



# Criminal Procedure Act 1865

1865 CHAPTER 18 28 and 29 Vict

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

## Modifications etc. (not altering text)

- C1 Short title given by [Short Titles Act 1896 \(c. 14\)](#)
- C2 Preamble omitted under authority of [Statute Law Revision Act 1893 \(c. 14\)](#)

## 1 Provisions of sect. 2. of this Act to apply to trials commenced on or after July 1, 1865.

The provisions of section two of this Act shall apply to every trial . . . . .<sup>F1</sup>; and 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.

## Textual Amendments

- F1 Words repealed by (E.W.) [Criminal Law Act 1967 \(c. 58\)](#), [Sch. 3 Pt. III](#) and (N.I.) [Criminal Law Act \(Northern Ireland\) 1967 \(c. 18\)](#), [Sch. 2 Pt. II](#)

## 2 Summing up of evidence in cases of felony and misdemeanor.

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 . . . . .<sup>F2</sup>, whether the prisoners or defendants, or any of them, shall be defended by counsel or not, each and every such

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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.

#### Textual Amendments

**F2** Words repealed by (E.W.) [Criminal Law Act 1967 \(c. 58\)](#), [Sch. 3 Pt. III](#) and (N.I.) [Criminal Law Act \(Northern Ireland\) 1967 \(c. 18\)](#), [Sch. 2 Pt. II](#)

#### Modifications etc. (not altering text)

**C3** [S. 2](#) excluded (E.W.) by [Criminal Justice Act 1948 \(c. 58\)](#), [s. 42\(1\)](#) and [Criminal Procedure \(Right of Reply\) Act 1964 \(c. 34\)](#), [s. 1\(1\)\(b\)](#)

### 3 How far witness may be discredited by the party producing.

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.

### 4 As to proof of contradictory statements of adverse witness.

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.

### 5 Cross-examinations as to previous statements in writing.

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 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.

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## 6 Proof of previous conviction of witness may be given. **E+W**

[<sup>F3</sup>(1)] [<sup>F4</sup>If, upon a witness being lawfully] questioned as to whether he has been convicted of any felony or misdemeanor, [<sup>F5</sup>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; [<sup>F6</sup>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 [<sup>F7</sup>the proper officer of the court where the offender was convicted] (for which certificate a fee of [<sup>F8</sup>25 p] 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.]

[<sup>F9</sup>(2) In subsection (1) “proper officer” means—

- (a) in relation to a magistrates’ court in England and Wales, the [<sup>F10</sup>designated officer] for the court; and
- (b) in relation to any other court, the clerk of the court or other officer having the custody of the records of the court, or the deputy of such clerk or other officer.]

### Textual Amendments

- F3** S. 6 renumbered as s. 6(1) (1.4.2001) by 1999 c. 22, s. 90, **Sch. 13 para. 3** (with Sch. 14 para. 7(2)); S.I. 2001/916, **art. 2(a)(ii)**
- F4** Words in s. 6 substituted (E.W.) (15.12.2004) by Criminal Justice Act 2003 (c. 44), ss. 331, 336(3), **Sch. 36 para. 79(a)**; S.I. 2004/3033, **art. 3(2)(b)(d)**
- F5** Words in s. 6(1) repealed (E.W.) (15.12.2004) by Criminal Justice Act 2003 (c. 44), ss. 331, 332, 336(3), Sch. 36 para. 79(b), **Sch. 37 Pt. 5**; S.I. 2004/3033, **art. 3(2)(b)(d)(e)(i)**
- F6** Words from “and a certificate” onwards repealed in relation to criminal proceedings by Police and Criminal Evidence Act 1984 (c. 60, SIF 95), s. 119, **Sch. 7 Pt. IV**
- F7** Words substituted (1.4.2001) by 1999 c. 22, s. 90, **Sch. 13 para. 3** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2001/916, **art. 2(a)(ii)**
- F8** Words substituted by virtue of Decimal Currency Act 1969 (c. 19), **s. 10(1)**
- F9** S. 6(2) inserted (1.4.2001) by 1999 c. 22, s. 90, **Sch. 13 para. 3** (with Sch. 14 para. 7(2)); S.I. 2001/916, **art. 2(a)(ii)**
- F10** Words in s. 6(2)(a) substituted (1.4.2005) by Courts Act 2003 (c. 39), ss. 109(1), 110(1), **Sch. 8 para. 47**; S.I. 2005/910, **art. 3(y)**

## 6 Proof of previous conviction of witness may be given. **E+W+N.I.**

[<sup>F3</sup>(1)] 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; [<sup>F6</sup>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 [<sup>F7</sup>the proper officer of the court where the offender was convicted] (for which certificate a fee of [<sup>F8</sup>25 p] 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.]

[<sup>F9</sup>(2) In subsection (1) “proper officer” means—

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- (a) in relation to a magistrates' court in England and Wales, the justices' chief executive for the court; and
- (b) in relation to any other court, the clerk of the court or other officer having the custody of the records of the court, or the deputy of such clerk or other officer.]

#### Textual Amendments

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## 6 Proof of previous conviction of witness may be given. **N.I.**

[<sup>F3</sup>(1)] 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; [<sup>F6</sup>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 [<sup>F7</sup>the proper officer of the court where the offender was convicted] (for which certificate a fee of [<sup>F8</sup>25 p] 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.]

[<sup>F9</sup>(2) In subsection (1) “proper officer” means—

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**7 As to proof by attesting witnesses.**

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.

**8 As to comparison of disputed writing.**

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.

**9 “Counsel.”**

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.

**10 Not to apply to Scotland.**

This Act shall not apply to Scotland.

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