



Evidence (Scotland) Act 1852

1852 CHAPTER 27

An Act to amend the Law of Evidence in *Scotland*.

[17th June 1852]

WHEREAS it is expedient to alter and amend the Law of Evidence in *Scotland* :

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 ; viz¹.

**I Witnesses not to be excluded by reason of Crime, &c. Right to examine
Witnesses as to Credibility not affected. Not competent to adduce as a Witness
any Person who shall be acting as an Agent in the Action. Where any Person
adduced has been an Agent no Plea of Confidentiality allowable.**

No Person adduced as a Witness in *Scotland* before any Court or before any Person having by Law or by Consent of Parties Authority to take Evidence, shall be excluded from giving Evidence, by reason of having been convicted of or having suffered Punishment for Crime, or by reason of Interest, or by reason of Agency or of partial Counsel, or by reason of having appeared without Citation, or by reason of having been precognosced subsequently to the Date of Citation; but every Person so adduced, who is not otherwise by Law disqualified from giving Evidence, shall be admissible as a Witness, and shall be admitted to give Evidence as aforesaid, notwithstanding of any Objections offered on the above-mentioned Grounds: Provided always, that nothing herein contained shall affect the Right of any Party in the Action or Proceeding in which such Witness shall be adduced to examine him on any Point tending to affect his Credibility: Provided also, that it shall not be competent to adduce as a Witness in any Action or Proceeding any Person who shall at the Time when he is so adduced as a Witness be acting as Agent in the Action or Proceeding in which he is so adduced, excepting in so far as the same may be competent by the existing Law and Practice of *Scotland* ; and where any Person who is or has been an Agent shall be adduced and examined as a Witness for his Client, touching any Matter or Thing, to prove which he could not competently have been adduced and examined according to the existing Law and Practice of *Scotland*, it shall not be competent to the Party adducing such

Status: This is the original version (as it was originally enacted).

Witness to object, on the Ground of Confidentiality, to any Question proposed to be put to such Witness on Matter pertinent to the Issue.

II Party to an Action may be adduced as a Witness, unless it be shown that he has a substantial Interest.

It shall be competent to adduce and to examine as a Witness as aforesaid in any Action or Proceeding any Party to such Action or Proceeding, even although individually named in the Record or Proceeding, unless it shall be shown to the Satisfaction of the Court, or of the Person having Authority to take Evidence as aforesaid, that such Party has a substantial Interest in such Action or Proceeding, and is not merely nominally a Party thereto.

III Witness may be examined as to having made a different Statement.

It shall be competent to examine any Witness who' may be adduced in any Action or Proceeding as to whether he has on any specified Occasion made a Statement on any Matter pertinent to the Issue different from the Evidence given by him in such Action of Proceeding ; and it shall be competent in the course of such Action or Proceeding to adduce Evidence to prove that such Witness has made such different Statement on the Occasion specified.

IV Witness may be recalled, after Examination.

It shall be competent to the presiding Judge or other Person before whom any Trial or Proof shall proceed, on the Motion of either Party, to permit any Witness who shall have been examined in the course of such Trial or Proof to be recalled.

V Laws and Practice inconsistent with this Act repealed.

All Statutes, Laws, and Practice now in force respecting Evidence in *Scotland* shall be and the same are hereby repealed, in so far as inconsistent or at variance with the Provisions of this Act, but the same shall in all other respects remain in full Force.