
CHAPTER 155

THE EVIDENCE ACT

Arrangement of Sections

Section

1. Short title.
2. Interpretation.
3. Witnesses not deemed incapacitated from crime or interest.
4. Parties to any suit in a Court of Justice competent and compellable to give evidence.
5. Accused parties not competent or compellable to criminate themselves.
6. Person charged and wife or husband a competent witness.
When wife or husband may be called without consent of person charged.
8. A husband or wife not compelled to disclose communications made to each other.
9. A witness in case of adultery not bound to answer criminating questions.
10. Breach of promise of marriage.
11. Inspections of documents.
12. Documents, admissible in England, admissible in Antigua and Barbuda.
13. Facts of which judicial notice is to be taken.
14. How far a party may discredit his own witness.
15. Proof of contradictory statements of adverse witness.
16. Cross-examination as to previous statements in writing.
17. Proof of previous conviction of a witness may be given.
18. Attesting witness need not be called except in certain cases.
19. Comparison of disputed writing.
20. False evidence how punishable.
21. Where necessary to prove conviction or acquittal of person charged, certified copy of record sufficient.

22. Examined or certified copies of documents admissible in evidence.
 23. Certifying a false document a misdemeanour.
 24. Court or person authorized to hear evidence may administer oath.
 25. Deeds may be proved before British Consuls, &c.
 26. Orders and commissions for the examination of witnesses.
 27. Attendance of persons to be examined as witnesses.
 28. Persons authorized to examine witnesses.
 29. Special report of persons authorized to examine witnesses.
 30. Costs.
 31. Examinations not to be read in evidence except the witness is unable to attend personally.
 32. Bringing up a prisoner to give evidence.
- SCHEDULE.
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EVIDENCE

(25th April, 1876.)

3/1876.
 2/1901.
 3/1942.
 15/1954.
 6/1955.
 S.R.O. 2211956.

1. This Act may be cited as the Evidence Act. **Short title.**

2. In this Act— **Interpretation.**

"indictable offence" means any offence for which the party charged is to be tried, or is in the course of being tried, in any Superior Criminal Court of Antigua and Barbuda.

3. No person, offered as a witness, shall hereafter 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 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 may by law be 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 may have been previously convicted of any crime or offence.

Witnesses not deemed incapacitated from crime or interest.

4. On the trial of any issue, 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 person in whose behalf any such suit, action, or other proceeding may be brought or defended, as also their husbands or wives, shall, except as hereinafter excepted, be

Parties to any suit in a court of Justice competent and compellable to give evidence.

competent and compellable to give evidence, either *vivâ uoce* 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.

Accused parties not competent or compellable to criminate themselves.

5. Nothing herein contained shall render any person, who, in any criminal proceeding, is charged with the commission of any indictable offence, or any offence punishable on summary conviction, competent or compellable to give evidence for or against himself or herself, or shall render any person compellable to answer any question tending to criminate himself or herself, or shall, in any criminal proceeding, 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.

Person charged and wife or husband a competent witness.

6. Every person charged with an offence and the wife or husband, as the case may be, of the person so charged, shall be a competent witness for the defence, at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person:

Provided as follows—

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

(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) 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.

(e) A person charged and called as a witness in pursuance of this Act shall not be asked, and if asked shall not be required to answer any question tending to show that he has committed, or been convicted of,

or been charged with, any offence other than that wherewith he is then charged, or is of bad character, unless—

- (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.

(f) Every person called as a witness in pursuance of this section shall, unless otherwise ordered by the Court, give his evidence from the witness box or other place from which the other witnesses give their evidence.

(g) Nothing in this section shall affect the provisions of sections 47 and 56 of the Magistrate's Code of Procedure Act, or any right of the person charged to make a statement without being sworn. Cap. 255.

7. (1) The wife or husband of a person charged with an offence under any enactment mentioned in the 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 may be called without consent of person charged.

(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.

8. No husband shall be compelled to disclose any communication made to him by his wife during the marriage, nor shall any wife be compellable to disclose any communication made to her by her husband during the marriage. A husband or wife not compelled to disclose communications made to each other.

LAWS OF ANTIGUA AND BARBUDA

CAP. 155)

Evidence

A witness in case of adultery not bound to answer criminating questions.

9. No witness in any cause or other proceeding instituted in consequence of adultery, 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 has been guilty of adultery, unless such witness shall have already given evidence, in the same proceeding, in disproof of his or her alleged adultery.

Breach of promise of marriage.

10. 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.

Inspection of documents.

11. Whenever any action, or other legal proceeding, shall henceforth be pending in any Court within Antigua and Barbuda, such Court and any Judge thereof may, respectively, on application made for such purpose by either of the litigants, compel the opposite party to allow the party making the application to inspect all documents in the custody, or under the control, of such opposite party, relating to such action, or other legal proceeding; and, if necessary, to take examined copies of the same in all cases in which, previous to the passing of this Act, a discovery might have been obtained by filing a bill, or by any other proceeding in a Court of Equity, at the instance of the party so making application as aforesaid to the said Court or Judge.

Documents admissible in England, admissible in Antigua and Barbuda.

12. Every document, which, by any law now in force, or hereinafter to be in force, is or shall be admissible in evidence in any Court of Justice in England, shall be admissible in evidence in the like manner, to the same extent, and for the same purpose, in any Court in Antigua and Barbuda, or before any person having by law, or by consent of parties, authority to hear, receive and examine evidence.

Facts of which judicial notice is to be taken.

13. (1) Every Judge shall take judicial notice of the following facts—

(a) all public Acts of the Parliament of the United Kingdom whatever, unless the contrary is expressly provided in any such Acts;

(b) all Orders of the Queen in Council and statutory instruments of the United Kingdom having effect in Antigua and Barbuda;

(c) the London Gazette, the Gazette of Antigua and Barbuda, the Government Gazette of any other part of Her Majesty's dominions or of any territory under Her Majesty's protection or of a territory for the time being administered by the Government of the United Kingdom under the trusteeship system of the United Nations;

(d) all laws purporting to be printed or published by authority or by the Government Printer;

(e) all other matters which a Judge is directed by any law to notice.

(2) No evidence of any fact of which judicial notice shall be taken need be given by the party alleging its existence; but the Judge, on being called upon to take judicial notice thereof may, if he is unacquainted with the fact, refer to any person or to any document or book of reference for his satisfaction in relation thereto, or may refuse to take judicial notice thereof unless and until the party calling upon him to take the notice produces the document or book of reference.

(3) For the purpose of this section "Judge" includes all persons authorized to take evidence either by law or by consent of parties.

14. 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 far a party may discredit his own witness.

Proof of contradictory statements, of adverse witness.

15. 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.

Cross-examination as to previous statements in writing.

16. 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:

Provided 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.

Proof of previous conviction of a witness may be given.

17. 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 his conviction, and a certificate containing the substance and effect only, omitting the formal part, of the indictment and conviction for the previous felony or misdemeanour, or a copy of any such summary conviction, purporting to be signed by the clerk of the Court, or other officer, having the custody of the record of the Court where the offender was first convicted, or to which such summary conviction has been returned, or by the deputy of such clerk or officer (for which certificate a fee of one dollar and twenty cents shall be demanded and taken) 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.

18. It shall not be necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite, and such instrument may be proved by admission, or otherwise, as if there had been no attesting witness thereto.

Attesting witness need not be called except in certain cases.

19. 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.

Comparison of disputed writing.

20. Any person, who shall upon any examination upon oath or affirmation, or in any affidavit, in any proceedings under this Act, wilfully and corruptly give false evidence, or wilfully and corruptly swear or affirm anything which shall be false, shall be liable to the penalties of wilful and corrupt perjury.

False evidence how punishable.

21. 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, 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.

Where necessary to prove conviction or acquittal of person charged, certified copy of record sufficient.

22. 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:

Examined or certified copies of documents admissible in 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 fee for the same of eighteen cents for every folio of ninety-six words.

Certifying a false document a misdemeanour.

23. If any officer, authorized or required by this Act to furnish any certified copies or extracts, 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 to imprisonment for any term not exceeding eighteen months.

Court or person authorized to hear evidence may administer oath.

24. Every Court, Judge, Magistrate, 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.

Deeds may be proved before British Consuls, &c.

25. Conveyances, deeds, letters of attorney, and instruments in writing made in any place out of Antigua and Barbuda, not being part of the dominions of Her Majesty, Her Heirs or Successors, the due execution of which shall be proved by a subscribing witness by affidavit sworn before, or which shall be acknowledged by the party or parties executing the same to be his, her, or their deed or act before, any British Consul-General, Consul, Vice-Consul, acting Consul, or Consular Agent, for the time being, resident at or near such place, and certified under his hand and seal of office, and annexed to the thing proved, shall be deemed to be as sufficiently proved as if the same witness were personally present and made such proof, or if such instrument in writing were acknowledged, where acknowledgement is by law necessary, by such party, before the Chief Justice or any other Judge of the Supreme Court, or the proper Registrar of deeds:

Provided that such deeds, letters of attorney, or written instruments, if concerning lands or tenements, be recorded in the proper Registrar's office, and copies thereof certified by him shall be admitted in evidence; but this section shall

not apply to the probate of any will, codicil, or testamentary writing.

26. It shall be lawful for any Court in Antigua and Barbuda, and any Judge thereof, in every action depending in such Court, upon the application of any of the parties to such suit, when it shall appear on oath or otherwise, that a person, required as a witness in the cause, will be unable to attend the trial from being about to quit the jurisdiction of the Court, or from permanent sickness or any permanent infirmity, to order the examination on oath, upon interrogatories or otherwise, before any Judge of the said Court, or any officer thereof, or other person or persons to be named in such order, of any witnesses within the jurisdiction of the Court where the action shall be depending; or, where the person required to be examined is out of the jurisdiction of the Court, to order a commission to issue for the examination of witnesses on oath, at any place, or places, so out of the jurisdiction of the Court, by interrogatories or otherwise, and, by the same or any subsequent order or orders, to give all such directions, touching the time, place, and manner of such examination, and all other matters and circumstances connected with such examination, as may appear reasonable and just.

Orders and commissions for the examination of witnesses.

27. When any rule, or order, shall be made for the examination of witnesses within the jurisdiction of the Court wherein the action shall be depending, by authority of this Act, it shall be lawful for the Court, or any Judge thereof, in and by the first rule or order to be made in the matter, or any subsequent rule or order, to command the attendance of any person, to be named in such rule or order, for the purpose of being examined, or the production of any writings or other documents to be mentioned in such rule or order, and to direct the attendance of any such person to be at his own place of abode or elsewhere, if necessary or convenient so to do; and the wilful disobedience of any such rule or order shall be deemed a contempt of Court, and proceedings may be thereupon had by attachment (the Judge's order being made a rule of Court, before or at the time of the application for an attachment) if, in addition to the service of the rule or order, an appointment of the time and place of attendance in obedience thereto, signed by the person or persons appointed to take the examination, or by one or more of

Attendance of persons to be examined as witnesses.

such persons, shall be also served together with, or after the service of, such rule or order:

Provided that every person, whose attendance shall be so required, shall be entitled to the like conduct money, and payment of expenses and loss of time, as upon attendance at the trial:

Provided also that no person shall be compelled to produce, under any such rule or order, any writing or other document that he would not be compellable to produce at a trial of the cause.

Persons
authorized to
examine
witnesses.

28. It shall be lawful for all and every person authorized to take the examination of witnesses, by any rule, order, or commission made or issued in pursuance of this Act, and he and they are hereby authorized and required to take all such examinations upon the oath of the witnesses, or affirmation in cases where affirmation may be allowed by law instead of oath, to be administered by the person so authorized, or by any Judge of the Court wherein the action shall be depending; and if upon such oath or affirmation, any person making the same shall wilfully and corruptly give any false evidence, every person so offending shall be deemed and taken to be guilty of perjury, and shall and may be indicted and prosecuted for such offence.

Special report of
persons
authorized to
examine
witnesses.

29. It shall be lawful for the officer, or any other person, to be named in every such rule or order, as aforesaid, for taking any examination in pursuance thereof, and he and they are hereby required to make, if need be, a special report to the Court, touching such examination, and the conduct, or absence, of any witness, or other person, thereon or relating thereto; and the Court is hereby authorized to institute such proceedings, and make such order or orders, upon such report, as justice may require, and as may be instituted and made in any case of contempt of the Court.

Costs.

30. The costs of every rule, or order, to be made for the examination of witnesses under any commission, or otherwise, by virtue of this Act, and of the proceedings thereupon, shall be costs in the cause, unless otherwise directed, either by the Judge making such rule or order, or by the Judge before whom the cause may be tried, or by the Court.

31. No examination or deposition, to be taken by virtue of any of the provisions of this Act, shall be read in evidence at any trial, without the consent of the party against whom the same may be offered, unless it shall appear, to the satisfaction of the Court, that the examinee, or deponent, is beyond the jurisdiction of the Court, or dead, or unable from permanent sickness, or other permanent infirmity, to attend the trial; in all, or any, of which cases the examination and depositions certified under the hand of the Judge, officer, commissioner, or other person taking the same, shall and may, without proof of the signature to such certificate, be received and read in evidence, saving all just exceptions.

Examinations not to be read in evidence except the witness is unable to attend personally.

32. It shall be lawful for the Governor-General, or any Judge of the Supreme Court, in any case where he may see fit to do so, upon written application, to issue a warrant or order under his hand, for bringing up any prisoner or person confined in any prison, or other legalized place of confinement, under any sentence, or under commitment for trial, or otherwise (except under process in any civil action, suit, or proceeding), before any Court, Judge, Justices, Magistrate, or other judicature, to be examined as a witness in any cause or matter, civil or criminal, depending, or to be inquired of or determined, in or before any such Court, Judge, Justices, Magistrate, or judicature; and the person required by any such warrant, or order, to be so brought before such Court, Judge, Justices, Magistrate, or judicature, shall be so brought under the same care and custody, and be dealt with in like manner in all respects, as a prisoner, required by any writ of *habeas corpus*, awarded by the Supreme Court, to be brought before such Court to be examined as a witness in any cause or matter depending before such Court, is now by law required to be dealt with.

Bringing up a prisoner to give evidence.

 SCHEDULE

S. 7 (1)

Chapter	Title	Parts of Act referred to
Cap. 116	Criminal Law Amendment Act	The whole Act.
Cap. 216	Infant Life Preservation Act	The whole Act.
Cap. 300	Offences against the Person Act	Sections 29, 43, 44, 49 to 53 (inclusive), 54, 55 and 60.
Cap. 405	Small Charges Act	Sections 13(2), 14(1), 16(1) and 25.
Cap. 267	Married Women's Property Act	Sections 14 and 18.
