

Act No. 34, 1900.

An Act to consolidate enactments relating to the examination of witnesses and production of documents in certain cases. [19th October, 1900.]

WITNESSES
EXAMINATION.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the "Witnesses Examination Act, Short title. 1900."

2. The Acts mentioned in the Schedule to this Act are, to the extent therein expressed, hereby repealed. Repeal. Schedule.

3. In this Act, unless the context or subject-matter otherwise indicates or requires,— Interpretation.

"the Court" means the Supreme Court;

"Judge" means a Judge of the Court.

4.

Witnesses Examination.

Examinations on commission, &c., in civil proceedings.

1 Wm. IV, c. 22, s. 4.

4 Vic. No. 22, s. 14.

5 Vic. No. 9, s. 15.

18 Vic. No. 13, s. 2.

36 Vic. No. 9, s. 12.

44 Vic. No. 18, s. 44.

54 Vic. No. 25, s. 98.

4. (1) In any action, suit, or other proceeding in the Court in any jurisdiction, except a criminal proceeding, at any stage thereof, and upon the application of any party thereto, the Court or a Judge may by rule or order direct—

- (a) that any witness within the jurisdiction of the Court be examined on oath, either *viva voce* or upon interrogatories or otherwise, before an officer of the Court or other person to be named in the rule or order; or
- (b) that a commission do issue for the examination of witnesses on oath, either *viva voce* or upon interrogatories or otherwise, at any place in or out of the jurisdiction.

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

Parties.

18 Vic. No. 13, s. 2.

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

The like in criminal proceedings.

4 Vic. No. 22, s. 14.

6. In any criminal proceeding, if—

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

the Court or a Judge may, on the application or with the consent of the Attorney-General or the Crown prosecutor as well as the prisoner, but not otherwise, make a like rule or order in respect of such witness.

7. (1) When any rule or order is made under the fourth section of this Act—

- (a) for the examination of any witness; or
- (b) for the issue of a commission for an examination of witnesses within the jurisdiction of the Court,

the Court or Judge may by such rule or order, or by any subsequent rule or order, command the attendance of any person named therein for the purpose of being examined, or the production of any writing or other

Commanding attendance of witnesses or production of documents.

1 Wm. IV, c. 22, s. 5.

Witnesses Examination.

other document mentioned therein, and may thereby direct the attendance of such person to be at his own place of abode, or elsewhere, if necessary or convenient so to do.

(2) The wilful disobedience of any such rule or order shall be deemed a contempt of Court, and proceedings may be thereupon had by attachment, if—

Penalty for disobedience.

(a) together with or after the service of the rule or order there has been served an appointment of the time and place of attendance in obedience thereto, signed by the person or one or more of the persons appointed to take the examination, and if—

(b) in the case of a Judge's order the same is made a rule of Court before or at the time of the application for attachment.

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

Payment of expenses, &c.

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

Proviso as to documents.

8. (1) Any sheriff, gaoler, or other officer having the custody of any prisoner may take such prisoner for examination under this Act by virtue of a writ of *habeas corpus* to be issued for that purpose.

Examination of prisoners.

1 Wm IV, c. 22, s. 6.

(2) Such writ shall be issued by the Court or a Judge in such circumstances and in such manner as the Court or a Judge may now by law issue the writ commonly called a writ of *habeas corpus ad testificandum*.

9. (1) Any person authorised by any rule, order, or commission under this Act to take the examination of any witness, shall take such examination upon the oath of such witness, to be administered by the person so authorised or by a Judge.

Examinations to be on oath.

Ibid. s. 7.

(2) Any witness who upon such oath wilfully and corruptly gives any false evidence shall be deemed to be guilty of perjury.

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

Report of examiner as to conduct of witnesses, &c.

Ibid. s. 8.

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

11. (1) The examination or deposition of any witness taken under this Act may be read in evidence at the hearing, saving all just exceptions.

Reading examinations and depositions in evidence.

Ibid. s. 10.

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

4 Vic. No. 22, s. 14.

5 Vic. No. 9, s. 16.

44 Vic. No. 18, s. 44.

(3)

Act No. 35, 1900.

Supreme Court and Circuit Courts.

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

Costs.
1 Wm. IV, c. 22, s. 9.

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

SCHEDULE.

Reference to Act.	Title or short title.	Extent of repeal.
4 Vic. No. 22 ...	An Act to provide the more effectual administration of justice in New South Wales and its Dependencies.	Section 14.
5 Vic. No. 9 ...	An Act for the further amendment of the law and for the better advancement of justice.	Sections 15, 16.
18 Vic. No. 13 ...	An Act further to amend the law of evidence	The unrepealed sections.
36 Vic. No. 9 ...	Matrimonial Causes Act	Section 12.
44 Vic. No. 18 ...	Equity Act of 1880	Section 44.
54 Vic. No. 25 ...	Probate Act of 1890	Section 98.