



ANNO DECIMO SEXTO

GEORGII V REGIS.

A.D. 1925.

No. 1669.

An Act to amend the Law of Evidence.

[Assented to, October 22nd, 1925.]

BE it Enacted by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

1. This Act may be cited as the "Evidence Amendment Act, Short title. 1925."

2. The Acts mentioned in the Second Schedule are hereby repealed **Repeal.** to the extent mentioned in that Schedule.

3. In the Act No. 2 of 1852, being "An Act to amend the Law of Evidence," the expression "British Colony" shall be deemed to mean any part of His Majesty's Dominions outside the Commonwealth of Australia, other than the United Kingdom. **Amendment of definition of "British Colony" in Act 2 of 1852.**

4. (1) Every person upon objecting to be sworn, and stating, as the ground of such objection either— **Affirmation in lieu of oath.**

(a) that he has no religious belief ; or

(b) that the taking of an oath is contrary to his religious belief, or to his conscience,

shall in all places and for all purposes where an oath is required by law be permitted to make his solemn affirmation instead of taking an oath.

(2) Every such affirmation shall be of the same force and effect as if the oath had been taken, and if any person making any such affirmation shall falsely affirm any matter or thing he shall be liable to prosecution, indictment, sentence, and punishment, as if he had taken the oath.

(3) Every

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(3) Every such affirmation shall be as follows, or to the effect following:—

“ I, A.B., do solemnly and truly declare and affirm ” and then proceed with the words of the oath prescribed by law, omitting any words of imprecation or calling to witness.

Application of
Telegraphic
Messages Act, 1873,
secs. 1 to 3.

5. The provisions of sections 1 to 3 of the Telegraphic Messages Act, 1873, shall apply to all legal proceedings in any Court of civil jurisdiction and to all proceedings in any cause or matter of the nature of civil jurisdiction pending before any arbitrator or person having authority by law or by consent of parties to hear, receive, and examine evidence, and the said provisions shall be so construed as to apply in respect to telegraphic messages at any time sent by electric telegraph the property of and under the control of the Government of the Commonwealth from any station in the Commonwealth to any other station within the Commonwealth.

Extension of s. 377
of the Criminal Law
Consolidation Act,
1876, as to
unsworn testimony
of children.

6. The provisions of section 377 of the Criminal Law Consolidation Act, 1876 (which enable the evidence of a child to be received though not given on oath), shall apply to proceedings against persons for offences not mentioned in that section in like manner as such provisions apply in respect of proceedings against persons for offences mentioned in that section.

Amendment of
definitions in the
Bankers Books
Evidence Act, 1879.

7. In the Bankers Books Evidence Act, 1879—

(a) the expressions “ bank ” and “ banker ” shall be deemed to include any Savings Bank or banking institution which is now or may hereafter be established in South Australia, whether under or pursuant to the Statute law of the State or of the Commonwealth; and

(b) the powers and discretions conferred by sections 5, 6, and 7 shall be deemed to be exercisable and exercisable only by a Judge; or

(i.) any person who is authorised by law to exercise, in relation to the proceeding in question, the powers of a Judge with respect to the trial of any cause or matter or issue of fact; or

(ii.) the Commissioner of Insolvency in relation to any matter pending in the Court of Insolvency; or

(iii.) any Special Magistrate in relation to any proceedings pending before a Local Court or before any Court of Summary Jurisdiction or Justices.

Proof of convictions
and orders.

8. (1) Any conviction, order of dismissal or other order made by a Court of Summary Jurisdiction may be proved in any Court whatever by the production of a copy of such conviction, order of dismissal or other order, purporting to be certified by the clerk of the Court by which such conviction, order of dismissal or other order was made, or by the deputy of such clerk.

(2) No

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(2) No proof shall be required of the signature or official character of the person appearing to have signed any such copy as aforesaid.

(3) This section shall apply to any conviction, order of dismissal or other order made before or after the commencement of this Act.

9. All documents purporting to be copies of the votes and proceedings or journals or minutes of either House of the Parliament, or of papers presented to either House of the Parliament if purporting to be printed by the Government Printer, shall on their mere production be admitted as evidence thereof in all Courts.

Proceedings in Parliament provable by print.

10. (1) Whenever in a Court of summary jurisdiction it becomes proper to inquire as to any previous conviction of the defendant, and the defendant does not appear in person, the Court may—

Proceedings to facilitate or dispense with proof of identity in cases of previous conviction in Courts of summary jurisdiction.

(a) allow evidence to be given of the previous conviction of any person, alleged by the prosecution to be identical with the defendant; and

(b) (such evidence having been given) adjourn the further consideration of the case to a time and place specified by the Court in order to enable the defendant to attend in person for the purpose of answering such allegation.

(2) If at the time and place so specified—

(a) it is proved that the defendant has been personally served with notice in writing, requiring him to attend accordingly, and informing him of the purpose for which his personal attendance is required; and

(b) the defendant fails to appear in person; and

(c) no sufficient reason to the contrary is shown to the satisfaction of the Court,

the allegation, of the identity of the defendant with the person so convicted as aforesaid, shall be deemed to have been proved, and the Court shall proceed accordingly: Provided that service of the notice aforesaid shall not be required if the defendant has been represented at the original hearing by any counsel or solicitor who has waived such service.

(3) The further hearing or consideration of the case may be adjourned from time to time as aforesaid to enable the defendant—

(a) to be served as aforesaid; or

(b) to attend in person if the Court is satisfied that he intends to do so.

11. Whenever in any proceedings before Justices, in respect of any offence, it is an essential ingredient of the offence that the place (where any fact or matter occurred or was done) should be a public place, an allegation, in the complaint or information, that the place (specified as that in which the fact or matter charged occurred or

Proof of "public place" in certain cases.

was

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was done) was a public place, shall be *prima facie* evidence of that fact. But the Court may, if it thinks fit, and at any stage of the proceedings, permit evidence to be called with respect to the said fact.

Competency of
witnesses in criminal
cases.

12. Every person charged with an offence, and the wife or husband, as the case may be, of the person so charged shall be a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person: Provided as follows:—

- (a) A person so charged shall not be called as a witness in pursuance of this Act except upon his own application:
- (b) The failure of any person charged with an offence or of the wife or husband, as the case may be, of the person so charged, to give evidence shall not be made the subject of any comment by the prosecution:
- (c) The wife or husband of the person charged shall not, save as in this Act mentioned, be called as a witness in pursuance of this Act except upon the application of the person so charged:
- (d) A person charged and being a witness in pursuance of this Act may be asked any question in cross-examination notwithstanding that it would tend to criminate him as to the offence charged:
- (e) A person charged and called as a witness in pursuance of this Act shall not be asked, and if asked, shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than that wherewith he is then charged, or is of bad character, unless—
 - (i.) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged; or
 - (ii.) he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establish his own good character; or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution; or
 - (iii.) he has given evidence against any other person charged with the same offence:
- (f) Every person called as a witness in pursuance of this Act shall, unless otherwise ordered by the Court, give his evidence from the witness box or other place from which the other witnesses give their evidence: (g) Nothing

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(g) Nothing in this Act shall affect the provisions of section 110 of the Justices Act, 1921, or any right of the person charged to make a statement without being sworn.

13. Where the only witness to the facts of the case called by the defence is the person charged, he shall be called as a witness immediately after the close of the evidence for the prosecution. Evidence of person charged.

14. In cases where the right of reply depends upon the question whether evidence has been called for the defence, the fact that the person charged has been called as a witness shall not of itself confer on the prosecution the right of reply. Right of reply.

15. (1) The wife or husband of a person charged with an offence under any enactment mentioned in the First Schedule to this Act may be called as a witness either for the prosecution or defence and without the consent of the person charged; and shall be both competent and compellable. Calling of husband or wife in certain cases.

(2) Nothing in this Act shall affect the operation of any statute or rule of law in a case where—

(a) the person charged with an offence is compellable to give evidence by virtue of the provisions of any enactment specially applicable to the case; or,

(b) the wife or husband of a person charged with an offence may, either under any enactment specially applicable to the case, or at common law, be called as a witness without the consent of that person.

16. A person may admit on his trial any fact alleged or sought to be proved against him, and such admission shall be sufficient proof of the fact without other evidence: Provided that the admission shall be made by the accused either personally or by his counsel or solicitor in his presence, or, in the case of a body corporate, by its counsel or solicitor. Admissions by accused persons.

17. (1) If any question put to a witness upon cross-examination relates to a matter not relevant to the proceeding, except in so far as it affects the credit of the witness by injuring his character, it shall be the duty of the Court to decide whether or not the witness shall be compelled to answer it, and the Court may, if it thinks fit, inform the witness that he is not obliged to answer it. Disallowance of certain questions in cross-examination. Cf. W.A. No. 28 of 1906, s. 25 (1).

(2) In exercising this discretion the Court shall have regard to the considerations referred to in section 3 of the Evidence Further Amendment Act, 1888.

18. The Court may forbid any question it regards as—

(a) indecent or scandalous, although such question may have some bearing on the case before the Court, unless the question relates to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed; or

(b) intended

Disallowance of scandalous and insulting questions. Cf. *ibid.*, s. 26.

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- (b) intended to insult or annoy, or needlessly offensive in form, notwithstanding that such question may be proper in itself.

Proof of public acts.

19. Where by any law at any time in force the Governor or any Minister of the Crown is authorised or empowered to do any act whatsoever, production of the *Government Gazette* purporting to contain a copy or notification of any such act shall be evidence of such act having been duly done.

Proof of shipping documents and matters connected therewith.

20. (1) Any apparently genuine document which purports to be a bill of lading and to relate to any property which is, or has been, shipped shall be—

- (a) admissible in evidence on production without further proof; and
- (b) evidence that the ownership of the property referred to in the document is in the consignee named in the document or his assignee and of the particular facts stated or referred to in the bill of lading.

(2) Evidence of the description of any property which has been shipped, or of any writing, printing, or mark upon any such property, or on any package containing the same shall be receivable (without producing the original writing, printing, or mark, or requiring the production thereof by notice or otherwise) for the purpose of raising an inference as to the identity of such property with that referred to in any bill of lading.

(3) For the purposes of this section regard shall be had to any relevant circumstances including the source from which the bill of lading is produced, and the circumstances of its receipt or custody by the person producing it or by any person from whom it has been obtained for the purposes of production.

(4) In this section—

“Bill of lading” includes manifest shipping receipt, consignment note, delivery order, or invoice, and any specification, schedule, or packing list annexed thereto or incorporated by reference therein.

“Shipped” means shipped or carried or received for shipment or carriage by water or rail, to or from any port, railway station, or place in Australia.

Proof of foreign law.
Cf. W.A. No. 23 of 1906, s. 71.

21. Printed books purporting to contain statutes, ordinances, or other written laws in force in any country, although not purporting to have been printed or published by authority, and books purporting to contain reports of decisions of Courts or Judges in such country, and text books treating of the laws of such country, may be referred to by all Courts and persons authorised to receive evidence by law or by consent of parties for the purpose of ascertaining the laws in force

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force in such country ; but such Courts or persons shall not be bound to accept or act on the statements in any such books as evidence of such laws.

22. All Courts and persons as aforesaid may, in matters of public history, literature, science, or art, refer, for the purposes of evidence, to such published books, calendars, maps, or charts as such Courts or persons consider to be of authority on the subjects to which they respectively relate : Provided that nothing herein contained shall be deemed to require any such Court or person to accept or act upon any such evidence when tendered, unless it or he thinks fit.

Proof of matters of history, science, &c.
Cf. *ibid.*, s. 22.

23. In any matter relating to—

- (a) the ordinary course of the post between any place within the Commonwealth of Australia and any other place, whether within or without the said Commonwealth, or to the public business and transactions of the Post and Telegraph Department ; or
- (b) the territorial limits of the area controlled by any Municipal or District Council or other local governing body, or of any other area designated or proclaimed or appointed by or under any statute or to the inclusion in any such area or the exclusion therefrom of any particular place ; or
- (c) the distance between any two places in the State ;

Reference by Court to books, &c., or official certificates on certain matters relating to post and telegraph, locality and distance.

every Court or person authorised to receive evidence by law or by consent of parties may refer to—

- (i.) any such published book, map, chart, or document as such Court or person considers to be of authority upon the subject to which it relates ; or
- (ii.) any certificate purporting to be signed by some person occupying any official position which, in the opinion of such Court or person, qualifies him to certify to the fact in question :

Provided that nothing herein contained shall be deemed to require any such Court or person to accept or act upon any such evidence when tendered unless it or he thinks fit.

24. (1) Any oath or affidavit required for the purpose of any Court or matter in the State may be taken or made, in any place out of the State, before—

Taking of affidavits out of the State.

- (a) a Commissioner for taking Affidavits in the Supreme Court empowered and authorised to act in that place ; or
- (b) a British diplomatic or consular agent exercising his function in that place ; or
- (c) any person having authority to administer an oath in that place.

(2) Judicial

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(2) Judicial and official notice may be taken—

(a) of the signature or seal of any such commissioner or agent, or of any person having authority as aforesaid if he purports to have such authority, otherwise than by the law of a foreign country not under the dominion of His Majesty; and

(b) of the fact that any particular place is under the dominion of His Majesty.

(3) In the case of a person purporting to have such authority by the law of a foreign country not under the dominion of His Majesty, such authority may be verified by any of the persons mentioned in subsections 1 (a) and 1 (b), or by the certificate of the superior Court of such place, and if such authority purports to be so verified the oath or affidavit may be admitted or received without further proof of the signature or seal, or of the judicial, official, or other character of such first mentioned person.

(4) In this section—

“ Oath ” includes affirmation and declaration :

“ Affidavit ” includes any statutory or other declaration, acknowledgment, or examination :

“ Diplomatic agent ” means ambassador, envoy, minister, chargé d'affaires, or secretary of embassy or legation :

“ Consular agent ” means consul-general, consul, vice-consul, or consular agent, or acting consul-general, acting consul, acting vice-consul, or acting consular agent.

Extension of provisions relating to affidavits to attestation, &c., of other documents.

25. (1) The provisions of section 24 shall, as far as applicable, extend to every attestation, verification, acknowledgment, or signature in relation to any document required, authorised, or permitted by or under any statute or by custom or otherwise to be attested, verified, acknowledged, or signed, and to the doing of all notarial acts as if such provisions had been re-enacted in this section, excluding words relating to the administration of oaths and the taking of affidavits and substituting therefor words relating to attestation, verification, acknowledgment, or signature, as the case may be.

(2) “ Notarial act ” includes any act, matter, or thing which in South Australia or elsewhere a notary public can attest or verify or otherwise do by or under any Act of Parliament or custom or otherwise for the purpose of being used in the State.

(3) The provisions of this section apply to documents required, authorised, or permitted by or under the Real Property Act, 1886.

Discovery in actions for libel.

26. In any action for damages arising out of the publication of any alleged libel and upon any application for discovery, as to any matter relating to the fact of publication as alleged, the defendant shall not be entitled to object to answer upon the ground of tendency to
 criminate,

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criminate, but shall be compellable to make discovery, unless it appears that there is a reasonable probability of criminal proceedings being instituted against him : Provided always that such discovery shall not be made use of as evidence or otherwise in any other action or proceedings against the defendant.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

T. SLANEY POOLE, Administrator.

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SCHEDULES.

FIRST SCHEDULE.

Provisions Referred to in Section 15.

Reference to Act.	Title of Act.	Enactments Referred to.
No. 38 of 1876 . .	The Criminal Law Consolidation Act, 1876	Sections 37, 38, 54, 60, 61, 62, 63, 64, 65, 66, 68, 69, 70, 71, 72, 73, 74 and 77.
No. 300 of 1883-4 No. 358 of 1885 .	Married Women's Property Act, 1883-4 The Criminal Law Consolidation Amendment Act, 1885	Sections 12 and 16. Sections 2, 3, 4, 6, 7, 10, and 11.
No. 641 of 1895 .	The State Children Act, 1895	Sections 69, 80, and 127.
No. 664 of 1896 .	The Married Women's Protection Act, 1896	Section 16.
No. 730 of 1899 . No. 819 of 1903 .	The Children's Protection Act, 1899 . . The State Children Further Amendment Act, 1903	Sections 4 and 10. Section 10.
No. 931 of 1907 . No. 996 of 1909 .	The Suppression of Brothels Act, 1907 The State Children Amendment Act, 1909	Section 3. Sections 20, 26, and 27.
No. 1257 of 1916 No. 1334 of 1918	Police Act, 1916 Children's Protection Act Amendment Act, 1918	Section 67 (p). Section 3.
No. 1442 of 1920	Venereal Diseases Act, 1920	Sections 5, 14, 17, and 22.

SECOND SCHEDULE.

Section 2.

Provisions elsewhere Enacted or the Subject Matter otherwise provided for and therefore Repealed.

Reference to Act.	Title of Act.	Extent of Repeal.
2 of 1852	An Act to Amend the Law of Evidence	Sections 4, 11, and 12.
24 of 1855-6	Supreme Court Procedure Act, 1855 . .	Sections 14 and 15.
13 of 1866-7	An Act for Amending the Law of Evidence and Practice in Criminal Trials	Sections 9 and 10.
8 of 1867	The Supreme Court Act, 1867	Sections 16, 17, 18, and 22.
10 of 1869-70	Evidence Further Amendment Act, 1869	Section 4.
245 of 1882	An Act to enable Persons Accused of Offences to give Evidence on Oath	The whole.
435 of 1888	Evidence Further Amendment Act, 1888	Sections 4, 5, 6, and 7.
1189 of 1915	Oaths and Notarial Acts (in Foreign Countries) Act, 1915	The whole.