false certificate.

Power to Administer Oaths

31. Power to administer oath.

PART 1A. Hearsay and Computer-generated Evidence

- 31A. Admissibility of certain evidence formerly admissible at common law.
- 31B. Interpretation.
- 31C. Admissibility of written statement in criminal proceedings.

- 31D. Admissibility of first-hand hearsay statements in criminal proceedings.
- 31E. Admissibility of first-hand hearsay statements in civil proceedings.
- 31F. Admissibility of business documents in civil or criminal proceedings.
- 31G. Admissibility of computer evidence constituting hearsay.
- 31H. Admissibility of computer evidence not constituting hearsay.
- 31I. Witness' previous statement to be evidence of facts stated.
- 31J. Admissibility of evidence as to credibility of maker of statement.
- 31K. Offence.
- 31L. Power of Court to exclude evidence.

PART II. *Banker's Books Evidence*

- 32. Interpretation.
- 33. Copies of entries in banker's books, *prima facie* evidence.
- 34. Proof that book is a banker's book.
- 35. Verification of copy.
- 36. Case in which banker, etc., not compellable to produce book, etc.
- 37. Court or Judge may order inspection, etc.
- 38. Costs.

PART III. *Telegraphic Messages Evidence*

- 39. Definitions.
- 40. Notice of intention to give telegraphic messages in evidence.
- 41. Effect of such notice towards making such messages *prima facie* evidence.
- 42. *Prima facie* evidence of due delivery of a telegraphic message.
- 43. Power to send documents, orders, etc., by electric telegraph. Provisions to be observed in so doing.
- 44. Validity, effect and admissibility in evidence of copies of such documents, etc., so sent.

[The inclusion of this page is authorized by L.N. 95/1997]

EVIDENCE

45. Transmission of such documents, etc., to the Postmaster-General, and inspection thereof.
46. Wilful misdelivery of telegraphic message.
47. Unlawfully sending message in the name of another person.
48. False endorsements, certificates and information.
49. False certificate of receipt of document.

Penalty.

PART IV. *Medical Evidence*

50. Medical certificates and reports admissible in evidence.
51. Saving.

PART V. *Island Chemist's Certificate*

52. Certificate *prima facie* evidence at preliminary investigation.
53. Coroner's inquest.
54. Interpretation.

PART VI. *Service of Courts Process (Proof)*

55. Service of summons may be proved by affidavit or affirmation.
56. Form of affidavit.
57. Original summons to be marked for identification.
58. Affidavit under sections 55 and 56 shall be received in evidence.
59. Proof of service of process.

SCHEDULE

Cap. 118.
 Laws
 22 of 1954,
 31 of 1960
 S. 29.
 Acts
 40 of 1968,
 42 of 1969
 3rd. Sch.,
 12 of 1995,
 12 of 2009
 3rd Sch.
 Short title.

THE EVIDENCE ACT

[1843.]

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

PART I. *Competency of Witnesses*

2. No person offered as a witness shall be excluded, by reason of incapacity from crime or interest, from giving evidence either in person or by deposition, according to the practice of the court, on the trial of any issue joined, or of any matter or question or any inquiry arising in any suit, action, or proceeding, civil or criminal, in any court, or before any Judge, Jury, Coroner, Magistrate, Officer, or person having by law or by consent of parties authority to hear, receive, and examine evidence; but every person so offered may and shall be admitted to give evidence on oath (or solemn affirmation in those cases wherein affirmation is by law receivable) notwithstanding that such person may or shall have an interest in the matter in question, or in the event of the trial of any issue, matter, question, or inquiry, or of the suit, action, or proceeding, in which he is offered as a witness, and notwithstanding that such person offered as a witness may have been previously convicted of any crime or offence:

Removal of
 incapacity
 to testify
 from
 crime or
 interest.

Provided, that this section shall not repeal any provision in the Wills Act:

Provided also that in Courts of Equity any defendant to any cause pending in any such Court may be examined as a witness on the behalf of the plaintiff or of any co-defendant in any such cause, saving just exceptions, and that any interest which such defendant so to be examined may have in the matters, or any of the matters, in question

in the cause, shall not be deemed a just exception to the testimony of such defendant, but shall only be considered as affecting or tending to affect, the credit of such defendant as a witness.

Parties to record may be examined as witnesses.

3. On the trial of any issue joined, or of any matter or question, or on any inquiry arising in any suit, action, or other proceeding in any court of justice, or before any person having by law, or by consent of parties, authority to hear, receive, and examine evidence, the parties thereto, and the persons in whose behalf any such suit, action, or other proceeding may be brought or defended, shall be competent and compellable to give evidence, either *viva voce*, or by deposition, according to the practice of the court, on behalf of either or any of the parties to the said suit, action, or other proceeding.

Husbands' and wives' evidence against each other.

4.—(1) On the trial of any issue joined, or of any matter, or question, or on any inquiry arising in any suit, action, or other proceeding in any court of justice, or before any person having by law, or by consent of parties, authority to hear, receive, and examine evidence, the husbands and wives of the parties thereto, and of the persons on whose behalf any such suit, action, or other proceeding may be brought, or instituted, or opposed, or defended, shall, except as hereinafter excepted, be competent and compellable to give evidence, either *viva voce* or by deposition, according to the practice of the court, on behalf of either or any of the parties to the said suit, action, or other proceeding.

Exceptions.

(2) Nothing in subsection (1) shall render any husband competent or compellable to give evidence for or against his wife, or any wife competent or compellable to give evidence for or against her husband in any criminal proceeding.

5.—(1) Notwithstanding any rule of law, the evidence of a husband or wife shall be admissible in any proceedings to prove that marital intercourse did or did not take place between them during any period.

Evidence of access.

(2) Notwithstanding anything in this section or in any rule of law, a husband or wife shall not be compelled in any proceedings to give evidence of the matters aforesaid.

6. No husband shall be compellable to disclose any communication made to him by his wife during the marriage, and no wife shall be compellable to disclose any communication made to her by her husband during the marriage.

Not compellable to disclose communication made during marriage.

7. The parties to any action for breach of promise of marriage shall be competent to give evidence in such action:

Provided always, that no plaintiff in any action for breach of promise of marriage shall recover a verdict unless his or her testimony shall be corroborated by some other material evidence in support of such promise.

In action for breach of promise of marriage, how far parties competent to give evidence.

8. [Repealed by Act 12 of 1995.]

Accused Persons' competency to give Evidence

9. 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:

Accused persons and their wives competent witnesses.

Provided as follows—

(a) A person so charged shall not be called as a witness in pursuance of this Act, except upon his own application.

EVIDENCE

- (b) The failure of any person charged with an offence, or of the wife or husband, as the case may be, of the person so charged, to give evidence shall not be made the subject of any comment by the prosecution.
- (c) The wife or husband of the person charged shall not, save as in this Act mentioned, be called as a witness in pursuance of this Act, except upon the application of the person so charged.
- (d) Nothing in this Act 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.
- (e) 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.
- (f) 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 or been charged with any offence other than that wherewith he is then charged, or is of bad character, unless—
 - (i) 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
 - (ii) 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

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

(g) 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.

(h) Nothing in this Act shall affect the provisions of section 36 of the Justices of the Peace Jurisdiction Act; or any right of the person charged to make a statement without being sworn.

10. 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.

Where accused himself is his only witness.

11. 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.

Right of reply does not accrue to prosecution because accused has given evidence.

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

When wife or husband of accused may be called as witness for prosecution.

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

First Schedule.

Sections 9 to 12 apply to all criminal proceedings.

42/1969
3rd Sch.

13. Sections 9 to 12 inclusive shall apply to all criminal proceedings.

Sections 9 to 12 apply to courts-martial if so provided.

14. Sections 9 to 12 inclusive shall apply to proceedings in courts-martial if so provided—

- (a) as to courts-martial under the United Kingdom Naval Discipline Act, 29 and 30 Victoria, chapter 109, by general orders made in pursuance of section 65 of that Act; and
- (b) as to courts-martial under the United Kingdom Army Act, 44 and 45 Victoria, chapter 58, by rules made in pursuance of section 70 of that Act.

Impeaching Credit, Cross-examination of Witness

Impeaching credit of witness when and how allowed to be done by party producing him.

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

How and when witness' evidence on cross-examination may be contradicted.

16. If a 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 such statement, proof may be given that he did in fact make it; but before such proof can be given, the circumstances of the supposed

statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

17. 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 such writing being shown to him; but if it is intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him :

Cross-examination as to statements reduced to writing.

Provided always, that it shall be competent for the Judge at any time during the trial, to require the production of the writing for his inspection, and he may thereupon make such use of it for the purpose of the trial as he shall think fit.

18. A witness in any cause may be questioned as to whether he has been convicted of any felony or misdemeanour, and, upon being so questioned, if he either denies the fact, or refuses to answer, it shall be lawful for the opposite party to prove such conviction; and a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for such offence, purporting to be signed by the Clerk of the Court or other officer having the custody of the records of the court, where the offender was convicted, or by the deputy of such Clerk or officer shall, upon proof of the identity of the person, be sufficient evidence of the said conviction, without proof of the signature or official character of the person appearing to have signed the same.

Questions whether witness has been convicted of felony or misdemeanour allowable.

Proof of Written Instrument and Comparison of Handwriting

19. It shall not be necessary to prove by the attesting witness any instrument to the validity of which attesta-

Proof of instruments in writing.

tion is not requisite; and such instrument may be proved by admission or otherwise, as if there had been no attesting witness thereto.

Compari-
son of
hand-
writing.

20. Comparison of a disputed writing with any writing proved to the satisfaction of the Judge to be genuine shall be permitted to be made by witnesses; and such writings, and the evidence of witnesses respecting the same, may be submitted to the court and jury as evidence of the genuineness, or otherwise, of the writing in dispute.

Application of Sections

Sections 15
to 20
apply to
courts of
civil and
criminal
judicature.

21. The provisions of sections 15 to 20 both inclusive, shall apply to every court of civil and criminal judicature, and in all legal proceedings, civil and criminal.

Admissibility of various Documents and Copies

Official or
public
documents,
etc.

22. Whenever by any enactment now in force or hereafter to be in force any certificate, official or public document or documents, or proceeding of any corporation, or joint stock or other company, or any certified copy of any document, by-law, entry in any register or other book, or of any other proceeding, shall be receivable in evidence of any particular in any court of justice, or before any legal tribunal, or the Senate or House of Representatives of this Island, or any Committee of the Senate or House of Representatives or in any judicial proceeding, the same shall respectively be admitted in evidence provided they respectively purport to be sealed or impressed with a stamp, or sealed and signed, or signed alone, as required, or impressed with a stamp and signed, as directed by the respective enactments made or to be hereafter made, without any proof of the seal or stamp where a seal or stamp is necessary, or of the signature, or of the official character of the person appearing to have signed the same, and without any further proof there-

of, in every case in which the original record could have been received in evidence.

23. All courts, Judges, Justices, the Registrar of the Supreme Court, Taxing Officers of courts, Commissioners judicially acting, and other Judicial Officers, shall henceforth take judicial notice of the signature of any of Her Majesty's Judges of the Supreme Court of Judicature in England, and of the Judges of the Supreme Court in this Island, provided such signature be attached or appended to any decree, order, certificate, or other judicial or official document.

Judicial notice to be taken of signature of Judges of Superior Courts.

24. All copies of private Acts of the United Kingdom Parliament, if purporting to be printed by the Queen's Printer, and all copies of private Laws and Acts of the Legislature of this Island, if purporting to be printed by the Government Printing Office or Government Printer and all copies of the Minutes of the Senate or House of Representatives of this Island, and of Royal Proclamations, purporting to be printed by the Printers to the Crown, or by the Government Printing Office or Government Printer respectively, or by any or either of them, shall be admitted as evidence thereof by all courts, Judges, Justices, and others, without any proof being given that such copies were so printed.

Private Laws and Acts and minutes of Legislature.

25. All proclamations, treaties, and other Acts of State of any Foreign State, or Commonwealth country, and all judgments, decrees, orders and judicial proceedings of any court of justice in any Foreign State, or in any Commonwealth country, and all affidavits, pleadings, and other

Acts of State, etc.

legal documents filed or deposited in any such court, may be proved in any court of justice, or before any person having by law, or by consent of parties, authority to hear, receive and examine evidence, either by examined copies, or by copies authenticated as hereinafter mentioned; that is to say, if the document sought to be proved be a proclamation, treaty, or other Act of State the authenticated copy to be admissible in evidence, must purport to be sealed with the seal of the Foreign State, or Commonwealth country to which the original document belongs; and if the document sought to be proved be a judgment, decree, order, or other judicial proceeding of any Foreign, or Commonwealth court, or an affidavit, pleading, or other legal document filed or deposited in any such court, the authenticated copy, to be admissible in evidence, must purport either to be sealed with the seal of the Foreign, or Commonwealth court to which the original document belongs, or, in the event of such court having no seal, to be signed by the Judge; or if there be more than one Judge, by any one of the Judges of the said court; and such Judge shall attach to his signature a statement in writing on the said copy that the court whereof he is a Judge has no seal; but if any of the aforesaid authenticated copies shall purport to be sealed or signed as hereinbefore respectively directed, the same shall respectively be admitted in evidence in every case in which the original document could have been received in evidence, without any proof of the seal where a seal is necessary, or of the signature, or of the truth of the statement attached thereto, where such signature and statement are necessary, or of the judicial character of the person appearing to have made such signature and statement.

26. Every register of a vessel kept under any of the Acts relating to the registry of British vessels may be proved in any court of justice, or before any person having by law or by consent of parties authority to hear, receive, and examine evidence, either by the production of the original, or by any examined copy thereof, or by a copy thereof purporting to be certified under the hand of the person having the charge of the original, and which person is hereby required to furnish such certified copy to any person applying at a reasonable time for the same, upon payment of the sum of ten cents; and every such register, or such copy of a register, and also every certificate of registry granted under any of the Acts relating to the registry of British vessels, and purporting to be signed as required by law, shall be received in evidence in any court of justice, or before any person having by law, or by consent of parties, authority to hear, receive, and examine 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 the matters contained or recited in or endorsed on such certificate of registry, when the said certificate is produced.

Registers
of ships.

27. Whenever, in any proceeding whatever, it may be necessary to prove the trial and conviction or acquittal of any person charged with any indictable offence, it shall not be necessary to produce the record of the conviction or acquittal of such person, or a copy thereof, but it shall be sufficient that it be certified, or purport to be certified under the hand of the Clerk of the Court, or other officer having the custody of the records of the court where such conviction or acquittal took place, or by the Deputy of such Clerk or other officer, that the paper produced is a copy of the record of the indictment, trial, conviction, and judgment or acquittal, as the case may be, omitting the formal parts thereof.

Certificate
of conviction
or
acquittal.

Examined
copies of
contents of
books of
public
nature.

28. 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 statute exists which renders its contents provable by means of a copy, any copy thereof or extract therefrom shall be admissible in evidence in any court of justice, or before any person now or hereafter having, by law or by consent of parties authority to hear, receive, and examine evidence :

Provided it be proved to be an examined copy or extract, or provided it purport to be signed and certified as a true copy or extract by the officer to whose custody the original is entrusted; and which officer is hereby required to furnish such certified copy or extract to any person applying at a reasonable time for the same, upon payment of a reasonable sum for the same, not exceeding five cents for every folio of ninety words.

Power of
Court to
impound
documents.

29. Where any document has been admitted in evidence before any court and such court is of the opinion that, in relation to that document, an offence has been committed, the court may impound such document and make such order in relation to it as the court may think fit.

Penalty for False Certificate

Wilfully
certifying
false
certificate.

30. If any officer authorized or required by this Act to furnish any certified copies 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, he shall be guilty of a misdemeanour, and be liable, upon conviction, to imprisonment for a term not exceeding eighteen months.

Power to Administer Oaths

Power to
administer
oath.

31. Every court, Judge, Justice, Officer, Commissioner, Arbitrator, or other person now or hereafter having by law or by consent of parties authority to hear, receive, and

examine evidence, is hereby empowered to administer an oath to all such witnesses as are legally called before them respectively.

PART IA. Hearsay and Computer-generated Evidence 12/1995
S. 3.

31A. In any proceedings a statement which, before the 30th day of March, 1995, would by virtue of any rule of law, have been admissible in evidence of any fact stated therein, shall continue to be admissible as evidence of that fact by virtue of this section. Admissibility of certain evidence formerly admissible at common law.

31B. In this Part— Interpretation.
12/1995
S. 3.

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

- (a) any map, plan, graph or drawing;
- (b) any photograph;
- (c) any disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;
- (d) any film (including microfilm), negative, tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom.

31C.—(1) Subject to this section, in any criminal proceedings, a written statement by a person shall, if the conditions specified in subsection (2) are satisfied, be admissible in evidence to the same extent and effect as direct oral evidence by that person. Admissibility of written statement in criminal proceedings.
12/1995
S. 3.

[The inclusion of this page is authorized by L.N. 95/1997]

(2) The conditions referred to in subsection (1) are that—

- (a) the statement purports to be signed by the person who made it;
- (b) a copy of the statement and a notice of intention to tender the statement in evidence are served on all other parties to the proceedings by or on behalf of the person seeking to tender the statement in evidence, at least twenty-one days before the hearing at which the statement is to be so tendered;
- (c) none of the other parties to the proceedings or their attorneys-at-law have, within ten days from the service of the copy of the statement, served a counter-notice on the party seeking so to tender it, objecting to the statement being tendered in evidence and requiring the attendance of the maker of the statement as a witness at the hearing;
- (d) notice of the intention to tender the statement in evidence is accompanied by a declaration by the person who made it to the effect that it is true to the best of his knowledge and belief and that he made it knowing that, if it were tendered in evidence, he would be liable to prosecution if he wilfully stated in it anything which he knew to be false or did not believe to be true.

(3) Paragraphs (b) and (c) of subsection (2) shall not apply if the parties to the proceedings agree before or during the hearing that the statement be tendered in evidence.

(4) A statement shall be inadmissible in evidence under this section in any criminal proceedings where a party to the proceedings has served a counter-notice objecting to the statement being tendered in evidence and requiring the person who made the statement to attend the hearing as a witness.

(5) Notwithstanding that a written statement made by any person may be admissible by virtue of subsection (2), the court may, on its own motion or on application by any party to the proceedings, require that the maker of the statement attend and give oral evidence at the hearing.

(6) Notwithstanding the failure of any party to the proceedings to serve a counter-notice objecting to the admissibility of the statement, the court may, if it thinks fit, permit that party to lead evidence contradicting the evidence contained in the written statement.

(7) Where contradicting evidence is given as mentioned in subsection (6), the party who tendered the written statement may lead additional evidence in response to the contradicting evidence.

31D. Subject to section 31G, a statement made by a person in a document shall be admissible in criminal proceedings as evidence of any fact of which direct oral evidence by him would be admissible if it is proved to the satisfaction of the court that such person—

- (a) is dead;
- (b) is unfit, by reason of his bodily or mental condition, to attend as a witness;
- (c) is outside of Jamaica and it is not reasonably practicable to secure his attendance;
- (d) cannot be found after all reasonable steps have been taken to find him; or
- (e) is kept away from the proceedings by threats of bodily harm and no reasonable steps can be taken to protect the person.

Admissibility of first-hand hearsay statements in criminal proceedings.
12/1995
S. 3.

Admissibility of first-hand hearsay statements in civil proceedings.
12/1995
S. 3.

31E.—(1) Subject to section 31G, in any civil proceedings, a statement made, whether orally or in a document or otherwise, by any person (whether called as a witness in those proceedings or not) shall subject to this section, be admissible as evidence of any facts stated therein of which direct oral evidence by him would be admissible.

(2) Subject to subsection (6), the party intending to tender such statement in evidence shall, at least twenty-one days before the hearing at which the statement is to be tendered, notify every other party to the proceedings as to the statement to be tendered, and as to the person who made the statement.

(3) Subject to subsection (4), every party so notified shall have the right to require that the person who made the statement be called as a witness.

(4) The party intending to tender the statement in evidence shall not be obliged to call, as a witness, the person who made the statement if it is proved to the satisfaction of the court that such person—

- (a) is dead;
- (b) is unfit, by reason of his bodily or mental condition, to attend as a witness;
- (c) is outside of Jamaica and it is not reasonably practicable to secure his attendance;
- (d) cannot be found after all reasonable steps have been taken to find him; or
- (e) is kept away from the proceedings by threats of bodily harm.

(5) Where in any civil proceedings a statement which was made otherwise than in a document is admissible by virtue of this section, no evidence other than direct oral evidence by the person who made the statement or any

person who heard or otherwise perceived it being made shall be admissible for the purpose of proving it.

(6) The court may, where it thinks appropriate having regard to the circumstances of any particular case, dispense with the requirements for notification as specified in subsection (2).

(7) Where the party intending to tender a statement in evidence has called, as a witness in the proceedings, the person who made the statement, the statement shall be admissible only with the leave of the court.

31F.—(1) Subject to section 31G, a statement in a document shall be admissible as evidence of any fact stated therein of which direct oral evidence would be admissible if in relation to—

Admissibility of business documents in civil or criminal proceedings.
12/1995
S. 3.

(a) criminal proceedings, the conditions specified in—

- (i) subsection (2); and
- (ii) subsection (3),

are satisfied;

(b) civil proceedings, the conditions specified in—

- (i) subsection (2); and
- (ii) subsection (4),

are satisfied.

(2) The conditions referred to in subsection (1) (a) and (b) (i) are that—

- (a) the document was created or received by a person in the course of a trade, business, profession or other occupation or as the holder of an office, whether paid or unpaid;
- (b) the information contained in the document was supplied (whether directly or indirectly) by a person, whether or not the maker of the statement,

who had or may reasonably be supposed to have had, personal knowledge of the matters dealt with in the statement;

- (c) each person through whom the information was supplied received it in the course of a trade, business profession or other occupation or as the holder of an office, whether paid or unpaid.

(3) The condition referred to in subsection (1) (a) (ii) is that it be proved to the satisfaction of the court that the person who supplied the information contained in the statement in the document—

- (a) is dead;
- (b) is unfit, by reason of his bodily or mental condition, to attend as a witness;
- (c) is outside of Jamaica and it is not reasonably practicable to secure his attendance;
- (d) cannot be found or identified after all reasonable steps have been taken to find or to identify him;
- (e) is kept away from the proceedings by threats of bodily harm and no reasonable steps can be taken to protect the person; or
- (f) cannot reasonably be expected, having regard to the time which has elapsed since he supplied the information and to all the circumstances, to have any recollection of the matters dealt with in the statement.

(3A) In estimating the weight, if any, to be attached to a statement admissible in criminal proceedings as evidence by virtue of this section, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement, and, in particular, to the question whether or not the person who supplied the information recorded in the statement did

so contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not that person, or any person concerned with making or keeping the record containing the statement, had any incentive to conceal or misrepresent the facts.

(4) Subject to subsections (5) to (8), the condition referred to in subsection (1) (b) (ii) is that the party intending to tender the statement in evidence shall, at least twenty-one days before the hearing at which the statement is to be so tendered, notify every other party to the proceedings as to the statement and as to the person who made the statement.

(5) Subject to subsection (6), every party so notified shall have the right to require that the person who made the statement be called as a witness.

(6) The party intending to tender the statement in evidence shall not be obliged to call, as a witness, the person who made it if it is proved to the satisfaction of the court that such person—

- (a) is dead;
- (b) is unfit, by reason of his bodily or mental condition, to attend as a witness;
- (c) is outside of Jamaica and it is not reasonably practicable to secure his attendance;
- (d) cannot be found or identified after all reasonable steps have been taken to find or identify him;
- (e) is kept away from the proceedings by threats of bodily harm.

(7) The Court may, where it thinks appropriate having regard to the circumstances of any particular case, dispense with the requirements for notification as specified in subsection (4).

(8) Where the person who made the statement is called as a witness, the statement shall be admissible only with the leave of the court.

Admissibility of computer evidence constituting hearsay.
12/1995
S. 3.

31G. A statement contained in a document produced by a computer which constitutes hearsay shall not be admissible in any proceedings as evidence of any fact stated therein unless—

- (a) at all material times—
 - (i) the computer was operating properly;
 - (ii) the computer was not subject to any malfunction;
 - (iii) there was no alterations to its mechanism or processes that might reasonably be expected to have affected the validity or accuracy of the contents of the document;
- (b) there is no reasonable cause to believe that—
 - (i) the accuracy or validity of the document has been adversely affected by the use of any improper process or procedure or by inadequate safeguards in the use of the computer;
 - (ii) there was any error in the preparation of the data from which the document was produced;
- (c) the computer was properly programmed;
- (d) where two or more computers were involved in the production of the document or in the recording of the data from which the document was derived—
 - (i) the conditions specified in paragraphs (a) to (c) are satisfied in relation to each of the computers so used; and
 - (ii) it is established by or on behalf of the person tendering the document in evidence that the

use of more than one computer did not introduce any factor that might reasonably be expected to have had any adverse effect on the validity or accuracy of the document.

31H. Where a statement contained in a document produced by a computer does not constitute hearsay, such a statement shall be admissible if the conditions specified in section 31G are satisfied in relation to that document.

Admissibility of computer evidence not constituting hearsay.
12/1995
S. 3.

31I.—(1) Where in any civil proceedings—

(a) a previous inconsistent or contradictory statement made by a person called as a witness in those proceedings is proved by virtue of sections 15 to 17; or

Witness' previous statement to be evidence of facts stated.
12/1995
S. 3.

(b) a previous statement made by a person called as aforesaid is proved for the purpose of rebutting a suggestion that his evidence has been fabricated, that statement shall, by virtue of this subsection, be admissible in evidence of any fact stated therein of which direct oral evidence by him would be admissible.

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

Admissibility of evidence as to credibility of maker of statement.
12/1995
S. 3.

31J.—(1) Where in any proceedings a statement made by a person who is not called as a witness in those proceedings is given in evidence pursuant to section 31D, 31E, 31F or 31G—

- (a) any evidence which, if that person had been so called would have been admissible as relevant to his credibility as a witness, shall be admissible in the proceedings for that purpose;
- (b) evidence may, with the leave of the court, be given of any matter which, if that person had been called as a witness, could have been put to him in cross-examination as relevant to his credibility as a witness but of which evidence could not have been adduced by the party cross-examining him;
- (c) evidence tending to prove that, whether before or after he made the statement, that person made (whether orally or in a document or otherwise) another statement inconsistent therewith, shall be admissible for the purpose of showing that the person has contradicted himself.

(2) References in subsection (1) to a person who made the statement and to his making the statement shall be construed respectively as including references to the person who supplied the information from which the document containing the statement was derived and to his supplying that information.

Offence.
12/1995
S. 3.

31K. If any person in a written statement tendered in evidence in criminal proceedings by virtue of section 31C wilfully makes a statement material in those proceedings which he knows to be false or does not believe to be true, he shall be liable on conviction on indictment to a fine or to imprisonment for a term not exceeding seven years or to both such fine and imprisonment.

31L. It is hereby declared that in any proceedings the court may exclude evidence if, in the opinion of the court, the prejudicial effect of that evidence outweighs its probative value.

Power of court to exclude evidence.
12/1995
S. 3.

PART II. *Banker's Books Evidence*

32.—(1) In this Part—

“bank” or “banker” means any bank licensed under the Banking Act, the Workers Savings and Loan Bank constituted under the Workers Savings and Loan Bank Act and any other Savings Bank established and carrying on business within the Island under the provisions of any law relating to Savings Banks; and the fact that any such Savings Bank is established and carrying on business as aforesaid may be proved by the production of an office or examined copy of the rules or regulations of that Savings Bank certified under the provisions of the law under which it is established;

Interpretation.
31/1960
S. 29.

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

“legal proceeding” means any civil or criminal proceeding or inquiry in which evidence is or may be given, and includes an arbitration;

“the court” means the court, Judge, Arbitrator, persons or person before whom a legal proceeding is held or taken;

“a Judge” means a Judge of the Supreme Court of Judicature of Jamaica.

(2) The Judge of a Resident Magistrate’s Court may with respect to any action in such Court exercise the powers of a Judge under this Part.

Copies of entries in banker's books, *prima facie* evidence.

33. Subject to the provisions of this Part, 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.

Proof that book is a banker's book.

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

Such proof may be given by a partner or officer of the bank, and may be given orally or by an affidavit sworn before any Justice or other person authorized to take affidavits.

Verification of copy.

35. A copy of an entry in a banker's book shall not be received in evidence under this Part unless it be further proved that the copy has been examined with the original entry and is correct.

Such proof shall be given by some person who has examined the copy with the original entry, and may be given either orally or by an affidavit sworn before any Justice or other person authorized to take affidavits.

Case in which banker, etc., not compellable to produce book, etc.

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

Court or Judge may order inspection, etc.

37. On the application of any party to a legal proceeding a court or Judge may order that such party be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceedings. An order

under this section may be made either with or without summoning the bank or any other party, and shall be served on the bank three clear days before the same is to be obeyed, unless the court or Judge otherwise directs.

38. The costs of any application to a court or Judge under or for the purposes of this Part, and the costs of anything done or to be done under an order of a court or Judge made under or for the purposes of this Act shall be in the discretion of the court or Judge, who may order such last-mentioned costs 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 in complying with an order made as aforesaid. Any such order against a bank may be enforced as if the bank was a party to the proceeding.

PART III. *Telegraphic Messages Evidence*

39. In this Part—

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

“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 Government for the receipt and transmission of telegraphic messages;

“person” includes any corporation or corporate body or any individual.

40. It shall be lawful for any party to any action or suit in any court of civil jurisdiction, at any time after the commencement thereof, to give notice to any other party that he proposes to adduce in evidence, at the trial or hear-

Definitions.

Notice of intention to give telegraphic messages in evidence.

ing of such action or suit, any telegraphic messages that before the date of such notice shall have been sent and received by electric telegraph within this Island:

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 before the day of such hearing or trial; and every such notice shall specify the names of the sender and receiver of such messages, the subject matter thereof, and their dates as nearly as may be; and any such notice may be served, and the service thereof proved, in the same manner as notices to admit and produce may now be served and proved respectively.

Effect of such notice towards making such messages *prima facie* evidence.

41. In any case in which such notice shall have been given, the production of any telegraphic message described in such 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 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.

Prima facie evidence of due delivery of a telegraphic message.

42. In any cause depending in a court of civil jurisdiction, the production of any telegraphic message, 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 notice shall be first given by the party adducing the same in evidence to the other party of his intention to do so; and such notice may be given in such manner and at such times as by the practice of the court in which the proceeding is taken notices to produce or admit are required to be given.

43. It shall be lawful for any person to cause to be transmitted by electric telegraph the contents of any writ, warrant, rule, authority, order, or other communication requiring signature or seal, or the contents of any affidavit or statutory declaration, subject to the provisions following, that is to say—

Power to send documents, orders, etc., by electric telegraph.

- (a) the original document shall be delivered at the telegraph station in the presence and under the inspection of some Justice or Notary Public;
- (b) the person to whom the contents of any document shall be so sent shall forthwith, and under the supervision of a Justice, 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 shall appear that a true copy of such document has been received by the person to whom it shall have been sent;
- (c) when it shall appear 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 Part, to the person to whom the same shall have been so sent, and

Provisions to be observed in so doing.

shall forthwith by electric telegraph inform such person that such certificate has been so endorsed, and such last-mentioned person shall forthwith endorse on such copy a certificate that such copy was duly received by him under the provisions of this Part, and this certificate shall be countersigned by the Justice or Notary Public under whose supervision such copy may have been received.

Validity, effect and admissibility in evidence of copies of such documents, etc., so sent.

44. Every copy so endorsed, certified and countersigned, shall be as valid to all intents and purposes as the original whereof it purports to be a true copy would have been, and shall be admissible as evidence in any case in which the original would have been so admissible; and any person by whom such copy shall have been so received, or who shall be thereby authorized, instructed, or commanded, or who shall or may be lawfully charged with any duty in respect thereof, shall have and become liable to the same rights or duties in respect thereof, as if he had received such original document duly signed and sealed, or signed or sealed, or sworn or declared, as the case may be; and in the case of documents 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.

Transmission of such documents, etc., to the Postmaster-General, and inspection thereof.

45. Every original document, a copy whereof shall have been transmitted under section 43, shall be sent forthwith from the telegraph station at which it was delivered for the purposes of such transmission to the Postmaster-General, and shall be open within reasonable hours to the inspection of any person, on the order of a Judge of the Supreme Court or of a Resident Magistrate.

46. Any person who, being charged with the delivery of any telegraphic message, shall wilfully deliver or cause to be delivered the same to any person other than the person to whom the same shall be addressed, or his authorized agent in that behalf, shall be guilty of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the court, to pay a fine not exceeding one hundred dollars, or be imprisoned for a term not exceeding one year, with or without hard labour.

Wilful
misdeli-
ery of
telegraphic
message.

47. Whoever, without lawful authority or excuse, shall sign the name of any other person to any telegraphic message, with intent to procure such message to be sent as a message from such other person, shall be guilty of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the court, to pay a fine not exceeding two hundred dollars, or to be imprisoned for a term not exceeding two years, with or without hard labour.

Unlawfully
sending
message in
the name
of another
person.

48. Any Justice or Notary Public who shall wilfully and falsely endorse upon any original document, delivered at a telegraph station for the purpose of being transmitted under the provisions of this Part, a certificate that a true copy thereof has been sent under this Part, or who shall by telegraph wilfully and falsely inform any person to whom such document shall have been so sent that a certificate under the provisions of this Part has been endorsed thereon, shall be guilty of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the court, to pay a fine not exceeding two hundred dollars, or to be imprisoned for a term not exceeding two years, with or without hard labour.

False
endorse-
ments,
certificates
and
informa-
tion.

49. Any person by this Part required to sign a certificate upon any copy of a document that such copy has been duly received under the provisions of this Part, who shall wilfully sign such certificate knowing the same to be false,

False
certificate
of receipt
of
document.
Penalty.

shall be guilty of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the court, to pay a fine not exceeding two hundred dollars, or to be imprisoned for a term not exceeding two years, with or without hard labour.

PART IV. *Medical Evidence*

Medical
certificates
and
reports
admissible
in evidence.

50.—(1) Notwithstanding anything contained in any law, but subject always to the provisions of this Part, any certificate or report, if accompanied by a sworn statement by the medical practitioner who has signed the certificate or report, shall be admitted in evidence in any criminal proceedings before a Resident Magistrate or Justices, or at any Coroner's Inquest, without the medical practitioner being called upon to attend and to give evidence upon oath.

(2) Where, in any criminal proceedings before a Resident Magistrate or Justices it is intended to put in evidence a certificate or report as provided in subsection (1), the prosecution shall, at least three clear days before the proceedings, serve upon the defendant written notice of such intention, together with a copy of the certificate or report, and the defendant, at the commencement of the proceedings, may object to the admission of the certificate or report, and may require the attendance of the medical practitioner to give evidence on oath.

Saving.

51. Nothing in this Part contained shall be deemed to prejudice or take away the rights of the defendant, or of the court or Coroner, as the case may be, at any stage of any proceedings to require the medical practitioner who has signed a certificate or report to attend and give evidence on oath.

PART V. *Island Chemist's Certificate*

52. At any preliminary investigation held by a Court into facts which constitute an indictable offence, and which may necessitate the sending on of an accused person for trial, such Court may, for the purpose of determining whether it shall dismiss the charge or send on the accused person for trial, accept as evidence at that stage, the certificate of the Island Chemist, purporting to be signed by him as such, as *prima facie* evidence of the matters therein contained, if it is otherwise proved that the parcel, vessel or other receptacle containing the food, viscera, or other matter or thing analysed, and in respect of which the said certificate is given, had its seals, or other fastenings uninjured, at the time the same was delivered to the said Chemist:

Certificate
prima facie
evidence
at pre-
liminary
investiga-
tion.

40/1968
S. 2.

Provided that if such accused person shall require that the Island Chemist shall attend such preliminary enquiry, the Police and the Court shall take the necessary steps to procure his attendance:

42/1969
3rd Sch.

Provided always, that such certificate shall not be received as evidence at the trial of any accused person, and that at such trial, if the evidence of the Island Chemist is considered necessary, he shall attend in the same way as any other witness.

53. At any Coroner's inquest the Coroner may accept as *prima facie* evidence of the matters therein contained, the certificate of the Island Chemist, if the same purport to be signed by such Island Chemist.

Coroner's
inquest.

54. In this Part, the expression "Island Chemist" means Government Chemist, Government Pathologist or any Analyst appointed under any enactment for the time being in force relating to food and drugs and includes any laboratory technician prescribed by the Minister responsible for health by general notice.

Interpre-
tation.

40/1968
S. 3.

PART VI. *Service of Courts Process (Proof)*

Service of summons may be proved by affidavit or affirmation.

55. The personal service of any summons issued by any Justice or Resident Magistrate under the Justices of the Peace Jurisdiction Act or in any criminal proceeding, may be proved in any legal proceeding by affidavit, sworn or affirmed before any Judge, Justice or Clerk of a Resident Magistrate's Court.

Form of affidavit.

56. Every such affidavit shall state the name of the complainant or prosecutor, the name of the defendant, the date of the summons, the name of the Judge, or Justice who issued the same, the hour of the day, day of the week, the month and year, and the particular place, namely, the number of house, name of street, pen, estate or other locality at which the service is effected, and shall state that at the time of service such summons was read over or explained to the person served, and shall also state whether or not the person served was, previous to the service, personally known to the person serving the summons; and, if not so known, shall state how the person serving the summons knew that the person served was the person who ought to be served; such affidavit may be in the Form given in the Second Schedule, or to the like effect.

Second Schedule.

Original summons to be marked for identification.

57. The original summons shall be marked for identification by the person taking the affidavit, and the affidavit when made, shall be attached to the original summons.

Affidavit under sections 55 and 56 shall be received in evidence.

58. Any affidavit which contains the statement required by section 56, and purports to be taken as required by section 55, shall be received, without proof, in any legal proceeding as *prima facie* evidence of the fact therein stated.

Proof of service of process.

59.—(1) Notwithstanding anything in this or any law contained where any summons or other process of a court is served by a Constable or other Peace Officer, or by a

Bailiff of any court, the service may be proved by endorsement on the original or a copy of the summons or process under the hand of any such person effecting the service, showing the fact and mode of the service of such summons or process; and any such person wilfully and corruptly endorsing any false statement on the original or the copy of a summons or other process shall be guilty of a misdemeanour and on conviction thereof in a Resident Magistrate's Court shall incur the same penalties as are or may be incurred by persons convicted of wilful and corrupt perjury.

(2) For the purposes of this section, "court" means the Supreme Court, or a Resident Magistrate's Court, or Court of Petty Sessions.

(Section 12
(1))

FIRST SCHEDULE

12/2009
3rd Sch.

TITLE OF ACT	ENACTMENT REFERRED TO
The Sexual Offences Act.	Sections 3, 4, 5, 7 to 11, 13, 15 to 21 and 23.
The Married Women's Property Act.	Sections 13 and 15.
The Child Care and Protection Act.	Part I and Part II

(Section 56)

SECOND SCHEDULE

I, *E.F.* (Constable, or as the case may be), do swear that on the _____ day of _____, 19____, at _____ o'clock in the afternoon (or morning, as the case may be), (at No. _____ Harbour Street, Kingston), (or at _____ pen, as the case may be, describing the locality), I served upon *A.B.* a summons now marked *A*, dated the _____ day of _____, 19____, and issued by *J.S.*, Justice of the Peace (or, as the case may be), against *A.B.* on the information (or complaint) of *C.D.* (the complainant or prosecutor). At the time that I served the summons on *A.B.*, I read over the same to him (or explained the same to him). Before the day on which I served such summons I knew *A.B.*, personally (or I did not know *A.B.* personally, but I asked him if he were *A.B.* and he said that he was, or the other means by which *E.F.* ascertained that the person served was *A.B.*, must be stated).

Taken and sworn to before me, at _____, in the parish of _____, this _____ day of _____, 19____.

(Signed)

A.B.,
Justice of the Peace
(or as the case may be)