

Passed in Council this first day of September in the year of our Lord one thousand eight hundred and sixty-five.

DAVID B. HORSFORD,
Acting Clerk of the Council.

No. 19.—1865.

2nd October.

AN ORDINANCE for amending the Law of Evidence and Practice on Criminal Trials.

[L.S.] J. H. T. MANNERS-SUTTON.

October 7, 1865.

BE it enacted by His Excellency the Governor, with the advice and consent of the Legislative Council, as follows :

Defines the application of this Ordinance.

1. That the provisions of Section 2 of this Ordinance shall apply to every trial for felony or misdemeanour which shall be commenced on or after the first day of January, one thousand eight hundred and sixty-six, and that the provisions of Sections from 3 to 8 both inclusive of this Ordinance shall apply to all Courts of Judicature, as well Criminal as all others, and to all persons having, by law, or by consent of parties, authority to hear, receive, and examine evidence.

In cases where no evidence is adduced, the counsel for the prosecution shall be allowed to address the jury a second time; and upon trials for felony, prisoners or their counsel shall be allowed to open their case.

2. If any prisoner or prisoners, defendant or defendants shall be defended by Counsel, but not otherwise, it shall be the duty of the presiding Judge at the close of the case for the prosecution to ask the Counsel for each prisoner or defendant so defended by Counsel whether he or they intend to adduce evidence; and in the event of none of them thereupon announcing his intention to adduce evidence, the Counsel for the prosecution shall be allowed to address the Jury a second time in support of his case, for the purpose of summing up the evidence against such prisoner or prisoners, or defendant or defendants; and upon every trial for felony or misdemeanour, whether the prisoners or de-

defendants or any of them shall be defended by Counsel or not, each and every such prisoner or defendant, or his or their Counsel respectively, shall be allowed, if he or they shall think fit, to open his or their case or cases respectively; and after the conclusion of such opening or of all such openings if more than one, such prisoner or prisoners, or defendant or defendants or their Counsel shall be entitled to examine such witnesses as he or they may think fit, and when all the evidence is concluded to sum up the evidence respectively; and the right of reply and practice and course of proceedings, save as hereby altered, shall be as at present.

3. 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.

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of a witness
shall not
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bad character.

4. If a witness upon cross-examination as to a former statement made by him relative to the subject matter of the indictment or proceeding 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.

Proof may be
given of the
testimony of
a witness
being incon-
sistent with a
former state-
ment made
by him.

5. A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing relative to the subject matter of the indictment or proceeding, 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 to be used for the purpose of so contradicting him: Provided always that it shall be

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Proviso.

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 may think fit.

Proof may be given of a witness having been convicted of felony or misdemeanour; and a certificate signed by the proper officer of the Court shall be sufficient evidence of the conviction.

6. A witness may be questioned as to whether he has been convicted of any felony or misdemeanour, and upon being so questioned, if he either denies or does not admit the fact, or refuses to answer, it shall be lawful for the cross-examining 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 Registrar or 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, 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.

Instruments may be proved without there being an attesting witness thereto.

7. 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 as if there had been no attesting witness thereto.

Disputed writings may be compared with any writing proved to be genuine.

8. 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.

Interpretation clause.

9. The word "Counsel" in this Ordinance shall be construed to apply to Solicitors in all cases where Solicitors are allowed by law or by the practice of the Court to appear as advocates.

Passed in Council this second day of October, in the year of our Lord one thousand eight hundred and sixty-five.

DAVID B. HORSFORD,
Acting Clerk of the Council.