



ANNO DECIMO-SEPTIMO

VICTORIÆ REGINÆ,

No. 15.

*By His Excellency SIR WILLIAM THOMAS DENISON, Knight,
Lieutenant-Governor of the Island of Van Diemen's Land
and its Dependencies, with the Advice and Consent of the
Legislative Council.*

AN ACT to amend the Law of Evidence.

[6th October, 1853.]

WHEREAS it is expedient to amend the Law of Evidence in divers Particulars: Be it therefore enacted by His Excellency SIR WILLIAM THOMAS DENISON, Knight, Lieutenant-Governor of the Island of Van Diemen's Land and its Dependencies, with the Advice and Consent of the Legislative Council of the said Island, as follows:

I. On the Trial of any Issue joined, or of any Matter or Question, or on any Inquiry 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 Husband or Wife (as the Case may be) of either or any of such Parties, and the Persons in whose Behalf any such Suit, Action, or other Proceeding may be brought or defended, and the Husband or Wife (as the Case may be) of either or any of such Persons, shall, except as herein-after excepted, be competent and compellable to give Evidence, either *vivâ 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.

Parties and their
Husbands and
Wives to be ad-
missible Witnesses.

II. Nothing herein contained shall render any Husband compellable to disclose any Communication whatsoever between him and his Wife, nor any Wife compellable to disclose any Communication whatsoever between her and her Husband; but all Communications whatsoever between Husband and Wife shall, as heretofore, be held to be privileged and inviolable.

Nothing herein to
compel Husbands
and Wives to dis-
close Communica-
tions *inter se*.

17 VICT. No. 15.

Nothing herein to compel Person charged with criminal Offence to give Evidence tending to criminate himself, &c.

III. Nothing herein contained shall render any Person who in any criminal Proceeding is charged with the Commission of any indictable Offence, or any Offence punishable on summary Conviction, competent or 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 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.

Not to apply to Proceedings in consequence of Adultery, &c.

IV. Nothing herein contained shall apply to any Action, Suit, or Proceeding instituted in consequence of Adultery, or to any Action for Breach of Promise of Marriage.

Nothing to repeal any Provisions of 1 Vict. c. 26. (Wills Act.)

V. Nothing herein contained shall repeal any Provision contained in Chapter Twenty-six of the Statute passed in the First Year of the Reign of Her Majesty Queen Victoria, intituled *An Act for the Amendment of the Laws with respect to Wills.*

Common Law Courts authorised to compel Inspection of Documents whenever Equity would grant Discovery.

VI. Whenever any Action or other legal Proceeding shall henceforth be pending in the Supreme Court of Van Diemen's Land, the said Court and each of the Judges thereof may respectively, on Application made for such Purpose by either of the Litigants, compel the opposite Party to allow the Party making the Application to inspect all Documents in the Custody or under the Control of such opposite Party relating to such Action or other legal Proceeding, and, if necessary, to take examined Copies of the same, in all Cases in which previous to the passing of this Act a Discovery might have been obtained by filing a Bill or by any other Proceeding in a Court of Equity at the Instance of the Party so making Application as aforesaid to the said Court or Judge.

Registers of British Vessels and Certificates of Registry admissible as *prima facie* Evidence of their Contents, without Proof of Signature, &c.

VII. 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 the 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 Payment of the Sum of One Shilling; and every such Register or such Copy of a Register, and also every Certificate of 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 the Matters contained or recited in such Register when the Register or such Copy thereof as aforesaid is produced, and of all the Matters contained or recited in or endorsed on such Certificate of Registry when the said Certificate is produced.

VIII. And whereas it is expedient, as far as possible, to reduce the Expense attendant upon the Proof of criminal Proceedings: Be it enacted, That whenever in any Proceeding whatever it may be necessary to prove the Trial and Conviction or Acquittal of any Person charged with any indictable Offence, it shall not be necessary to produce the Record of the Conviction or Acquittal of such Person, or a Copy thereof, but it shall be sufficient that it be certified or purport to be certified under the Hand of the Clerk of the Court or other Officer having the Custody of the Records of the Court where such Conviction or Acquittal took place, or by the Deputy of such Clerk or other Officer, that the Paper produced is a Copy of the Record of the Indictment, Trial, Conviction, and Judgment or Acquittal, as the Case may be, omitting the formal Parts thereof.

Whereneccessaryto prove Conviction or Acquittal of Person charged, not necessary to produce Record, but may be certified under Hand of Clerk of Court.

IX. 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 Law exists which renders its Contents provable by means of a Copy, any 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 by 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 intrusted, 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 Sixpence for every Folio of Ninety Words.

Examined or certified Copies of Documents admissible in Evidence.

X. If any Officer authorised or required by this Act 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 with or without Hard Labour for any Term not exceeding Eighteen Months.

Certifying a false Document a Misdemeanor.

XI. Every Court, Judge, Justice, Officer, Commissioner, 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.

Court, &c. may administer Oaths.

XII. If any Person shall forge the Seal, Stamp, or Signature of any Document in this Act 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 Transportation for Seven Years, or to Imprisonment for any Term not exceeding Three Years nor less than One Year, with Hard Labour; and whenever any such Document shall have been admitted in Evidence by virtue of this Act, the Court or the Person who shall have admitted the same may,

Persons forging Seal, Stamp, or Signature of certain Documents, or wilfully uttering same, guilty of Felony.

at the Request of any Party against whom the same is so admitted in Evidence, direct that the same shall be impounded and be 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 Person shall seem meet.

RICHARD DRY, *Speaker.*

Passed the Legislative Council this thirtieth day of September, one thousand eight hundred and fifty-three.

FR. HARTWELL HENSLOWE,
Clerk of the Council.

IN the name and on the behalf of Her Majesty I assent to this Act.

W. DENISON,
Lieut.-Governor

*Government House, Hobart Town,
6th October, 1853.*