

Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1856. Fredericton, NB: John Simpson, Printer to the Queen's Most Excellent Majesty, 1856.

19 Victoria – Chapter 41

An Act in further amendment of the Law. Passed 1st May 1856.

Section.

1. Crime or interest not to exclude from giving evidence: Plaintiff or defendant to be witnesses except as excepted, viz:
2. In criminal proceedings - self-crimination - husband and wife.
3. Communications between husband and wife;
4. Proceedings in consequence of adultery.
5. Proof of foreign and other proclamations, treaties, judgments, &c.
6. Documents admissible in English Courts to be admissible in Provincial Courts.
7. Validity of affidavits for proceedings in this Province when made without the Province.
8. Proof of register of or declaration in respect of any British Ship, how may be made.
9. Penalty for wilfully certifying as true false copies or extracts.
10. Courts, &c. authorized to hear evidence empowered to administer an oath so witnessed.
11. Penalty, &c. for forging, &c. seal or signature of certain documents.
12. Substitution of affirmation for an oath.
13. False affirmation deemed perjury.
14. Credibility of witness, how impeachable to be established.

Section.

15. Inconsistency on cross-examination, how to be established.
16. Examination of a witness as to previous written statements;
17. As to his conviction of a felony or misdemeanor.
18. Proof of instrument by an attesting witness, when unnecessary.
19. Comparison of disputed with genuine writing
20. Affidavit in answer to affidavits involving new matter.
21. On hearing any motion or summons, production of documents or witnesses may be ordered;
22. Order to have force of Rule of Court; adjournment and conduct of proceedings.
23. Affidavits obtainable by Rule of Court when party refuses;
24. Proceedings on such order.
25. Production of documents in possession of adverse party.
26. Act 3 V. c. 65, as to proof of records and Letters Patent, extended to Crown inquisitions, judgments, &c. and records of Court of Chancery.
27. First four Sections of this Act to come in force on 1st January 1857.

Be it enacted by the Lieutenant Governor, Legislative Council, and Assembly, as follows:—

1. On the trial of any issue joined, or of any matter or question, or 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, no person offered as a witness shall hereafter be excluded by reason of incapacity from crime or interest, from giving

evidence either in person or by deposition, according to the practice of the Court: and the parties thereto, and the person in whose behalf any such suit, action, or other proceeding may be brought or defended, and the husbands and wives of the parties thereto, and the person 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 suit, action, or other proceeding.

2. 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 shall render any person compellable to answer any question intended to criminate himself; and nothing herein contained shall 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, in any criminal proceeding, or in any proceeding instituted in consequence of 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. Nothing herein contained shall apply to any action, suit, proceeding, or bill, in any Court of Common Law or Court of Marriage and Divorce, instituted in consequence of adultery.

5. 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 the United Kingdom of Great Britain and 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 hereinafter 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 an 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 said British, Foreign, or Colonial Court to which the 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 a 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.

6. Every document which by any law now in force is or shall be admissible in evidence of any particular, in any Court of Justice in England, 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 Province, or before any person having therein, by law or by consent of parties, authority to hear, receive, and examine evidence, 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.

7. All affidavits for the purpose of holding persons to bail in this Province, or having relation to any judicial proceeding in any Court of Justice therein, purporting to be made before a Judge of any Court of Justice in the United Kingdom, or in any Foreign State, or in any British Colony, if in other respects conformable to law and the practice of the Court in which they are designed to be used, may, notwithstanding they are made before a Judge of a British, Foreign, or Colonial Courts be received and acted upon, and shall have the same effect as if made before a Judge or other lawful authority in this Province, provided the same purport to be sealed with the seal of the British, Foreign, or Colonial Court, before one of the Judges of which they purport to be made, or in the event of such Court having no seal, provided the Judge whose name is subscribed thereto shall have attached to his signature a statement in writing on the affidavit, that the Court whereof he is a Judge has no seal; but if any such affidavit shall purport to be sealed and signed, or to be signed without being sealed, as hereinbefore respectively directed, the same shall be respectively received and acted upon as aforesaid, and admitted in evidence in every Court of this Province, without any proof of the signature of the Judge and seal of the Court where a seal is necessary, or of the signature, or of the truth of the statement attached thereto, where such signature and statement are alone required, or of the judicial character of the person appearing to have made such signature, or signature and statement respectively.

8. Every register of or declaration made, in respect of any British ship, in pursuance of any of the Acts relating to the registry of British ships; 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 one shilling; and every register or copy of 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 presumptive proof of all the matter 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 upon such certificate of registry when the said certificate is produced.

9. If any officer authorized 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 for any term not exceeding three years.

10. 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.

11. 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 on conviction be liable to imprisonment for any term not exceeding three years, nor less than one year; and whenever any such document shall have been admitted in evidence by virtue of this Act, the Court or 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 person, for such period and subject to such conditions as to the said Court or person shall seem meet; and every person who shall be charged with committing any offence under this Act, may be dealt with, indicted, tried, and, if convicted, sentenced, and his offence may be laid and charged to have been committed in the County, district, or place in which he shall be apprehended or be in custody; 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 County, district, or place in which the principal offender may be tried.

12. 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, it shall be lawful for the Court, or a 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, *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.

13. 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 of this Province are or may be enacted or provided against persons convicted of wilful and corrupt perjury.

14. 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 no he has made such statement.

15. 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 no he has made such statement.

16. A witness may be examined as to previous statements made by him in writing, or reduced into writing, relative into the subject matter of the cause, without such writing being shewn 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 shall think fit.

17. 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 denies the fact or refuses to answer, it shall be lawful for the opposite 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, (for which certificate a fee of five shillings 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 signed the same.

18. 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.

19. 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.

20. Upon motions founded upon affidavits, it shall be lawful for either party, with leave of the Court or a Judge, to make affidavits in answer to the affidavits of the opposite party, upon any new matter arising out of such affidavits, subject to all such rules as shall hereafter be made respecting such affidavits.

21. Upon the hearing of any motion or summons it shall be lawful for the Court or a Judge thereof, at their or his discretion, and upon such terms as they or he shall think reasonable, from time to time to order such documents as they or he may think fit to be produced, and such witnesses as they or he may think necessary to appear, and be examined viva voce either before such Court or Judge; and upon such evidence to make such rule or order as may be just.

22. The Court or Judge may by such rule or order, or any subsequent rule or order, command the attendance of the witnesses named therein, for the purpose of being examined, of the production of any writings or other documents, to be mentioned in such rule or order; and such rule or order shall be proceeded upon in the same manner, and shall have the same force and effect as other rules or orders of the said Court now have, and be enforced in like manner; and it shall be lawful for the Court or Judge to adjourn the examination from time to time as occasion may require; and the proceedings upon such examination shall be conducted, and the depositions taken down as nearly as may be in the mode now in use with respect to the viva voce examination of witnesses.

23. Any party to any civil action or other civil proceeding in the said Court, 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 a person 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 a Judge may, if he think fit, make such order for the attendance of such person before himself or 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 other orders are now proceeded in, and the examination thereon shall be conducted, and the depositions taken down and returned, as nearly as may be in the mode now used in viva voce examinations.

25. Upon the application of either party to any cause or other civil proceeding in the said Court, upon an affidavit by such party of his belief that any document to the production of which he is entitled for the purpose of discovery or otherwise, is in the possession or power of the opposite party, it shall be lawful for the Court or a Judge to order that the party against whom such application is made; or if such party is a body corporate, that some officer to be named of such body corporate, shall answer on affidavit, stating what documents he or they has or have in his or their possession or power, relating to the matters in dispute, or what he knows as to the custody such documents or any of them are in, and whether he or they objects or object (and if so on what

ground) to the production of such as are in his or their possession or power, and upon such affidavit being made, the Court or Judge may make such further order therein as shall be just.

26. The provisions of an Act passed in the third year of the Reign of Her present Majesty, intituled *An Act to amend the Law of Evidence in regard to the proof of Records and Letters Patent*, are hereby extended to all inquisitions, surrenders, escheats, leases, licences, judgments, and conveyances by, to, or from, or in favour of or against the Crown, and to the Records or Rolls of judgment and decrees heretofore had or obtained in the Court of Chancery by or against the Crown in this Province, or which may hereafter be had or obtained on the Equity side of the Supreme Court by or against the Crown.

27. The first four Sections of this Act shall not come into operation, until the first day of January in the year of our Lord one thousand eight hundred and fifty seven.