

14.

# New Zealand.

ANNO TRICESIMO

## VICTORIÆ REGINÆ.

No. —.

### ANALYSIS.

<p>Title. Preamble. 1. Short Title. 2. Provisions of the third section of this Act to apply to trials commenced on or after 1st July 1866. 3. Summing up of evidence in cases of felony and misdemeanour. 4. How far witness may be discredited by the party producing. 5. As to proof of contradictory statements of adverse witness.</p>	<p>6. Cross-examinations as to previous statements in writing. 7. Proof of previous conviction of witness may be given. How proved. 8. As to proof by attesting witnesses. 9. As to comparison of disputed handwriting. 10. Witnesses to be examined before Grand Juries to be sworn in the presence of the jurors. 11. Such witnesses need not be sworn in open Court. 12. Interpretation.</p>
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### A BILL INTITULED

## **AN ACT for amending the law of evidence and practice on Criminal Trials and for facilitating the despatch of business before Grand Juries.**

Title.

**W**HEREAS it is expedient to amend the law of evidence and practice on trials for felony and misdemeanour and other proceedings in courts of criminal judicature

Preamble.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled and by the authority of the same as follows —

I. The Short Title of this Act shall be “The Criminal Law Procedure Act 1866.”

Short Title.

II. The provisions of the third section of this Act shall apply to every trial for felony or misdemeanour which shall be commenced on or after the first day of July one thousand eight hundred and sixty six and the provisions of sections from four to nine 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.

Provisions of the third section of this Act to apply to trials commenced on or after the first of July 1866.

III. 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 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 the same as at present.

How far witness may be discredited by party producing.

IV. 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.

V. 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.

VI. 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.

Proof of previous conviction of witness may be given.

How proved.

VII. 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 of 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.

VIII. 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 handwriting

IX. 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

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evidence of the genuineness or otherwise of the writing in dispute.

X. From and after the passing of this Act it shall be lawful for the foreman of every Grand Jury impanelled in the colony and he is hereby authorized and required to administer an oath to all persons whomsoever who shall appear before such Grand Jury to give evidence in support of any Bill of Indictment and all such persons attending before any Grand Jury to give evidence may be sworn and examined upon oath by such Grand Jury touching the matters in question and every person taking any oath or affirmation in support of any Bill of Indictment who shall wilfully swear or affirm falsely shall be deemed guilty of perjury and the name of any witness so examined or intended to be so examined shall be indorsed on such Bill of Indictment and the foreman of each Grand Jury shall write his initials against the name of each witness so sworn and examined touching such Bill of Indictment Provided that upon the written order of the presiding judge but not otherwise any other witness may be sworn and examined by and before the Grand Jury though the name of the witness may not have been indorsed on the Bill of Indictment.

Witnesses to be examined before Grand Juries to be sworn in the presence of the jurors.

XI. From and after the passing of this Act it shall not be necessary for any person to take an oath in open Court to qualify such person to give evidence before any Grand Jury.

Such witnesses need not be sworn in open Court.

XII. The word "counsel" in this Act shall be construed to apply not only to barristers-at-law but also to attorneys and solicitors in all cases where attorneys and solicitors are allowed by law or by the practice of any court to appear as advocates And the word "foreman" in this Act shall include any member of such Grand Jury who may for the time being act on behalf of such foreman in the examination of witnesses in support of any Bill of Indictment And the word "oath" in this Act shall include affirmation when by law such affirmation is required or allowed to be taken in lieu of an oath.

Interpretation.