

ACT No. II OF 1855.

PASSED BY THE LEGISLATIVE COUNCIL OF INDIA.

(Received the assent of the Governor-General on the 2nd February 1855).

An Act for the further improvement of the Law of Evidence.

WHEREAS it is expedient further to improve the Law of Evidence; It is
enacted as follows:—
Preamble.

Act repealed.

I. Act No. X of 1835 is hereby repealed.

II. Within the territories in the possession and under the Government of
the East India Company, all Courts of Justice, and all
persons having by law or consent of parties authority to
take evidence, shall take judicial notice of all Regulations
and Ordinances made before or on the 22nd day of April 1834 by the Governor-
General in Council of the Presidency of Fort William in Bengal, by the
Governor in Council of the Presidency of Fort St. George, or by the Governor
in Council of the Presidency of Bombay, and having the force of Law in any
part of the said territories, and of all Laws and Regulations heretofore made
by the Governor-General of India in Council, and of this Act, and of all Acts
and Regulations heretofore made, or hereafter to be made by the Governor
General of India in Council, constituted for the purpose of making Laws and
Regulations, whether the same be of a public or of a private nature.

Judicial notice to be
taken of all Acts and Regu-
lations.

III. All Courts and persons aforesaid shall take judicial notice of all
public Acts of Parliament and of all local and personal
Acts declared by Parliament to be public and to be judi-
cially noticed, and shall admit as *prima facie* evidence of
any private Act of Parliament, any copy thereof purport-
ing to be printed by the King's Printer.

Judicial notice to be
taken of public Acts of
Parliament.

What shall be *prima*
facie proof of a private
Act.

IV. Every

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IV. Every Court shall take judicial notice of its own Members and Officers respectively, and of their deputies and subordinate Officers or Assistants, and also of all Officers acting in execution of its process, and of all Advocates, Attornies, Proctors, Vakeels, Pleaders, and other persons authorized by Law to act before it.

Judicial notice to be taken by Court of its own Officers, &c.

V. All Courts and persons aforesaid shall take judicial notice of the names, titles, and authorities of the persons filling for the time being any one of the following offices in any part of the said territories :—Governor-General, Governor, Lieutenant-Governor or Deputy Governor, Secretary or Under-Secretary to Government, Commander-in-Chief, Bishop, Member of Council, Legislative Councilor, Judge of any of Her Majesty's Courts or of any Sudder Court, or of any Court of Judicature hereafter to be constituted in the said territories to or in which the powers of any of Her Majesty's Supreme Courts may be transferred or vested.

Judicial notice to be taken of the names, titles, &c., of certain persons.

VI. All such Courts and persons aforesaid shall take judicial notice of all divisions of time, of the geographical divisions of the world, of the territories under the dominion of the British Crown, of the commencement, continuation, and termination of hostilities between the British Crown and any other State, and also of the existence, title, and national flag of every Sovereign or State recognized by the British Crown. In all the above cases, such Court or person may resort for its aid to appropriate books or documents of reference.

Judicial notice to be taken of divisions of time, place, &c.

VII. Any Government Gazette of any Country, Colony, or Dependency under the dominion of the British Crown, may be proved by the bare production thereof before any of the Courts or persons aforesaid.

Proof of Government Gazette.

VIII. All Proclamations, Acts of State, whether Legislative or Executive, nominations, appointments, and other official communications of the Government appearing in any such Gazette, may be proved by the production of such Gazette, and shall be *primâ facie* proof of any fact of a public nature which they were intended to notify.

Proof of Proclamations, Acts of State, &c.

Proclamations, &c., when to be *primâ facie* proof of fact.

IX. Any

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IX. Any recital contained in any Act of the Governor-General of India in Council, constituted for the purpose of making Laws and Regulations, hereafter to be passed, of any fact of a public nature, shall be deemed, before all such Courts and persons, to be *primâ facie* evidence of the truth of the fact recited.

Recital in Act of a fact of a public nature to be *primâ facie* proof.

X. The Gazette or Newspaper containing any advertisement purporting to be published by virtue of any public Statute, Act, Regulation, or Ordinance, or of any Rule or Order of a Court of Justice or of any Board or Officer of Revenue, may be received by any such Courts or persons as aforesaid as *primâ facie* evidence that such advertisement was published duly under the authority from which it purports to proceed.

Gazette, &c., containing advertisement purporting to be published by authority, to be *primâ facie* evidence of such authority.

XI. All Courts and persons aforesaid may, on matters of public History, Literature, Science, or Art, refer, for the purposes of evidence, to such published Books, Maps, or Charts as such Courts or persons shall consider to be of authority on the subject to which they relate.

Books, Maps, &c., to be evidence in matters of public history, &c.

XII. Books printed or published under the authority of the Government of a Foreign Country and purporting to contain the Statutes, Code, or other written Law of such Country, and also printed and published Books of reports of decisions of the Courts of such country, and Books proved to be commonly admitted in such Courts as evidence of the Law of such Country, shall be admissible before any such Courts or persons as aforesaid as evidence of the Law of such Foreign Country.

What Books, &c., shall be evidence of Foreign Law.

XIII. All Maps made under the authority of Government or of any public municipal body, and not made for the purpose of any litigated question, shall *primâ facie* be deemed to be correct, and shall be admitted in evidence without further proof.

Government or public Maps, when to be *primâ facie* proof.

XIV. The following persons only shall be incompetent to testify.

Persons incompetent to testify.

1. Children under seven years of age who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly.

Children.

2. Persons

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2. Persons of unsound mind, who, at the time of their examination, appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly; and no person who is known to be of unsound mind shall be liable to be summoned as a witness, without the consent previously obtained of the Court or person before whom his attendance is required.

Insane persons.

Not to be summoned without leave of Court.

XV. Any person who, by reason of immature age or want of religious belief, or who, by reason of defect of religious belief, ought not, in the opinion of such Court or person, to be admitted to give evidence on oath or solemn affirmation, shall be admitted to give evidence on a simple affirmation, declaring that he will speak the truth, the whole truth, and nothing but the truth.

Children and persons of defective religious belief to testify on simple affirmation.

XVI. The provisions in the last preceding Section as to witnesses shall apply to testimony given by affidavit or otherwise in writing as well as to testimony orally delivered.

Provisions as to witness to apply to affidavits, &c.

XVII. Any such witness wilfully giving false evidence shall be subject to be proceeded against in like manner, and to suffer, if convicted, the same punishment as if he had been sworn and had committed wilful and corrupt perjury. The indictment or charge shall be varied so as to meet the case.

Punishment for giving false evidence.

XVIII. No person shall, by reason of any interest in the result of any suit or of any interest connected therewith, or by reason of relationship to any of the parties thereto, be incompetent to give evidence in such suit.

No incompetency from interest in suit.

XIX. Any party to a civil suit or other proceeding of a civil nature shall be competent and may be compelled to give evidence as a witness therein either on his own behalf or on behalf of any other party to the suit or proceeding, and also to produce any document in his possession or power, in the same manner as if he were not a party to the suit or proceeding. Provided that no Court or person as aforesaid, other than Her Majesty's Supreme Courts of Judicature, shall compel the attendance of any party to such suit or proceeding, for the purpose of giving evidence therein, except

Party to suit may be examined as a witness.

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except under and subject to the rules prescribed in that behalf in Act XIX of 1853.

XX. A husband or wife shall in every civil proceeding be competent to give evidence for or against each other. Provided that any communication made by husband or wife to the other during their marriage shall be deemed a privileged communication and shall not be disclosed without the consent of the person making the same, unless such communication shall relate to a matter in dispute in a suit pending between such husband and wife.

Husband or wife giving evidence.
Provido.

XXI. A witness, whether a party or not, shall not be bound to produce any document relating to affairs of State, the production of which would be contrary to good policy, nor any document held by him for any other person who would not be bound to produce it if in his own possession.

Witness, &c., not bound to produce document relating to State affairs.

XXII. A witness being a party to the suit shall not be bound to produce any document in his possession or power which is not relevant or material to the case of the party requiring its production, nor any confidential writing or correspondence which may have passed between him and any legal professional adviser. If any party, however, offer himself as a witness, he shall be bound to produce any such writing or correspondence in his custody, possession, or power, if relevant or material to the case of the party requiring its production.

Party to suit not bound to produce certain documents.
Unless he offers himself as a witness.

XXIII. Every witness summoned to produce a document shall, if the same be in his custody, possession, or power, be bound to bring it, or cause it to be brought into Court; although there be a valid objection to the right of the party calling for it to compel its production or to the reading or putting it in as evidence, or to the disclosure of the contents thereof, the validity of any such objection made by the person producing the document shall be determined by the Court; and for the better determination thereof, it shall be lawful for the Court to receive any admissible evidence which the person producing the document may give respecting it, and it shall also be lawful for the Court, except in the case of any document relating

Witness summoned to produce a document must bring it into Court.
Mode of determining objection to production.

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relating to affairs of State, to inspect the document, and, if necessary, to call to its assistance any person whom it may appoint to interpret the same. Such person, however, shall be previously sworn truly to interpret the same to the Court alone, and not to disclose the contents thereof except to the Court, unless the Court shall order the document to be given in evidence.

XXIV. A Barrister, Attorney, or Vakeel shall not, without the consent of his client, disclose any communication made by the client to him in the course of his professional employment, nor any advice given by him professionally to his client, nor the contents of any document of his client, the knowledge of which he shall have acquired in the course of his professional employment. The privilege, however, is that of the client, and if any party to a suit shall give evidence therein, at his own instance, he shall be deemed thereby to have waived his privilege, and to have consented to the disclosure by such Barrister, Attorney, or Vakeel, of any matter as aforesaid, which may be relevant, and which the Barrister, Attorney, or Vakeel would have been bound to disclose but for the privilege of his client; and the Barrister, Attorney, or Vakeel shall be bound upon examination to disclose any such matter.

XXV. Any person present in Court, whether a party or not, may be called upon and compelled by the Court to give evidence, and produce any document then and there in his actual possession, or in his power, in the same manner and subject to the same rules as if he had been summoned to attend and give evidence, or to produce such document, and may be punished in like manner for any refusal to obey the order of the Court.

XXVI. Any person, whether a party to the suit or not, may be summoned to produce a document without being summoned to give evidence, and any person summoned merely to produce a document, shall be deemed to have complied with the summons, if he cause such document to be produced instead of attending personally to produce the same.

XXVII. The Rules of evidence in Her Majesty's Supreme Courts as to matters of Ecclesiastical or Admiralty Civil Jurisdiction, shall be the same as they are on the Plea side of the said Courts.

XXVIII. Except

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XXVIII. Except in cases of treason, the direct evidence of one witness, who is entitled to full credit, shall be sufficient for proof of any fact in any such Court or before any such person. But this provision shall not affect any rule or practice of any Court that requires corroborative evidence in support of the testimony of an accomplice or of a single witness in the case of perjury.

Evidence of one witness sufficient proof.

Proviso.

XXIX. Where dying declarations are evidence, they shall be received if it be proved that the deceased was at the time of making the declaration, and then thought himself to be in danger of approaching death, though he entertained at the time of making it hope of recovery.

Dying declarations when admissible.

XXX. The party at whose instance a witness is examined may, with the permission of such Court or person, cross-examine such witness to test his veracity, in the same manner as if he had not been called at his instance, and may be allowed to show that the witness has varied from a previous statement made by him.

Party allowed to cross-examine, and discredit his own witness.

XXXI. In order to corroborate the testimony of a witness, any former statement made by such witness, relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, shall be admissible, and for that purpose a copy of any deposition or statement taken before any Court, Judge, Justice of the Peace, Magistrate or person lawfully exercising the powers of a Magistrate, or before a Commissioner or Superintendent for the Suppression of Thuggee or Dacoity in the discharge of his duty, shall, if certified by such Court, Judge, or other Officer above-mentioned, under his hand or the Official Seal of the Court, or under the hand or Official Seal of such Judge, to be a true copy of such deposition or statement, without further proof, be received as *prima facie* evidence that such deposition or statement was made, and that it was made at the time and place, and under the circumstances, if any, which shall be stated in the certificate or on the face of the deposition or statement.

Former statement admissible to corroborate a witness.

XXXII. A witness shall not be excused from answering any question relevant to the matter in issue in any suit or in any Civil or Criminal proceeding, upon the ground that the answer to such question will criminate, or may tend, directly

Witness bound to answer criminating questions.

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directly or indirectly, to criminate such witness, or that it will expose, or tend, directly or indirectly, to expose such witness to a penalty or forfeiture of any kind. Provided that no such answer, which a witness

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XXXIII. A witness in any cause may be questioned as to whether he has been convicted of any felony or misdemeanor, 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.

Witness may be examined as to conviction for felony.

XXXIV. 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 always that it shall be com-

Proviso. petent 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 purposes of the trial as he shall think fit.

Copy of a document made by a copying machine to be deemed correct.

XXXV. An impression of a document made by a copying machine shall be taken without further proof to be a correct copy.

XXXVI. When an original document is out of the reach of the process of the Court, it shall be lawful for the Court, on application to it in any Civil suit or proceeding, and on notice to the opposite party at a reasonable time before the hearing, to make an order for the reception of secondary evidence of its execution and contents.

Admission of secondary evidence where original document is out of the reach of process.

When attested document may be proved as if unattested.

XXXVII. An attested document may be proved as if unattested, unless it be a document to the validity of which attestation is requisite.

XXXVIII. The

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XXXVIII. The admission of a party to an attested instrument of its execution by himself shall be as against him sufficient *prima facie* proof of such execution of it, though it be an instrument which is required by law to be attested.

Admission *prima facie* proof of an attested document.

XXXIX. Any entry or statement, which would be admissible in evidence after the death of the person who made it, on the ground of its having been made against the interest of the person making it, or on the ground of its having been made in the ordinary course of business, shall be admissible, though the person who made it be not dead, if he is incapable of giving evidence by reason of his subsequent loss of understanding, or is at the time of the trial or hearing *bona fide* and permanently beyond the reach of the process of the Court, or cannot after diligent search be found.

Entry made against interest or in course of business when admissible in life-time of person making it.

XL. Any entry in any books proved to have been regularly kept in the course of business or in any public office, so far as such entry merely refers to and tends to identify by name, description, number, or otherwise any Bank Notes or other Securities for the payment of money, or other property, and the payer-in or receiver of them, shall, in any case where such identification is necessary to be proved, be admissible in evidence for that limited purpose if it shall appear to have been made at or about the time of the transaction to which it relates, though the person who made it, or he on whose information it was made, is alive and capable of being produced as a witness.

Entry in course of business when admissible for purpose of identification.

XLI. Any receipt in writing, acknowledging the receipt of any money, valuable securities, or goods, shall, on proof of the execution thereof, be admissible in evidence before such Court or person aforesaid, not only against the party giving it, but also against any person in whose favor such receipt would operate as a discharge, or to whom it would render the person giving it liable for the money, security, or goods acknowledged to have been received.

Receipt when evidence against person other than the giver.

XLII. Whenever a receipt would be admissible under the preceding Section if given by a principal, a receipt given by an agent or servant of such principal shall in like manner be evidence upon proof of the authority to give such receipt.

Receipt of agent.

XLIII. Books

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XLIII. Books proved to have been regularly kept in the course of business or in any public office, shall be admissible as corroborative, but not as independent proof of the facts stated therein.

Books kept in course of business or in a public office admissible as corroborative evidence.

XLIV. The following documents may be admitted as corroborative evidence:—Certificates of shares, and of registration thereof, bills of lading, invoices, account sales, receipts usually given on the payment, deposit, or delivery of money, goods, securities, or other things, provided they be proved to have been given in the ordinary course of business.

Documents admissible as corroborative evidence.

XLV. A witness shall be allowed before any such Court or person aforesaid to refresh his memory by any writing made by himself or by any other person at the time when the fact occurred, or immediately afterwards, or at any other time when the fact was fresh in his memory, and he knew that the same was correctly stated in the writing. In such case the writing shall be produced and may be seen by the adverse party, who may, if he choose, cross-examine the witness upon it.

Refreshing memory of witness.

XLVI. Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document, provided the Court or person, under the circumstances, be satisfied that there is sufficient reason for the non-production of the original.

Court may permit a copy of document to be used to refresh memory.

XLVII. In cases of pedigree, the declarations of illegitimate members of the family, and also persons who, though not related by blood or marriage to the family, were intimately acquainted with its members and state, shall be admissible in evidence after the death of the declarant, in the same manner and to the same extent as those of deceased members of the family.

Declarations of illegitimate persons, &c., admissible in questions of pedigree.

XLVIII. On an inquiry whether a signature, writing, or seal is genuine, any undisputed signature, writing, or seal of the party, whose signature, writing, or seal is under dispute, may be compared with the disputed one, though such signature, writing, or seal be on an instrument which is not evidence in the cause.

Comparison of handwriting, &c.

XLIX. Any Power of Attorney, which has been executed at a place distant more than one hundred miles from the place wherein the action, suit, or proceeding is depending, may be proved by the

Proof of Power of Attorney.

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the production of it, without further proof, where it purports, on the face of it, to have been executed before, and authenticated by a Notary Public, or any Court, Judge, Consul, or Magistrate.

L. Whenever it is proved that a Letter Book is kept, and that, according to the usual course of business, letters are copied into such book and despatched, and the Letter Book is produced, and it is proved that the letter was despatched according to the usual practice, to the best of the knowledge and belief of the witness, having reasonable ground for forming that belief, the Court may presume the despatch of that letter according to the usual course of business.

LI. Any book proved to have been kept for marking the despatch and receipt of letters, containing an entry of the despatch of a letter, and an acknowledgment of the receipt of such letter, shall, on proof that such entry was made in the usual course of business, be *primâ facie* evidence of the receipt of such letter.

LII. So much of Section VI of Act XV of 1852 as provides that every such application as therein mentioned shall be made before issue joined in any such action, or twenty-one days before the trial or hearing of any other legal proceeding as therein mentioned, is hereby repealed.

LIII. The provision contained in the 16th Section of Act VI of 1854, that affidavits of particular witnesses, or affidavits as to particular facts or circumstances, may, by consent of the parties, or by leave of the Court obtained upon notice, be used in the hearing of any cause on the Equity side of the Supreme Courts, shall extend to all civil actions, suits, and proceedings on all sides of the Courts.

LIV. So much of the 17th Section of the same Act as provides that upon the hearing of any motion, petition, or other proceeding in any of the said Supreme Courts, the Court may, upon the application of any of the parties thereto, or of its own accord, require and enforce the attendance and oral examination before itself of any witness or of any party to the suit, and may also require and enforce the production of any document or documents, and may direct the costs of the attendance and examination of such witness or party to be paid by such of the parties to the suit, or in such manner as it may think fit, shall extend to all civil actions, suits,

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suits, and proceedings on all sides of the said Courts.

LIV. The 33rd Section of the Act No. VI of 1854, which applies only to proof of accounts on the Equity side of the said Supreme Courts, shall extend to and embrace all accounts directed to be taken on any side of the said Courts.

LVI. Whenever by any Statute or Act, Regulation or Ordinance now in force, or any Statute or Act to be hereafter in force, any certificate, certified copy, or other document, shall be receivable in evidence of any particular in any Court of Justice, the same, if it is substantially in the form and purports to be executed in the manner directed by the Statute, Act, Regulation, or Ordinance which makes it evidence, shall be *prima facie* evidence, where it is rendered admissible, without proof of any seal, stamp, signature, character, or authority, which it is directed to have, or from which it is directed to proceed.

LVII. The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised, that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

LVIII. Nothing in this Act contained shall be so construed as to render inadmissible in any Court any evidence which, but for the passing of this Act, would have been admissible in such Court.