

# Criminal Evidence.

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## A BILL INTITULED

AN ACT to provide for the Attendance of Witnesses for the Defence in Criminal Cases. Title.

**W**HEREAS complaint is frequently made by persons charged with indictable offences upon their trial that, by reason of poverty or otherwise, they are unable to call witnesses on their behalf, and it is expedient to remove as far as practicable all just ground of complaint : Preamble.

5 BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows :—

1. The Short Title of this Act shall be “The Criminal Evidence Act, 1870.” Short Title.

10 2. Where any person shall hereafter appear or be brought before any Justice or Justices of the Peace, charged with any indictable offence, such Justice or Justices shall, before he or they shall commit such accused person for trial, or admit him to bail, immediately after obeying the directions of the fifty-sixth section of “The Justices of the Peace Act, 1866,” also demand and require of the accused person whether he desires to call any witness or witnesses upon the hearing of the charge against him. Further inquiring by Justice on hearing of information for indictable offence.

15 3. The depositions of all witnesses called by the accused person upon the hearing of the charge, shall be transmitted in due course of law with the depositions on the part of the prosecution. Depositions of witnesses for accused to be transmitted.

20 4. All witnesses, not being witnesses merely to the character of the accused person, called by him upon the hearing of the charge Witnesses for accused to be bound over.

who, in the opinion of the Justice or Justices aforesaid, give evidence in any way material to the case, or tending to prove the innocence of the accused person, shall be bound by recognizance to appear and give evidence at the trial of the accused person; and afterwards, upon the trial of such accused person, all the laws now in force relating to the depositions of witnesses for the prosecution shall extend and be applicable to the depositions of witnesses hereby directed to be taken. 5

Laws now in force to apply to witnesses bound over for defence.

**5.** All the provisions of the laws now in force relating to the summoning and enforcing the attendance and committal of witnesses, and binding them by recognizance, and committal in default, and for giving the accused person copies of the examinations, shall be read and have operation as part of this Act in relation to witnesses called before such Justice or Justices as aforesaid, by or on behalf of any such accused person. 10

Accused may deliver list of witnesses for defence.

**6.** In case any such accused person shall, upon the hearing of such charge before the Justice or Justices as aforesaid, in answer to such inquiry as directed by the second section of this Act, decline then to call any witness or witnesses, but shall be desirous of calling any witness or witnesses upon his trial, it shall be lawful for the accused person, at any time within three days after he shall have been committed for trial upon such charge, to deliver, or cause to be delivered, to the said Justice or Justices, or to any one of them, a list of persons whom he desires and requires to call as witnesses in his defence upon his trial. 15

Contents of list.

**7.** Such list shall contain the names, residences, and as far as possible the occupations, of the persons named therein. 20

Certificate.

**8.** Every such list shall be accompanied by a certificate, written at the foot thereof, under the hand of a Barrister or Solicitor of the Supreme Court, that in his belief the persons named therein are material and necessary witnesses for the defence, and not merely witnesses to the character of the accused person. 25

List to be transmitted to Clerk to Bench.

**9.** It shall be the duty of the Justice or Justices to whom such list shall be delivered as aforesaid, immediately after receiving the same, so certified as aforesaid, to sign his or their name or names at the foot thereof, and thereupon forthwith to deliver or cause the same to be delivered to the Clerk to the Magistrates acting in and for the district within which the accused person was committed for trial. 30

Duty of Clerk to the Bench.

**10.** It shall be the duty of the Clerk to the Magistrates to whom such list shall have been delivered as aforesaid, immediately after receiving the same, to cause each of the several persons named therein to be served with a notice in the form in the Schedule to this Act, and it shall be the duty of all peace officers to whom such notices shall be transmitted or delivered for service to serve the same without delay upon the persons to whom the same are addressed, in case such persons shall be found at or in the neighbourhood of the residences respectively set forth in the said list. 35

Persons summoned bound to attend.

**11.** Every person upon whom any such notice as aforesaid shall be served shall be bound to appear and give evidence at the trial of the accused person, and shall be deemed duly to have entered into a recognizance to the Crown to appear and give evidence upon such trial, in like manner, and subject to the same conditions, and under the same obligations in all things, as witnesses duly bound over by recognizance to appear and give evidence for the prosecution. 40

Witnesses to be paid.

**12.** Every witness attending and giving evidence upon the trial of any accused person, in pursuance of any recognizance or notice as aforesaid, or voluntarily, who shall in the opinion of the Court before which such accused person was tried have given evidence material in the case, or tending to prove the innocence of the accused person, shall be entitled to the same remuneration as a witness of the 45 50 55 60

same class attending on behalf of the prosecution, and the amount of such remuneration shall, upon the production of a certificate under the hand of the Judge presiding at such trial, be paid in like manner, and out of the like fund as shall be provided in that behalf in respect to witnesses for the prosecution.

13. It shall be lawful for the Crown Prosecutor or for the Counsel for the prosecution, without any subpoena or other process, to call any of the witnesses upon whom any such notice shall have been served as aforesaid on behalf of the prosecution, in like manner as the witnesses bound over by recognizance to appear and give evidence for the prosecution; and every witness so called shall be compellable to give evidence accordingly.

Crown Prosecutor may call witnesses bound over for defence.

14. Whenever it shall be made to appear to the satisfaction of any Justice of the Peace that any person dangerously ill, and in the opinion of some registered medical practitioner not likely to recover from such illness, is able and willing to give material information relating to any indictable offence, or relating to any person accused of any such offence, and it shall not be practicable for any Justice or Justices of the Peace to take an examination or deposition in accordance with the provisions of the law now in force in that behalf of the person so being ill, it shall be lawful for the said Justice to take in writing the statement on oath or affirmation of such person so being ill, and such Justice shall thereupon subscribe the same, and shall add thereto, by way of caption, a statement of his reason for taking the same, and of the day and place when and where the same was taken, and of the names of the persons (if any) present at the taking thereof, and, if the same shall relate to any indictable offence for which any accused person is already committed or bailed to appear for trial, shall transmit the same with the said addition to the proper officer of the Court for trial at which such accused person shall have been so committed or bailed.

Evidence of persons dangerously ill.

15. Whenever a prisoner in actual custody shall have served or shall have received notice of an intention to take such statement as hereinbefore mentioned, the Judge or Justice of the Peace by whom the prisoner was committed, or any of the Visiting Justices of the prison in which he is confined, may, by an order in writing, direct the Gaoler having the custody of the prisoner to convey him to the place mentioned in the said notice, for the purpose of being present at the taking of the statement; and such Gaoler shall convey the prisoner accordingly; and the expenses of such conveyance shall be paid out of the funds applicable to the other expenses of the prison from which the prisoner shall have been conveyed.

Accused person to be present in such cases.

### SCHEDULE.

#### NOTICE TO APPEAR AND GIVE EVIDENCE FOR THE DEFENCE.

To

TAKE NOTICE, that you and each of you are required to appear at the next sitting for the trial of criminal cases of the Supreme Court of New Zealand [or District Court for the District of *as the case may be*], to be holden at *in the Colony of* New Zealand, and to give evidence for the defence upon the Bill of Indictment to be there preferred against *and that if you fail to do so you will forfeit the* sum of *pounds each.*

And take further notice, that by virtue of "The Criminal Evidence Act, 1870," you and each of you are deemed, upon the service of this notice upon you, to have duly entered into a recognizance to the Crown to appear and give evidence upon the said Bill of Indictment, in like manner, and subject to the same conditions, and under the same obligations in all things, as witnesses duly bound over by recognizance to appear and give evidence for the prosecution.