

Laws of Her Majesty's Province of Newfoundland, passed in the year 1856.

19 Victoria – Chapter 15

An Act to Amend the Law of Evidence. (Passed 12th May, 1856.)

Whereas it is expedient to Amend the Law of Evidence:

Be it therefore enacted by the Governor, Legislative Council and Assembly, in Legislative Session convened, as follows:—

- I. That Sections Thirteen, Fifteen and Sixteen, of the Act of the Legislature of this Island, passed in the Twelfth Year of the Reign of Her present Majesty, intituled “An Act for the further amendment of the Law, and the better advancement of Justice,” and all Laws and Rules of Court now in force in this Island, contrary to the intent and purport of this Act, are hereby respectively Repealed.
- II. 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 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 persona 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 or 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 examined by the opposite party under the rules applicable to, the cross-examination of witnesses.
- III. But 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, or in any proceeding instituted in consequence of Adultery, 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 Act 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.
- IV. 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.

V. Nothing herein contained shall apply to any Action, Suit, Proceeding, or Bill, in any Court of Common-Law, or in any Ecclesiastical-Court, instituted in consequence of Adultery, or to any Action for Breach of Promise of Marriage.

VI. A Clergyman, or Priest, cannot be examined as to any Confession made to him in his professional character.

VII. Whenever any Action or other legal proceeding shall henceforth be pending in any of the Superior Courts of this Colony, such 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.

VIII. 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 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 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.

IX. 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 the same, or of the judicial or official character of the person appearing to have signed the same.

X. 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 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,

XI. 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.

XII. 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 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 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 Four Pence for every folio of Ninety Words.

XIII. If any Officer or other Person 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 Eighteen Months.

XIV. 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.

XV. 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 when 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, 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 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.

XVI. That from and after the passing of this Act, no person offered as a Witness shall be excluded, by reason of incapacity from Crime, from giving Evidence according to the provisions of this Act 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.

XVII. It shall be competent for a Superior Court or any Judge thereof to order the examination, de bene esse, at any time after the commencement of any Action, or other Civil Proceeding, of any Witness who might be so examined after issue joined and a Witness shall for such purpose be deemed to be proceeding beyond the jurisdiction of such Court when he shall be about to proceed out of the District in which such Court shall be hidden.

XVIII. When any Deposition, Examination, or Evidence, under Commission, or by consent of Parties, or otherwise, has been once taken, it may be read in any stage of the same Action, Suit or Proceeding; or in any other Action, Suit or Proceeding, between the same parties, or the representatives of any of them, or any person claiming right or title under them (for the same cause of action,) subject to all just exceptions; provided the Witness giving the Evidence be dead, insane, beyond the jurisdiction of the Court, or be kept away by contrivance.

XIX. For the purpose of perpetuating the testimony of Witnesses, the applicant must produce to one of the Superior Courts of this Island, or a Judge thereof, an Affidavit stating such facts and circumstances as are usual and necessary to support a Bill for perpetuating testimony; whereupon the Court or Judge shall grant a Rule or Order Nisi for the examination of the witness or witnesses, and upon the appearance of the adverse party and no sufficient cause shown, or upon proof of the service of the Rule or Order on such Party, his Agent or Attorney, the Court or Judge shall make such Rule or Order absolute for such examination, subject to such terms or conditions as to costs or otherwise, as he or they may deem expedient to prescribe.

XX. If a trial be had between the Parties named in the Affidavit, as Parties actual or expectant, or their Successors in interest, upon proof of the death or insanity of the Witness, the examination, or a certified copy thereof, may be given in Evidence by either party on the trial, subject to all just exceptions.

XXI. The Examination, when taken and completed, must be subscribed by the Witness, then certified by the Examiner, and filed in the office of the Clerk of the Supreme Court, together with the original Order, and the Affidavit of service. The mode of examination of the witness shall be *viva voce*, except in case the witness who is sought to be examined reside at such a distance from the place of application as to render it necessary or advisable that he should be examined upon interrogatories to accompany the order directing the examination, If the adverse party should fail in attending the examination, or in examining the witness, or in furnishing his cross-interrogatories, within the time prescribed in the order, or such further time as the Court or Judge may allow, the Applicant may proceed with such examination or examinations *ex parte*.

XXII. That from and after the passing of this Act, in all proceedings in the Equity and Ecclesiastical Courts, Evidence shall be taken *viva voce* in open Court or before an examiner, according to the order of the Court or Judge thereof, in the presence and subject to the examination and cross-examination of the Parties, or their Counsel, or Attornies; except, in those cases in which a Commission to examine witness or witnesses would be allowed or ordered in Actions at Law, in which cases such Commission shall be executed as in Actions at Law.

XXIII. 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. 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.

XXIV. A Witness may be cross-examined as to the previous statements made, by him, in writing, relative to the subject matter of the cause, 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 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 purpose of the trial, as he shall think fit.

XXV. 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 in custody 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.

XXVI. 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.

XXVII. 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 the Witnesses, and such writing, 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.

XXVIII. Upon the hearing of any Motion or Summons, it shall be lawful for the Court or Judge, 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 to be examined viva voce either before such Court or Judge or before the Master, and upon hearing such Evidence, or reading the Report of such Master, to make such Rule or Order as may be just.

XXIX. 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, or 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 a Rule of the Court, under, an Act of the Imperial Parliament, passed in the First Year of his late Majesty King William the Fourth, entitled "An Act to enable Courts, of Law, to order the examination of Witnesses upon interrogatories or otherwise;" and it shall be lawful for the Court, or Judge, or Master, 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 viva voce examination of Witnesses under the last mentioned Act.

XXX. Any Party to any Civil. Action or other Civil Proceeding in any of the Superior Courts, requiring the Affidavit of a Person refusing 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 a 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 Witness or Document 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.

XXXI. Such order shall be proceeded upon in like manner as an order made under the hereinbefore mentioned Act passed in the First Year of His late Majesty King William the Fourth, 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 Evidence in all causes in any of the Superior Courts.

XXXII. By Order of the Court or Judge, the Plaintiff may, with the Declaration, and the Defendant may with the Plea, or either of them by leave of the Court or Judge, deliver to the Opposite Party or his Attorney (provided such Party, if not a Body, Corporate, would be liable to be called and examined as a Witness upon such matter,) Interrogatories in Writing upon, any matter as to which discovery may be sought, and require such party, or in the case of a Body Corporate any of the Officers; of such Body Corporate, within Ten Days, to answer the questions in writing, by Affidavit to be sworn and filed in the ordinary way; and any Party or Officer omitting, without just cause, sufficiently to answer all questions to which a discovery may be sought, within the above time or such extended time as the Court or Judge shall allow, shall be deemed to have committed a contempt of the Court and shall be liable to be proceeded against accordingly.

XXXIII. The application for such Order shall be made upon an Affidavit of the Party proposing to interrogate, and his Attorney or Agent, or in the case of a Body Corporate or their Agent stating that the Deponent or Deponents believe or believes that the Party proposing to interrogate, whether Plaintiff or Defendant, will derive material benefit in the cause from the discovery which he seeks; and that there is a good cause of Action, or Defence upon the merits; and if the application be made on the part of the Defendant, that the discovery is not sought for the purpose of delay, provided where it shall happen from Unavoidable circumstances that, the Plaintiff or Defendant cannot join such Affidavit, the Court or Judge may, if they or he think fit, upon Affidavit of such circumstances by which the Party is prevented from sojourning therein allow and order, that the interrogations may be delivered without such Affidavit.

XXXIV. In Case of omission, without just cause to answer sufficiently such written Interrogatories, it shall be lawful for the Court or a Judge, at their or his discretion, to direct an oral examination of the Interrogated Party, as to such points as they or he may direct, before a Judge or Master; and the Court or Judge may, by such Rule or Order, or any subsequent Rule or Order, command the attendance of any such Party or Parties before the Person appointed to take such examination, for the purpose of being orally examined as aforesaid, or the production of any Writings, or Documents, to be mentioned in such Rule or Order, and may impose therein such terms, as to such examination, and the costs of the application and of the proceedings thereon, and otherwise as to such Court or Judge shall seem just.

XXXV. Such Rule or Order shall have the same force and effect, and may be proceeded upon in like manner, as an order made under the said hereinbefore mentioned Act, passed in the First, Year of the Reign of His late Majesty King William the Fourth.

XXXVI. Whenever, by virtue of this an examination of any Witness or Witnesses has been taken before a Judge of one of the same Courts, or before a Master, the depositions taken down by such Examiner shall be returned to and kept in the Master's Office of the Court in which the proceedings, are pending;

and office copies of such depositions may be given out, and the depositions may be otherwise used, in the same manner as in the case of depositions taken under the hereinbefore mentioned Act, passed in the First Year of His late Majesty King William the Fourth.

XXXVII. It shall be lawful for every Judge or Master named in any such Rule or Order as aforesaid for taking Examinations under this Act, and he is hereby required to make, if need be, a Special Report to the Court in which such Proceedings are pending, touching such examination and the conduct or absence of any Witness or Person thereon or relating thereto; and the Court is hereby authorized to institute such Proceedings and make such Order and Orders upon such Report as Justice may require, and as may be instituted and made in any case of Contempt of the Court.

XXXVIII. The Costs of every application for any Rule or Order to be made for the Examination of Witnesses by virtue of this Act, and of the Rule or Order and Proceedings thereon, shall be in the discretion of the Court or Judge by whom such Rule or Order is made.

XXXIX. Any Person who shall, upon examination upon Oath or Affirmation, or in any Affidavit in Proceedings under this Act, wilfully and corruptly give False Evidence, or wilfully and corruptly swear or affirm anything which shall be False, being convicted thereof shall be liable to the Penalties of wilful and corrupt Perjury.

XL. It shall be lawful for all and every Person authorised to take the examination of Witnesses by any Rule, Order, Writ or Commission, made or issued in pursuance of this Act, and he and they are hereby authorized and required to take all such examinations upon the Oath of the Witnesses, or Affirmation in cases where Affirmation is allowed by Law instead of Oath, to be administered by the Person so authorized, or by any Judge of the Court wherein the action shall be depending; and if upon such Oath or Affirmation, any Person making the same shall wilfully and corruptly give any False Evidence, every Person so offending shall be deemed and taken to be guilty of Perjury and shall and may be indicted and prosecuted for such offence in the District wherein such Evidence shall be given.

XLI. It shall and may be lawful for the Master, Examiner, Commissioner, or any other Person to be named in any such Rule or Order as aforesaid for taking any Examination in pursuance thereof, and he and they are hereby required, to make, if need be, a Special Report to the Court touching such Examination, and the conduct or absence of any Witness or other Person thereon or relating thereto; and the, Court is hereby authorized to institute such Proceedings, and make such Order and Orders upon such Report, as Justice may require, and as may be instituted and made in any case of Com tempt of the Court.