



Evidence (Scotland) Act 1840

1840 CHAPTER 59

An Act for the Amendment of the Law of Evidence in *Scotland*. [7th August 1840]

WHEREAS the Law of Evidence in *Scotland* has in certain respects been found inconvenient, and inconsistent with the Ends of Justice, and therefore requires Amendment:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same,

Witnesses admissible notwithstanding Relationship to Party adducing them.

That from and after the passing of this Act it shall by the Law of *Scotland* be no Objection to the Admissibility of any Witness that he or she is the Father or Mother, or Son or Daughter, or Brother or Sister, by Consanguinity or Affinity, or Uncle or Aunt, or Nephew or Niece, by Consanguinity, of any Party adducing such Witness in any Action, Cause, Prosecution, or other Judicial Proceeding, Civil or Criminal; nor shall it be competent to any Witness to decline to be examined and give Evidence on the Ground of any such Relationship.

II Examination in *initialibus* may be dispensed with.

And be it enacted, That it shall not be necessary for any Judge in *Scotland*, or for any Person acting as Commissioner in taking Evidence in any Action, Cause, Prosecution, or other Judicial Proceeding, Civil or Criminal, depending in *Scotland*, to examine any Witness *in initialibus*: Provided always, that it shall nevertheless be competent for any such Judge or Person acting as Commissioner, or the Party against whom the Witness shall be called, to examine any Witness *in initialibus* as heretofore.

III Presence in Court not to disqualify Witnesses in certain Cases.

And be it enacted, That in any Trial before) any Judge of the Court of Session or Court of Justiciary, or before any Sheriff or Stewart in *Scotland*, it shall not be imperative on the Court to reject any Witness against whom it is objected that he or she has, without

Status: This is the original version (as it was originally enacted).

the Permission of the Court, and without the Consent of the Party objecting, been present in Court during all or any Part of the Proceedings ; but it shall be competent for the Court, in its Discretion, to admit the Witness, where it shall appear to the Court that the Presence of the Witness was not the Consequence of culpable Negligence or criminal Intent, and that the Witness has not been unduly instructed or influenced by what took place during his or her Presence, or that Injustice will not be done by his or her Examination.

IV Examination of Witnesses by the Parties against whom they are produced.

And be it declared and enacted, That in any Action, Cause, Prosecution, or other Judicial Proceeding, Civil or Criminal, where Proof shall be taken, whether by the Judge or a Person acting as Commissioner, it shall be competent for the Party against whom a Witness is produced and sworn in *causâ* to examine such Witness, not in cross only, but in *causâ*.

V Act may be amended this Session.

And be it enacted, That this Act may be amended or repealed by any Act to be passed in the present Session of Parliament.