

LAWS OF THE UNITED KINGDOM

THE EVIDENCE ACT 1851

(14 & 15 Vict. c. 99)

ARRANGEMENT OF SECTIONS

SECTION

2. Parties to be admissible witnesses
3. Saving as to criminal proceedings
5. Saving as to 7 Will. 4 and 1 Vict. c. 26
6. Inspection, etc., of documents in common law courts
7. Proof of foreign and colonial acts of state, judgments, etc.
8. Proof of apothecaries' certificates
9. Proof of documents in Ireland
10. Proof of documents in England and Wales
11. Proof of documents in the colonies
13. Proof of previous conviction by certified copy of record
14. Examined or certified copies or extracts of public documents to be admissible in evidence
15. Penalty for falsely certifying documents
16. Administration of oaths
18. Extent of Act
19. Interpretation of "British Colony"

An Act to amend the Law of Evidence

[7th August 1851]

The short title was given to this Act by the Short Titles Act 1896.

Effect of Act. This Act is one of the most important of those relating to evidence. Ss. 2, 3 and 5, *post*, deal with the competency of parties as witnesses; s. 6, *post*, legalises the method of obtaining inspection of documents; and ss. 7-14, *post*, facilitate the reception in evidence of various documents and their copies.

Secondary evidence of a document, which had been lost, though admissible before this Act was passed, could only be produced by an "indifferent" witness, viz. not a party to the litigation as he was an interested person (*Fisher v. Samuda* (1808), 1 Camp. 190, at pp. 192, 193). See, generally, as to the competency of witnesses, 15 Halsbury's Laws (3rd Edn.) 418, 419, and 22 Digest (Repl.) 331 *et seq.*

Evidence Acts 1806 to 1895. For the Acts (including this Act) which may be cited together by this collective title, see the Introductory Note to the Witnesses Act 1806, p. 802, *ante*.

Northern Ireland. This Act applies.

1. (*Rep. by the S.L.R. Act 1875.*)

2. Parties to be admissible witnesses

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 herein-after excepted, be competent and compellable to give evidence, either *vivâ voce* 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.

NOTES

Competency of parties. See also the Evidence Further Amendment Act 1869, ss. 2 and 3, p. 846, *post*; and see, generally, 15 Halsbury's Laws (3rd Edn.) 118, 419.

Compellable. For exceptions, see s. 3, *post*, and 15 Halsbury's Laws (3rd Edn.) 419, 420. Note the Parliamentary Commissioner Act 1967, s. 11(2), Vol. 6, p. 829.

Husbands and wives of parties. It was decided in *Stapleton v. Crofts* (1552), 18 Q.B. 367, that this section did not by implication make husbands and wives of parties competent witnesses in civil cases; but see now the Evidence Amendment Act 1853, s. 1, p. 822, *post*; and see also the note "Competency of parties" to the Evidence Act 1843, s. 1, p. 812, *ante*.

3. Saving as to criminal proceedings

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 criminal proceeding 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.

NOTES

Criminal proceeding. See the note "Criminal proceedings" to the Criminal Evidence Act 1965, s. 1, p. 908, *post*.

Competency of accused and their husbands and wives. The effect of this section has been considerably narrowed by the Criminal Evidence Act 1898, which enacts by s. 1, p. 865, *post*, that (subject as therein provided) every person charged with an offence and the spouse of such person shall be a competent witness for the defence, and by s. 4, p. 869, *post*, that the spouse of any person charged with an offence under any enactment

mentioned in the Schedule to that Act, p. 870, *post*, may be called as a witness for the prosecution or defence without the consent of the person charged.

Competency of prosecutor. A prosecutor was at all times a competent witness unless he was certain to reap some financial benefit as a result of securing a conviction; and in some cases, even though he would reap some such benefit, he was allowed to give evidence on the grounds of public policy. He was not a party to the litigation as the prosecution is in the name and on behalf of the Crown.

Persons jointly charged. This section, in prohibiting a person from giving evidence for or against himself, did not by implication enable him to give evidence for a person charged with him (*R. v. Payne* (1872), L.R. 1 C.C.R. 349). But he may now do so under the Criminal Evidence Act 1898, s. 1, p. 865, *post*. As to when the prosecution may call one of two persons jointly charged, see the note "Persons jointly charged" to that section.

Incriminating questions. An accused person giving evidence under the Criminal Evidence Act 1898, s. 1, p. 865, *post*, may be compelled to answer a question incriminating him as to the offence charged, but (subject to certain exceptions) may not be asked a question incriminating him as to any other offence; see provisos (*e*) and (*f*) to that section.

Witnesses other than accused. In certain cases a witness in civil or bankruptcy proceedings may now be compelled to answer incriminating questions; see the Bankruptcy Act 1914, ss. 15 and 166, Vol. 3, pp. 53, 159, and the Theft Act 1968, s. 31(1), Vol. 8, p. 802.

Where a witness is not so compellable, he will in practice usually be warned by the Court that he need not answer if an answer may clearly tend to incriminate him. Otherwise he must himself claim the privilege of refusing to answer (*Thomas v. Newton* (1827), 2 C. & P. 606) and can do so only after being sworn (*Boyle v. Wiseman* (1855), 10 Exch. 647). He may do so at any time thereafter (*R. v. Garbett* (1847), 2 Car. & Kir. 474).

After doubts had arisen, as a result of earlier decisions, as to whether a witness's statement that an answer would incriminate him in itself entitled him to refuse, it was finally decided that the court must see that there are reasonable grounds for apprehending a real and appreciable danger to the witness before he may be excused from answering (*R. v. Boyes* (1861), 1 B. & S. 311; [1861-73] All E.R. Rep. 172).

See, generally, the cases cited in 22 Digest (Repl.) 391 *et seq.*

4. (*Rep. by the Evidence Further Amendment Act 1869, s. 1.*)

5. Saving as to 7 Will. 4 and 1 Vict. c. 26

Nothing herein contained shall repeal any provision contained in the Wills Act, 1837.

NOTE

Wills Act 1837. See Vol. 39, title Wills.

6. Inspection, etc., of documents in common law courts

Whenever any action or other legal proceeding shall henceforth be pending in any of the superior courts of common law at Westminster or Dublin, . . . such court . . . may . . . 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, 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 . . .

NOTES

The words omitted were repealed by the S.L.R. Act 1892.

Former practice. Before the enactment of this section, it was in general necessary for a party to common law proceedings who sought discovery of documents in possession of the other party to file a bill in equity for the purpose. But for some time before this Act, a practice had grown up by which the courts of common law would order the discovery of a document by one party to the other if the party holding it could be deemed to hold it as trustee for both parties (*Price v. Harrison* (1860), 8 C.B.N.S. 617).

Effect of section. This section supplemented, but did not abolish, the former common law jurisdiction to order discovery (*Bluck v. Gompertz* (1851), 7 Exch. 67; see also *Shadwell v. Shadwell* (1859), 6 C.B.N.S. 679; *Hunt v. Hewitt* (1852), 7 Exch. 236).

Modern practice. For the modern practice as to discovery and inspection of documents, see R.S.C. Ord. 24. For cases, see 18 Digest (Repl.) 5 *et seq.*

Superior courts of common law at Westminster or Dublin. See the note "Superior courts at Westminster" to the Evidence Act 1845, s. 2, p. 814, *ante*, and the note "Superior Courts at Dublin" to the Attendance of Witnesses Act 1854, s. 1, p. 824, *post*.

7. Proof of foreign and colonial acts of state, judgments, etc.

All proclamations, treaties, and other acts of state of any foreign state or of any British colony, and all judgments, decrees, orders, and other judicial proceedings of any court of justice in any foreign state or in any 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 herein-after 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 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 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 foreign or colonial 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 on

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 herein-before 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 and statement are necessary, or of the judicial character of the person appearing to have made such signature and statement.

NOTES

Acts of state. This phrase has been so widely construed as to include a Belgian patent (*Re Bett's Patent* (1862), 1 Moo. P.C.C.N.S. 49).

British colony. For meaning, see s. 19, *post*.

Examined copy. An examined copy is one of which a person can swear either that he has compared it with the original or that he has checked it while the original was being read over to him. The examiner must have read the whole of the document (*Nelthrop v. Johnson* (1650), Clay. 142. pl. 259), and be able to understand it (*Crawford and Lindsay Peerages* (1848), 2 H.L. Cas. 534, at p. 544).

Extension of section. This section and s. 11, *post*, may be applied by Order in Council to any foreign country in which Her Majesty has jurisdiction as if that country were a British possession; see the Foreign Jurisdiction Act 1890, s. 5 and Sch. 1, Vol. 4, pp. 508, 513.

Further enactments. See as to the proof of Commonwealth statutes, the Evidence (Colonial Statutes) Act 1907, p. 871, *post*; as to the proof and effect of foreign and Commonwealth registers and certain official certificates, the Evidence (Foreign, Dominion and Colonial Documents) Act 1933, p. 875, *post*; and, as to the registration of foreign judgments in the High Court, the Foreign Judgments (Reciprocal Enforcement) Act 1933, Vol. 6, p. 365.

Cases under this section. See *R. v. Beadon* (1933), 24 Cr. App. Rep. 59 (Photostat copy of document); and see as to the proof of judicial documents, 22 Digest (Repl.) 623 *et seq.*, and, as to proof of Commonwealth statutes, 22 Digest (Repl.) 626, 627.

8. Proof of apothecaries' certificates

Every certificate of the qualification of an apothecary which shall purport to be under the common seal of the Society of the Art and Mystery of Apothecaries of the City of London shall be received in evidence in any court of justice, and before any person having by law or by consent of parties authority to hear, receive, and examine evidence, without any proof of the said seal or of the authenticity of the said certificate, and shall be deemed sufficient proof that the person named therein has been from the date of the said certificate duly qualified to practice as an apothecary in any part of England or Wales.

9. Proof of documents in Ireland

Every document which by any law now in force or hereafter to be in force is or shall be admissible in evidence of any particular in any court of justice in England or Wales 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 admitted in evidence to the same extent and for the same purposes in any court of justice in Ireland, or before any person having in Ireland by law or by consent of parties authority to hear, receive and examine evidence, 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.

NOTES

Admissible ... without proof of seal. As to what documents are admitted without such proof, see s. 7, *ante*; and the Evidence Act 1845, s. 1, p. 813, *ante*.

Republic of Ireland. As to the effect of the establishment of what is now the Republic of Ireland, see the Irish Free State (Consequential Adaptation of Enactments) Order 1923, S.R. & O. 1923 No. 405.

10. Proof of documents in England and Wales

Every document which by any law now in force or hereafter to be in force is or shall be admissible in evidence of any particular in any court of justice in 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 admitted in evidence to the same extent and for the same purposes in any court of justice in England or Wales, or before any person having in England or Wales by law or by consent of parties authority to hear, receive, and examine evidence, 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.

NOTE

Republic of Ireland. See the note to s. 9, *ante*.

11. Proof of documents in the colonies

Every document which by any law now in force or hereafter to be in force is or shall be admissible in evidence of any particular in any court of justice in England or Wales 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 admitted in evidence to the same extent and for the same purposes in any court of justice of any of the British colonies, or before any person having in any of such colonies by law or by consent of parties authority to hear, receive, and examine evidence, 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.

NOTES

This section was repealed as to British India by the S.L.R. Act 1875.

Admissible ... without proof of seal. See the note to s. 9, *ante*.

British colonies. For meaning of "British colony", see s. 19, *post*.

Extension of section. See the note to s. 7, *ante*.

Republic of Ireland. See the note to s. 9, *ante*.

12. (*Rep. by the S.L.R. Act 1875.*)

13. Proof of previous conviction by certified copy of record

... 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, trial, conviction, and judgment or acquittal, as the case may be, omitting the formal parts thereof.

NOTES

The words omitted were repealed by the S.L.R. Act 1892.

General Note. This section applies to civil and criminal proceedings (*Richardson v. Willis* (1872), L.R. 8 Exch. 69). Production of a certified copy together with evidence of identity is sufficient proof (*R. v. Drabble* (1909), 53 Sol. Jo. 449).

The method devised by this Act for facilitating the proof of convictions is now rarely used, the other methods being found more convenient. It seems that the record must be drawn (this is not now usually done) and a copy of it, omitting the formal parts, made before a conviction can be proved under this section.

The evidence of a person present at the trial is not sufficient to prove the conviction (*Mash v. Darley*, [1914] 3 K.B. 1226, C.A.).

Alternative methods of proving convictions are provided by the Criminal Procedure Act 1865, s. 6, p. 839, *post*, and the Prevention of Crimes Act 1871, s. 18, Vol. 8, p. 199. The Criminal Justice Act 1948, s. 39, Vol. 8, p. 360, provides for proof of previous conviction by means of finger prints. See also as to proof of proceedings in magistrates' courts, the Magistrates' Courts Rules 1968, S.I. 1968 No. 1920, r. 56.

See, further, as to proof of conviction, 14 Digest (Repl.) 577 *et seq.*, and as to the admissibility of convictions in evidence, 22 Digest (Repl.) 274 *et seq.*

14. Examined or certified copies or extracts of public documents to be admissible in evidence

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 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 reasonable sum for the same, not exceeding fourpence for every folio of ninety words.

NOTES

Document of a public nature. See the note "Public document" to the Evidence Act 1845, s. 1, p. 813, *ante*. See also, as to proving Court Rolls, the Law of Property Act 1922, s. 144, Vol. 7, p. 97.

Examined copy. See the note to s. 7, *ante*.

See, generally, as to examined copies, the cases cited in 22 Digest (Repl.) 250 *et seq.*

Certified as a true copy. See, generally, as to certified copies, 22 Digest (Repl.) 253 *et seq.*

15. Penalty for falsely certifying documents

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 misdemeanour, and be liable, upon conviction, to imprisonment for any term not exceeding eighteen months.

16. Administration of oaths

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, is hereby empowered to administer an oath to all such witnesses as are legally called before them respectively.

NOTES

Former law. Before this Act was passed, a person giving false evidence before an arbitrator could not be convicted of perjury, as an arbitrator had no authority to administer an oath (*R. v. Hallett* (1851), 2 Den. 237).

Oath. This includes affirmation (Interpretation Act 1889, s. 3, Vol. 32, title Statutes).

17. (*Rep. by the Forgery Act 1913, s. 20 and Schedule, Part I ; see now that Act, Vol. 8, p. 257.*)

18. Extent of Act

This Act shall not extend to Scotland.

19. Interpretation of "British Colony"

The words "British Colony" as used in this Act shall apply . . . to the islands of Guernsey, Jersey, Alderney, Sark, and Mann, and to all other possessions of the British Crown, wheresoever and whatsoever.

NOTES

This section so far as it relates to British India was repealed by the S.L.R. Act 1875. The words omitted were repealed by the S.L.R. Act 1892.

Possessions of the British Crown, etc. Cf. the note "Her Majesty's dominions" to the Evidence by Commission Act 1859, s. 1, p. 829, *post*; but note the first note above.

20. (*Rep. by the S.L.R. Act 1875.*)
