

No. 1.

An Act for improving the Law of Evidence. [26th
June, 1844.]

WHEREAS the enquiry after truth in Courts of Justice is often obstructed by incapacities created by the present law, and it is desirable that full information as to the facts in issue, both in criminal and in civil cases, should be laid before the persons who are appointed to decide upon them, and that such persons should exercise their judgment on the credit of the witnesses adduced, and on the truth of their testimony: Now, therefore, be it enacted by His Excellency the Governor of New South Wales, with the advice and consent of the Legislative Council thereof, That no person offered as a witness, shall hereafter be excluded by reason of incapacity, from crime or interest, from giving evidence, either in person or by deposition, according to the practice of the Court, on the trial of any issue joined, or of any matter or question, or on any enquiry arising in any suit, action, or proceeding, civil or criminal, in any court or before any judge, jury, sheriff, coroner, magistrate, officer, or person having by law, or by consent of parties, authority to hear, receive, and examine evidence in the Colony of New South Wales; but that every person so offered may and shall be admitted to give evidence on oath, or solemn affirmation, in those cases wherein affirmation is by law receivable, notwithstanding that such person may or shall have an interest in the matter in question, or in the event of the trial of any issue, matter, question, or injury, or of the suit, action, or proceeding, in which he is offered as a witness, and notwithstanding that such person offered as a witness may have been previously convicted of any crime or offence: Provided that this Act shall not render competent any party to any suit, action or proceeding, individually named in the record, or any lessor of the plaintiff or tenant of premises sought to be recovered in ejectment, or the landlord or other person in whose right any defendant in replevin may make cognizance, or any person in whose immediate and individual behalf any action may be brought or defended, either wholly or in part, or the husband or wife of such persons respectively: Provided also, that this Act shall not repeal any provision in a certain Act passed in the Session of Parliament holden in the seventh year of the reign of His late Majesty, and in the first year of the reign of Her present Majesty, intituled, "*An Act for the amendment of the laws with respect to wills,*" which said last mentioned Act was adopted and applied in the administration of justice in New South Wales, by a certain Act of His Excellency the Governor, and Legislative Council thereof, passed in the third year of the reign of Her present Majesty, intituled, "*An Act for adopting a certain Act of Parliament,*" intituled, "*An Act for the amendment of the laws with respect to wills, in the administration of justice in New South Wales, in like manner as other laws of England are applied therein:*" Provided further, that in Courts of Equity any defendant to any cause pending in any such Court may be examined as a witness on the behalf of the plaintiff, or of any co-defendant in any such cause, saving just exceptions; and that any interest which such defendant so to be examined may have in the matters or any of the matters in question, in the cause, shall not be deemed a just exception to the testimony of such defendant, but shall only be considered as affecting, or tending to affect the credit of such defendant as a witness.

Preamble.

Witnesses not to be excluded from giving evidence by incapacity from crime or interest.

Proviso.

Not to repeal any provision in 7 Wm. IV., and 1 Vic., c. 26.

In Courts of Equity defendant may be examined on behalf of the plaintiff, or any co-defendant.

II.

As to suits
commenced
before passing
this Act.

II. And be it enacted, That nothing in this Act shall apply to, or affect any suit, action, or proceeding brought or commenced before the passing of this Act.

ALEX. McLEAY,

SPEAKER.

*Passed the Legislative Council, this } In the name, and on the behalf
twenty-sixth day of June, one thou- } of Her Majesty, I assent to
sand eight hundred and forty-four. } this Act.*

GEORGE GIPPS,

GOVERNOR.

WM. MACPHERSON,

CLERK OF THE COUNCIL.