

Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1835. Fredericton, NB: John Simpson, Printer to the King's Most Excellent Majesty, 1835.

5 William IV – Chapter 34 (Session 1)

An Act to facilitate the examination of Witnesses before trial in the Supreme Court. Passed 17th March 1835.

I. Be it enacted by the Lieutenant Governor, Council and Assembly, That it shall be lawful for the Supreme Court, and the several Judges thereof, in any action depending in such Court, upon the application of any of the parties to such suit, to order the examination on oath, upon interrogatories or otherwise, before a Judge of the Court or any other person or persons to be named in such order, of any witnesses within this Province, or to order a Commission to issue under the seal of the said Court, for the examination of witnesses on oath at any place or places out of this Province, by interrogatories or otherwise, and by the same or any subsequent order or orders to give all such directions touching the time, place and manner of such examination, as well within this Province as without, and all other matters and circumstances connected with such examinations as may appear reasonable and just.

II. And be it further enacted, That when any rule or order shall be made for the examination of witnesses within this Province by authority or this Act, it shall be lawful for the Court or any Judge thereof, in and by the first rule or order to be made in the matter, or any subsequent rule or order, to command the attendance of any person to be named in such rule or order for the purpose of being examined, or the production of any writings or other documents to be mentioned in such rule or order, and to direct the attendance of any such person to be at his own place of abode or elsewhere if necessary or convenient so to do; and the wilful disobedience of any such rule or order shall be deemed a contempt of Court, and proceedings may be thereupon Bail by attachment, (the Judge's order being made a rule of Court before or at the time of the application for an attachment,) if in addition to the service of the rule or order, an appointment of the time and place of attendance in obedience thereto, signed by the Judge or person or persons appointed to take the examination, or by one or more of such persons, shall be also served together with or alter the service of such rule or order: Provided always, that the service of every such rule, order or appointment shall be by showing to the person whose attendance shall be required the original paper under the hand of the Judge or person issuing the same, and by delivering to such person a copy thereof or a ticket containing the substance thereof: and also that every person whose attendance shall be so required shall be entitled to the like conduct money and payment for expenses as upon attendance at a trial: Provided also, that no person shall be compelled to produce under any such rule or order any writing or other document that he would not be compellable to produce at a trial of the cause.

III. And be it further enacted, That it shall be lawful for any Sheriff, Gaoler or other officer having the custody of any prisoner, to take such prisoner for examination under the authority of this Act, by virtue of a writ of Habeas Corpus to be issued for that purpose; which writ shall and may be

issued by the Court or Judge under such circumstances and in such manner as such Court or Judge may now by law issue the writ commonly called a writ of *Habeas Corpus ad testificandum*.

IV. And be it further enacted, That it shall be lawful for all and every person authorised to take the examination of witnesses by any rule, order or commission made or issued in pursuance of this Act, and he and they are hereby authorised and required to take all such examinations upon the oath of the witnesses, or affirmation in cases where affirmation is allowed by law instead of oath, to be administered by the person so authorised or by any Judge of such Court; and if upon such oath or affirmation any person making the same shall wilfully and corruptly give any false evidence, every person so offending shall be deemed and taken to be guilty of perjury, and shall and may be indicted and prosecuted for such offence in the County wherein such evidence shall be given, or in the County of York if the evidence be given out of the Province.

V. And be it further enacted, That it shall and may be lawful for any person or persons to be named in any such rule or order as aforesaid for taking any examination in pursuance thereof, and he and they are hereby required to make, if need be, a special report to the Court touching such examination, and the conduct or absence of any witness or other person thereon or relating thereto; and the Court is hereby authorised to institute such proceedings and make such order and orders upon such report as justice may require, and as may be instituted and made in any case of contempt of the Court.

VI. And be it further enacted, That the costs of every rule or order to be made for the examination of witnesses under any commission or otherwise by virtue of this Act, and of the proceedings thereupon shall be costs in the cause, unless otherwise directed either by the Judge making such rule or order, or by the Judge before whom the cause may be tried, or by the Court.

VII. And be it further enacted, That no examination or deposition to be taken by virtue of this Act shall be read in evidence at any trial without the consent of the party against whom the same may be offered, unless it shall appear to the satisfaction of the Judge, on proof by affirmation or viva voce, that the examinant or deponent is out of the Province or dead, or unable from sickness or other infirmity to attend the trial; in all or any of which cases the examinations and depositions certified under the hand of the Judge, Commissioners or other person taking the same, shall and may without proof of the signature to such certificate be received and read in evidence, saving all just exceptions: Provided always, that such examinations or depositions shall be closed up under the seal of the Judge, Commissioner or other person taking the same, and addressed to the Supreme Court, and shall not be opened before the trial without the consent of the parties to the suit.

VIII. And be it further enacted, That the Judges of the Supreme Court may from time to time make and establish such general rules and orders relating to the matters contained in this Act, the same being not repugnant to this Act, as to them may seem expedient.

IX. And be it further enacted, That an Act made and passed in the thirty-first year or the reign of King George the Third, intituled "An Act to enable the Justices of the Supreme Court to issue

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Commissions for the examining of witnesses out of the Province," be and the same is hereby repealed.