

Evidence

WESTERN AUSTRALIA

ANNO DECIMO

VICTORIÆ REGINÆ

No. 14

An Ordinance for improving the Law of Evidence.

[Assented to 2nd September, 1847.]

Preamble

6 & 7 Vic., c. 85,
s. 1 (*Imperial*)

No incapacity
from crime or
interest

Proviso, not a
party to the
record, &c., &c.

*Proviso repealed
by 16 Vic., No. 9

Proviso, not to
repeal Statute of
Wills, 7 WIL. IV.,
and 1 Vic., No. 26

Proviso as to
parties in Equity

Not necessary to
state when jury-
men made affir-

WHEREAS it is expedient to remove the legal incapacities which at present prevent the admission of the testimony of certain classes of persons as witnesses, and to leave the question of the credibility of witnesses to be decided by the persons appointed to decide on the case; and whereas it is also expedient to admit certain public documents to be receivable in evidence without the necessity of proving that the said documents are genuine: Be it therefore enacted by His Excellency the Governor of Western Australia and its Dependencies, by and with the advice and consent of the Legislative Council thereof, that no person offered as a witness shall hereafter be excluded by reason of incapacity from crime or interest from giving evidence either in person or by deposition, according to the practice of the Court, on the trial of any issue joined, or of any matter or question, or on any inquiry arising in any suit, action or proceeding, civil or criminal, in any Court or before any Judge, Commissioner, Jury, Sheriff, Coroner, Magistrate, Officer or person having by law or consent of parties, authority to hear, receive and examine evidence, but that every person so offered may and shall be admitted to give evidence on oath or solemn affirmation, in those cases wherein affirmation is by law receivable, notwithstanding that such person may or shall have an interest in the matter in question or in the event of the trial of any issue, matter, question or inquiry, suit, action or proceeding, in which he is offered as a witness, and notwithstanding that such person offered as a witness may have been previously convicted of any crime or offence . . . *
Provided also that this Ordinance shall not be held to affect the admissibility as a witness of a mere agent, though a party as aforesaid named in the record, nor to repeal any provision in a certain Act passed in the session of Parliament holden in the seventh year of the reign of His late Majesty and in the first year of the reign of Her present Majesty, and intituled 'An Act for the Amendment of the Laws with respect to Wills:' Provided also, that in Courts of Equity any defendant to any cause pending in any such Court may be examined as a witness on the behalf of the plaintiff or of any co-defendant in any such cause, saving just exceptions, and that any interest which such defendant so to be examined may have in the matters or any of the matters in question in the case shall not be deemed a just exception to the testimony of such defendant, but shall only be considered as affecting or tending to affect the credit of such defendant as a witness.

2. And be it enacted that wherever in any legal proceedings whatever, legal proceeding may be set out, it shall not be necessary to

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specify that any particular persons who acted as jurors had made affirmation instead of oath, but it may be stated that they served as jurymen in the same manner as if no Act had passed for enabling persons to serve as jurymen without oath.

ation instead of oath

3. And be it enacted that whenever by any Act now in force, or hereafter to be in force, any certificate, official or public document or proceeding of any corporation, or joint stock or other company, or any certified copy of any document, by-law, entry in any register or other book, or of any other proceeding, shall be receivable in evidence of any particular in any Court of Justice, or before any legal tribunal, or in any judicial proceeding, the same shall be respectively admitted in evidence, provided they respectively purport to be sealed or impressed with a stamp, or sealed and signed, or signed alone, as required, or impressed with a stamp and signed, as directed by the respective Acts made or to be hereafter made, without any proof of the seal or stamp, where a seal or stamp is necessary, or of the signature, or of the official character of the person appearing to have signed the same, and without any further proof thereof in every case in which the original record could have been received in evidence.

Proof of seal, stamp, &c., &c., not required

4. And be it enacted that all Courts, Judges, Justices, Masters of Courts, Commissioners judicially acting, and other judicial officers, shall henceforth take judicial notice of the signature of any equity or common law Judge of the Civil Court, or Chairman of Quarter Sessions, of this Colony respectively, provided such signature be attached or appended to any decree, order, certificate or other judicial or official document.

Courts, &c., to take notice of signature of Judge, &c.

5. And be it enacted that all copies of private and local and personal Acts or Ordinances of the Legislature of this Colony, purporting to be printed by the Government Printer, and of Proclamation by His Excellency the Governor, purporting to be printed by the Government Printer, or by any person authorised to act as such for the time, shall be admitted as evidence thereof by all Courts, Judges, Justices and others, without any proof being given that such copies were so printed.

Private Acts, Proclamations, &c., admissible without proof

6. Provided always and be it enacted that if any person shall forge the seal, stamp or signature of any such certificate, official or public document, or document or proceeding of any corporation, or joint stock or other company, or of any certified copy of any document, by-law, entry in any register or other book, or other proceeding as aforesaid, or shall tender in evidence any such certificate, official or public document, or document or proceeding of any corporation, or joint stock or other company, or any certified copy of any document, by-law, entry in any register or other book, or of any other proceeding, with a false or counterfeit seal, stamp or signature thereto, knowing the same to be false or counterfeit, whether such seal, stamp or signature be those of or relating to any corporation or company already established, or of or relating to any corporation or company to be hereafter established, or if any person shall forge the signature of any Judge, Commissioner or other officer as aforesaid to any order, decree, certificate or other judicial or official document, or shall tender in evidence any order, decree, certificate or other judicial document with

Forgery of seal, stamp, signature &c., felony

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a false or counterfeit signature of any such Judge, Commissioner or other officer as aforesaid thereto, knowing the same to be false or counterfeit, or if any person shall print any copy of any private Act or Ordinance as aforesaid, which copy shall falsely purport to have been printed by the Government Printer, or by any other person so authorised as aforesaid, or shall tender in evidence any such copy, knowing that the same was not printed by the person or persons by whom it so purports to have been printed, every such person shall be guilty of felony, and shall upon conviction be liable to transportation for seven years, or to imprisonment for any term not more than three nor less than one year with hard labour: Provided also that whenever any such document as before mentioned shall have been received in evidence by virtue of this Ordinance, the said Court, Judge, Commissioner or other person officiating judicially who shall have admitted the same shall, at the request of any party against whom the same is so received, be authorised at its or his own discretion to direct that the same shall be impounded and be kept in the custody of some officer of the Court or other proper person until further order touching the same shall be given either by such Court or the Court to which such master or other officer belonged, or by the person or persons who constituted such Court, or by such Judge, Commissioner or other officer as aforesaid, on application being made for that purpose.

Proviso, document may be impounded

FREDERICK CHIDLEY IRWIN,
GOVERNOR AND COMMANDER-IN-CHIEF.
