

CHAPTER 57.

Of Evidence.

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1. On the trial of any issue joined, or any matter or question, or on any enquiry 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, or who may have any interest in the result thereof, and the husbands and wives of the parties thereto, and of the parties in whose behalf any such suit, action or other proceeding may be brought or instituted, or opposed 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 other proceeding: Provided that the party so called to testify may be cross-examined by the opposite party under the rules applicable to the cross-examination of witnesses.

2. Nothing herein contained shall render any person who in any criminal proceeding, is charged with the commission of any indictable offence, competent and 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 such 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; nor shall anything in this chapter contained

affect the laws now in force relating to the estates of idiots or lunatics, or the execution or attestation of last wills and testaments: Provided that nothing herein contained shall preclude a defendant or the husband or wife of the defendant from becoming a witness, should he or she think fit, in any summary proceeding of a criminal or other nature; and that no witness in any proceeding instituted in consequence of adultery, whether a party to the suit or not, or the husband or wife of such party, shall be liable to be asked or bound to answer any question tending to show that he or she has been guilty of adultery, unless such witness shall have already given evidence in the same proceeding in disproof of his or her alleged adultery.

3. No husband shall be compellable to disclose any communication made to him by his wife during the marriage, and no wife shall be compellable to disclose any communication made to her by her husband during the marriage.

4. The parties to any action for breach of promise of marriage shall be competent to give evidence in such action: Provided that no plaintiff in any action for breach of promise of marriage shall receive a verdict unless his or her testimony shall be corroborated by some other material evidence in support of such promise.

5. A clergyman or priest shall not be compellable to give evidence as to any confession made to him in his professional character.

6. 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 Great Britain or Ireland, or 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 herein-after 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 British, foreign, or colonial Court, or any affidavit, pleading or other legal document, filed or deposited in any such Court, the authenticated copy, to be admissible in evidence, must purport either to be sealed with the seal of the British, foreign, or colonial Court to which the said 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 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 where 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.

7. 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 British Court of Justice, 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 admitted in evidence, to the same extent and for the same purposes, in any Court of Justice in this colony, or before any person 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 same, or of the judicial or official character of the person appearing to have signed the same.

8. Every register of a vessel kept under any of the acts relating to the registry of British 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 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 the payment of the sum of twenty-five cents; and every such register and such copy of a register, and also every certificate of a registry granted under any of the acts relating to the registry of British 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 of parties, authority to hear, receive and examine evidence, as *prima facie* proof of all matters contained and recited in such register, when the register or such copy thereof as aforesaid is produced and of all matters contained or recited in or endorsed on such certificate of registry when the certificate is produced.

9. 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 statute exists which renders its contents proveable by means of a copy, a 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 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 entrusted; 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 of a reasonable sum for the same, not exceeding ten cents for every folio of ninety words.

10. If any officer or other person authorized or required by this chapter 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.

11. Any Court, Judge, Justice, officer, commission, 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.

12. If any person shall forge the seal, stamp, or signature of any document in this chapter 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 imprisonment for any term not exceeding three years, with hard labor: and when any such document shall have been admitted in evidence by virtue of this chapter, 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 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 other proper person shall seem meet; 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.

13. From and after the passing of this chapter, no person offered as a witness shall be excluded by reason of incapacity from crime from giving evidence according to the provisions of this chapter or otherwise; and any person present in Court, or before a judicial officer, may be required to testify in the same manner as if he were in attendance upon subpoena issued by such Court or officer.

14. If any person called as a witness, or required or desiring to make an affidavit or deposition, shall refuse or be unwilling from alleged conscientious motives to be sworn, the Court or Judge, or other presiding officer, or person qualified to take affidavits or depositions, may, upon being satisfied of the sincerity of such objection, permit such person, instead of being sworn, to make his or her solemn affirmation or declaration, in the words following—*videlicet*:

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,

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.

15 If any person making such solemn affirmation or declaration shall wilfully, falsely, and maliciously 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 of this colony are or may be enacted or provided against persons convicted of wilful and corrupt perjury.

16. If any person called to give evidence in any Court of Justice, whether in a civil or criminal proceeding, shall object to take an oath, or shall be objected to as incompetent to take an oath, such person shall, if the presiding Judge is satisfied that the taking of an oath would have no binding effect upon his conscience, make the following promise and declaration :—

“I solemnly promise and declare that the evidence given by me to the Court shall be the truth, the whole truth, and nothing but the truth.”

And any person who, having made such promise and declaration, shall wilfully and corruptly give false evidence, shall be liable to be indicted, tried and convicted for perjury, as if he had taken an oath.

17. 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.

18. If a witness, upon cross-examination as to a former statement made by him relative to the subject-matter of the cause 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.

19. 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 cause, without such writing being shown to him; but if it be 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 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 shall think fit.

20. A witness in any cause may be questioned as to whether he has been convicted of any felony or misdemeanor, and upon being so questioned, if he either deny the fact or refuse to answer, the opposite party may prove such conviction; and a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction of such offence, purporting to be signed by the Clerk of the Court where the offender was convicted, or by the deputy of such clerk or officer (for which certificate a fee of one dollar, 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 made the same.

21. 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 by admission, or otherwise, as if there had been no attesting witness thereto.

22. 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 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.

23. Any party to any civil action, or other civil proceeding, in any of the Superior Courts, requiring the affidavit of a person who refuses to make an affidavit, may apply, by summons, for an order to such person to appear and be examined upon oath before a Judge or Master to whom it may be most convenient to refer such examination as to the matters concerning which he has refused to make an affidavit; and the Judge may, if he think fit, make such order for the attendance of such person before the person therein appointed to take such examination, for the purpose of being examined as aforesaid, and for the production of any writings or documents to be mentioned in such order, and may therein impose such terms, as to such examination and the costs of the application and proceedings thereon, as he shall think just.

24. Such order shall be proceeded upon in like manner as an order made under Order XXXIII., Rule 4, of the "Rules of the Supreme Court, 1889," and the examination thereon shall be conducted, and the depositions taken down and returned, as nearly as may be in the mode now used on *viva voce* examinations.

25. Where a deed or document shall have been duly registered in pursuance of the laws of this colony, and the same shall, on the trial of any cause, suit or proceeding, be proved to be lost, such registry, or a certified copy thereof by the registrar, shall, without further proof, be admitted in evidence in all cases where the original if produced would be receivable.

26. In any action or proceeding, by or against the representatives of a deceased person, an opposite or interested party to the action shall not obtain a verdict, judgment or decree therein, on his own evidence in respect of any matter occurring before the death of the deceased person, unless such evidence is corroborated by some other material evidence.

27. In any action or proceeding by or against a person found by inquisition to be of unsound mind, or being an inmate of a lunatic asylum, an opposite or interested party shall not obtain a verdict, judgment, or decree therein, on his own evidence, unless such evidence is corroborated by some other material evidence.