LAWS OF THE UNITED KINGDOM

THE CRIMINAL EVIDENCE ACT 1898

(61 & 62 Vict. c. 36)

ARRANGEMENT OF SECTIONS

An Act to amend the Law of Evidence

[12th August 1898]

General Note. The incompetency as witnesses of accused persons and their spouses was expressly preserved by the Evidence Act 1843, s. 1, p. 812, *ante*, as originally enacted: the Evidence Act 1851 s. 3, p. 816, *ante*, and the Evidence Amendment Act 1853, s. 2 p. 822, *ante*; but after 1853 many statutes were passed making such persons competent in particular instances. Those Acts, with the exception of the Evidence Act 1877, p. 847, *ante*, were superseded by the present Act, which is of general application to criminal proceedings (see s. 6, *post*, and *Charnock v. Merchant*, [1900] 1 Q.B. 474), and clearly defines the privileges and rights of accused persons and their spouses so far as giving evidence is concerned.
Courts-martial. See the Introductory Note to the Criminal Procedure Act 1865, p. 837, *ante*.
Northern Ireland. This Act does not apply, see s. 7(1), *post*.

1. Competency of witnesses in criminal cases

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) 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 continent 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*) Nothing in this Act shall make a husband compellable to disclose any communication made to him by his wife during the marriage, or a wife compellable to disclose any communication made to her by her husband during the marriage;

(e) A 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;

(*f*) A 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 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;

(g) Every person called as a witness in pursuance of this Act 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;

(h) Nothing in this Act shall affect the provisions of section eighteen of the Indictable Offences Act, 1848, or any right of the person charged to make a statement without being sworn.

NOTES

General Note. This section must be read 1n the light of the Children and Young Persons Act 1963, s. 16(2), Vol. 17, title Infants, Children and Young Persons, under which in any proceedings for an offence committed or alleged to have been committed by a person of or over twenty-one, any offence of which he was found guilty while under fourteen is to be disregarded for the purposes of any evidence relating to his previous convictions, and he may not be asked, and if asked need not answer, any question relating to such an offence, notwithstanding that the question would otherwise be admissible under this section.

Accused to be informed of rights. It should be made clear to the person charged that he is entitled to give evidence on his own behalf. While failure to do so is not itself a sufficient ground for quashing a conviction (*R. v. Saunders*, [1899] 1 Q.B. 490), it is a fact which is material on appeal (*R. v. Graham* (1922), 17 Cr. App. Rep. 40).

Persons jointly charged. The prosecution cannot call one of two or more persons charged, as a witness against the others, unless either (1) a *nolle prosequi* is entered, or (2) a verdict of acquittal is given, or (3) he has pleaded guilty, or (4) he is being tried separately from the persons with whom he is jointly indicted (*Winsor v. R.* (1866), L.R. 1 Q.B. 390). In all these four cases he is a compellable witness on behalf of a co-defendant. See also *Townsend v. Strathern*, 1923 S.C. (J.) 66 and *R. v. Boal*, [1965] 1 Q.B. 402; [1964] 3 All E.R. 269.

Cross-examination. Even though a person charged enters the witness box and merely pleads. guilty to the offence with which he is charged, he may be cross-examined by the prosecution with a view to incriminating other defendants with whom he is indicted (*R. v. Paul*, [1920] 2 K.B. 183; [1920] All E.R. Rep. 535). If the evidence he gives tends to incriminate another defendant, he may be cross-examined on behalf of that other defend ant (*R. v. Hadwen*, [1902] 1 K.B. 882). If he merely gives evidence on behalf of another defendant and not on his own behalf, he may be cross-examined by the prosecution in order to secure his conviction (*R. v. Rowland*, [1910] 1 K.B. 458).

Every stage in the proceeding. These words include proceedings after the defendant has been found or has pleaded guilty (*R. v. Wheeler*, [1917] 1 K.B. 283; [1916-17] All E.R. Rep. 1111).

Proviso (a): Upon his own application. These words apparently include an application by counsel with the prisoner's consent.

Proviso (b): Comment by judge. It is open to the judge, if he thinks fit, to comment on the failure of the person charged, his wife, or her husband, to give evidence (*R. v. Rhodes*, [1899] 1 Q.B. 77), but a direction to the jury that they could take the failure of the accused to give evidence as amounting to corroboration of accomplices' evidence is wrong (*R. v. Jackson*, [1953] 1 All E.R. 872). As to the effect of inadvertent comment by counsel, see *R. v. Dickman* (1910), 74 J.P. 449.

Proviso (c): Calling of wife or husband. See the note to s. 4, *post*.

Proviso (d): Matrimonial communications. The right to refuse to disclose a matrimonial communication is a privilege of the witness not of the accused (*H.M. Advocate v. H.D.*, 1953 S.C. (J.) 65). See also the note "Marital privilege" to the Evidence Amendment Act 1853, s. 3, p. 822, *ante*.

Proviso (e): Accused compelled to answer. If it appears likely that the answer to a question put to a person charged with a crime would tend to show some other person guilty of that crime, he is none the less bound to answer the question (*R. v. Minihane* (1921), 16 Cr. App. Rep. 38).

Proviso (f): What questions within proviso. The test to be applied is not what was in the mind of counsel putting a question, but what would be its effect on the minds of a jury. A question which, when taken by itself, is not within this proviso, may, when considered in conjunction with previous questions, be adjudged to be a question tending to show a previous conviction or bad character (*R. v. Ellis*, [1910] 2 K.B. 746; [1908-10] All E.R. Rep. 488; *R. v. Cohen*, [1938] 3 All E.R. 380); see also *Jones v. Director of Public Prosecutions*, [1962] A.C., at p. 647; [1962] 1 All E.R. 569. See, further, as to questions asked contravening this proviso, in particular, *Jenkins v. Felt* (1923), 129 L.T. 95; [1923] All E.R. Rep. 295.

Charged with any offence. The word "charged" as used throughout this proviso means charged before a court, not merely suspected or accused without a prosecution (*Stirland v. Director of Public Prosecutions*, [1944] A C. 315; [1844] 2 All E.R. 13).
Putting of questions. Counsel for the prosecution, before asking any such question, should first ask the leave of the judge in order that the judge should have an opportunity of stopping such a question being put (*R. v. McLean* (1926), 134 L.T. 640). If such a question is improperly put, the judge should not wait for an objection by the defendant's counsel, but should stop it himself and direct the jury to disregard it and not let it influence their minds (*R. v. Ellis*, [1910] 2 K.B. 746; [1908-10] All E.R. Rep. 488).
Whether proof of committal or conviction for a previous offence is or is not admissible in evidence depends on whether such proof will directly tend to prove some matter in issue, e.g., proof that the accused had on previous occasions caused miscarriages was held admissible to show the intent where the accused was charged with "using a certain instrument with intent to procure a miscarriage" (*R. v. Bond*, [1906] 2 K.B. 389; *Perkins v. Jeffery*, [1915] 2 K.B. 702; [1914-15] All E.R. Rep. 172; *Maxwell v. Director of Public Prosecutions*, [1935] A.C. 309; [1934] All E.R. Rep. 168, at pp. 318, 319, and p. 173, respectively, *per* Viscount Sankey, L.C.).
A question as to a previous charge on which the prisoner has been acquitted is not within proviso (f) (i) (*R. v. Cokar*, [1960] 2 Q.B. 207; [1960] 2 All E.R. 175).
Proviso (f) (ii) is not intended to apply when a general examination of the surrounding circumstances has been made on behalf of the prisoner and facts favourable to him thereby elicited, but when evidence as to character has been given on his behalf or witnesses for the prosecution have been led to speak of his character. Mere assertions of innocence on the part of the accused do not amount to evidence of good character (*R. v. Ellis*, [1910] 2 K.B. 746; [1908-10] All E.R. Rep. 488), nor does a voluntary statement as to character by one of the accused's witnesses (*R. v. Redd*, [1923] 1 K.B. 104). Questions relating to a previous charge resulting in acquittal or to an accusation not resulting in prosecution are in general irrelevant and inadmissible since such matters are evidence of misfortune rather than bad character *(Maxwell) v. Director of Public Prosecutions*, [1935] A.C. 309; [1934] All E.R. Rep. 168; *Stirland v. Director of Public Prosecutions*, [1944] A.C. 315; [1944] 2 All E.R. 13; but see *R. v. Waldman* (1934), 78 Sol. Jo. 634 (questions as to previous conviction and previous acquittal on similar charges held admissible)). Where the accused calls evidence as to his character in a particular respect, he puts his whole character in issue (*R. v. Winfeld*, [1939] 4 All E.R. 164).
Whether the nature or conduct of the defence does or does not involve casting imputations on the character of the prosecutor or of the witnesses for the prosecution is a question of fact in each case. An imputation on the character of a person other than the prosecutor or a witness for the prosecution, e.g., a deceased person, will not deprive the accused of protection (*R. v. Biggin*, [1920] 1 K.B. 213; [1918-19] All E.R. Rep. 501; *R. v. Westfall* (1912), 107 L.T. 463).
The cross-examination of an accused as to previous convictions or bad character is permissible under proviso (f) (ii) if the nature and conduct of his defence involved imputations on a prosecution witness, notwithstanding that the imputations were a necessary part of the accused's answer to the charge (*Selvey v. Director of Public Prosecutions*, [1968] 2 All E.R. 497, H.L.); see, however, in particular, *R. v. Turner*, [1944] K.B. 463; [1944] 1 All E.R. 599; and *Stirland v. Director of Public Prosecutions*, *supra*).

A trial judge has a discretion to refuse to permit such cross-examination even though it is permissible under proviso (f) (ii), but there is no rule that the discretion should be exercised by excluding cross-examination if the accused's defence necessarily involves the imputations that have been made (*Selvey v. Director of Public Prosecutions*, *supra*).

See also, in particular, *R. v. Clark*, [1955] 2 Q.B. 469; [1955] 3 All E.R. 29 (cross-examination of accused as to character after allegation against police witness), and *R. v. Cook*, [1959] 2 Q.B. 340; [1959] 2 All E.R. 97 (same, but discretion not exercised by trial judge and no warning given).

The words "charged with the same offence" in proviso (f) (iii) are to be strictly construed (*R. v. Roberts*, [1936] 1 All E.R. 23).

Evidence "against" a co-accused means evidence which supports the prosecution's case against him in a material respect or which undermines his defence and may be given in cross-examination (*Murdoch v. Taylor*, [1965] A.C. 574; [1965] 1 All E.R. 406). See also, in particular, *R. v. Stannard*, [1965] 2 Q.B. 1; [1964] 1 All E.R. 34 (test objective).

Once an accused has given evidence against a co-accused within the meaning of proviso (f) (iii) a trial judge has no discretion whether or not to allow the former to be cross-examined at the instance of the latter as to previous convictions or bad character. If, however in this case the prosecution desires to put questions to the accused under the proviso, the trial judge has a discretion whether or not to allow cross-examination as to previous convictions (*Murdoch v. Taylor*, *supra*).

See, generally, 14 Digest (Reel.) 406 *et seq.* and 511 *et seq.*

Proviso (g): Right to enter box. An accused person should not be deprived of his right to give evidence from the same place and in the same way as other witnesses, without good reason (*R. v. Symonds* (1924), 18 Cr. App. Rep. 100).

Proviso (h): Unsworn statements. Formerly there was some dispute as to whether an accused person might, when defended by counsel, make an unsworn statement, and if he was so entitled, as to when he should make it. The practice has developed of allowing an accused person defended by counsel to make an unsworn statement. There is a considerable conflict of decisions as to whether he should do so before or after his counsel has addressed the jury, but in the most recent reported case (*R. v. Sheriff* (1903), 20 Cox C.C. 334). Darling, J., held that he should do so before counsel for the prosecution addresses the jury.

Indictable Offences Act 1848, s. 18. Repealed by the Criminal Justice Act 1925, s. 49(4) and Sch. 3; see now s. 12 of that Act, Vol 21, title Magistrates.

---

2. Evidence of person charged

Where the only witness to the facts of the case called by the defence is the person charged, he shall be called as a witness immediately after the close of the evidence for the prosecution.

NOTE

Magistrates' court. By virtue of the Magistrates' Courts Rules 1968, s.1. 1968 No. 1920, r. 13(2), on the summary trial of an information, at the conclusion of the evidence for the prosecution, the accused may address the court, whether or not he afterwards makes an unsworn statement or calls evidence. See also rr. 4(1) and 13(4)-(6) of those Rules.

---

3. Right of reply

. . . the fact that the person charged has been called as a witness shall not of itself confer on the prosecution the right of reply.

NOTES

The words omitted were repealed by the Criminal Procedure (Right of Reply) Act 1964, s. 1(2).

Notwithstanding the provisions of the Criminal Procedure Act 1865, s. 2, p. 837, *ante*, the prosecution is not entitled to the right of reply on the trial of a person on indictment on the ground only that documents have been put in evidence for the defence; see the Criminal Justice Act 1948, s. 42(1), Vol. 8, p. 362. By s. 42(2) of the same Act, the prosecutor has the right of reply on trial before a magistrates' court where an address is made on behalf of the accused both at the conclusion of the case for the prosecution and at the conclusion of the evidence as provided in that subsection.

Evidence as to character. Where any evidence including evidence as to character (see *R. v. Stannard* (1837), 7 C. & P. 673), is given for the defence by persons other than the prisoner or defendant, counsel for the prosecution has the right of reply. This right is not in practice exercised where the only evidence put in by the defence is evidence as to character.

Persons jointly indicted. Where there are two or more defendants, and one of them gives evidence against another defendant and is cross-examined on behalf of that defendant. there is no right of reply, as the evidence against the second defendant, giver by the first defendant, is as it were tacked on to the evidence for the prosecution (see *R. v. Hadwen* [1902] 1 K.B. 882).

Where two or more defendants are "jointly" indicted and one of them calls evidence which affects the other defendants, and the latter call no evidence, counsel for the prosecution may reply generally (*R. v. Hayes and Walter* (1838), 2 Mood. & R. 155), but, where the evidence only applies to the case of the defendant who adduces it, the prosecution may only reply as to his case (*R. v. Trevelh* (1882), 15 Cox C.C. 289), and counsel for the other defendants have the right to address the jury last (*R. v. Kain* (1883), 15 Cox C.C. 388; *R. v. Burns* (1887), 16 Cox C.C. 195).

Where the defendants although jointly indicted are charged with separate offences which could have been tried separately and one of them calls evidence and the others do not, the prosecution can only reply to the case of the one who does call evidence (*R. v. Hayes and Walter*, *supra*).

---

4. Calling of wife or husband in certain cases

(1) The wife or husband of a person charged with an offence under any enactment mentioned in the schedule to this Act 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.

NOTES

Calling of wife or husband. The wife or husband of the accused can, in England and Wales, only be called as a witness on the accused's application (see s. 1(c), *ante*), except (1) where she or he was a competent witness at common law without the accused's consent; (2) where the Evidence Act 1877, p. 847, *ante* (cf. s. 6(1) *post*), applies; (3) where the Married Women's Property Act 1882, s. 12 (see also the Married Women's Property Act 1884, s. 1), Vol. 17, title Husband and Wife (cf. *R. v. Moore*, [1954] 2 All E. R. 189), applies; (4) in cases under the statutes specified in the Schedule, *post*, as extended by the Children and Young Persons Act 1933, ss. 15 and 108 (6) and Sch. I, Vol. 17, title Infants, Children and Young Persons; and (5) in cases under the Criminal Justice Administration Act 1914, s. 23 (3), Vol. 21, title Magistrates; s. 26 (5) of the Act of 1933; the Sexual Offences Act 1956 s. 39, Vol. 8, p. 438; the Indecency with Children Act 1960, s. 1(2) (see also s. 1(3)), Vol. 8, p. 486; the National Insurance Act 1965, s. 94(6), and that subsection as applied by the National Insurance (Industrial Injuries) Act 1965, s. 68(1), both Vol. 23, title National Insurance; the Industrial Injuries and Diseases (Old Cases) Act 1967, s. 11(5), Vol. 23, title National Insurance; and the Theft Act 1968, s. 30(3), Vol. 8, p. 801.

Rule at common law. At common law a wife or husband can only give evidence where the accused party is charged with committing some offence against the person or liberty of the other spouse (see, in particular, *R. v. Verolla*, [1963] Q.B. 285; [1962] 2 All E.R. 426).

When wife or husband compellable. In cases in which a wife or husband is a competent witness at common law (and in cases falling within the Evidence Act 1877, s. 1, p. 847, *ante*, or the Married Women's Property Act 1884, Vol. 17, title Husband and Wife), she or he is a compellable, as well as competent, witness for the prosecution (*R. v. Lapworth*, [1931] 1 K.B. 117; [1930] All E.R. Rep. 340); but she or he is not compellable in cases falling outside the common law rule (*Leach v. R.*, [1912] A.C. 305). In such cases, she or he should be warned that she or he is not compellable to give evidence (*R. v. Acaster* (1912), 106 L.T. 384).

Bigamy. The difficulty of having to prove the first marriage on a charge of bigamy before the second wife or husband could give evidence, the second marriage being then void (*R. v. Young* (1847), 2 Cox C.C. 291), has been removed by the Criminal Justice Administration Act 1914, s. 28(3), Vol. 21, title Magistrates, but as the first wife or husband may elect not to give evidence it is advisable to call another witness to prove the first marriage.

Treason. It has always been doubtful whether a wife was a competent witness against her husband without his consent on a treason charge, but the better opinion seems to be that she is not.

Persons jointly indicted. At common law, where two or more persons were jointly indicted, their spouses were not competent witnesses save in the instance quoted above, for their husbands, or wives, or for a co-defendant (*R. v. Thompson* (1872), L.R. I.C.C.R. 377).

Since this Act makes spouses competent in certain cases, if a wife or husband in such a case goes into the witness box, she or he will presumably not be prevented from giving evidence for or against a spouse's co-defendant, though she or he may be liable to cross-examination on behalf of that co-defendant (*R. v. Hadwen*, [1902] 1 K.B. 882). Her or his position is similar in most respects to that of an accused person in the witness box (*R. v. Williams* (1838), 8 C. & P. 284). However, if a spouse is not a

competent witness against the other spouse, she or he is not competent to give evidence against persons jointly charged with that spouse (*R. v. Mount, R. v. Metcalfe* (1934), 78 Sol. Jo. 225).
See, generally, as to the evidence of the wife or husband of the accused, the cases in 14 Digest (Rep l.) 519 *et seq.*

---

5. (*Applies to Scotland.*)

6. Provisions as to previous Acts

(1) This Act shall apply to all criminal proceedings [including proceedings in courts-martial,] notwithstanding any enactment in force at the commencement of this Act, except that nothing in this Act shall affect the Evidence Act, 1877.

(2) (*Rep. by the Revision of the Army and Air Force Acts (Transitional Provisions) Act 1935, Ss. 3 and 5 (2), Sch. 2, para. 5, and Sch. 4.*)

NOTES

The words in square brackets were inserted by the Revision of the Army and Air Force Acts (Transitional Provisions) Act, 1955, s. 3 and Sch. 2, para. 5.
Evidence Act 1877. See p. 847, *ante*.

---

7. Extent and short title

(1) This Act shall not extend to Ireland.

(2) (*Rep. by the S.L.R. Act* 1908.)

(3) This Act may be cited as the Criminal Evidence Act, 1898.

Section 4

SCHEDULE

ENACTMENTS REFERRED TO

Session and Chapter	Short Title	Enactments referred to
8 & 9 Vict. c. 83	The Poor Law (Scotland) Act, 1845	Section eighty.
[19 & 20 Geo. 5 c. 34	The Infant Life (Preservation) Act, 1929	The whole Act.]
[11 & 12 Geo. 6 c. 29	National Assistance Act, 1948	Section 51.]

NOTES

The entry relating to the Infant Life (Preservation) Act 1929 was added by s. 2(5) of that Act. The entry relating to the National Assistance Act 1948 was added by the National Assistance (Adaptation of Enactments) Regulations 1952, S.I. 1952 No. 1334 (made under the National Assistance Act 1948, s. 62, Vol. 23, title National Insurance).

The entries omitted (not all of which had been in the Schedule as originally enacted) were repealed by the Sexual Offences Act 1956, s. 51 and Sch. 4, and the Theft Act 1968, s. 33 (3) and Sch. 3, Parts II and III.

Poor Law (Scotland) Act 1845. Repealed by the National Assistance Act 1948, s. 62 and Sch. 7, Part I.

Infant Life (Preservation) Act 1929. See Vol. 8, p. 304.

National Assistance Act 1948, s. 51. See Vol. 23, title National Insurance.
