

Law Amendment Act 1856

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An Act for the amendment of the Law of Evidence, and of the Law of Debtor and Creditor.**BE IT ENACTED by the General Assembly of New Zealand as follows:—***EVIDENCE***1 Affirmation instead of oath in certain cases.**

If any person called as a witness, or required or desiring to make an affidavit or deposition, shall refuse or be unwilling from alleged conscientious motives to be sworn, it shall be lawful for the Court or Judge or other presiding officer or person qualified to take affidavits or depositions, upon being satisfied of the sincerity of such objection, to permit such person, instead of being sworn, to make his or her solemn affirmation or declaration in the words following, *videlicet*:—

I, A.B., do solemnly sincerely and truly affirm and declare that the taking of any oath is, according to my religious belief, unlawful; and I do also solemnly sincerely and truly affirm and declare, &c.

Which solemn affirmation and declaration shall be of the same force and effect as if such person had taken an oath in the usual form.

2 Persons making a false affirmation to be subject to the same punishment as for perjury.

If any person making such solemn affirmation or declaration shall wilfully falsely and corruptly affirm or declare any matter or thing which, if the same had been sworn in the usual form, would have amounted to wilful and corrupt perjury, every such person so offending shall incur the same penalties as by the law are or may be enacted or provided against persons convicted of wilful and corrupt perjury.

3 How far a party may discredit his own witness.

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 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 cause 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-examination 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 cause, 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 purpose of the trial as he shall think fit.

6 Proof of previous conviction of a witness may be given.

A witness in any cause may be questioned as to whether he has been convicted of any felony or misdemeanour, and upon being so questioned, if he either denies the fact or refuses to answer, it shall be lawful for the opposite 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.

7 Attesting witness need not be called except in certain cases.

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 by admission or otherwise, as if there had been no attesting witness thereto.

8 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.

ATTACHMENT OF DEBTS

9 Examination of Judgment debtor as to debt due to him.

It shall be lawful for any creditor who has obtained a judgment in the Supreme Court of New Zealand, to apply to the Court or a Judge for a rule or order that the judgment debtor should be orally examined as to any and what debts are owing to him before a Judge or Registrar of the Court, or such other person as the Court or Judge shall appoint; and the Court or Judge may by such rule or order, or any subsequent rule or order, command the attendance of such judgment debtor before the person appointed to take such examination for the purpose of being orally examined as aforesaid, or the production of any writings or other documents to be mentioned in such rule or order, and may impose therein such terms as to such examination, and the costs of the application, and of the proceedings thereon and otherwise, as to such Court or Judge shall seem just.

10 Judge may order an attachment of debts.

It shall be lawful for a Judge, upon the *ex parte* application of such judgment creditor, either before or after such oral examination, and upon affidavit by himself or his solicitor stating that judgment has been recovered and that it is still unsatisfied and to what amount, and that any other person is indebted to the judgment debtor and is within the jurisdiction, to order that all debts owing or accruing from such third person (hereinafter called the sub-debtor) to the judgment debtor shall be attached to answer the judgment debt; and by the same or any subsequent order it may be ordered that the subdebtor shall appear before the Judge, or a Registrar of the Court as such Judge shall appoint, to show cause why he should not pay the judgment creditor the debt due from him to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment debt.

11 Order for attachment to bind debts.

Service of an order that debts due or accruing to the judgment debtor shall be attached, or notice thereof to the sub-debtor, in such manner as the Judge shall direct, shall bind such debts in his hands.

12 Proceedings to levy amount due from sub-debtor to judgment debtor.

If the sub-debtor does not forthwith pay into Court the amount due from him to the judgment debtor, or an amount equal to the judgment debt, and does not dispute the debt due or claimed to be due from him to the judgment debtor, or if he does not appear upon summons, then the Judge may order execution to issue, and it may be sued forth accordingly, without any previous writ or

process, to levy the amount due from such sub-debtor towards satisfaction of the judgment debt.

13 Judge may allow judgment creditor to sue sub-debtor.

If the sub-debtor dispute his liability, the Judge, instead of making an order that execution shall issue, may order that the judgment creditor shall be at liberty to proceed against the sub-debtor by writ, calling upon him to show cause why there should not be execution against him for the alleged debt, or for the amount due to the judgment debtor if less than the judgment debt, and for costs of suit; and the proceedings upon such suit shall be the same as nearly as may be as upon a writ of revivor issued under the general rules of the said Court.

14 Sub-debtor discharged.

Payment made by or execution levied upon the sub-debtor under any such proceeding as aforesaid shall be a valid discharge to him as against the judgment debtor to the amount paid or levied, although such proceeding may be set aside or the judgment reversed.

15 Attachment books to be kept by the Registrars of the Court.

In each judicial district of the Supreme Court there shall be kept at the Registrar's Office a debt attachment book, and in such book entries shall be made of the attachment and proceedings thereon, with names dates and statements of the amount recovered and otherwise; and copies of any entries made therein may be taken by any person upon application to the Registrar.

16 Costs of application.

The costs of any application for an attachment of debt under this Act, and of any proceedings arising from or incidental to such application, shall be in the discretion of the Court or a Judge.

LOST INSTRUMENTS

17 Actions on lost instruments.

In case of any action founded upon a bill of exchange or other negotiable instrument, it shall be lawful for the Court or a Judge to order that the loss of such instrument shall not be taken advantage of, provided an indemnity is given, to the satisfaction of the Court or Judge or a Registrar thereof, against the claims of any other person upon such negotiable instrument.

18 Short Title.

This Act shall be intituled and may be cited as "*The Law Amendment Act, 1856.*"