

1950

c 119 Evidence Act

Ontario

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CHAPTER 119

The Evidence Act

1. In this Act,

Interpre-
tation.

- (a) "action" includes an issue, matter, arbitration, reference, investigation, inquiry, a prosecution for an offence committed against a statute of Ontario or against a by-law or regulation made under any such statute and any other proceeding authorized or permitted to be tried, heard, had or taken by or before a court under the law of Ontario;
- (b) "court" includes a judge, arbitrator, umpire, commissioner, magistrate, justice of the peace or other officer or person having by law or by consent of parties authority to hear, receive and examine evidence. R.S.O. 1937, c. 119, s. 1.

2. This Act shall apply to the evidence offered or taken orally or by interrogatories or affidavits or by the production of documents or things or otherwise by or before a court in an action, and in the case of oaths, affidavits, affirmations or declarations administered, sworn, affirmed or made under section 40, to any matter for which the administering, swearing, affirming or making of such oath, affidavit, affirmation or declaration is required or permitted by any statute of Ontario or under any rule made under the authority thereof or by any order, regulation or commission made or issued by the Lieutenant-Governor in Council under any law authorizing him to require the taking of evidence. R.S.O. 1937, c. 119, s. 2.

3. No person offered as a witness in an action shall be excluded, by reason of any alleged incapacity from crime or interest, from giving evidence. R.S.O. 1937, c. 119, s. 3.

Application
of Act.

Competency
of witnesses,
not in-
capacitated
by crime, etc.

4. Every person offered as a witness shall be admitted to give evidence notwithstanding that he has an interest in the matter in question or in the event of the action, and notwithstanding that he has been previously convicted of a crime or offence. R.S.O. 1937, c. 119, s. 4.

Admissi-
bility not-
withstanding
interest or
crime.

Evidence of parties.

5. The parties to an action, and the persons on whose behalf the same is brought, instituted, opposed or defended shall, except as hereinafter otherwise provided, be competent and compellable to give evidence on behalf of themselves or of any of the parties, and the husbands and wives of such parties and persons shall, except as hereinafter otherwise provided, be competent and compellable to give evidence on behalf of any of the parties. R.S.O. 1937, c. 119, s. 5.

Evidence of husband and wife.

6. Without limiting the generality of section 5, a husband or a wife may in any action, give evidence that he or she did or did not have sexual intercourse with the other party to the marriage at any time or within any period of time before or during the marriage. 1946, c. 25, s. 1.

Witness not excused from answering questions tending to criminate.

7.—(1) A witness shall not be excused from answering any question upon the ground that the answer may tend to criminate him, or may tend to establish his liability to a civil proceeding at the instance of the Crown or of any person or to a prosecution under any Act of the Legislature.

Answer not to be used in evidence against him.

(2) If, with respect to any question, a witness objects to answer upon any of the grounds mentioned in subsection 1, and if, but for this section or any Act of the Parliament of Canada, he would therefore have been excused from answering such question, then, although the witness is by reason of this section or by reason of any Act of the Parliament of Canada compelled to answer, the answer so given shall not be used or receivable in evidence against him in any civil proceeding or in any proceeding under any Act of the Legislature. R.S.O. 1937, c. 119, s. 6.

Evidence in proceedings in consequence of adultery.

8. The parties to any proceeding instituted in consequence of adultery and the husbands and wives of such parties shall be competent to give evidence in such proceeding; provided that no witness in any proceeding whether a party to the suit or not, shall be liable to be asked or bound to answer any question tending to show that he or she is guilty of adultery unless such witness has already given evidence in the same proceeding in disproof of his or her alleged adultery. R.S.O. 1937, c. 119, s. 7.

Communications made during marriage.

9. A husband shall not be compellable to disclose any communication made to him by his wife during the marriage, nor shall a wife be compellable to disclose any communication made to her by her husband during the marriage. R.S.O. 1937, c. 119, s. 8.

Expert evidence.

10. Where it is intended by any party to examine as witnesses persons entitled, according to the law or practice, to

give opinion evidence, not more than three of such witnesses may be called upon either side without the leave of the judge or other person presiding, to be applied for before the examination of any of such witnesses. R.S.O. 1937, c. 119, s. 9.

11. The plaintiff in an action for breach of promise of marriage shall not recover unless his or her testimony is corroborated by some other material evidence in support of the promise. R.S.O. 1937, c. 119, s. 10. Corroborative evidence, breach of promise.

12. In an action by or against the heirs, next of kin, executors, administrators or assigns of a deceased person, an opposite or interested party shall not obtain a verdict, judgment or decision on his own evidence in respect of any matter occurring before the death of the deceased person, unless such evidence is corroborated by some other material evidence. R.S.O. 1937, c. 119, s. 11. Actions by or against heirs, etc.

13. In an action by or against a mentally incompetent person so found, or a patient in a mental hospital, or a person who from unsoundness of mind is incapable of giving evidence, an opposite or interested party shall not obtain a verdict, judgment or decision on his own evidence, unless such evidence is corroborated by some other material evidence. R.S.O. 1937, c. 119, s. 12. Actions by or against persons under disability.

14. Where an oath may be lawfully taken, it may be administered to any person while such person holds in his hand a copy of the Old or New Testament without requiring him to kiss the same, or, when he objects to being sworn in this manner or declares that the oath so administered is not binding upon his conscience, then in such manner and form and with such ceremonies as he may declare to be binding. R.S.O. 1937, c. 119, s. 13. Mode of administering oath.

15.—(1) Where any person objects to be sworn from conscientious scruples, or on the ground of his religious belief, or on the ground that the taking of an oath would have no binding effect on his conscience, such person may in lieu of taking an oath make an affirmation and declaration which shall be of the same force and effect as if such person had taken an oath in the usual form. Affirmation in lieu of oath.

(2) Where the evidence is in the form of an affidavit or written deposition, the person before whom the same is taken shall certify that the deponent satisfied him that he was a person entitled to affirm. R.S.O. 1937, c. 119, s. 14. Certifying affirmation.

16. A witness served in due time with a subpoena issued out of any court in Ontario, and paid his proper witness fees Attendance of witnesses.

and conduct money, who makes default in obeying such subpoena, without any lawful and reasonable impediment, shall, in addition to any penalty he may incur as for a contempt of court, be liable to an action on the part of the person by whom, or on whose behalf, he has been subpoenaed for any damage which such person may sustain or be put to by reason of such default. R.S.O. 1937, c. 119, s. 15.

ISSUE OF SUBPOENAS INTO ANY PART OF ONTARIO OR QUEBEC

[Sections 4-11 and 13 of C.S.C., c. 79, which were taken from 18 Vict., c. 9, ss. 1-4, 6, 7, are not consolidated in the Revised Statutes of Canada, and are as follows:]

Courts may issue subpoenas to any part of Canada.

4. If in any action or suit depending in any of Her Majesty's Superior Courts of Law or Equity in Canada, it appears to the Court, or when not sitting, it appears to any Judge of the Court that it is proper to compel the personal attendance at any trial or *enquête* or examination of witnesses, of any person who may not be within the jurisdiction of the Court in which the action or suit is pending, the Court or Judge, in their or his discretion, may order that a writ called a writ of *subpoena ad testificandum* or of *subpoena duces tecum* shall issue in special form, commanding such person to attend as a witness at such trial or *enquête* or examination of witnesses wherever he may be in Canada.

Service thereof in any part of Canada to be good.

5. The service of any such writ or process in any part of Canada, shall be valid and effectual to all intents and purposes, as if the same had been served within the jurisdiction of the Court from which it has issued, according to the practice of such Court.

When not to be issued.

6. No such writ shall be issued in any case in which an action is pending for the same cause of action, in that section of the Province, whether Upper or Lower Canada respectively, within which such witness or witnesses may reside.

Writs to be specially noted.

7. Every such writ shall have at the foot, or in the margin thereof, a statement or notice that the same is issued by the special order of the Court or Judge making such order, and no such writ shall issue without such special order.

Consequences of disobedience.

8. In case any person so served does not appear according to the exigency of such writ or process, the Court out of which the same issued, may, upon proof made of the service thereof, and of such default to the satisfaction of such Court, transmit a certificate of such default, under the seal of the same Court, to any of Her Majesty's Superior Courts of Law or Equity in that part of Canada in which the person so served may reside, being out of the jurisdiction of the Court transmitting such certificate, and the Court to which such certificate is sent, shall thereupon proceed against and punish such person so having made default, in like manner as they might have done if such person had neglected or refused to appear to a writ of subpoena or other similar process issued out of such last mentioned Court.

If expenses paid or tendered.

9. No such certificate of default shall be transmitted by any Court, nor shall any person be punished for neglect or refusal to attend any trial or *enquête* or examination of witnesses, in obedience to any such subpoena or other similar process, unless it be made to appear to the Court transmitting and also to the Court receiving such certificate, that a reasonable and sufficient sum of money, according to the rate *per diem* and per mile allowed to witnesses by the law and practice of the Superior Court of Law within the jurisdiction of which such person was found, to defray the expenses of coming and attending to give evidence and of

returning from giving evidence, had been tendered to such person at the time when the writ of subpoena, or other similar process was served upon him.

10. The service of such writs of subpoena or other similar process, in Lower Canada, shall be proved by the certificate of a Bailiff within the jurisdiction where the service has been made, under his oath of office, and such service in Upper Canada by the affidavit of service endorsed on or annexed to such writ by the person who served the same. How service proved.

11. The costs of the attendance of any such witness shall not be taxed against the adverse party to such suit, beyond the amount that would have been allowed on a commission *rogatoire*, or to examine witnesses unless the Court or Judge before whom such trial or *enquête* or examination of witnesses is had, so orders. Costs of attendance provided for.

13. Nothing herein contained shall affect the power of any Court to issue a commission for the examination of witnesses out of its jurisdiction, nor affect the admissibility of any evidence at any trial or proceeding, where such evidence is now by law receivable, on the ground of any witness being beyond the jurisdiction of the Court. Power to issue commissions to examine witnesses, preserved.

17. A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the matter in question, without the writing being shown to him; but if it is intended to contradict him by the writing, his attention shall, before such contradictory proof is given, be called to those parts of the writing which are to be used for the purpose of so contradicting him, and the judge or other person presiding at any time during the trial or proceeding may require the production of the writing for his inspection, and may thereupon make such use of it for the purposes of the trial or proceeding as he may think fit. R.S.O. 1937, c. 119, s. 16. Examination of witnesses, proof of contradictory written statements.

18. If a witness upon cross-examination as to a former statement made by him relative to the matter in question and inconsistent with his present testimony does not distinctly admit that he did make such statement, proof may be given that he did in fact make it; but before such proof is given the circumstances of the supposed statement sufficient to designate the particular occasion shall be mentioned to the witness, and he shall be asked whether or not he did make such statement. R.S.O. 1937, c. 119, s. 17. Proof of contradictory oral statements.

19.—(1) A witness may be asked whether he has been convicted of any crime, and upon being so asked, if he either denies the fact or refuses to answer, the conviction may be proved, and a certificate containing the substance and effect only, omitting the formal part, of the charge and of the conviction, purporting to be signed by the officer having the custody of the records of the court at which the offender was convicted, or by the deputy of the officer, shall, upon proof of the identity of the witness as such convict, be sufficient evidence of the conviction, without proof of the signature or Proof of previous conviction of a witness.

of the official character of the person appearing to have signed the certificate.

Fee.

(2) For such certificate a fee of \$1 and no more may be demanded or taken. R.S.O. 1937, c. 119, s. 18.

How far a party may discredit his own witness.

20. A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may contradict him by other evidence, or if the witness in the opinion of the judge or other person presiding proves adverse such party may by leave of the judge or other person presiding prove that the witness made at some other time a statement inconsistent with his present testimony, but before such last mentioned proof is given the circumstances of the proposed statement sufficient to designate the particular occasion shall be mentioned to the witness and he shall be asked whether or not he did make such statement. R.S.O. 1937, c. 119, s. 19.

Letters patent.

21. Letters patent under the Great Seal of the United Kingdom, or of any other of His Majesty's dominions, may be proved by the production of an exemplification thereof, or of the enrolment thereof, under the Great Seal under which the same may have issued, and such exemplification shall have the like force and effect for all purposes as the letters patent thereby exemplified, as well against His Majesty as against all other persons whomsoever. R.S.O. 1937, c. 119, s. 20.

Copies of statutes, etc.

22. Copies of statutes, official gazettes, ordinances, regulations, proclamations, journals, orders, appointments to office, notices thereof and other public documents purporting to be printed by or under the authority of the Parliament of the United Kingdom, or of the Imperial Government or by or under the authority of the government or of any legislative body of any dominion, commonwealth, state, province, colony, territory or possession within the King's dominions, shall be admitted in evidence to prove the contents thereof. R.S.O. 1937, c. 119, s. 21.

Proclamations, orders, etc.

23. *Prima facie* evidence of a proclamation, order, regulation or appointment to office made or issued,

- (a) by the Governor-General or the Governor-General in Council, or other chief executive officer or administrator of the Government of Canada; or
- (b) by or under the authority of any minister or head of any department of the Government of Canada or of a provincial or territorial government in Canada; or

- (c) by a Lieutenant-Governor or Lieutenant-Governor in Council or other chief executive officer or administrator of Ontario or of any other province or territory in Canada,

may be given by the production of,

- (d) a copy of the *Canada Gazette* or of the official gazette for any province or territory purporting to contain a notice of such proclamation, order, regulation or appointment; or
- (e) a copy of such proclamation, order, regulation or appointment purporting to be printed by the King's Printer or by the government printer for the province or territory; or
- (f) a copy of or extract from such proclamation, order, regulation or appointment purporting to be certified to be a true copy by such minister or head of a department or by the clerk, or assistant or acting clerk of the executive council or by the head of any department of the Government of Canada or of a provincial or territorial government or by his deputy or acting deputy. R.S.O. 1937, c. 119, s. 22.

24. An order in writing purporting to be signed by the Secretary of State of Canada and to be written by command of the Governor-General shall be received in evidence as the order of the Governor-General and an order in writing purporting to be signed by the Provincial Secretary and to be written by command of the Lieutenant-Governor shall be received in evidence as the order of the Lieutenant-Governor. R.S.O. 1937, c. 119, s. 23.

Orders
signed by
Secretary
of State or
Provincial
Secretary.

25. Copies of proclamations and of official and other documents, notices and advertisements printed in the *Canada Gazette*, or in *The Ontario Gazette*, or in the official gazette of any province or territory in Canada shall be *prima facie* evidence of the originals and of the contents thereof. R.S.O. 1937, c. 119, s. 24.

Notices in
Gazette.

26. Where the original record could be received in evidence, a copy of any official or public document in Ontario purporting to be certified under the hand of the proper officer, or the person in whose custody such official or public document is placed, or of a document, by-law, rule, regulation or proceeding, or of any entry in any register or other book of any

Public
or official
documents.

corporation, created by charter or statute in Ontario, purporting to be certified under the seal of the corporation and the hand of the presiding officer or secretary thereof, shall be receivable in evidence without proof of the seal of the corporation, or of the signature of the official character of the person or persons appearing to have signed the same, and without further proof thereof. R.S.O. 1937, c. 119, s. 25.

Privilege in case of official documents.

27. Where a document is in the official possession, custody or power of a member of the Executive Council, or of the head of a department of the public service of Ontario, if the deputy head or other officer of the department has the document in his personal possession, and is called as a witness, he shall be entitled, acting herein by the direction and on behalf of such member of the Executive Council or head of the department, to object to produce the document on the ground that it is privileged, and such objection may be taken by him in the same manner, and shall have the same effect, as if such member of the Executive Council or head of the department were personally present and made the objection. R.S.O. 1937, c. 119, s. 26.

Entries in departmental books.

28. A copy of an entry in any book of account kept in any department of the Government of Canada or of Ontario shall be received as *prima facie* evidence of such entry, and of the matters, transactions and accounts therein recorded, if it is proved by the oath or affidavit of an officer of such department that such book was, at the time of the making of the entry, one of the ordinary books kept in such department, that the entry was apparently, and as the deponent believes, made in the usual and ordinary course of business of such department, and that such copy is a true copy thereof. R.S.O. 1937, c. 119, s. 27.

Copies of public books or documents.

29.—(1) Where a book or other document is of so public a nature as to be admissible in evidence on its mere production from the proper custody, a copy thereof or extract therefrom shall be admissible in evidence if it is proved that it is an examined copy or extract, or that it purports to be signed and certified as a true copy or extract by the officer to whose custody the original has been entrusted.

Copies to be delivered if required.

(2) Such officer shall furnish the certified copy or extract to any person applying for the same at a reasonable time, upon his paying therefor a sum not exceeding 10 cents for every folio of 100 words. R.S.O. 1937, c. 119, s. 28.

Interpretation.
1944-45,
c. 30 (Can.),
Rev. Stat.,
c. 11.

30.—(1) In this section, "bank" means a bank to which the *Bank Act* (Canada) applies and includes every branch, agency or office of a bank and an office opened under *The Agricultural Development Finance Act* in any part of Ontario.

(2) Subject to this section a copy of an entry in a book or record kept in a bank shall in any action to which the bank is not a party be received as *prima facie* evidence of such entry and of the matters, transactions and accounts therein recorded.

Copies of entries in books as *prima facie* evidence.

(3) A copy of an entry in such book or record shall not be received in evidence under this section unless it is first proved that the book or record was at the time of making the entry one of the ordinary books or records of the bank, that the entry was made in the usual and ordinary course of business, that the book of record is in the custody or control of the bank, or its successor, and that such copy is a true copy thereof, and such proof may be given by the manager or accountant, or a former manager of the bank or its successor and may be given orally or by affidavit.

Proof required as to entry in ordinary course of business.

(4) A bank or officer of a bank shall not in an action to which the bank is not a party be compellable to produce any book or record the contents of which can be proved under this section, or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the court or a judge made for special cause.

Production of books to be required only under order.

(5) On the application of any party to an action the court or judge may order that such party be at liberty to inspect and take copies of any entries in the books or records of a bank for the purposes of such proceeding, but a person whose account is to be inspected shall be served with notice of the application at least two clear days before the hearing thereof, and if it is shown to the satisfaction of the court or judge that such person cannot be notified personally such notice may be given by addressing the same to the bank.

Inspection of account.

(6) The costs of any application to a court or judge under or for the purposes of this section, 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 section, shall be in the discretion of the court or judge who may order the same or any part thereof to be paid to any party by the bank, where the same have been occasioned by any default or delay on the part of the bank, and any such order against a bank may be enforced as if the bank was a party to the proceeding. R.S.O. 1937, c. 119, s. 29.

Costs.

31.—(1) In this section,

Interpretation.

(a) "person" includes,

- (i) the governments of Canada and of any province of Canada and any department, commission, board or branch of any such governments,
- (ii) a corporation, its successors and assigns, and
- (iii) the heirs, executors, administrators or other legal representatives of a person; and

(b) "photographic film" includes any photographic plate, microphotographic film and photostatic negative and "photograph" has a corresponding meaning.

Admissible
in evidence.

(2) Where a bill of exchange, promissory note, cheque, receipt, instrument, agreement, document, plan or a record or book or entry therein kept or held by any person,

- (a) is photographed in the course of an established practice of such person of photographing objects of the same or a similar class in order to keep a permanent record thereof; and
- (b) is destroyed by or in the presence of the person or of one or more of his employees or delivered to another person in the ordinary course of business or lost,

a print from the photographic film shall be admissible in evidence in all cases and for all purposes for which the object photographed would have been admissible.

Court may
refuse to
admit in
evidence.

(3) Where a bill of exchange, promissory note, cheque, receipt, instrument, agreement or other executed or signed document was so destroyed before the expiration of six years from,

- (a) the date when in the ordinary course of business either the object or the matter to which it related ceased to be treated as current by the person having custody or control of the object; or
- (b) the date of receipt by the person having custody or control of the object of notice in writing of any claim in respect of the object or matter prior to the destruction of the object,

whichever is the later date, the court may refuse to admit in evidence under this section a print from a photographic film of the object.

(4) Where the photographic print is tendered by a government or the Bank of Canada, subsection 3 shall not apply. Exception as to application of subs. 3.

(5) Proof of compliance with the conditions prescribed by this section may be given by any person having knowledge of the facts either orally or by affidavit sworn before a notary public and unless the court otherwise orders, a notarial copy of any such affidavit shall be admissible in evidence in lieu of the original affidavit. 1945, c. 7, s. 1. Proof of compliance with conditions.

32.—(1) All courts, judges, justices, masters, clerks of courts, commissioners and other officers acting judicially, shall take judicial notice of the signature of any of the judges of any court in Canada, in Ontario and in every other province and territory in Canada, where such signature is appended or attached to any decree, order, certificate, affidavit, or judicial or official document. Judicial notice to be taken of signatures of judges, etc.

(2) The members of the Board of Transport Commissioners of Canada and of the Ontario Municipal Board, the judge of the Mining Court and a referee appointed under *The Municipal Drainage Act* shall be deemed judges for the purposes of this section. R.S.O. 1937, c. 119, s. 30. Who to be deemed "judges." Rev. Stat., c. 246.

33. No proof shall be required of the handwriting or official position of any person certifying to the truth of any copy of or extract from any proclamation, order, regulation or appointment, or to any matter or thing as to which he is by law authorized or required to certify. R.S.O. 1937, c. 119, s. 31. Proof of handwriting, when not required.

34. A judgment, decree or other judicial proceeding recorded, made, had or taken in the Supreme Court of Judicature or in any court of record in England or Ireland or in any of the superior courts of law, equity or bankruptcy in Scotland, or in any court of record in Canada, or in any of the provinces or territories in Canada, or in any British colony or possession, or in any court of record of the United States, or of any state of the United States of America, may be proved by an exemplification of the same under the seal of the court without any proof of the authenticity of such seal or other proof whatever, in the same manner as a judgment, decree or other judicial proceeding of the Supreme Court in Ontario may be proved by an exemplification thereof. R.S.O. 1937, c. 119, s. 32. Foreign judgments, etc., how proved.

35. A copy of a notarial act or instrument in writing made in Quebec before a notary and filed, enrolled or enregistered Copies of notarial acts in Quebec admissible.

by such notary, certified by a notary or prothonotary to be a true copy of the original thereby certified to be in his possession as such notary or prothonotary, shall be receivable in evidence in the place and stead of the original, and shall have the same force and effect as the original would have if produced and proved. R.S.O. 1937, c. 119, s. 33.

How
impeached.

36. The proof of such certified copy may be rebutted or set aside by proof that there is no such original, or that the copy is not a true copy of the original in some material particular, or that the original is not an instrument of such nature as may, by the law of Quebec, be taken before a notary, or be filed, enrolled or enregistered by a notary. R.S.O. 1937, c. 119, s. 34.

Protests
of bills
and notes.

37. A protest of a bill of exchange or promissory note purporting to be under the hand of a notary public wherever made shall be received as *prima facie* evidence of the allegations and facts therein stated. R.S.O. 1937, c. 119, s. 35.

Effect of
certain
certificates
of notaries.

38. Any note, memorandum or certificate purporting to be made by a notary public in Canada, in his own handwriting or to be signed by him at the foot of or embodied in any protest, or in a regular register of official acts purporting to be kept by him shall be *prima facie* evidence of the fact of notice of non-acceptance or non-payment of a bill of exchange or promissory note having been sent or delivered, at the time and in the manner stated in such note, certificate or memorandum. R.S.O. 1937, c. 119, s. 36.

Proving
titles under
division
court
executions.

39. In proving a title under a sheriff's conveyance based upon an execution issued from a division court it shall be sufficient to prove the judgment recovered in the division court without proof of any prior proceedings. R.S.O. 1937, c. 119, s. 37.

Function-
aries taking
affidavits.

40. Oaths, affidavits, affirmations or declarations administered, sworn, affirmed or made out of Ontario,

- (a) in England or Northern Ireland before a commissioner authorized to administer oaths in the Supreme Court of Judicature;
- (b) in England or Northern Ireland before a judge of the Supreme Court of Judicature;
- (c) in Scotland before a judge of the Court of Session or the Justiciary Court of Scotland;

- (d) in England, Scotland or Northern Ireland before a judge of a county court within his county;
- (e) in the Republic of Ireland before a commissioner authorized to administer oaths in the courts of justice of the Republic of Ireland, or before a judge of the Supreme Court of Justice of the Republic of Ireland, or before a judge of the High Court of Justice of the Republic of Ireland, or before a judge of the Circuit Court of Justice of the Republic of Ireland within his circuit;
- (f) In Great Britain or Northern Ireland or in the Republic of Ireland, or in any dominion or colony of His Majesty, or in any foreign country before the mayor or chief magistrate of any city, borough or town corporate, certified under the common seal of such city, borough or town corporate;
- (g) in any colony belonging to the Crown of Great Britain or any dependency thereof, or in any foreign country, before a judge of any court of record of supreme jurisdiction;
- (h) in the British possessions in India, before any magistrate or collector certified to have been such under the hand of the governor of such possession;
- (i) in Quebec, before a judge or prothonotary of the Superior Court or clerk of the Circuit Court;
- (j) in any foreign place, before any consul, vice-consul, or consular agent of His Majesty exercising his functions;
- (k) before a notary public and certified under his hand and official seal;
- (l) before a commissioner authorized by the laws of Ontario to take affidavits;
- (m) before a commissioner authorized to take affidavits in Ontario or a notary public of Ontario; or
- (n) in any province of Canada before a commissioner authorized to administer oaths in the courts of such province or by a notary public or a justice of the peace having authority or jurisdiction in the place where the oath is administered,

shall be as valid and effectual and shall be of like force and effect to all intents and purposes as if such oath, affidavit, affirmation or declaration had been administered, sworn, affirmed or made in Ontario before a commissioner for taking affidavits therein, or other competent authority of the like nature. R.S.O. 1937, c. 119, s. 38.

Proof of signature and seal dispensed with.

41. Any document purporting to have affixed, impressed or subscribed thereon or thereto the signature of such judge or commissioner, or the signature and official seal of such notary public, or prothonotary, or the seal of the corporation and the signature of such mayor or chief magistrate or governor as aforesaid, or the seal and signature of such consul, vice-consul or consular agent in testimony of such oath, affidavit, affirmation or declaration having been administered, sworn, affirmed or made by or before him, or for any other purpose authorized by this Act, shall be admitted in evidence without proof of such signature, or seal and signature, being the signature or the seal and signature of the person whose signature or seal and signature the same purport to be, or of the official character of such person. R.S.O. 1937, c. 119, s. 39.

Formal defects, when not to vitiate.

Rev. Stat., c. 57.

42. No informality in the heading or other formal requisites to any affidavit, declaration or affirmation made or taken before a commissioner or other person authorized to take affidavits under *The Commissioners for taking Affidavits Act* or under this Act, shall be any objection to its reception in evidence if the court or judge before whom it is tendered thinks proper to receive it. R.S.O. 1937, c. 119, s. 40.

Admissibility of copies of depositions.

43. Where an examination or deposition of a party or witness has been taken before a judge or other officer or person appointed to take the same, copies of the examination or deposition certified under the hand of the judge, officer or other person taking the same, shall, without proof of the signature, be received and read in evidence, saving all just exceptions. R.S.O. 1937, c. 119, s. 41.

Effect of probate, etc., as evidence of will, etc.

44. In order to establish a devise or other testamentary disposition of or affecting real estate, probate of the will or letters of administration with the will annexed containing such devise or disposition, or a copy thereof, under the seal of the surrogate court granting the same, or under the seal of the Supreme Court, where the probate or letters of administration were granted by the former court of probate for Upper Canada, shall be *prima facie* evidence of the will, and of its validity and contents. R.S.O. 1937, c. 119, s. 42.

45. Where a person dies in any of His Majesty's possessions out of Ontario having made a will sufficient to pass real estate in Ontario, purporting to devise, charge or affect real estate in Ontario, the party desiring to establish any such disposition, after giving one month's notice to the opposite party to the proceeding of his intention so to do, may produce and file the probate of the will or letters of administration with the will annexed or a certified copy thereof under the seal of the court which granted the same with a certificate of the judge, registrar or clerk of such court that the original will is filed and remains in the court and purports to have been executed before two witnesses, and such probate or letters of administration or certified copy with such certificate shall, unless the court otherwise orders, be *prima facie* evidence of the will and of its validity and contents. R.S.O. 1937, c. 119, s. 43.

Proof in the case of will of real estate filed in courts outside Ontario.

46. The production of the certificate mentioned in section 45 shall be sufficient *prima facie* evidence of the facts therein stated and of the authority of the judge, registrar or clerk, without proof of his appointment, authority or signature. R.S.O. 1937, c. 119, s. 44.

Effect of certificate.

47. The production of a certificate in writing signed or purporting to be signed,

Military records.

- (a) by the Adjutant-General, Deputy Adjutant-General, or officer in charge of records, Militia Service, Department of National Defence, in the case of a member of His Majesty's military forces; or
- (b) by the Naval Secretary, Naval Service, Department of National Defence, in the case of a member of His Majesty's naval forces; or
- (c) by the officer in charge of records, Air Service, Department of National Defence, in the case of a member of His Majesty's air forces; or
- (d) by an officer of His Majesty's naval, military or air forces, authorized so to sign, in the case of a member of any of His Majesty's forces,

stating that the person named in the certificate was a member of any of His Majesty's forces, and that he has been officially reported as dead or presumed to be dead, if it appears on the face of the certificate that the person signing is qualified as prescribed in clause *a*, *b*, *c*, or *d*, as the case may be, shall be sufficient proof of the death of such person and of all facts

stated in the certificate for any purpose to which the authority of this Legislature extends, and also of the office, authority and signature of the person giving or making the certificate, without any proof of his appointment, authority or signature. 1942, c. 15, s. 2.

Interpre-
tation.

48. The word "instrument" in sections 49 and 50 has the meaning assigned to that word in section 1 of *The Registry Act*. R.S.O. 1937, c. 119, s. 46.

Rev. Stat.,
c. 336.

Registered
instrument
as evidence.

49. A copy of an instrument or memorial certified under the hand and seal of office of the registrar, master of titles or local master of titles, in whose office the same is deposited, filed, kept or registered, to be a true copy shall be *prima facie* evidence of the original, except in the cases provided for in section 50. R.S.O. 1937, c. 119, s. 47.

When cer-
tified copies
of registered
instruments
may be used.

50. Where it would be necessary to produce and prove an instrument or memorial which has been so deposited, filed, kept or registered in order to establish such instrument or memorial and the contents thereof, the party intending to prove the same may give notice to the opposite party 10 days at least before the trial or other proceeding in which the proof is intended to be adduced, that he intends at the trial or other proceeding to give in evidence, as proof of the instrument or memorial, a copy thereof certified by the registrar, master of titles or local master of titles, under his hand and seal of office, and in every such case the copy so certified shall be sufficient evidence of the instrument or memorial and of its validity and contents unless the party receiving the notice, within four days after such receipt, gives notice that he disputes its validity, in which case the costs of producing and proving it may be ordered to be paid by any or either of the parties as may be deemed just. R.S.O. 1937, c. 119, s. 48.

Filing copies
of official
documents.

51.—(1) Where a public officer produces upon a subpoena an original document, it shall not be deposited in court unless otherwise ordered, but if the document or a copy is needed for subsequent reference or use, a copy thereof or of so much thereof as may be deemed necessary, certified under the hand of the officer producing the document or otherwise proved, shall be filed as an exhibit in the place of the original, and the officer shall be entitled to receive in addition to his ordinary fees, the fees for any certified copy, to be paid to him before it is delivered or filed.

When
original to
be retained.

(2) Where an order is made that the original be retained, the order shall be delivered to the public officer and the exhibit

shall be retained in court and filed. R.S.O. 1937, c. 119, s. 49.

52.—(1) A party intending to prove the original of a telegram, letter, shipping bill, bill of lading, delivery order, receipt, account or other written instrument used in business or other transactions, may give notice to the opposite party, 10 days at least before the trial or other proceeding in which the proof is intended to be adduced, that he intends to give in evidence as proof of the contents a writing purporting to be a copy of the documents, and in the notice shall name some convenient time and place for the inspection thereof. Proof of certain written instruments.

(2) Such copy may then be inspected by the opposite party, and shall without further proof be sufficient evidence of the contents of the original document, and be accepted and taken in lieu of the original, unless the party receiving the notice within four days after the time mentioned for such inspection gives notice that he intends to dispute the correctness or genuineness of the copy at the trial or proceeding, and to require proof of the original, and the costs attending any production or proof of the original document shall be in the discretion of the court. R.S.O. 1937, c. 119, s. 50. Inspection.

53. It shall not be necessary to prove, by the attesting witness, an instrument to the validity of which attestation is not requisite. R.S.O. 1937, c. 119, s. 51. Where no attestation is required.

54. Comparison of a disputed writing with any writing proved to the satisfaction of the court to be genuine, shall be permitted to be made by a witness, and such writings and the evidence of witnesses respecting the same may be submitted to the court or jury as evidence of the genuineness or otherwise of the writing in dispute. R.S.O. 1937, c. 119, s. 52. Comparison of disputed writing with genuine.

55. Where a document is received in evidence, the court admitting the same may direct that it be impounded and kept in such custody for such period and subject to such conditions as may seem proper, or until the further order of the court or of the Supreme Court or of a judge thereof or of a county or district court, as the case may be. R.S.O. 1937, c. 119, s. 53. When instruments offered in evidence may be impounded.

56. It shall not be necessary in any action to produce any evidence which, by section 1 of *The Vendors and Purchasers Act*, is dispensed with as between vendor and purchaser, and the evidence declared to be sufficient as between vendor and purchaser shall be *prima facie* sufficient for the purposes of the action. R.S.O. 1937, c. 119, s. 54. Evidence dispensed with under Rev. Stat., c. 407.

Evidence
for foreign
tribunals.

57.—(1) Where it is made to appear to the Supreme Court or a judge thereof, or to a judge of a county or district court, that any court or tribunal of competent jurisdiction in a foreign country has duly authorized, by commission, order or other process, the obtaining of the testimony in or in relation to any action, suit or proceeding pending in or before such foreign court or tribunal, of a witness out of the jurisdiction thereof and within the jurisdiction of the court or judge so applied to, such court or judge may order the examination of such witness before the person appointed, and in the manner and form directed by the commission, order or other process, and may, by the same or by a 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 or thing mentioned in the order, and may give all such directions as to the time and place of the examination, and all other matters connected therewith as may seem proper, and the order may be enforced, and any disobedience thereto punished, in like manner as in case of an order made by the same court or judge in an action pending in such court or before such judge.

Payment of
expenses of
witness.

(2) A person whose attendance is so ordered shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial in the Supreme Court.

Right of
refusal to
answer
questions
and to
produce
documents.

(3) A person examined under such commission, order or other process shall have the like right to object to answer questions tending to criminate himself, and to refuse to answer any questions which, in an action pending in the court by which or by a judge whereof or before the judge by whom the order for examination was made, the witness would be entitled to object or to refuse to answer, and no person shall be compelled to produce at the examination any writing, document or thing which he would not be compellable to produce at the trial of such an action.

Administra-
tion of oath.

(4) Where the commission, order or other process or the instructions of the court accompanying the same, direct that the person to be examined shall be sworn or shall affirm, the person so appointed shall have authority to administer the oath to him or take his affirmation. R.S.O. 1937, c. 119, s. 55.