

See Provisory Oaths Act
No 13 of 1866-67 sec 13
1869-70.



ANNO TRICESIMO

VICTORIÆ REGINÆ.

A.D. 1866-7.

No. 13.

An Act for amending the Law of Evidence and Practice on Criminal Trials. *But see S. 13 to all Courts*

[Assented to, 11th January, 1867.]

WHEREAS it is expedient that the Law of Evidence and Practice on trials for felony and misdemeanor and other proceedings in Courts of Criminal Judicature should be more nearly assimilated to that on trials of causes at the Civil Sittings of the Supreme Court—Be it therefore Enacted, by the Governor-in-Chief of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said Province, in this present Parliament assembled, as follows : Preamble.

1. The provisions of section 2 of this Act shall apply to every trial for felony or misdemeanor which shall be commenced on or after the first day of January, one thousand eight hundred and sixty-seven, and that the provisions of sections from three to ten 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. Provisions of section 2 of this Act to apply to trials commenced on or after first day of January, 1867.

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 Summing up of evidence in cases of felony and misdemeanor. See sec 1

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summing up the evidence against such prisoner or prisoners, or defendant or defendants; and upon every trial for felony or misdemeanor, 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 shall 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 shall be the same as on the trial of a cause at the Civil Sittings of the Supreme Court; but no right of reply shall in any case be allowed to the counsel appearing for the Crown or conducting the prosecution, unless the prisoner or prisoners, or some of them shall call evidence.

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 contradicting 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 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 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 writing which are to 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.

Proof of previous conviction of witness may be given.

6. A witness may be questioned as to whether he has been convicted of any felony or misdemeanor, and upon being so questioned, if he either denies or does not admit the fact, or refuses to answer, it

X This form for purpose of Act No. 1056 of 1911 Sec 1 and in the form substituted for it

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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 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 shall, upon proof of 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.

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

See Inq. Act of 1867 (32 & 33) 196

9. If any person called as a witness in any Court in the said Province, or required or desiring to make an affidavit or deposition in the course of any proceeding in any such Court, shall refuse or be unwilling, from alleged conscientious motives, to be sworn, it shall be lawful for the Court, or Judge, or other presiding officer or person qualified to take affidavits or depositions, upon being satisfied of the sincerity of such objection, to permit such person, instead of being sworn, to make his or her solemn affirmation or declaration in the words following, that is to say—

Persons refusing from conscientious motives to be sworn to be permitted to make a solemn affirmation or declaration.

see sec 1: "all Courts of judicature"

"I, A. B., do solemnly, sincerely, and truly affirm and declare that the taking of any oath is according to my religious belief unlawful, and I do also solemnly, sincerely, and truly affirm and declare," &c.

X Some repealed

Which solemn affirmation and declaration shall be of the same force and effect as if such person had taken an oath in the usual form.

10. If any person making such solemn affirmation or declaration shall wilfully, falsely, and corruptly affirm or declare any matter or thing which, if the same had been sworn in the usual form, would have amounted to wilful and corrupt perjury, every such person so offending shall incur the same penalties as by the laws and statutes in force within this Province, are or may be enacted or provided against persons convicted of wilful and corrupt perjury.

Punishment for making false affirmation.

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

D. DALY, Governor.

Notwithstanding the Preamble sec 9, at all events appears to apply to Courts other than those of Criminal Judicature