

WESTERN AUSTRALIA

ANNO TRIGESIMO QUARTO

VICTORIÆ REGINÆ

No. 5

An Act to amend the Law of Evidence and Practice on
Criminal Trials. [*Assented to 2nd January, 1871.*]

WHEREAS it is expedient that the law of evidence and practice
on trials for felony, misdemeanour and other proceedings in
Courts of Criminal Judicature should be more nearly assimilated to

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that on trials in civil actions: Be it enacted by His Excellency the Governor of Western Australia and its Dependencies, by and with the advice and consent of the Legislative Council thereof, as follows:—

Provisions of section 2 of this Act to apply to all criminal trials, and sections 3 to 8 to all Courts of Judicature, &c.

1. The provisions of section 2 of this Act shall apply to every trial for felony or misdemeanour which shall be commenced after the passing of this Act, and the provisions of sections 3 to 8 inclusive of this Act shall apply to all Courts of Judicature as well criminal as all others, and to all persons having by law or by consent of parties authority to hear, receive and examine evidence.

Summing up of evidence in cases of felony and misdemeanour

2. If any prisoner or prisoners, defendant or defendants, shall be defended by counsel, but not otherwise, it shall be the duty of the presiding Judge, at the close of the case for the prosecution, to ask the counsel for each prisoner or defendant so defended by counsel, whether he or they intend to adduce evidence; and in the event of none of them thereupon announcing his intention to adduce evidence, the counsel for the prosecution shall be allowed to address the jury a second time in support of his case, for the purpose of summing up the evidence against such prisoner or prisoners or defendant or defendants; and upon every trial for felony or misdemeanour, whether the prisoners or defendants, or any of them, shall be defended by counsel or not, each and every such prisoner or defendant or his or their counsel respectively, shall be allowed, if he or they should think fit, to open his or their case or cases respectively; and after the conclusion of such opening, or of all such openings (if more than one), such prisoner or prisoners, or defendant or defendants, or their counsel, shall be entitled to examine such witnesses as he or they may think fit, and when all the evidence is concluded to sum up the evidence respectively; and the right of reply, and practice and course of proceedings, save as hereby altered, shall be as at present.

How far witness may be discredited by the party producing

3. A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character; but he may, in case the witness shall in the opinion of the Judge prove adverse, contradict him by other evidence, or by leave of the Judge prove that he has made at other times a statement inconsistent with his present testimony; but before such last-mentioned proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

As to proof of contradictory statements of adverse witness

4. If a witness, upon cross-examination as to a former statement made by him relative to the subject-matter of the indictment, information or proceeding, and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make it; but before such proof can be given the circumstances of the supposed statement sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

Cross-examinations as to previous statements in writing

5. A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject-matter of the indictment, information or proceeding, without such writing being shown to him; but if it is intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writings which are to

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be used for the purpose of so contradicting him : Provided always that it shall be competent for the Judge, at any time during the trial, to require the production of the writing for his inspection, and he may thereupon make such use of it for the purposes of the trial as he may think fit.

6. A witness may be questioned as to whether he has been convicted of any felony or misdemeanour, and upon being so questioned, if he either denies or does not admit the fact, or refuses to answer, it shall be lawful for the cross-examining party to prove such conviction ; and a certificate containing the substance and effect only (omitting the formal part) of the indictment or information and conviction for such offence, purporting to be signed by the Clerk of the Court or other officer having the custody of the records of the Court where the offender was convicted, or by the deputy of such clerk or officer (for which certificate a fee of five shillings, and no more, shall be demanded or taken), shall, upon proof of the identity of the person, be sufficient evidence of the said conviction, without proof of the signature or official character of the person appearing to have signed the same.

Proof of previous conviction of witness may be given

7. It shall not be necessary to prove by the subscribing witness any instrument to the validity of which attestation is not requisite, and such instrument may be proved as if there had been no subscribing witness thereto.

As to proof by attesting witnesses

8. Comparison of a disputed writing with any writing proved to the satisfaction of the Judge to be genuine, shall be permitted to be made by witnesses ; and such writings and the evidence of witnesses respecting the same, may be submitted to the Court and jury as evidence of the genuineness or otherwise of the writing in dispute.

As to comparison of disputed writing

9. The word 'counsel' in this Act shall be construed to apply to attorneys in all cases where attorneys are allowed by law or by the practice of any Court to appear as advocates.

'Counsel'

FREDK. A. WELD,
GOVERNOR AND COMMANDER-IN-CHIEF.