

New Zealand.



ANALYSIS.

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1895, No. 10.

AN ACT for the further Amendment of the Law of Evidence. Title.

[30th August, 1895.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

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| <ol style="list-style-type: none"> 1. The Short Title of this Act is "The Evidence Further Amendment Act, 1895." 2. In this Act, if not inconsistent with the context,— <ul style="list-style-type: none"> "Court" includes Supreme Court, District Court, and Magistrate's Court: "Judge" means a Judge of the Supreme Court or the District Court, and includes a Stipendiary Magistrate: "Minister" means an "Officiating Minister" under "The Marriage Act, 1880," or any amendment thereof: "Prisoner" means any person confined in any prison under any sentence, or any commitment for trial or otherwise: "Proceeding" includes any action, suit, trial, inquiry, cause, or matter, whether civil or criminal, depending or to be inquired of or determined in any Court. | <p>Short Title.</p> <p>Interpretation.</p> |
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(1.) *Evidence of Witnesses in Prison.*

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| <ol style="list-style-type: none"> 3. On application in that behalf by any person who states on oath that any prisoner can give material evidence in any proceeding before a Court or Judge, the Judge in his discretion may, by order | <p>Judge may order prisoner to be brought up as a witness.</p> |
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under his hand, require such prisoner to be brought up for examination as a witness in such proceeding.

Such order shall operate and be obeyed in like manner in all things as a writ of *habeas corpus* duly issued out of the Supreme Court.

Expenses of bringing up prisoner.

4. In every civil proceeding the Judge shall, and in every other proceeding he may, before making the aforesaid order, require the applicant therefor to deposit a sum sufficient to pay the expense of bringing up the prisoner, maintaining him whilst out of prison, and returning him thither, including the expense of his custody from the time he leaves until the time he returns to the prison.

(2.) *Indemnity to Witnesses in certain cases.*

In certain cases any person may be examined.

5. In any proceeding in any Court or before any Justices for the breach of any enactment relating to—

- (1.) The duties of Customs ;
- (2.) The sale of intoxicating liquors ;
- (3.) Distillation ; or
- (4.) Beer duty,—

the Judge or the Justices may require any person to be examined as a witness.

No excuse that evidence may incriminate him.

6. No person so required to be examined as aforesaid shall be excused from being so examined, or from answering any question put to him touching such breach as aforesaid, on the ground that his evidence will tend to incriminate him.

Penalty for refusal to give evidence.

7. If any such person refuses to be examined or to answer any such question as aforesaid, he shall be deemed to be a witness appearing under subpoena and refusing without lawful cause or excuse to be sworn or to give evidence.

Such person making true discovery to be freed from all penalties.

8. (1.) Every such person who—

- (a.) Is required to be examined as aforesaid in any Court or before Justices touching any such breach as aforesaid, and, upon such examination,
- (b.) Makes to the best of his knowledge true and faithful discovery of all matters as to which he is so examined touching such breach, and thereby
- (c.) Gives evidence tending to incriminate himself,—

shall, upon application, receive from the Judge or Justices before whom he is examined a certificate in writing under his or their hands that he has made such true and faithful discovery as aforesaid.

(2.) If such person receives such certificate (but not otherwise) he shall be freed from all criminal prosecutions and penal actions, and from all penalties, forfeitures, and punishments, to which he may have been liable for anything done before that time in respect of the matters touching which he has been so examined.

(3.) *Ministers and Medical Men.*

All confessions to ministers privileged.

9. (1.) No minister shall, without the consent of the person alleged to have made a confession, divulge in any proceeding any confession made to him in his professional character.

Confessions to medical men privileged in civil proceedings.

(2.) No physician or surgeon shall, without the consent of his patient, divulge in any civil proceeding (unless the sanity of the

patient be the matter in dispute,) any communication which was made to him in his professional character by such patient, and which was necessary to enable him to prescribe or act for such patient :

Provided that nothing in this section contained shall protect any communication made for a criminal purpose, or prejudice the right to give in evidence or use any statement or representation at any time made to or by any physician or surgeon in or about the effecting by any person of an insurance on the life of himself or of any other person. Proviso.

10. Section seven of "The Evidence Further Amendment Act, 1885," is hereby repealed. Repeal.

(4.) *Protection of Witnesses.*

11. 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, warn the witness that he is not obliged to answer it. Cross-examination as to credit.

In exercising this discretion the Court shall have regard to the following considerations :—

- (1.) Such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies. When such questions are proper.
- (2.) Such questions are improper if the imputation which they convey relates to matters so remote in time or of such a character that the truth of the imputation would not affect, or would affect in a slight degree only, the opinion of the Court as to the credibility of the witness on the matter to which he testifies. When improper.
- (3.) Such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence. Unnecessary imputations improper.

12. Nothing herein contained shall be deemed to make any witness compellable to give evidence upon any matter which he is by law now protected against disclosing. Saving existing rights.

13. The Court shall forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue or to matters necessary to be known in order to determine whether or not the facts in issue existed. Indecent or scandalous questions.

14. The Court shall forbid any question which appears to it to be intended to insult or annoy, or which though proper in itself appears to the Court needlessly offensive in form. Questions intended to insult or annoy.

15. It shall not be lawful for any person to print or publish any question or inquiry which— Prohibited questions not to be published.

(a.) Has been forbidden or disallowed by the Court ;

(b.) The Court has warned the witness he is not obliged to answer, and which the Court has ordered shall not be published.

Any person printing or publishing any question or inquiry in contravention of this section shall be deemed guilty of contempt of Court.

(5.) *Special Provisions as to Evidence in Criminal Cases.*

Evidence in
poisoning cases.

16. When, in any criminal proceeding, there is a question whether poison was administered or attempted to be administered by or by the procurement of the accused person, evidence tending to prove the administration or attempted administration by or by the procurement of the accused, whether to the same or to another person, and at the same time as the time when the offence charged was committed, or at any other time or times, shall be deemed to be relevant to the general issue of "Guilty" or "Not guilty," and shall be admissible at any stage of the proceedings, as well for the purpose of proving the administration or attempted administration by or by the procurement of the accused as for the purpose of proving the intent.

Confession after
promise or threat.

17. No confession which is tendered in evidence on any trial shall be rejected on the ground that a promise or threat has been held out to the person confessing, unless the Judge or other presiding officer shall be of opinion that the inducement was really calculated to cause an untrue admission of guilt to be made.