



Western Australia.

ANNO SEXAGESIMO TERTIO

VICTORIÆ REGINÆ.

No. VIII.

AN ACT to amend the Law of Evidence in
Criminal Cases.

[Assented to, 9th October, 1899.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. THIS Act may be cited as the Criminal Evidence Act, 1899, and shall come into operation on the expiration of two months from the passing thereof.

Short title.

2. THE Act of the sixtieth year of Her now Majesty, numbered thirty-one, is hereby repealed.

Repeal of 60 Vict.
No. 31.

3. 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,

Competency of
witnesses in criminal
cases.

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whether the person so charged is charged solely or jointly with any other person: Provided as follows:—

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Act, 1898 (Imp.) s. 1.

- (a.) A person so charged shall not be called as a witness in pursuance of this Act except on 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 comment 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 in 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 ;

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(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 Ten of the Act of the fourteenth year of Her now Majesty, numbered four.

Saving of 14 Vict.,
No. 4, s. 10.

4. 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.

Evidence of defend-
ant, when to be given.

Ibid., s. 2.

5. IN cases where the right of reply depends upon the question whether evidence has been called for the defence, the fact that the person charged has been called as a witness shall not of itself confer on the prosecution the right of reply

Right of reply.

Ibid., s. 3.

6. (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.

Calling of wife or
husband in certain
cases.

Ibid., s. 4.

(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.

7. THIS Act shall apply to all criminal proceedings, notwithstanding any enactment in force at the commencement of this Act, except that on the trial of any indictment or other proceeding for the non-repair of any public highway or bridge, or for a nuisance to any public highway, river, or bridge, and of any other indictment or proceeding instituted for the purpose of trying or enforcing a civil right only, every defendant to such indictment or proceeding, and the wife or husband of any such defendant, shall be admissible witnesses and compellable to give evidence.

To apply to all crim-
inal proceedings, ex-
cept such as are
instituted to enforce
a civil right.

Ibid., s. 6.

See 40 Vict., c. 14,
(Imp.) Evidence Act,
1877.

In the name and on behalf of the Queen I hereby assent
to this Act.

GERARD SMITH, Governor.

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Section 6.

THE SCHEDULE.

Session and Number.	Object or Title.	Parts referred to.
9 Vict., 2	Relief of Destitute Persons	Sections 2, 3, 7, & 12
39 Vict., 8	The Bastardy Laws Act, 1875	Sections 4, 5, & 12
24 & 25 Vict., c. 100	Punishment of Offences against the Person	Sections 48 to 55, inclusive
55 Vict., 20	Married Women's Property Act, 1892	Sections 12 & 16
55 Vict., 24	Criminal Laws Amendment Act, 1892	The whole