

LAWS OF THE UNITED KINGDOM

THE EVIDENCE ACT 1938

(1 & 2 Geo. 6 c. 28)

ARRANGEMENT OF SECTIONS

Section

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An Act to amend the Law of Evidence

[26th May 1938]

Extension. This Act is applied in relation to proceedings before the Disciplinary Committee by the Solicitors (Disciplinary Proceedings) Rules 1966, S.I. 1966 No. 1168, r. 41; 20 Halsbury's Statutory Instruments, title Solicitors (Part 1).

Northern Ireland. The Act does not apply; see s. 7(2), *post*.

1. Admissibility of documentary evidence as to facts in issue

(1) In any civil proceedings where direct oral evidence of a fact would be admissible, any statement made by a person in a document and tending to establish that fact shall, on production of the original document, be admissible as evidence of that fact if the following conditions are satisfied, that is to say-

(i) if the maker of the statement either-

(a) had personal knowledge of the matters dealt with by the statement; or

(b) where the document in question is or forms part of a record purporting to be a continuous record, made the statement (in so far as the matters dealt with thereby are not within his personal knowledge) in the performance of a duty to record information supplied to him by a person who had, or might reasonably be supposed to have, personal knowledge of those matters; and

(ii) if the maker of the statement is called as a witness in the proceedings:

Provided that the condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead, or unfit by reason of his bodily or mental condition to attend as a witness, or if he is beyond the seas and it is not reasonably practicable to secure his attendance, or if all reasonable efforts to find him have been made without success.

(2) In any civil proceedings, the court may at any stage of the proceedings, if having regard to all the circumstances of the case it is satisfied that undue delay or expense would otherwise be caused, order that such a statement as is mentioned in subsection (1) of this section shall be admissible as evidence or may, without any such order having been made, admit such a statement in evidence-

(a) notwithstanding that the maker of the statement is available but is not called as a witness;

(b) notwithstanding that the original document is not produced, if in lieu thereof there is produced a copy of the original document or of the material part thereof certified to be a true copy in such manner as may be specified in the order or as the court may approve, as the case may be.

(3) Nothing in this section shall render admissible as evidence any statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish.

(4) For the purposes of this section, a statement in a document shall not be deemed to have been made by a person unless the document or the material part thereof was written, made or produced by him with his own hand, or was signed or initialled by him or otherwise recognised by him in writing as one for the accuracy of which he is responsible.

(5) For the purpose of deciding whether or not a statement is admissible as evidence by virtue of the foregoing provisions, the court may draw any reasonable inference from the form or contents of the document in which the statement is contained, or from any other circumstances, and may, in deciding whether or not a person is fit to attend as a witness, act on a certificate purporting to be the certificate of a registered medical practitioner and where the proceedings are with a jury, the Court may in its discretion reject the statement notwithstanding that the requirements of this section are satisfied with respect thereto, if for any reason it appears to it to be inexpedient in the interests of justice that the statement should be admitted.

NOTES

This section is repealed by the Civil Evidence Act 1968, s. 20(2), as from a day to be appointed under s. 20(4) thereof, p. 932, *post*.

Definitions. For "document", "proceedings" and "statement", see s. 6(1), *post*.

2. Weight to be attached to evidence

(1) *In estimating the weight, if any, to be attached to a statement rendered admissible as evidence by this Act, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement, and in particular to the question whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not the maker of the statement had any incentive to conceal or misrepresent facts.*

(2) *For the purpose of any rule of law or practice requiring evidence to be corroborated or regulating the manner in which uncorroborated evidence is to be treated, a statement rendered admissible as evidence by this Act shall not be treated as corroboration of evidence given by the maker of the statement.*

NOTES

This section is repealed by the Civil Evidence Act 1968, s. 20(2), as from a day to be appointed under s. 20(4) thereof, p. 932, *post*.

Statement. For definition, see s. 6(1), *post*.

3. Proof of instrument to validity of which attestation is necessary

Subject as hereinafter provided, in any proceedings, whether civil or criminal, an instrument to the validity of which attestation is requisite may, instead of being proved by an attesting witness, be proved in the manner in which it might be proved if no attesting witness were alive:

Provided that nothing in this section shall apply to the proof of wills or other testamentary documents.

NOTES

General Note. This section may be compared with the Criminal Procedure Act 1865, s. 7, p. 840, *ante*.

Proceedings. This includes arbitrations and references; see s. 6(1), *post*.

4. Presumptions as to documents twenty years old

In any proceedings, whether civil or criminal, there shall, in the case of a document proved, or purporting, to be not less than twenty years old, be made any presumption which immediately before the commencement of this Act would have been made in the case of a document of like character proved, or purported to be not less than thirty years old.

NOTES

Presumption as to "ancient documents". See 15 Halsbury's Laws (3rd Edn.) 354 *et seq.*

Vendor and purchaser. As to recitals, etc., in instruments twenty years old being sufficient evidence, see the Law of Property Act 1925, s. 45(6), Vol. 27, title Real Property.

5. Explanation of s. 99 of 15 & 16 Geo. 5 c. 49 and s. 99 of 24 & 25 Geo. 5 c. 53

It is hereby declared that section ninety-nine of the Supreme Court of Judicature (Consolidation) Act, 1925 . . . (which relate to the making of rules of court) authorise the making of rules of court providing for orders being made at any stage of any proceedings directing that specified facts may be proved at the trial by affidavit with or without the attendance of the deponent for cross-examination, notwithstanding that a party desires his attendance for cross-examination and that he can be produced for that purpose.

NOTES

The words omitted were repealed by the County Courts Act 1959, s. 204 and Sch. 3; see now s. 102(5) of that Act, Vol. 7, p. 366.

Rules of court, etc. See R.S.C. Ord. 38, r. 2.

Supreme Court of Judicature (Consolidation) Act 1925, s. 99. See Vol. 25, title Practice and Procedure.

6. Interpretation and savings

(1) In this Act-

"Document", includes books, maps, plans, drawings and photographs;

"Statement" includes any representation of fact, whether made in words or otherwise;

"Proceedings" includes arbitrations and references, and "Court" shall be construed accordingly.

(2) Nothing in this Act shall-

(a) prejudice the admissibility of any evidence which would apart from the provisions of this Act be admissible; or

(b) enable documentary evidence to be given as to any declaration relating to a matter of pedigree, if that declaration would not have been admissible as evidence if this Act had not passed.

NOTE

Sub-s. (1) (except the words from "Proceedings" to "references") and sub-s. (2)(*b*) are repealed by the Civil Evidence Act 1968, s. 20(2), as from a day to be appointed under s. 20(4) thereof, p. 932, *post*.

7. Short title, extent and commencement

(1) This Act may be cited as the Evidence Act, 1938.

(2) This Act shall not extend to Scotland or Northern Ireland.

(3) (*Rep. by the S.L.R. Act 1950.*)
