

No. VII.

An Act for the further amendment of the Law
of Evidence. [25th August, 1858.]

EVIDENCE LAW.

WHEREAS it is expedient further to amend the Law of Evidence Preamble.
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 New South Wales in Parliament assembled and by the
authority of the same as follows :—

1. The provisions of the tenth eleventh twelfth thirteenth The provisions of
sections 10 11 12 13
14 & 15 of the
"Common Law Pro-
cedure Act of 1857"
fourteenth and fifteenth sections of the "Common Law Procedure extended to all
proceedings in all
Courts.
Act of 1857" shall extend and apply to the Supreme Court in the
exercise of all branches of its jurisdiction and to every proceeding in
all inferior Courts throughout the Colony.

2. On the trial of any issue joined or any matter or question or Parties and husbands
and wives may be
witnesses.
any inquiry arising in any suit action or proceeding in any Court 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 suit action or
proceeding may be brought or defended shall (except as hereinafter
excepted) be competent and compellable to give evidence either orally
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.

3. Nothing herein contained shall render any husband com- Exceptions as to
criminal cases.
petent 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 or in any proceeding instituted
in consequence of adultery.

4. No husband shall be competent or compellable to disclose Communications to
husband or wife
privileged.
any communication made to him by his wife during the marriage and
no wife shall be competent or compellable to disclose any communi-
cation made to her by her husband during the marriage.

5. Any person present at any trial or other proceeding wherein Persons may be ex-
amined without a
subpœna.
he might have been compellable to give evidence and produce docu-
ments by virtue of a subpœna or other summons or order duly issued
and served for that purpose shall be compellable to give evidence and
produce documents then in his possession and power in the same
manner and in case of refusal shall be subject to the same penalties
and liabilities as if he had been duly subpœnaed or summoned for
that purpose.

6. When any writing whatsoever shall have been copied by Machine copies to be
evidence.
means of any machine or press which produces a fac-simile impression
or copy of such writing such impression or copy shall upon proof to
the satisfaction of the Court or person having by law or by consent of
parties authority to hear receive and examine evidence that the same
was taken or made from the original writing by means of such machine
or press as aforesaid be *primâ facie* evidence of such writing without
any proof that such impression or copy was compared with the said
original thereof and without any notice to produce such original.

7. In every case civil or criminal in which it shall be necessary Evidence to prove a
conviction or sen-
tence.
to prove that any person was convicted of any offence or sentenced to
any punishment or pecuniary fine before or by any Court or Justices
or was ordered by any Court or Justices to pay any sum of money a
certificate under the hand (or purporting so to be) of the officer having
ordinarily the custody of the records or documents and proceedings
shewing such conviction sentence or order shall upon proof of the
identity

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identity of the party be sufficient evidence of such conviction sentence or order and of the particular offence or matter in respect of which it was had or passed or made if stated in such certificate Provided that the time and place of such conviction sentence or order shall be stated therein with the title of the Court in which or the names of the Justices by or before whom the same was so had or made.

The like as to the fact of a trial or inquiry.

8. In every case civil or criminal in which it shall be necessary to prove that any particular cause or case or matter was tried or under inquiry in any Court or before any Judge or Justices or Justice a like certificate under the hand (or purporting so to be) of the officer having ordinarily the custody of the records or documents and proceedings shewing the pendency or existence of such cause or case or matter shall be taken as evidence of the fact of such trial or inquiry and of the particular nature and occasion or ground and cause thereof if stated in such certificate Provided that the time and place of such trial or inquiry shall be stated therein with the title of the Court in which or the names or name of the Justices or Justice by or before whom the same occurred or was had or pending.

Proof of certificate.

9. Every such certificate or paper purporting to be such a certificate stating that the party signing the same has ordinarily the custody of the records documents or proceedings referred to therein shall be *prima facie* evidence of that fact and of the signature and official character of such party.

False certificate &c. misdemeanor.

10. If any person shall sign or issue or give or tender in evidence any such certificate or paper purporting so to be knowing the same to be false in any particular or shall forge or procure to be forged the signature of any officer or person to any such certificate or to any paper purporting to be such a certificate or shall fraudulently alter any such certificate after it has been signed or shall give or tender in evidence any such forged or altered certificate or paper knowing the same to be forged or fraudulently altered he shall be guilty of a misdemeanor and be liable to imprisonment with or without hard labor for any term not exceeding five years.

Confessions.

11. No confession which is tendered in evidence on any criminal proceeding shall be received which has been induced by any untrue representation or by any threat or promise whatever and every confession made after any such representation or threat or promise shall be deemed to have been induced thereby unless the contrary be shewn.

Not to affect Insolvents Acts.

12. Nothing in this Act shall be construed to exclude any evidence which is now admissible under the Acts relating to Insolvents.

Witnesses without just excuse neglecting to attend.

13. Where any person duly bound by recognizance or served with a subpoena to attend in any Court as a witness at the trial of any case civil or criminal shall fail to appear when called in open Court either at such trial or upon the day appointed for such trial it shall be lawful for the Court upon proof of such recognizance or of his having been duly served with such subpoena to call upon such person to shew cause why execution upon such recognizance or why an attachment for disobedience to such subpoena should not be issued against him or upon proof of those facts and also that the person's non-appearance was without just cause or reasonable excuse and upon oath that he will probably be able to give material evidence to issue a warrant to bring him before the Court to give evidence at such trial.

Mode of proceeding.

14. Such proof may be oral before the Court or by affidavit sworn before any Commissioner of the Supreme Court or any Justice of the Peace and every rule or order to shew cause as aforesaid may be made returnable either before the Court itself at the then sittings or at some future sitting or in respect of the non-appearance of a witness

Larceny by Bailees.

witness at a Circuit Court or on the trial of a case pending in the Supreme Court the rule or order may be made returnable in the Supreme Court. And on the return of any such rule or order the Court may deal with the case as the Supreme Court might and would have done upon a rule to the like effect issued out of that Court.
