Queensland

ANNO UNDECIMO

ELIZABETHAE SECUNDAE REGINAE

No. 9 of 1962

An Act to Amend the "Evidence and Discovery Act of 1867," and "The Evidence Further Amendment Act of 1874," each in certain particulars

[ASSENTED TO 12TH NOVEMBER, 1962]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I.—PRELIMINARY

1. (1) This Act may be cited as "*The Evidence Acts Amendment Act of* 1962." Short title

(2) The Court concerned may, if it thinks fit, apply this Act to any proceedings commenced before and in progress at the commencement of this Act.

Parts of Act

2. This Act is divided into Parts as follows :—

PART I.—PRELIMINARY;

PART II.—AMENDMENTS OF THE " EVIDENCE AND DISCOVERY ACT OF 1867 " ;

PART III.—AMENDMENTS OF " THE EVIDENCE FURTHER AMENDMENT ACT OF 1874 ".

PART II.—AMENDMENTS OF THE " EVIDENCE AND DISCOVERY ACT OF 1867 "

Construction of Part II.

3. (1) This Part II. of this Act shall be read as one with the " *Evidence and Discovery Act of* 1867 " herein in this Part referred to as the Principal Act.

Collective title

(2) " *The Evidence and Discovery Acts,* 1867 *to* 1960," and this Part of this Act may be collectively cited as " *The Evidence and Discovery Acts,* 1867 *to* 1962."

New s. 25A inserted

4. The Principal Act is amended by inserting after section twenty-five the following section:—

Proof of instrument of validity of which attestation is necessary

" [*25A.*] Subject as hereinafter provided, any instrument of the validity of which attestation is requisite may, instead of being proved by an attesting witness, be proved in the manner in which it might be proved if no attesting witness were alive:

Provided that nothing in this section shall apply to the proof of wills or other testamentary documents."

New s. 41A inserted

5. The Principal Act is amended by inserting after section forty-one the following section:—

Presumptions as to documents twenty years old

" [*41A.*] Whenever any document is proved, or purports, to be not less than twenty years old, there shall be made any presumption which immediately before the date of the passing of " *The Evidence and Discovery Acts and Another Act Amendment Act of* 1962," would have been made in the case of a document of like character proved, or purporting, to be not less than thirty years old."

6. The Principal Act is amended by inserting after section forty-two the following sections:— New ss. 42A, 42B, 42C

" [*42A.*] (*1*) In sections 42B and 42C of this Act— Interpretation and savings

(*a*) " Document " includes books, maps, plans, drawings and photographs;

(*b*) " Statement " includes any representation of fact, whether made in words or otherwise;

(*c*) " Proceedings " includes arbitrations and references; and " court " shall be construed accordingly.

(*2*) Nothing in sections 42B or 42C of this Act shall prejudice the admissibility of any evidence which would, apart from the provisions of those sections, be admissible.

[*42B.*] (*1*) In any civil proceedings where direct oral evidence of a fact would be admissible, any statement made by a person in a document and tending to establish that fact shall, on production of the original document, be admissible as evidence of that fact if the following conditions are satisfied, that is to say:— Admissibility of documentary evidence as to facts in issue

(*a*) If the maker of the statement either—

(i) had personal knowledge of the matters dealt with by the statement; or

(ii) where the document in question is or forms part of a record purporting to be a continuous record, made the statement (in so far as the matters dealt with thereby are not within his personal knowledge) in the performance of a duty to record information; and

(*b*) If the maker of the statement is called as a witness in the proceedings:

Provided that the condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead, or unfit by reason of his bodily or mental condition to attend as a witness, or if he is out of the State and it is not reasonably practicable to secure his attendance, or if all reasonable efforts to find him have been made without success, or where no party to the proceedings who would have the right to cross-examine him requires him to be called as a witness.

(*2*) In any civil proceedings, the court may at any stage of the proceedings order that such a statement as is mentioned in subsection (1) of this section shall be admissible as evidence or may, without any such order having been made, admit such a statement in evidence—

(*a*) notwithstanding that the statement is tendered by the party calling the maker of the statement;

(*b*) notwithstanding that the maker of the statement is available but is not called as a witness;

(*c*) notwithstanding that the original document is lost or mislaid or destroyed, or is not produced, if in lieu thereof there is produced a copy of the original document or of the material part thereof certified to be a true copy in such manner as may be specified in the order or as the court may approve, as the case may be.

(*3*) For the purposes of this section, a statement in a document shall not be deemed to have been made by a person unless the document or the material part thereof was written, made or produced by him with his own hand, or was signed or initialled by him or otherwise recognised by him in writing as one for the accuracy of which he is responsible.

(*4*) For the purpose of deciding whether or not a statement is admissible as evidence by virtue of the foregoing provisions, the court may draw any reasonable inference from the form or contents of the document in which the statement is contained, or from any other circumstances, and may, in deciding whether or not a person is fit to attend as a witness, act on a certificate purporting to be the certificate of a registered medical practitioner, and where the proceedings are with a jury, the court may in its discretion reject the statement notwithstanding that the requirements of this section are satisfied with respect thereto, if for any reason it appears to it to be inexpedient in the interests of justice that the statement should be admitted.

[*42*C.] (*1*) In estimating the weight, if any, to be attached to a statement rendered admissible as evidence by section 42B of this Act, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement, and in particular to the question whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not the maker of the statement had any incentive to conceal or misrepresent facts. Weight to be attached to evidence

(*2*) For the purpose of any rule of law or practice requiring evidence to be corroborated or regulating the manner in which uncorroborated evidence is to be treated, a statement rendered admissible as evidence by section 42B of this Act shall not be treated as corroboration of evidence given by the maker of the statement."

PART III.—AMENDMENTS OF "THE EVIDENCE FURTHER AMENDMENT ACT OF 1874"

7. (1) This Part III. of this Act shall be read as one with "*The Evidence Further Amendment Act of* 1874." Construction of Part III.

(2) "*The Evidence Further Amendment Act of* 1874" and this Part of this Act may be collectively cited as "*The Evidence Further Amendments Acts,* 1874 *to* 1962." Collective title

8. Section three of "*The Evidence Further Amendment Act of* 1874" is repealed and the following sections are inserted in its stead:— Repeal of and new s. 3

"[*3.*] Notwithstanding anything contained in any Act or any rule of law, neither the evidence of any person nor any statement made out of court by any person shall be inadmissible in any proceedings whatever by reason of the fact that it is tendered with the object of proving, or that it proves or tends to prove, that marital intercourse did or did not take place at any time or during any period between that person and a person who is or was his or her wife or husband or that any child is or was, or is not or was not, their legitimate child. Admissibility of evidence as to access by husband or wife

Compellability of parties and witnesses as to evidence of adultery

[*3A.*] Notwithstanding anything in any Act or any rule of law, in any proceedings whatever,—

(*a*) a party shall not be entitled to refuse to answer any interrogatory or to give discovery of documents;

(*b*) a witness, whether a party or not, shall not be entitled to refuse to answer any question, whether relevant to any issue or relating to credit merely,

on the ground solely that such answer or discovery would or might relate to, or would tend or might tend to establish, adultery by that party or that witness, or by any other person with that party or that witness, as the case may be."