

LAWS OF THE UNITED KINGDOM

THE EVIDENCE AMENDMENT ACT 1853

(16 & 17 Vict. c. 83)

An Act to amend an Act of the Fourteenth and Fifteenth Victoria, Chapter Ninety-nine.

[20th August 1853]

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. Husbands and wives of 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 husbands and wives of the parties thereto, and of the persons in whose behalf any such suit, action, or other proceeding may be brought or instituted, or opposed 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.

NOTE

Adultery. See as to the competency of the spouses of parties to proceedings instituted in consequence of adultery, the Evidence Further Amendment Act 1869, s. 3, p. 846, *post*.

2. Saving as to criminal cases

Nothing herein shall 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, in any criminal proceeding, ...

NOTES

The words omitted were repealed by the Evidence Further Amendment Act 1869, s. 1.

General Note. This section must now be read in the light of the Criminal Evidence Act 1898, ss. 1(c) and 4, pp. 865, 869, *post*.

Husband; wife. The incompetency extends to a former spouse in respect of acts committed during the marriage; see, in particular, *R. v. Algar*, [1954] 1 Q.B. 279; [1953]

2 All E.R. 1381, C.C.A. A voidable marriage is for this purpose to be treated as a subsisting marriage even though it was annulled before the prosecution was begun; see *R. v. Algar, supra*.

3. Husbands and wives not compellable to disclose communications

No husband shall be compellable to disclose any communication made to him by his wife during the marriage, and no wife shall be compellable to disclose any communication made to her by her husband during the marriage.

NOTES

This section was repealed, except in relation to criminal proceedings, by the Civil Evidence Act 1968, s. 16(3), p. 929, *post*.

Marital privilege. It has often been stated that at common law communications between husband and wife were privileged from disclosure, on the ground that to compel one spouse to disclose communications made to the other would destroy the confidence that should exist between husband and wife.

It would appear, however, that no such rule ever existed, that the belief that it did exist rested on a misunderstanding of decisions based on the general incompetency (before the passing of this Act) of husbands and wives of parties as witnesses, and that the only privilege attached to marital communications is that conferred by this section (and by the Criminal Evidence Act 1898, s. 1(d), p. 865, *post*) (*Shenton v. Tyler*, [1939] Ch. 620; [1939] 1 All E.R. 827, C.A.).

Widowed and divorced persons. The privilege conferred by this section comes to an end with the end of the marriage (*Shenton v. Tyler*, [1939] Ch. 620; [1939] 1 All E.R. 827, C.A.; contrast *R. v. Algar*, [1951] 1 Q.B. 279; [1953] 2 All E.R. 1381).

Evidence of third party. A third party may give evidence of what occurred during a conversation between husband and wife (*Hamp v. Robinson* (1865), 16 L.T. 29).

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

5. Short title

In citing this Act in other Acts of Parliament, or in any instrument, document, or proceeding, it shall be sufficient to use the expression, "The Evidence Amendment Act, 1853".

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