MONTSERRAT

CHAPTER 2.08

EVIDENCE ACT
and Related Legislation

Revised Edition
showing the law as at 1 January 2019

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

Page

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CABINET (EVIDENCE) ACT[1] 19

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[1]Executive Council (Evidence) Act renamed as Cabinet (Evidence) Act

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CHAPTER 2.08

EVIDENCE ACT

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Witnesses not deemed incapacitated from crime or interest
4. Parties to any suit in a Court of Justice competent and compellable to give evidence
5. Witness not compellable to incriminate himself
6. Person charged and wife or husband a competent witness
7. When wife or husband may be called without consent of person charged
8. A husband or wife not compelled to disclose communications made to each other
9. A witness in case of adultery not bound to answer incriminating questions
10. Breach of promise of marriage
11. Inspection of documents
12. Documents, admissible in England, admissible in Montserrat
13. Judicial notice of certain matters
14. Proof of certain public documents
15. How far a party may discredit his own witness
16. Proof of contradictory statements of adverse witness
17. Cross-examination as to previous statements in writing
18. Proof of previous conviction of a witness may be given
19. Attesting witness need not be called except in certain cases
20. Comparison of disputed writing
21. Where necessary to prove conviction or acquittal of person charged, certified copy of record sufficient
22. Examined or certified copies of documents admissible in evidence
23. Court or person authorised to hear evidence may administer oath
24. Deeds may be proved before British Consuls, etc.
25. Orders and commissions for the examination of witnesses
26. Attendance of persons to be examined as witnesses
27. Persons authorised to examine witnesses
28. Special report of persons authorised to examine witnesses
29. Costs
30. Examinations not to be read in evidence except the witness is unable to attend personally

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31. Bringing up prisoner to give evidence
32. Admissibility of medical certificates and reports
SCHEDULE

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CHAPTER 2.08

EVIDENCE ACT

(Acts 3 of 1876, 2 of 1901, F.A.s 3 of 1942, 15 of 1954 and 6 of 1955; 4 of 1961, S.R.O. 15/1956, Acts 25 of 1982, 12 of 1983, 4 of 2003 and 9 of 2011)

Commencement

[25 April 1876]

Short title

1. This Act may be cited as the Evidence Act.

Interpretation

2. In this Act—

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

Witnesses not deemed incapacitated from crime or interest

3. No person, offered as a witness, shall hereafter be excluded, by reason of incapacity from crime or interest, from giving evidence either in person or by deposition, according to the practice of the Court, on the trial of any issue joined, or of any matter or question, or any inquiry, arising in any Court, or before any Judge, jury, Coroner, Magistrate, officer, or person having by law, or by consent of parties, authority to hear, receive, and examine evidence; but every person, so offered, may and shall be admitted to give evidence on oath, or solemn affirmation in those cases wherein affirmation may by law be receivable, notwithstanding that such person may or shall have an interest in the matter in question, or in the event of the trial of any issue, matter, question, or inquiry, or of the suit, action, or proceeding, in which he is offered as a witness, and notwithstanding that such person offered may have been previously convicted of any crime or offence.

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

4. On the trial of any issue, or of any matter or question, or on any inquiry arising in any suit, action, or other proceeding, in any Court of Justice, or before any person having by law, or by consent of parties, authority to hear, receive and examine evidence, the parties thereto, and the person in whose behalf any such suit, action, or other proceeding may be

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brought or defended, as also their husbands or wives, shall, except as hereinafter excepted, be competent and compellable to give evidence.

Witness not compellable to incriminate himself

5. Nothing in this Act shall render any person charged with a criminal offence compellable to give evidence for or against himself, and no person called as a witness shall be compellable to answer any question tending to incriminate himself.

(Substituted by Act 12 of 1983)

Person charged and wife or husband a competent witness

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

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

(b) the failure of any person charged with an offence or of the wife, or husband, as the case may be, of the person so charged, to give evidence, shall not be made the subject of any comment by the prosecution;

(c) the wife or husband of the person charged shall not, save as in this Act mentioned, be called as a witness in pursuance of this Act except upon the application of the person so charged;

(d) person charged and being a witness in pursuance of this Act may be asked any question in cross-examination notwithstanding that it would tend to criminate him as to the offence charged;

(e) person charged and called as a witness in pursuance of this Act shall not be asked, and if asked shall not be required to answer any question tending to show that he has committed, or been convicted of, or been charged with, any offence other than that wherewith he is then charged, or is of bad character, unless—

(i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged; or

(ii) he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establish his own good character, or has given evidence of his good character or the nature or conduct of the defence is

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such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution; or

(iii) he has given evidence against any other person charged with the same offence;

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

(g) nothing in this section shall affect the provisions of sections 79, 80 and 219 of the Criminal Procedure Code[2], or any right of the person charged to make a statement without being sworn.

(Amended by Act 12 of 1983)

When wife or husband may be called without consent of person charged

7. (1) The wife or husband of a person charged with an offence under any enactment mentioned in the Schedule may be called as a witness either for the prosecution or defence and without the consent of the person charged.

(2) Nothing in this Act shall affect a case where the wife or husband of a person charged with an offence may at common law be called as a witness without the consent of that person.

A husband or wife not compelled to disclose communications made to each other

8. No husband shall be compelled to disclose any communication made to him by his wife during the marriage, nor shall any wife be compellable to disclose any communication made to her by her husband during the marriage.

A witness in case of adultery not bound to answer incriminating questions

9. No witness in any cause or other proceeding instituted in consequence of adultery, whether a party to the suit or not, shall be liable to be asked, or bound to answer, any question tending to show that he or she has been guilty of adultery, unless such witness shall have already given evidence, in the same proceeding, in disproof of his or her alleged adultery.

[2] This section has been corrected to reflect the renumbering of the Criminal Procedure Code.

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Breach of promise of marriage

10. No plaintiff in any action for breach of promise of marriage shall recover a verdict, unless his or her testimony shall be corroborated by some other material evidence in support of such promise.

Inspection of documents

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

Documents, admissible in England, admissible in Montserrat

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

Judicial notice of certain matters

13. (1) All courts shall take judicial notice of—

(a) all public Acts of the Parliament of the United Kingdom of Great Britain and Northern Ireland (or of Great Britain or of England as the case may be according to the date thereof), and of any statutory instruments made under any such Acts;

(b) all enactments of the former Federation of the West Indies having effect in Montserrat and any subordinate legislation made thereunder;

(c) all enactments of the legislature of any of the territories which formed part of the former Federation of the West Indies, and any subordinate legislation made thereunder.

(2) All courts shall take judicial notice of—

(a) the public seal of Montserrat and of any government or territory (however styled) referred to in this section, without evidence of such seal having been duly impressed or other evidence relating thereto;

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(b) the seal of any court having or which has had jurisdiction in Montserrat;

(c) the signature of any person who holds or has held, in any such government or territory as is referred to in this section, the office of Governor General, Governor, Administrator, Judge, Registrar, Registrar General, Attorney General, Secretary of Cabinet (or any office equivalent thereto however styled) or such other public office as may be designated by the Governor acting on the advice of Cabinet by order, and the official seal (if any) of any such person;

(Amended by Act 9 of 2011)

(d) the *London Gazette,* the official *Gazette* of Montserrat and of any other territory in the Commonwealth or of any territory for the time being administered by the government of the United Kingdom or by any other territory in the Commonwealth;

(e) any other matters of which any court is expressly required by any law in force in Montserrat to take judicial notice.

(3) Evidence of any law such as is mentioned in this section or of any instrument made under any such law, may be given in all courts by the production of the official *Gazette* of Montserrat or of the government or territory concerned, as the case may be, purporting to contain a copy of such law or instrument.

(4) The mere production of a paper purporting to be an official *Gazette*, such as is referred to in this section, shall be *prima facie* evidence that such paper is such *Gazette* and was published on the date shown thereon.

(5) In this section and in section 14, unless the context otherwise requires, the expression **"court"** means a court having jurisdiction in Montserrat and includes all persons authorised by law, or by the consent of the parties, to hear, receive and examine evidence.

(Substituted by Act 25 of 1982)

Proof of certain public documents

14. (1) Whenever by the law for the time being in force in Montserrat or in any other territory formerly part of the former Federation of the West Indies—

(a) any public document; or

(b) any record required by law to be kept of any public document or proceeding; or

(c) any certified copy of any public document or instrument or of any entry in any public register or book,

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is admissible in evidence for any purpose in Montserrat or in any such territory, it shall be admitted in evidence to the same extent and for the same purpose in all courts, if it purports to be sealed or impressed with a stamp, or sealed or signed, as directed by such law, without any proof of the stamp, seal or signature, as the case may be, of the person purporting to have made or issued the same and, in the case of a certified copy, without further proof thereof, in every case in which the original could have been received in evidence.

(2) Where under this section a document is admissible if it purports to be signed or certified by the holder of any office, the mere production of that document shall be *prima facie* evidence that the signature is that of the person concerned and that at the time he was the holder of such office.

(Inserted by Act 25 of 1982)

How far a party may discredit his own witness

15. A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may, in case the witness shall, in the opinion of the Judge, prove adverse, contradict him by other evidence, or, by leave of the Judge, prove that he has made, at other times, a statement inconsistent with his present testimony; but, before such last-mentioned proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

Proof of contradictory statements of adverse witness

16. If a witness, upon cross-examination as to a former statement made by him relative to the subject matter of the cause and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make it; but, before such proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

Cross-examination as to previous statements in writing

17. A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject matter of the cause, without such writing being shown to him; but, if it is intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him:

Provided that, it shall be competent for the Judge, at any time during the trial, to require the production of the writing for his inspection, and he may thereupon make such use of it, for the purpose of the trial, as he shall think fit.

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Proof of previous conviction of a witness may be given

18. A witness in any cause may be questioned as to whether he has been convicted of any felony or misdemeanour, and, upon being so questioned, if he either denies the fact or refuses to answer, it shall be lawful for the opposite party to prove his conviction, and a certificate containing the substance and effect only, omitting the formal part, of the indictment and conviction for the previous felony or misdemeanour, or a copy of any such summary conviction, purporting to be signed by the clerk of the Court, or other officer, having the custody of the record of the Court where the offender was first convicted, or to which such summary conviction has been returned, or by the deputy of such clerk or officer (for which certificate a fee of $10 shall be demanded and taken) shall, upon proof of the identity of the person, be sufficient evidence of the said conviction, without proof of the signature, or official character, of the person appearing to have signed the same.

(Amended by Act 4 of 2003)

Attesting witness need not be called except in certain cases

19. 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.

Comparison of disputed writing

20. Comparison of a disputed writing with any writing proved, to the satisfaction of the Judge, to be genuine shall be permitted to be made by witnesses; and such writings, and the evidence of witnesses respecting the same, may be submitted to the Court and jury as evidence of the genuineness, or otherwise, of the writing in dispute.

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

21. Whenever, in any proceeding whatever, it may be necessary to prove the trial and conviction, or acquittal, of any person charged with any indictable offence, it shall not be necessary to produce the record of the conviction, or acquittal, of such person, or a copy thereof, but it shall be sufficient that it be certified, or purport to be certified, under the hand of the clerk of the Court, or other officer having the custody of the records of the Court where such conviction or acquittal took place, that the paper produced is a copy of the record of the indictment, trial, conviction, and judgment, or acquittal, as the case may be, omitting the formal parts thereof.

Examined or certified copies of documents admissible in evidence

22. Whenever any book, or other document, is of such a public nature as to be admissible in evidence on its mere production from the proper

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custody, and no statute exists which renders its contents provable by means of a copy, any copy thereof, or extract therefrom, shall be admissible in evidence in any Court of Justice, or before any person now, or hereafter, having by law, or by consent of parties, authority to hear, receive, and examine evidence; provided it be proved to be an examined copy or extract, or provided it purport to be signed and certified as a true copy, or extract, by the officer to whose custody the original is entrusted, and which officer is hereby required to furnish such certified copy, or extract, to any person applying, at a reasonable time, for the same, upon payment of a fee for the same of such amount prescribed in the Magistrate's Court Act.

(Amended by Act 4 of 2003)

Court or person authorised to hear evidence may administer oath

23. Every Court, Judge, Magistrate, Officer, Commissioner, Arbitrator, or other person, now or hereafter, having by law, or by consent of parties, authority to hear, receive, and examine evidence, is hereby empowered to administer an oath to all such witnesses as are legally called before them respectively.

Deeds may be proved before British Consuls, etc.

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

Provided that, such deeds, letters of attorney, or written instruments, if concerning lands or tenements, be recorded in the proper Registrar's office, and copies thereof certified by him shall be admitted in evidence; but this section shall not apply to the probate of any will, codicil, or testamentary writing.

Orders and commissions for the examination of witnesses

25. It shall be lawful for any Court in Montserrat, and any Judge thereof, in every action depending in such Court, upon the application of any of the parties to such suit, when it shall appear on oath, or otherwise, that a person, required as a witness in the cause, will be unable to attend the trial from being about to quit the jurisdiction of the Court, or from permanent sickness or any permanent infirmity, to order the examination on oath, upon interrogatories or otherwise, before any Judge of the said Court, or any

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officer thereof, or other person or persons to be named in such order, of any witnesses within the jurisdiction of the Court where the action shall be depending; or, where the person required to be examined is out of the jurisdiction of the Court, to order a commission to issue for the examination of witnesses on oath, at any place, or places, so out of the jurisdiction of the Court, by interrogatories or otherwise, and, by the same or any subsequent order or orders, to give all such directions, touching the time, place, and manner of such examination, and all other matters and circumstances connected with such examination, as may appear reasonable and just.

Attendance of persons to be examined as witnesses

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

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

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

Persons authorised to examine witnesses

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

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Special report of persons authorised to examine witnesses

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

Costs

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

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

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

Bringing up a prisoner to give evidence

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

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cause or matter depending before such Court, is now by law required to be dealt with.

Admissibility of medical certificates and reports

32. (1) Notwithstanding anything to the contrary contained in any law, but subject always to the provisions of this section, any certificate or report, if accompanied by a sworn statement by the medical practitioner who has signed the certificate or report, shall be admitted in evidence in any criminal proceedings before a Magistrate, or at a Coroner's Inquest, without the medical practitioner being called upon to attend and to give evidence upon oath.

(2) Where, in any criminal proceedings before a Magistrate, it is intended to put in evidence a certificate or report as provided by the preceding subsection, the prosecution shall, at least three clear days before the proceedings, serve upon the defendant written notice of such intention, together with a copy of the certificate or report, and the defendant, at the commencement of the proceedings, may object to the admission of the certificate or report, and may require the attendance of the medical practitioner to give evidence on oath.

(3) Nothing in this section contained shall be deemed to prejudice or take away the rights of the defendant, or of the Court or Coroner, as the case may be, at any stage of the proceedings to require the medical practitioner who has signed the certificate or report to attend and give evidence on oath.

SCHEDULE

(Section 7(1))

Enactment	*Section referred to*
Married Women's Property Act	Sections 14 and 18
Penal Code[3]	Sections 11, 14, 52, 135, 138 to 140, 142 to 146, 148, 149, 160 to 162, 171, 206, 210, 214, 219 to 222, 231 and 330.

(Substituted by Act 12 of 1983)

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[3] This section of the Schedule has been corrected to reflect the renumbering of the Penal Code.

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CHAPTER 2.08

GOVERNMENT CHEMIST'S CERTIFICATE ACT

(Acts 8 of 1908 and 24 of 1956)

Commencement

[15 April 1908]

Short title

1. This Act may be cited as the Government Chemist's Certificate Act.

Interpretation

2. In this Act—

"government chemist" means the analytical and agricultural chemist or the assistant chemist of Montserrat.

Certificate *prima facie* evidence at preliminary investigation

3. At any preliminary investigation held by a Magistrate into the facts which constitute an indictable offence, and which may necessitate the sending on of an accused person for trial, such Magistrate may, for the purpose of determining whether he shall dismiss the charge or send on the accused person for trial, accept at that stage the certificate of the government chemist purporting to be signed by him as such, as *prima facie* evidence of the matters therein contained, if it is otherwise proved that the bottle or other vessel containing the food, viscera, or other matter or thing analysed, and in respect of which the said certificate is given, had its seals, or other fastenings uninjured, at the time the same was delivered to the said chemist:

Provided that, if such accused person shall require that the government chemist shall attend such preliminary enquiry, the police and presiding Magistrate shall take the necessary steps to procure his attendance:

Provided further, that, such certificate shall not be received as evidence at the trial of any accused person, and that at such trial, if the evidence of the government chemist is considered necessary he shall attend in the same way as any other witness.

Coroner's inquest

4. At any Coroner's inquest the Coroner may accept as *prima facie* evidence of the matters contained, the certificate of the government chemist, if the same purports to be signed by such government chemist.

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CHAPTER 2.08

CABINET (EVIDENCE) ACT

(Act 11 of 1898, S.R.O. 15/1956, Acts 10 of 1984 and 9 of 2011)

Commencement

[31 December 1898]

Short title

1. This Act may be cited as the Cabinet (Evidence) Act.

Power to administer oath upon an inquiry before Cabinet

2. In any inquiry before the Cabinet of Montserrat into the conduct of any public officer against whom any charge is preferred the Governor acting on the advice of Cabinet may direct that the evidence on such inquiry shall be given and taken on oath, and the Secretary of such Cabinet shall have power and authority to administer all oaths required to be administered on any such inquiry. *(Amended by Act 9 of 2011)*

Penalty for giving false evidence before Cabinet

3. All persons wilfully deposing or affirming falsely before the Cabinet shall be deemed guilty of perjury and shall be liable to all the pains and penalties attached thereto. *(Amended by Act 9 of 2011)*

Power to summon witnesses before Cabinet

4. Where an Order shall have been made under section 2, it shall be lawful for the Cabinet to cause summonses to be issued under the hand of its Secretary, requiring the attendance of any person before the Cabinet, at a time and place to be specified in such summons, to give evidence upon oath of the truth of any facts or matters in issue in the inquiry or touching or relating to the same. *(Amended by Act 9 of 2011)*

Penalty on person summoned for failing to appear or refusing to testify before Cabinet

5. Every person so summoned who shall refuse or neglect to appear according to the exigency of the summons, or who, having so appeared, shall refuse to take the oath or shall refuse to give evidence or to answer according to the best of his knowledge and belief any question which according to the rules of evidence may be permissible or relevant to such inquiry, when thereto required, shall for every such offence or default on complaint being made by the Secretary of such Cabinet be liable on

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summary conviction to a fine of £250 or to imprisonment for three months, or to both such fine and imprisonment. *(Amended by Acts 10 of 1984 and 9 of 2011)*

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