



WESTERN AUSTRALIA.

ANNO DECIMO SEXTO

VICTORIÆ REGINÆ.

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No. IX.

An Ordinance to amend the Law of Evidence. <sup>14th & 15th Vict.,</sup>  
<sub>Chap. 98, 99</sub>

**W**HEREAS it is expedient to amend the Law of Evidence in Preamble. divers particulars; 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

Recited Provision in so much of Section One of the Ordinance of the 10th year of the sec. 1. of 10th Vict., reign of Her present Majesty, No. 14, as provides that the said Ordinance No. 14, repealed.

“shall not render competent any party to any suit, action, or proceeding, who shall be individually named in the record, or shall be virtually included as a co-defendant on the record in any proceeding against a co-partnership, under the authority of any local Ordinance, or any lessor of the Plaintiff, or tenant of premises sought to be recovered in ejectment, or the Landlord or other person in whose right any Defendant in replevin may make cognizance, or any person in whose immediate and individual behalf any action may be brought or defended, either wholly or in part, or the husband or wife of such persons respectively,” is hereby repealed.

Parties to be admissible witnesses.

II. AND be it enacted, that 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 hereinafter excepted) be competent and compellable to give evidence, either *viva 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 proceeding.

Nothing herein to compel person charged with criminal offences to give evidence tending to criminate himself, &c.

III. AND be it enacted, that 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.

Not to apply to proceedings in consequence of adultery, or to action for Breach of promise of marriage.

IV. AND be it enacted, that nothing herein contained shall apply to any action, suit, proceeding, or bill, instituted in consequence of adultery, or to any action for breach of promise of marriage.

V. NOTHING herein contained shall be deemed to repeal or re-

strict the applicability, in the administration of justice in this colony, of any provision contained in chapter 26 of the Statute passed in the session of the Imperial Parliament, holden in the seventh year of the reign of King William the 4th, and the first year of the reign of Her present Majesty, intituled "an Act for the amendment of the laws with respect to wills." Nothing to repeal any provisions of 7th William 4th and 5th Vic. c. 26.

VI. Whenever any action or other legal proceeding at law shall henceforth be pending in the Civil Court of the said colony, the Commissioner of 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 Ordinance, 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 Commissioner. Common Law Court authorised to compel inspection of documents wherever Equity would grant a discovery.

VII. 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 hereinafter 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 and 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 Foreign and Colonial Acts of State, Judgments, &c. proveable by certified copies without proof of seal or signature, or judicial character of person signing the same.

signature a statement, in writing, on the said copy, that the court whereof he is Judge, has no seal; but if any of the aforesaid authenticated copies shall purport to be sealed or signed as hereinbefore 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, when a seal is necessary, or of the signature, or of the truth of the statement attached thereto, where such signature and statement are necessary, or of the judicial character of the person appearing to have made such signature and statement.

Documents admissible without proof of seal, &c., in England, Wales, or Ireland, equally admissible in the Colonies.

VIII. AND be it enacted, that 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, 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 admissible in evidence to the same extent and for the same purposes, in any Court of Justice in the Colony of Western Australia, or before any person in the said colony having 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,

Registers of British vessels, etc., admissible as *prima facie* evidence of their contents, without proof of signature, etc.

IX. EVERY register of a vessel kept under any of the Acts of the Imperial Parliament, or any local Ordinance relating to the registry of any British or Colonial vessels, 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 the production of the original, or by an examined copy thereof, or by a copy thereof purporting to be certified under the hand of the person having the charge of the original, and which person is hereby required to furnish such certified copy to any person applying at a reasonable time for the same, upon payment of the sum of two shillings and sixpence; and every such register or such copy of a register, and also every certificate of registry granted under any of the Acts of the Imperial Parliament, or any local Ordinance relating to the registry of any British or Colonial vessels, and purporting to be signed as required by law, shall be received in evidence in any Court of Justice or before any person having by law or by consent

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of parties, authority to hear, receive, and examine evidence, as *prima facie* proof of all the matters contained or recited in such register, when the register or such copy thereof as aforesaid is produced, and of all the matters contained or recited in, or endorsed on such certificate of registry, when the said certificate is produced.

X. AND whereas it is expedient, as far as possible, to reduce the expense attendant upon the proof of criminal proceedings; Be it enacted, that 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, Judgment or Acquittal, as the case may be, omitting the formal parts thereof.

XI. AND be it enacted, that 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 law exists which renders its contents proveable 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 intrusted, 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 (except where otherwise provided for by law) of a sum not exceeding four pence for every folio of seventy-two words.

XII. AND be it enacted, that if any officer authorised or required by this Ordinance 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 misdemeanor, and be liable upon conviction to imprisonment for any term not exceeding eighteen months.

Court, etc., may administer oaths.

XIII. AND be it enacted, that every Court, Commissioner, Judge, Justice, Officer, 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

Persons forging Seal, Stamp, or Signature, of certain documents, or wilfully uttering same, guilty felony.

XIV. AND be it enacted, that if any person shall forge the seal, stamp or signature, of any document in this Ordinance mentioned or referred to, or shall tender in evidence any such document with a false or counterfeit seal, stamp or signature thereto, knowing the same to be false or counterfeit, he shall be guilty of felony, and shall upon conviction be liable to transportation for seven years, or to imprisonment for any term not exceeding three years, nor less than one year with hard labour; and whenever any such document shall have been admitted in evidence by virtue of this Ordinance, the court or the person who shall have admitted the same, may, at the request of any party against whom the same is so admitted in evidence, direct that the same shall be impounded and be kept in the custody of some officer of the court or other proper person for such period and subject to such conditions as to the said court or person shall seem meet; and every person who shall be charged with committing any felony under this Ordinance may be dealt with, indicted, tried, and if convicted, sentenced, and his offence may be laid and charged to have been committed, in the district or place in which he shall be apprehended or be in custody; and every accessory before or after the fact to any such offence may be dealt with, indicted, tried, and if convicted, sentenced, and his offence laid and charged to have been committed in any district or place in which the principal offender may be tried.

Interpretation of British Colony."

XV. AND be it enacted, that the words "*British Colony*" as used in this Ordinance, shall apply to all the British territories under the Government of the East India Company, and to the Islands of Guernsey, Jersey, Alderney, and Sark, and Man, and to all other Possessions of the British Crown, wheresoever and whatsoever.

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XVI. AND be it enacted, that all sums of money payable under Application of fees, this Ordinance, shall be paid over to the Colonial Treasurer of the said colony for the public uses thereof.

CHARLES FITZGERALD,  
GOVERNOR AND COMMANDER-IN-CHIEF.

*Passed the Council, }  
22nd Dec. 1852. }*

A. O'GRADY LEFROY,  
Clerk of the Council.