

Evidence Act

CHAPTER 154 OF THE REVISED STATUTES, 1989

as amended by

1995-96, c. 13, s. 79; 1999 (2nd Sess.), c. 8, s. 5;
2001, c. 6, s. 105; 2002, c. 17, 2015, c. 8, s. 13; 2022, c. 54, s. 24



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**An Act Respecting
Witnesses and Evidence**

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Short title

- 1** This Act may be cited as the *Evidence Act*. R.S., c. 154, s. 1.

INTERPRETATION

Interpretation

- 2** In this Act,
- (a) “commissioner” includes a commissioner appointed for taking affidavits, and also a commissioner and any other person specially authorized under this Act, the *Judicature Act* or the rules of the Supreme Court to take examinations, depositions, affirmations or answers;
 - (b) “court” includes any person having by law or consent of parties authority to receive evidence;
 - (c) “criminal proceeding” includes any prosecution for an offence under any statute of the Province;
 - (d) “witness” includes parties to an action when entitled or compellable to be examined. R.S., c. 154, s. 2.

STATUTES

Evidence of statute or ordinance

3 (1) Evidence of any statute of the Imperial Parliament, of the Parliament of Canada, of this Province or of any province, colony or territory forming part of Canada, or of any ordinance of any such territory, may be given in any court by the production of a copy of such statute or ordinance, purporting to be published by the King's Printer or by the government printer for Great Britain or Canada or for such province, colony or territory, whether published in print or electronic form.

(2) In addition to the method provided in subsection (1), evidence of any statute of this Province may be given in any court or for any purpose by the production of a copy of such statute certified by the Clerk of the Assembly or the

Legislative Counsel, whether the statute is in the form of a bill or of an engrossed bill.

(2A) In addition to the methods provided in subsections (1) and (2), evidence of any statute of this Province may be given in any court or for any purpose by the production of a copy of such statute purporting to be published by authority of the Speaker of the Assembly, whether published in print or electronic form.

(3) Notwithstanding any other provision in this Act, judicial notice shall be taken of all Acts of the Parliament of Canada, of this Province or of any province or territory forming part of Canada, or of any ordinance of any such territory, whether enacted before or after the passing of the *Constitution Act, 1867*. R.S., c. 154, s. 3; 1999 (2nd Sess.), c. 8, s. 5.

PUBLIC DOCUMENTS

Proof of Imperial public document

4 Imperial proclamations, orders in council, treaties, orders, warrants, licences, certificates, rules or regulations, or other Imperial official records, acts or documents, may be proved

(a) in the same manner as the same are from time to time provable in any court in England;

(b) by the production of a copy of the Canada Gazette or a volume of the Acts of the Parliament of Canada purporting to contain a copy of the same, or a notice thereof; or

(c) by the production of a copy thereof, purporting to be printed by the King's Printer for Canada or for the Province. R.S., c. 154, s. 4.

Evidence of federal public document

5 Evidence of any proclamation, order, regulation or appointment made or issued by the Governor General, by the Governor General in Council or by or under the authority of any minister or head of any department of the Government of Canada may be given in any court of justice in the Province, and in all or any legal proceedings of any kind in the Province, in any one of the modes hereinafter mentioned:

(a) by the production of a copy of the Canada Gazette or of a volume of the Acts of the Parliament of Canada, purporting to contain a copy of such proclamation, order, regulation or appointment, or a notice thereof;

(b) by the production, in case of any proclamation, order, regulation or appointment, of a copy thereof purporting to be printed by the King's Printer for Canada; or

(c) by the production, in case of any proclamation, order, regulation or appointment made or issued by the Governor General or by the Governor General in Council, of a copy or extract purporting to be a true copy thereof by the Clerk or assistant or acting Clerk of the King's Privy Council for Canada, and, in the case of any order, regulation or appointment made or issued by or under the authority of any minister or head of a department, by the production of a copy thereof, or extract therefrom, purporting to be certified as true by such minister, or by his deputy or acting deputy, or by the sec-

retary, or acting secretary, of the department over which the minister presides. R.S., c. 154, s. 5.

Evidence of provincial public document

6 (1) Evidence of any proclamation, order, regulation or appointment made or issued by the Lieutenant Governor, by the Governor in Council of the Province, by the lieutenant governor or governor in council of any of the provinces or territories of Canada or by or under the authority of any members of the executive council, being the head of any department of the government of such province or territory, may be given in any court of justice in the Province, and in all or any legal proceedings of any kind in the Province in any one of the modes hereinafter mentioned:

(a) by the production of a copy of such proclamation, order, regulation or appointment, purporting to be printed by the King's Printer of the Province or by the government printer for the province or territory;

(b) by the production of a copy of the official Gazette for the province, purporting to contain a copy of such proclamation, order, regulation or appointment, or a notice thereof;

(c) by the production of a copy or extract of such proclamation, order, regulation or appointment, certified to be a true copy by the Clerk or assistant or acting Clerk of the Executive Council or by the head of any department of any such provincial or territorial government, or by his deputy, or acting deputy, as the case may be.

(2) For greater certainty, any regulation or consolidated regulation or copy of a regulation or consolidated regulation purporting to be published in accordance with the *Regulations Act* shall be received in evidence without further proof to its contents. R.S., c. 154, s. 6; 2022, c. 54, s. 24.

Evidence of order of Governor General

7 Any order in writing, signed by the Secretary of State of Canada, and purporting to be written by command of the Governor General, shall be received in evidence as the order of the Governor General. R.S., c. 154, s. 7.

Evidence of order of Lieutenant Governor

8 Any order in writing, signed by the Provincial Secretary of the Province, and purporting to be written by command of the Lieutenant Governor, shall be received in evidence as the order of the Lieutenant Governor. R.S., c. 154, s. 8.

Proof of consent to prosecute

9 A certificate purporting to be signed by the head of a department of the Government of the Province that the head has consented to the commencement of a prosecution or proceeding under any Act of the Legislature is *prima facie* proof of such consent and such certificate shall be received in evidence without proof of the handwriting or official position of the person purporting to sign the same. R.S., c. 154, s. 9.

Proof of acts of state

10 Proclamations, treaties and other acts of state of any foreign state or of any British colony may be proved by the production of a copy purporting to be sealed with the seal of the foreign state, or British colony, to which the original document belongs. R.S., c. 154, s. 10.

Judicial notice of proclamation or order in council

11 Notwithstanding anything in this Act, every proclamation and every order made or issued by the Governor General or the Governor General in Council or by the Lieutenant Governor or the Lieutenant Governor in Council, and every publication thereof in the Canada Gazette and in the Royal Gazette, shall be judicially noticed by all courts, judges, justices of the peace and others. R.S., c. 154, s. 11.

OFFICIAL DOCUMENTS**Copies in Canada Gazette or Royal Gazette**

12 All copies of official and other notices, advertisements and documents, printed in the Canada Gazette or in the Royal Gazette, shall be *prima facie* evidence of the originals, and of the contents thereof. R.S., c. 154, s. 12.

If original record admissible evidence

13 In every case in which the original record could be received in evidence,

- (a) a copy of any grant, map, plan, report, letter or official or public document, belonging to or deposited in any department of the Government of Canada, of this Province or of any province of Canada, purporting to be certified under the hand of any officer or person in whose custody such grant, map, plan, report, letter or official or public document is placed; and
- (b) a copy of a document, by-law, rule, regulation or proceeding, or of any entry in any register, or other book of any municipal or other corporation created by charter or statute of Canada, of this Province or of any province of Canada, purporting to be certified under the seal of the corporation and the hand of the presiding officer, clerk or secretary thereof,

shall be received in evidence in any court without proof of the seal of the corporation, of the signature or of the official character of the person or persons appearing to have signed the same, and without further proof thereof, provided that no subpoena, no summons and no other process shall be issued or sued out requiring any person having the custody of any of the public documents set out in clause (a) to bring or produce before any court, judge or officer any of such public documents or records except upon an order of the court, judge or officer having jurisdiction in the cause or matter with respect to which such public documents or records are required to be brought or produced. R.S., c. 154, s. 13.

Certificate of Treasury Board

14 Every certificate granted by the Treasury Board under the *Bank Act* (Canada) shall, on proof of the signature subscribed thereto, be received as evidence of the contents of such certificate, and that the same was granted by such Treasury Board. R.S., c. 154, s. 14.

Copy of entry in government book

15 A copy of any entry in any book kept in any department of the Government of Canada or of this Province shall be received as evidence in any court 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 made in the usual and ordinary course of business of such department and that such copy is a true copy thereof. R.S., c. 154, s. 15.

Copy of document admissible by public nature

16 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, and no other statute exists which renders its contents provable by means of a copy, a copy thereof or extract therefrom shall be received in evidence in any court, provided it is proved that it is a copy or extract purporting to be certified to be true by the officer to whose custody the original has been entrusted. R.S., c. 154, s. 16.

Military certificate of death overseas

17 The production of a certificate in writing signed by the officer in charge of estates of the Canadian Overseas Expeditionary Forces, by the Director of Pay and Record Services of the Canadian Overseas Expeditionary Forces, by the director or other head of the Record Office at the Military Headquarters, Ottawa, or by any officer designated by the Governor General in Council for that purpose, stating that the person named in the certificate was a member of the Canadian Expeditionary Forces, and died while overseas, and that he has been officially reported dead, shall be sufficient evidence of the death of such person for any purpose to which the authority of the Legislature extends. R.S., c. 154, s. 17.

Armed forces death certificate

18 The production of a certificate in writing purporting to be signed by a person described thereon as

- (a) Adjutant General, Deputy Adjutant General, or Officer in charge of Records, Department of National Defence, in the case of a member of His Majesty's Military Forces;
- (b) Naval Secretary, Department of National Defence, in the case of a member of His Majesty's Naval Forces;
- (c) Chief of the Air Staff, or Director of Postings and Records, Department of National Defence, in the case of a member of His Majesty's Air Forces; or
- (d) an officer of His Majesty's Military, Naval or Air Forces authorized so to sign, in the case of a member of any of His Majesty's Forces,

stating that a person named in the certificate was a member of any of the said Forces and that he has been officially reported as dead, or presumed to be dead, shall be sufficient proof of the death of such person and of all the facts in connection therewith stated in such certificate for any purpose to which the authority of the Legislature extends. R.S., c. 154, s. 18.

DOCUMENTS IN COURTS

Copy of court document

19 (1) A copy of any document, writing or proceeding, filed in any court in this Province, shall be received as evidence to the same extent as the original, if it is certified under the seal of the court or by the proper officer under his hand.

(2) A copy of any order for judgment, or of the entry of the judgment in the docket of judgments, certified under the hand of the proper officer shall be sufficient proof of the judgment in any court without the production of any record or other proceeding in the action. R.S., c. 154, s. 19.

Judicial proceeding of any country

20 Evidence of any proceeding or record whatsoever of, in or before any court in the United Kingdom or the Supreme or Federal Courts of Canada, or any court, or before any justice of the peace, or any coroner, in any province of Canada, or any court in any British colony or possession, or any court of record of the United States of America, or of any state of the United States of America, or of any other foreign country, may be given in any action or proceeding by a certified copy thereof, purporting to be under the seal of such court, or under the hand or seal of such justice or coroner, as the case may be, without any proof of the authenticity of such seal, or of the signature of such justice or coroner, or other proof whatever, and if any such court, justice or coroner has no seal, or so certifies, then by a copy purporting to be certified under the signature of a judge or presiding magistrate of such court, or of such justice or coroner, without any proof of the authenticity of such signature, or other proof whatsoever. R.S., c. 154, s. 20.

Bank entry

21 (1) Subject to this Section, a copy of any entry in any book or record kept in any bank shall in all legal proceedings be received as *prima facie* evidence of such entry and of the matters, transactions and accounts therein recorded.

(2) A copy of an entry in such book or record shall not be received in evidence under this Section unless it be first proved that the book or record was at the time of the making of the entry, one of the ordinary books or records of the bank, and that the entry was made in the usual and ordinary course of business, and that the book or record is in the custody or control of the bank and that such copy is a true copy thereof and such proof may be given by the manager or accountant of the bank and may be given orally or by affidavit, sworn before any commissioner or other person authorized to take affidavits.

(3) A bank or officer of a bank shall not, in any legal proceeding 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 a court or judge made for special cause.

(4) On the application of any party to a legal proceeding the court 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 purpose of any such proceeding and the person whose account is to be inspected shall be notified of the application at least two

clear days before the hearing thereof, and if it is shown to the satisfaction of the court that such person cannot be notified personally, such notice may be given by addressing the same to the bank.

(5) The costs of any application to a court under or for the purposes of this Section, and the costs of anything done or to be done under an order of a court made under or for the purposes of this Section, shall be in the discretion of the court which 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.

(6) In this Section,

(a) “bank” means any bank to which the *Bank Act* (Canada) applies and includes any branch, agency or office of any such banks;

(b) “court” means the court, judge, arbitrator or person before whom a legal proceeding is held or taken;

(c) “legal proceeding” means any civil or criminal proceeding or inquiry in which evidence is or may be given and includes an arbitration.

(7) Holidays shall be excluded from the computation of time under this Section. R.S., c. 154, s. 21.

Photographic records

22 (1) In this Section,

(a) “person” includes

(i) the Government of Canada and of any province of Canada and any department, commission, board or branch of any such government,

(ii) a corporation,

(iii) the heirs, executors, administrators or other legal representatives of a person;

(b) “photographic film” includes any photographic plate, microphotographic film and photostatic negative and “photograph” shall have a corresponding meaning.

(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.

(3) and (4) *repealed 2002, c. 17, s. 1.*

(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. R.S., c. 154, s. 22; 2002, c. 17, s. 1.

Business records

23 (1) In this Section,

(a) “business” includes every kind of business, profession, occupation, calling, operation of institutions, and any and every kind of regular organized activity, whether carried on for profit or not;

(b) “record” includes any information that is recorded or stored by means of any device.

(2) Any writing or record made of any act, transaction, occurrence or event is admissible as evidence of such act, transaction, occurrence or event if made in the usual ordinary course of any business and if it was in the usual and ordinary course of such business to make such writing or record at the time of such act, transaction, occurrence or event or within a reasonable time thereafter.

(3) Evidence to the effect that the records of a business do not contain any record of an alleged act, condition or event shall be competent to prove the non-occurrence of the act or event or the non-existence of the condition in that business if the judge finds that it was the regular course of that business to make such records of all such acts, conditions or events at the time or within reasonable time thereafter and to retain them.

(4) The circumstances of the keeping of any records, including the lack of personal knowledge of the witness testifying as to such records, may be shown to affect the weight of any evidence tendered pursuant to this Section, but such circumstances do not affect its admissibility.

(5) Nothing in this Section affects the admissibility of any evidence that would be admissible apart from this Section or makes admissible any writing or record that is privileged. R.S., c. 154, s. 23.

ELECTRONIC RECORDS

Interpretation of Sections 23A to 23H

23A In this Section and Sections 23B to 23H,

(a) “data” means representations, in any form, of information or concepts;

(b) “electronic record” means data that is recorded or stored on any medium in or by a computer system or other similar device and that can be read or perceived by a person or a computer system or other similar

device and includes a display, printout or other output of that data, other than a printout referred to in subsection 23D(2);

(c) “electronic records system” includes the computer system or other similar device by or in which data is recorded or stored, and any procedures related to the recording and storage of electronic records. 2002, c. 17, s. 2.

Effect on common law or statutory rule

23B (1) Sections 23C to 23H do not modify any common law or statutory rule relating to the admissibility of records, except the rules relating to authentication and best evidence.

(2) A court may have regard to evidence adduced under Sections 23C to 23H in applying any common law or statutory rule relating to the admissibility of records. 2002, c. 17, s. 2.

Burden of proof

23C The person seeking to introduce an electronic record in any legal proceeding has the burden of proving its authenticity by evidence capable of supporting a finding that the electronic record is what the person claims it to be. 2002, c. 17, s. 2.

Best evidence rule

23D (1) In any legal proceeding, subject to subsection (2), where the best evidence rule is applicable in respect of an electronic record, the rule is satisfied on proof of the integrity of the electronic records system in or by which the data was recorded or stored.

(2) In any legal proceeding, an electronic record in the form of a print-out that has been manifestly or consistently acted on, relied upon or used as the record of the information recorded or stored on the printout is the record for the purposes of the best evidence rule. 2002, c. 17, s. 2.

Integrity of electronic records system

23E In the absence of evidence to the contrary, the integrity of the electronic records system in which an electronic record is recorded or stored is presumed in any legal proceeding

(a) by evidence that supports a finding that at all material times the computer system or other similar device was operating properly or, if it was not, the fact of its not operating properly did not affect the integrity of the electronic record, and there are no other reasonable grounds to doubt the integrity of the electronic records system;

(b) if it is established that the electronic record was recorded or stored by a party to the proceedings who is adverse in interest to the party seeking to introduce it; or

(c) if it is established that the electronic record was recorded or stored in the usual and ordinary course of business by a person who is not a party to the proceedings and who did not record or store it under the control of the party seeking to introduce the record. 2002, c. 17, s. 2.

Determination of admissibility

23F For the purpose of determining under any rule of law whether an electronic record is admissible, evidence may be presented in any legal proceeding in respect of any standard, procedure, usage or practice on how electronic records are to be recorded or stored, having regard to the type of business or endeavour that used, recorded or stored the electronic record and the nature and purpose of the electronic record. 2002, c. 17, s. 2.

Affidavit

23G The matters referred to in subsection 23D(2) and Sections 23E and 23F may be established by an affidavit given to the best of the deponent's knowledge or belief. 2002, c. 17, s. 2.

Cross-examination of deponent

23H (1) A deponent of an affidavit referred to in Section 23G that has been introduced in evidence may be cross-examined as of right by a party to the proceedings who is adverse in interest to the party who has introduced the affidavit or has caused the affidavit to be introduced.

(2) Any party to the proceedings may, with leave of the court, cross-examine a person referred to in clause 23E(c). 2002, c. 17, s. 2.

SHIPS' TITLES**Registers of British ships and vessels**

24 (1) Every register of, or declaration made in respect to, any British ship, in pursuance of any of the Acts relating to the registry of British ships, may be proved in any court, either by the production of the original, or by a copy thereof, purporting to be certified under the hand of the person having the custody of the original.

(2) Every register, or copy of register, and every certificate of registry granted under any of the Acts relating to the registry of British vessels, and purporting to be signed as required by law, shall be received in evidence in any court as presumptive proof of all the matters contained or recited in such register, when the register, or such copy thereof as aforesaid, is produced, and of all the matters contained or recited in, or indorsed upon, such certificate of registry when such certificate is produced. R.S., c. 154, s. 24.

DOCUMENTS ADMISSIBLE IN ENGLAND**Document admissible in England or Ireland**

25 Every document which is admissible in evidence of any particular in any court of justice in England, or Ireland, without proof of the seal, or stamp, or signature, authenticating the same, or of the judicial or official character of the person appearing to have signed the same, shall be received in evidence to the same extent, and for the same purposes, in any court without proof of the seal, or stamp, or signature authenticating the same, or of the judicial or official character of the person appearing to have signed the same. R.S., c. 154, s. 25.

TOWNSHIPS AND GRANTS

Plan of township or respecting Crown grant

26 (1) The plan of any township, or the plan of partition, allotment or location of any Crown grant of land in this Province, may be proved in any court by the production

(a) of a copy of any such plan, certified by the Minister of Natural Resources and Renewables to be a copy of the original plan, or of the duplicate original plan, or the certified copy of the plan on file in his department; or

(b) of a copy of any such plan on file in the registry of deeds for the registration district in which such township or land granted is, in whole or part, situated, provided such copy is certified by such Minister to be a true copy of the original plan, or of such duplicate or certified copy, on file in his department.

(2) Every such plan on file in such registry which bears the certificate of the Prothonotary, or of any of the former prothonotaries at Halifax, to the effect that such plan is an original plan returned to the office of the Prothonotary at Halifax, shall be *prima facie* evidence that the same is the original plan so returned.

(3) Every such plan or copy shall be received in evidence without proof of the report or other proceedings taken in respect to the partition, location or allotment of such township or grant.

(4) The report, allotment or other document in respect to any township, or in respect to the partition, allotment or location of any grant of land, may be proved in any court by the production of a copy, certified by the Minister of Natural Resources and Renewables to be a true copy of the original document on file in his department.

(5) If there is comprised in any such plan or document more than one lot of the original lots, it shall be sufficient to produce in evidence an extract, representing or having reference to the lot in question, certified to be a true extract, provided that the party intending to produce the same has, ten days before the trial, given to the party against whom it is intended to be produced notice of such intention. R.S., c. 154, s. 26; O.I.C. 91-971; O.I.C. 2018-188; O.I.C. 2021-210.

Copy of grant

27 (1) A copy of any duplicate original of a grant from the Crown deposited in the Department of Natural Resources and Renewables, certified by the Minister of Natural Resources and Renewables, or a copy of any grant from the books of registry for any registration district in which the land granted is situated, certified under the hand of the registrar of deeds, shall be received in evidence in any court to the same extent as the original grant.

(2) If any such duplicate original contains a reference to any plan, and there is on file in such department a plan corresponding to the description in, or meeting the requirements of, the said duplicate original, such plan shall be deemed to be the plan referred to in such duplicate original, notwithstanding the same is not annexed to such a duplicate original. R.S., c. 154, s. 27; O.I.C. 91-971; O.I.C. 2018-188; O.I.C. 2021-210.

DEEDS, WILLS AND OTHER DOCUMENTS

Copy of deed or document in registry book

28 A copy of any deed, or any document from the books of registry, certified under the hand of the registrar of deeds, or proved to be a true copy taken therefrom, shall be taken as evidence in the place of the original, if it is made to appear to the court, by the affidavit of the party, his agent, or solicitor, that such original is not in the possession or under the control of the party and that he has been unable to procure the same. R.S., c. 154, s. 28.

Records under Land Registration Act

29 For properties registered pursuant to the *Land Registration Act*, all records and copies of records that are required by law to be kept or held by a registrar or the Registrar General, and accurate reproductions of such records or copies, shall in any court be admissible in evidence as proof of the contents therein if certified as correct by the registrar or Registrar General. 2001, c. 6, s. 105.

Probate

30 (1) The probate of a will, or a copy thereof, certified under the hand of the registrar of probate, or proved to be a true copy of the original will, when such will has been recorded, shall be received as evidence of the original will, but the court may, upon due cause shown upon affidavit, order the original will to be produced in evidence, or may direct such other proof of the original will as under the circumstances appears necessary or reasonable for testing the authenticity of the alleged original will and its unaltered condition, and the correctness of the prepared copy.

(2) This Section shall apply to wills and the probate, and copies of wills proved elsewhere than in this Province provided that the original wills have been deposited, and the probate and copies granted in courts having jurisdiction over the proof of wills and administration of intestate estates, or the custody of wills. R.S., c. 154, s. 30.

Notice of intent to use Sections 28 and 30

31 A party intending to avail himself of Sections 28 and 30 shall give notice, in writing, of such intention to the opposite party, at least ten days before the trial, with a schedule of the deeds, documents or wills so intended to be given in evidence, and the books wherein the same are registered, but the judge may dispense with such notice if he is satisfied that no injustice has been done by the want thereof. R.S., c. 154, s. 31.

Personal property documents

32 A copy of any writing filed or registered pursuant to the *Assignment of Books Debts Act*, the *Bills of Sale Act*, the *Conditional Sales Act* or the *Corporations Securities Registration Act* may be proved in any court by the production of a copy thereof, certified under the hand of the person in whose office the writing is filed. 1995-96, c. 13, s. 79.

Deed or document registered in registry

33 (1) The registration of any deed or document registered in the registry of deeds may be proved in any court by the production of the certificate of

registry, signed by the registrar, indorsed on such deed or document, or upon any such certified copy of such deed or document.

(2) No subpoena, no summons and no other process shall be issued or sued out requiring a registrar of deeds to bring or produce before any court, judge or officer any books of registry or any other records pertaining to the office of registrar of deeds except upon an order of the court, judge or officer having jurisdiction in the cause or matter in respect of which the books of registry or records are required to be brought or produced. R.S., c. 154, s. 33.

Deed or document under Land Registration Act

33A The registration or recording of any deed or document pursuant to the *Land Registration Act* may be proved in any court by the production of the certificate of registration or recording, as the case may be, signed by the registrar, endorsed on such deed or document, or upon any such certified copy of such deed or document. 2001, c. 6, s. 105.

Restriction on subpoena

33B For properties registered pursuant to the *Land Registration Act*, no subpoena, no summons and no other process shall be issued or sued out requiring a registrar or the Registrar General to bring or produce before any court, judge or officer any records pertaining to the office of registrar or Registrar General, except upon an order of the court, judge or officer having jurisdiction in the cause or matter in respect of which the records are required to be brought or produced. 2001, c. 6, s. 105.

Deed executed out of the Province

34 A deed executed out of the Province, as well in foreign countries as in the British dominions, shall be received in evidence in any court if there is endorsed on the deed such a certificate of its execution as is required by the *Registry Act* for the registration of such deed. R.S., c. 154, s. 34.

Copy of notarial act in Quebec

35 (1) A copy of a notarial act, or instrument in writing, made in Quebec before a notary, filed, enrolled or enregistered by such notary, and 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 received in evidence in any court in the place of the original and shall have the same force and effect as the original would have if produced and proved.

(2) A party intending to avail himself of this Section shall, if the instrument proposed to be proved is a will or deed, give notice in writing of such intention to the opposite party at least ten days before the trial, specifying the will or deed and the name and address of the notary, but the judge may dispense with such notice if he is satisfied that no injustice has been done by the want thereof. R.S., c. 154, s. 35.

Protest of negotiable instrument

36 The production in any court of any protest, wherever made, under the hand or seal of one or more notaries public, of a bill of exchange or promissory

note, shall be *prima facie* evidence of the making of such protest and of the statements therein contained. R.S., c. 154, s. 36.

Notice respecting negotiable instrument

37 Any note, memorandum or certificate at any time made by a notary, or firm of notaries, in Canada, in the handwriting of such notary, or a member of such firm, signed by such notary or firm at the foot of or embodied in any protest, or in a regular register of official acts kept by such notary or firm, shall be *prima facie* evidence in the Province 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., c. 154, s. 37.

Telegraphic message

38 (1) In any action or other proceeding where a party intends to prove the sending and contents of a telegraphic message, he may give notice to the opposite party, at least ten days before the trial or other proceeding, that he intends, at such trial or proceeding, to give in evidence as proof of the contents of the telegraphic message alleged to have been sent, the message received by him from the telegraph office, and such message, so received, shall be received as evidence in any court, provided the party so receiving the same proves that it was received at the telegraph office of the place to which it purports to be addressed.

(2) The judge may dispense with such notice if he is satisfied that no injustice has been done by the want thereof. R.S., c. 154, s. 38.

MODE OF PROVING

Proof of handwriting or official character

39 No proof shall be required of the handwriting or official position of any person certifying, in pursuance of this Act, to the truth of any copy of or extract from any proclamation, order, regulation, appointment, book, grant, map, plan, will, deed or other document, and any such copy or extract may be in print or in writing, or partly in print and partly in writing. R.S., c. 154, s. 39.

Proof of document if attestation not required

40 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. R.S., c. 154, s. 40.

Comparison of disputed writing

41 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 writing, 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. R.S., c. 154, s. 41.

Evidence respecting foreign law and marriages

42 (1) Where, for the purpose of disposing of any action or other matter which is being tried by a judge with a jury in any court in the Province, it is

necessary to ascertain the law of any other country which is applicable to the facts of the case, any question as to the effect of the evidence given with respect to that law shall, instead of being submitted to the jury, be decided by the judge alone.

(2) Wherever in any cause or matter in any court in the Province it is necessary to prove a foreign marriage and the fact of the solemnization of such foreign marriage is proved, there shall thereupon arise a *prima facie* presumption that such foreign marriage was duly solemnized in accordance with the foreign law. R.S., c. 154, s. 42.

Vital statistics

43 A court may receive as evidence of the facts stated in it, a document purporting to be either the original or a certified copy of a certificate, entry or record of a birth, death or marriage alleged to have taken place anywhere outside the Province. R.S., c. 154, s. 43.

COMPETENCY OF WITNESSES

Competency unaffected by crime or interest

44 No person shall be an incompetent witness by reason of incapacity from crime or from interest. R.S., c. 154, s. 44.

Competency and compellability at trial

45 On the trial of any action, matter or proceeding in any court, the parties thereto, and the persons in whose behalf any such action, matter or proceeding is brought or instituted, or opposed, or defended, and the husbands and wives of such parties and persons, shall, except as hereinafter provided, be competent and compellable to give evidence, according to the practice of the court, on behalf of either or any of the parties to the action, matter or proceeding, provided that in any action or proceeding in any court, by or against the heirs, executors, administrators or assigns of a deceased person, an opposite or interested party to the action shall not obtain a verdict, judgment, award or decision therein on his own testimony, or that of his wife, or of both of them, with respect to any dealing, transaction or agreement with the deceased, or with respect to any act, statement, acknowledgement or admission of the deceased, unless such testimony is corroborated by other material evidence. R.S., c. 154, s. 45.

Where action in consequence of adultery

46 The parties to an action or proceeding instituted in consequence of adultery, and their husbands and wives, shall be competent, but not compellable to give evidence, but the husband or wife, if competent only under this Act, shall not be asked or bound to answer any question tending to show that he or she has been guilty of adultery, unless he or she shall have already given evidence in the same action or proceeding in disproof of his or her alleged adultery or unless permission to ask such question is given by the presiding judge. R.S., c. 154, s. 46.

Evidence of no sexual intercourse

47 A husband or wife may, in an action, give evidence that he or she 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. R.S., c. 154, s. 47.

Where person charged in criminal proceeding

48 Nothing in this Act contained shall render any person who, in any criminal proceeding, is charged with the commission of any offence, or the wife or husband of such person compellable to give evidence for the prosecution. R.S., c. 154, s. 48.

Communications between spouses

49 No husband shall be compellable to disclose any communication made to him by his wife during the marriage and no wife shall be compellable to disclose any communication made to her by her husband during the marriage. R.S., c. 154, s. 49.

No presumption of compulsion

50 No presumption shall be made that a married woman committing an offence does so under compulsion because she commits it in the presence of her husband. R.S., c. 154, s. 50.

ATTENDANCE OF WITNESSES**Subpoena**

51 Where a witness in any action resides more than five miles from the place at which the trial is to take place, a justice of the peace may issue a subpoena for such person to attend at such trial, and the same may be in the form of a justice's subpoena, or to the like effect, and such subpoena shall have the same force and effect as if it had been issued out of the court in which the action is pending. R.S., c. 154, s. 51.

Witness fees

52 No person shall be obliged to attend or give evidence in any action, before any court, unless he is tendered his legal fees for such attendance and necessary travel. R.S., c. 154, s. 52.

Testimony of Supreme Court judge

53 The testimony of a judge of the Supreme Court may be taken *de bene esse*, and may be used on the trial of an action if he is, owing to official business, unable to attend such trial. R.S., c. 154, s. 53.

Warrant for arrest of witness

54 If it is made to appear to a court or judge or other person authorized to hear evidence that a witness has been duly served with a subpoena or order requiring him to attend and give evidence before such court, judge or other person so authorized, and his fees for travel and attendance paid or tendered to him, and that such witness refuses or neglects to attend to give evidence as required by such subpoena or order and that his evidence is material, such court, judge or other person so authorized may, in addition to any power which it or he possesses for the punishment of such witness as for a contempt of court, issue a warrant in the like form as is used in the Supreme Court directed to any sheriff, constable or other proper officer for the immediate arrest of such witness to be brought before such court, judge or other person so authorized for the purpose of giving evidence in the cause or matter. R.S., c. 154, s. 54.

EXAMINATION OF WITNESSES

Restrictions if examining own witness

55 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, in the opinion of the judge, proves 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, shall be mentioned to the witness, and he shall be asked whether or not he made such statement. R.S., c. 154, s. 55.

Previous inconsistent statement

56 If a witness, upon cross-examination as to a former statement made by him relative to the subject-matter of a cause, and inconsistent with his present testimony, does not distinctly admit that he 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, shall be mentioned to the witness, and he shall be asked whether or not he made such statement. R.S., c. 154, s. 56.

Examination as to previous written statement

57 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 shall, 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 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 purposes of the trial as he thinks fit. R.S., c. 154, s. 57.

Criminal record

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

(2) For such certificate a fee of one dollar and no more shall be paid. R.S., c. 154, s. 58.

Self-incrimination

59 (1) A witness shall not be excused from answering any question or producing any document upon the ground that the answer or the document may tend to criminate him or any other person, 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.

(2) If, with respect to any question, a witness objects to answer upon any of the grounds set out in subsection (1), and if, but for this Section or any Act of Canada, he would have been excused from answering the question, then, although the witness is by reason of this Section or by reason of any Act 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., c. 154, s. 59.

60 and 61 *repealed 2015, c. 8, s. 13.*

ADMINISTERING OATHS AND AFFIRMATIONS

Solemn affirmation

62 (1) Every person shall be permitted to make his solemn affirmation instead of taking an oath, in all places and for all purposes where an oath is or shall be required by law, which affirmation shall be of the same force and effect as if he had taken the oath.

(2) Every such affirmation shall be as follows:

I, *A.B.*, do solemnly, sincerely, and truly declare and affirm (*and then proceed with the words of the oath prescribed by law, omitting any words of imprecation, or calling to witness*)

R.S., c. 154, s. 62.

Evidence of child of tender years

63 (1) In any legal proceeding where a child of tender years is offered as a witness and the child does not, in the opinion of the judge, justice or other presiding officer, understand the nature of an oath or solemn affirmation, the evidence of the child may be received though not given upon oath or solemn affirmation if, in the opinion of the judge, justice or other presiding officer, as the case may be, the child is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth.

(2) No case shall be decided upon such evidence unless it is corroborated by some other material evidence. R.S., c. 154, s. 63.

Who may administer oath or affirmation

64 Every court, judge, justice, officer, commissioner, arbitrator or other person now or hereafter having, by law or by consent of parties, authority to hear, receive and examine evidence, may administer an oath to any witness legally called before such court, judge, justice, officer, commissioner, arbitrator or other person respectively and administer an affirmation to any witness who is exempted from taking an oath. R.S., c. 154, s. 64.

Solemn declarations

65 (1) A person authorized by law to administer an oath or take an affidavit may receive the solemn declaration of any person in attestation of the exe-

cution of any writing, deed or instrument, or of the truth of any fact, or of any account rendered in writing.

(2) A solemn declaration made under this Section may be in the form from time to time prescribed by the *Canada Evidence Act* or in the form following:

I, *A.B.*, do solemnly declare that (*state the fact or facts declared to*), and I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

Declared before me at this day
of, 19

R.S., c. 154, s. 65.

Administration of oath or affidavit in Nova Scotia

66 (1) An oath, affidavit, affirmation or declaration for use in the Province may be administered, sworn, affirmed or made within the Province before

- (a) a judge of any court;
- (b) a judge of the provincial court;
- (c) a prothonotary of the Supreme Court or a clerk of the county court;
- (d) a barrister of the Supreme Court;
- (e) a notary public for the Province;
- (f) a commissioner appointed under Section 5 of the *Notaries and Commissioners Act*;
- (g) any person authorized to take the oath, affidavit, affirmation or declaration by the enactment under which it is authorized or directed to be taken, or by any other enactment,

and the person before whom an affidavit, affirmation or declaration is sworn, affirmed or made shall designate his office below his signature to the jurat on the affidavit, affirmation or declaration.

(2) A document purporting to have the signature of any person referred to in subsection (1) subscribed on it in testimony of an 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 his signature or of his official character. R.S., c. 154, s. 66.

OATHS, AFFIDAVITS, ETC., ABROAD

Administration of oath outside Province

67 (1) Oaths, affidavits, affirmations or declarations administered, sworn, affirmed or made out of the Province before some one of the following persons:

- (a) a commissioner authorized by the laws of the Province to take affidavits in and for any of the courts of the Province;

- (b) a commissioner authorized to administer oaths in the Supreme Court of Judicature in England or Ireland;
- (c) a judge of the Supreme Court of Judicature in England or Ireland;
- (d) a judge of the Court of Sessions or the Justiciary Court in Scotland;
- (e) a judge of any of the county courts of Great Britain or Ireland;
- (f) a judge of any court of record or of supreme jurisdiction in any colony or possession belonging to the Crown of Great Britain, or any dependency thereof or in any foreign country;
- (g) the mayor or chief magistrate of any city, borough or town corporate, in Great Britain or Ireland or in any colony of His Majesty, or in any foreign country, and certified under the common seal of such city, borough or town corporate;
- (h) if made in the British possessions of India, any magistrate or collector certified to be such under the hand of the governor of any such possession;
- (i) if made in Quebec, a judge or prothonotary of the Superior Court, or clerk of the circuit court, a practising lawyer or avocat or a notary;
- (j) an officer of any of His Majesty's diplomatic or consular services exercising his functions in any country other than Canada, including an ambassador, envoy, minister, charge d'affaires, counsellor, secretary, attaché, consul-general, consul, vice-consul, pro-consul, consular agent, acting consul-general, acting consul, acting vice-consul and acting consular agent;
- (k) an officer of the Canadian diplomatic, consular or representative services exercising his functions in any country other than Canada, including, in addition to the diplomatic and consular officers mentioned in clause (j), a high commissioner, permanent delegate, acting high commissioner, acting permanent delegate, counsellor and secretary;
- (l) a Canadian Government Trade Commissioner or an Assistant Canadian Government Trade Commissioner exercising his functions in any country other than Canada;
- (m) a notary public, and certified under his hand and official seal wherever made;
- (n) if made in a province of Canada, a person authorized by the laws of that province to take affidavits in and for any of the courts of that province;
- (o) an officer holding a commission in His Majesty's Navy, Army or Air Force and being on active service in Canada or abroad,

shall, for the purposes of, and in or concerning any cause, matter or thing depending or to be had in any court in the Province, 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 the Province before a commissioner for taking affidavits therein, or other competent authority of the like nature.

(2) Any document purporting to have affixed, impressed or subscribed thereon, or thereto,

- (a) the signature of any such commissioner;
- (b) the signature of such judge, and a seal of the court of which he is a member;
- (c) the seal of the corporation, and the signature of such mayor;
- (d) the signature of such chief magistrate or governor as aforesaid;
- (e) the official seal and signature of such prothonotary or notary public;
- (f) the signature of a person mentioned in clause (j), (k) or (l) of subsection (1) and his seal or the seal or stamp of his office or of the office to which he is attached; or
- (g) the signature of any such officer in His Majesty's Navy, Army or Air Force,

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 his signature, or his signature and the seal or stamp, or of his official character. R.S., c. 154, s. 67.

DECLARATIONS AND ACKNOWLEDGEMENTS IN HIS MAJESTY'S DOMINIONS

Declaration in conformity with 5 and 6 Wm. IV, c. 62

68 Declarations made in conformity with, and which have legal effect and operation in the place where the same are made under and by virtue of, an Act of the Imperial Parliament, passed in the fifth and sixth years of the reign of his late Majesty King William the Fourth, Chapter sixty-two, relating to the abolition of oaths in certain cases, and of any Act in amendment thereof, shall have the same operation and effect in the Province as if authenticated under oath before the same officers before whom the declaration had been made, and as if these officers had been authorized to administer such oath. R.S., c. 154, s. 68.

Where proved in British domains

69 Acts, deeds, evidence, acknowledgements and declarations, now or hereafter done, made, taken or proved in Great Britain or Ireland, or any of His Majesty's possessions, with those forms of proof and authentication which are the legal mode of proof and authentication in those places, shall have the same force and effect in the Province as if sworn to before the same persons or officers by and before whom the proof and authentication may be made, and as if those persons or officers had power to administer an oath. R.S., c. 154, s. 69.

COMMISSIONS ISSUED ABROAD AND
EVIDENCE FOR FOREIGN TRIBUNALS

Commission for obtaining testimony

70 Where a court or tribunal of competent jurisdiction in any part of His Majesty's dominions, or in any foreign country, in some proceeding before it, issues or authorizes a commission or order for obtaining the testimony of some person being within the Province, or the production of papers therein, it shall be lawful for the Supreme Court, or a judge thereof, if satisfied of the authenticity of the commission or order and the propriety of the examination or production, by order to direct the examination of the persons whom it is desired to examine, and the production of papers, when required, in the manner prescribed in the commission or order for examination, or in such other manner, and before such person, and with such notice, as the Court or a judge directs. R.S., c. 154, s. 70.

Foreign Tribunals Evidence Act, 1856 (England)

71 (1) Where under the *Foreign Tribunals Evidence Act, 1856* (England), any civil or commercial matter is pending before a court or tribunal of a foreign country, and it is made to appear to the Supreme Court or a judge thereof by *commission rogatoire*, or letters of request, or other evidence as hereinafter provided, that such court or tribunal is desirous of obtaining the testimony in relation to such matter of any witness or witnesses within the Province, such Court or judge may, on the *ex parte* application of any person shown to be duly authorized to make the application on behalf of such foreign court or tribunal, and upon production of the *commission rogatoire*, or letter of request, or of a certificate signed in the manner and certifying to the effect mentioned in Section 2 of the *Foreign Tribunals Evidence Act, 1856* (England), or such other evidence as such Court or judge may require, make such order or orders as may be necessary to give effect to the intention of the Act above mentioned, in conformity with Section 1 of the *Foreign Tribunals Evidence Act, 1856* (England), and such order shall be in the Form A in the Schedule to this Act.

(2) The examination may be ordered to be taken before any fit and proper person nominated by the person applying, or before such other qualified person as to the said Court or judge may seem fit.

(3) Unless otherwise provided by the order for examination, the examiner before whom the examination is taken, shall, on its completion, forward the same to the Prothonotary of the Supreme Court at Halifax, and on receipt thereof the Prothonotary shall append thereto a certificate in the Form B in the Schedule to this Act with such variation as circumstances may require, duly sealed with the seal of the Supreme Court, and shall forward the depositions, so certified, and the *commission rogatoire* or letter of request, if any, to the Provincial Secretary for transmission to the foreign court or tribunal requiring the same. R.S., c. 154, s. 71.

Special directions for examination

72 An order made under Section 71 may, if the Court or judge shall think fit, direct the examination to be taken in such manner as may be requested by the *commission rogatoire* or letter of request from the foreign court or tribunal or therein signified to be in accordance with the practice or requirements of such court or tribunal or which may, for some reason, be requested by the applicant for such order, but in the absence of any such special directions being given in the order for

examination, the same shall be taken in the manner prescribed in the rules of the Supreme Court respecting the examination of witnesses under an order or commission. R.S., c. 154, s. 72.

Procedure

73 Where any matter of procedure respecting the giving effect to any *commission rogatoire* or letter of request is herein unprovided for, the procedure followed by the Supreme Court of Judicature in England shall, *mutatis mutandis*, apply. R.S., c. 154, s. 73.

SCHEDULE

Form A

ORDER RESPECTING EVIDENCE UNDER THE FOREIGN TRIBUNALS EVIDENCE ACT, 1856 (ENGLAND)

In the Supreme Court of Nova Scotia.

Before the Honourable Justice

In the matter of the *Foreign Tribunals Evidence Act*, 1856 (19 and 20 Vict. c. 113, England);

And in the matter of the *Evidence Act*.

And in the matter of a civil or commercial proceeding now pending before instituted as follows:

Between

. Plaintiff

and

. Defendant.

Upon reading the affidavit (if any) of filed the day of, 19., and the certificate of (*name and description of minister, diplomatic agent, etc.*) that proceedings are pending in the (*description of foreign tribunal*) in (*name of country*) and that such court is desirous of obtaining testimony of (*name of witness*);

It is ordered that the said witness do attend before (*name and address of the examiner*) who is hereby appointed examiner herein at (*place appointed*), on the day of, 19., at o'clock in the noon, or such other day and time as the said examiner may appoint, and do there submit to be examined upon oath or affirmation, touching the testimony so required as aforesaid, and do then and there produce (*description of documents required to be produced*);

And it is further ordered that the said examiner do take down in writing the evidence of the said witness, or witnesses, according to the rules and practice of the Supreme Court pertaining to the examination and cross-examination of witnesses (*or as may be otherwise directed*); and do cause each and every such witness to sign his or her depositions in his, the said examiner's presence; and do sign the depositions taken in pursuance of this order, and when so completed do transmit the same, together with this order, to the Prothonotary of the Supreme Court at Halifax, for transmission to the Provincial Secretary and to the tribunal desiring the evidence of such witness or witnesses.

Dated this day of, 19.

Form B

CERTIFICATE UNDER THE
FOREIGN TRIBUNALS EVIDENCE ACT, 1856

I, Prothonotary of the Supreme Court of Nova Scotia, at Halifax, in the Province of Nova Scotia, hereby certify that the documents annexed hereto are

(1) the original order of a judge of the Supreme Court of Nova Scotia, dated the day of, 19. . . . , made in the matter of pending in the at in the of directing the examination of certain witnesses to be taken before ; and

(2) the examination and depositions taken by the said pursuant to the said order, and only signed and completed by him on the day of, 19

Dated this day of, 19

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L.S.

R.S., c. 154, Sch.
