ANNO VICESIMO OCTAVO

VICTORIÆ REGINÆ.

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CAP. XVIII.

An Act for amending the Law of Evidence and Practice on Criminal Trials. [9th *May* 1865.]

WHEREAS it is expedient that the Law of Evidence and Practice on Trials for Felony and Misdemeanor and other Proceedings in Courts of Criminal Judicature should be more nearly assimilated to that on Trials at Nisi Prius: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows; that is to say,

Provisions of Sect. 2. of this Act to apply to Trials commenced on or after July 1, 1865.

1. That the Provisions of Section Two of this Act shall apply to every Trial for Felony or Misdemeanor which shall be commenced on or after the First Day of *July* One thousand eight hundred and sixty-five, and that the Provisions of Sections from Three to Eight, inclusive, of this Act 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.

Summing up of Evidence in Cases of

2. If any Prisoner or Prisoners, Defendant or Defendants, shall be defended by Counsel, but not otherwise, it shall be the Duty of the

Felony and Misdemeanor.

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 Misdemeanor, whether the Prisoners or 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.

How far Witness may be discredited by the Party producing.

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.

As to Proof of contradictory Statements of adverse Witness.

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.

Cross-examinations as to previous Statements in Writing.

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

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 may think fit.

Proof of previous Conviction of Witness may be given.

6. A Witness may be questioned as to whether he has been convicted of any Felony or Misdemeanor, 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 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.

As to Proof by attesting Witnesses.

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.

As to Comparison of disputed Writing.

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.

"Counsel."

9. The Word "Counsel" in this Act shall be construed to apply to Attorneys in all Cases where Attorneys are allowed by Law or by the Practice of any Court to appear as Advocates.

Not to apply to Scotland.

10. This Act shall not apply to *Scotland*.

LONDON:
Printed by GEORGE EDWARD EYRE and WILLIAM SPOTTISWOODE,
Printers to the Queen's most Excellent Majesty. 1865.