

No. XIV.

An Act to amend the Law of Evidence. [19th ^{EVIDENCE LAW.} August, 1852.]

WHEREAS it is expedient to amend the Law of Evidence in divers particulars Be it therefore enacted by His Excellency the Governor of New South Wales by and with the advice and consent of the Legislative Council thereof as follows:—

1. So much of section one of the Act of the Governor and Council of this Colony passed in the eighth year of the reign of Her present Majesty intituled *"An Act for improving the Law of Evidence"* as provides that the said Act shall "not render competent any party to any suit action or proceeding individually named in the record or any lessor of the plaintiff or tenant of premises sought to be recovered in ejectment or the landlord or other person in whose right any defendant or replevin may make cognizance or any person in whose immediate and individual behalf any action may be brought or defended either wholly or in part" and the whole of the seventh section of the Act of Council passed in the twelfth year of the reign of Her present Majesty number one are hereby repealed.

2. On the trial of any issue joined 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 persons in whose behalf any such suit action or other proceeding may be brought or defended shall except as hereinafter excepted be competent and compellable to give evidence either *vice versa* or by deposition according to the practice of the Court on behalf of either or any of the parties to the said suit action or other proceeding.

3. But nothing herein contained shall render any person who in any criminal proceeding is charged with the commission of any indictable offence or any offence punishable on summary conviction competent or compellable to give evidence for or against himself or herself or shall render any person compellable to answer any question tending to criminate himself or herself or shall in any proceeding whether civil or criminal render any husband competent or compellable to give evidence for or against his wife or any wife competent or compellable to give evidence for or against her husband.

4. Nothing herein contained shall apply to any action suit proceeding or bill in any Court instituted in consequence of adultery or seduction or to any action for breach of promise of marriage nor shall render any party competent to give evidence in his own favour where it shall appear that the person with whom the cause of action suit or proceeding arose is dead lunatic or absent from the Colony.

5. Nothing herein contained shall repeal any provision contained in the *"Act for the amendment of the Laws with respect to Wills"* adopted by the said Governor and Council in the third year of Her Majesty's reign.

6. Whenever any action or other legal proceeding shall henceforth be pending in the Supreme Court of this Colony such Court and each of the Judges 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

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to take examined copies of the same or to procure the same to be duly stamped 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.

Evidence of Acts of State and of judgments in any British Colonial and Foreign Courts.

7. All proclamations treaties and other Acts of State of Great Britain or of any Foreign State or British Colony and all judgments decrees orders and other judicial proceedings of any Court of Justice in Great Britain or of any Foreign State or British Colony and all affidavits pleadings and other legal documents filed or deposited in any such Court may be proved in any Court of Justice or before any person having by law or by consent of parties authority to hear receive and examine evidence either by examined copies or by copies authenticated as hereinafter mentioned that is to say if the document sought to be proved be a proclamation treaty or other Act of State the authenticated copy to be admissible in evidence must purport to be sealed with the Seal of Great Britain or of the Foreign State or British Colony to which the original document belongs and if the document sought to be proved be a judgment decree order or other judicial proceeding of any British Foreign or Colonial Court or an affidavit pleading or other legal document filed or deposited in any such Court the authenticated copy to be admissible in evidence must purport either to be sealed with the Seal of the Court to which the original document belongs or in the event of such Court having no Seal to be signed by the Judge or if there be more than one Judge by any one of the Judges of the said Court and such Judge shall attach to his signature a statement in writing of the said copy that the Court whereof he is a Judge has no Seal but if any of the aforesaid authenticated copies shall purport to be sealed or signed as hereinbefore respectively directed the same shall respectively be admitted in evidence in every case in which the original document could have been received in evidence without any proof of the Seal where a Seal is necessary or of the signature or of the truth of the statement attached thereto where such signature and statement are necessary or of the judicial character of the person appearing to have made such signature and statement.

Proof of conviction or acquittal.

8. And whereas it is expedient as far as possible to reduce the expense attendant upon the proof of criminal proceedings Be it enacted That 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 or by the deputy of such Clerk or other officer that the paper produced is a copy of the record of the indictment or information trial conviction and judgment or acquittal as the case may be omitting the formal part thereof.

Proof of books and documents of a public nature by certified copies or extracts.

9. Whenever any book or other document is of such a public nature as to be admissible in evidence on its mere production from the proper custody and no Statute or Act of Council 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 intrusted and which officer is hereby required to

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to furnish such certified copy or extract to any person applying at a reasonable time for the same upon payment of a reasonable sum for the same not exceeding four-pence for every folio of ninety words.

10. If any officer authorized or required by this Act to furnish any certified copies or extracts shall wilfully certify any document as being a true copy or extract knowing that the same is not a true copy or extract as the case may be he shall be guilty of a misdemeanor and be liable upon conviction to imprisonment for any term not exceeding eighteen months.

11. If any person shall forge the seal stamp or signature of any document in this Act mentioned or referred to or shall tender in evidence any such document with a false or counterfeit seal stamp or signature thereto knowing the same to be false or counterfeit he shall be guilty of felony and shall upon conviction be liable to transportation for seven years or to imprisonment for any term not exceeding three years nor less than one year with hard labor and whenever any such document shall have been admitted in evidence by virtue of this Act the Court or the person who shall have admitted the same may at the request of any party against whom the same is so admitted in evidence direct that the same shall be impounded and be kept in the custody of some officer of the Court or other proper person for such period and subject to such conditions as to the said Court or person shall seem meet and every accessory before or after the fact to any such offence may be dealt with indicted tried and if convicted sentenced and his offence laid and charged to have been committed in any county district or place in which the principal offender may be tried.

12. This Act shall come into operation on the first day of October in this present year.

Punishment for giving false certificates.

Punishment for forging or uttering any forged stamp seal or signature of any document mentioned in this Act.

Impounding documents.

Trial and punishment of accessories.

Commencement of Act.