

*Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1858.* Fredericton, NB: John Simpson, Printer to the Queen's Most Excellent Majesty, 1858.

21 Victoria – Chapter 3

**An Act to compel the attendance of Witnesses under Commissions from other Countries, and in further amendment of the Law of Evidence. Passed 12th March 1858.**

Section.	Section.
1. Authority for order to attend and produce papers	5. Authentication of acts done by Mayors, &c. of Cities.
2. Summons to shew cause for neglect to appear.	6. Testimony, when admissible from a Judge's Notes.
3. Attachment on failure to shew good cause.	7. Copies, without proof of official character of the Certifier, admissible in evidence.
4. Certain Acts of State extended to Acts of Legislature.	

Be it enacted by the Lieutenant Governor, Legislative Council, and Assembly, as follows:—

1. Whenever any Commission or Commissions shall be issued from any Court of any other Province, State, or Kingdom, for the examination of any Witness or Witnesses in this Province, by any Commissioner or Commissioners named in such Commission, it shall be lawful for such Commissioner or Commissioners to make an order for the attendance of such Witness or Witnesses, with such books, papers, documents, or writings of any kind as may be in the custody, power or possession of such Witness or Witnesses, to be mentioned in such order, at such time and place as such Commissioner or Commissioners shall appoint.
2. If after any such order shall have been served on any such Witness or Witnesses, and reasonable expenses tendered in the manner prescribed by Law or the practice of the Supreme Court of this Province, for the service of subpoenas in actions depending in the said Court, such Witness or Witnesses shall not attend in obedience to such order, and produce and give in evidence such books, papers, documents, or writings, or having attended shall without sufficient cause neglect or refuse to give evidence of the matters in question, such Commissioner or Commissioners, or any of them, or the Attorney or Agent of any of the parties to the action, proceeding or suit in which such Commission shall be issued, may apply to a Judge of the said Supreme Court, who shall forthwith, upon an affidavit of such service, refusal, or default, order such Witness or Witnesses to appear before him at such time and place as he shall appoint, to shew cause why an attachment should not be issued against him or them for such neglect, refusal, or default.
3. Such Judge shall have full power and authority to issue such attachment, and is hereby required to issue the same, unless good and sufficient cause be shewn to the contrary, and to make such further order in the matter with reference to such Witness or Witnesses and such examination, and the costs and expenses thereof, and of such neglect, refusal, or default, as he

may deem proper, and may order such Witness or Witnesses to pay all costs and expenses incurred by such neglect, refusal, or default, and enforce such payment by attachment.

4. All Acts of State of any Foreign State or British Colony, mentioned in the fifth Section of the Act of Assembly passed in the nineteenth year of the Reign of Her present Majesty, intituled *An Act in further amendment of the Law*, shall be held to extend to all Acts or Statutes of any Legislature, or other governing body of such Foreign State or British Colony, and to all written enactments or Laws of the same; and all the provisions of the said fifth Section of the said Act shall be applicable to this Section as fully as if the same were hereby re-enacted.

5. Whenever it may be necessary to authenticate any act done by any Mayor or Chief Magistrate of a City, under the Corporate Seal of such City, whether to be used as evidence in any Court, or for the purposes of Registry in any Registry of Deeds in this Province, or otherwise, the Seal of the Mayor of the said City, or Chief Magistrate, shall be a sufficient authentication of such act, unless the act done be a corporate act.

6. On the trial of any cause, the testimony of any Witness given on a former trial thereof, may be given in evidence between the same parties from the Judge's notes, if the Judge on the subsequent trial shall be satisfied that the Witness is dead, or out of the Province, or from sickness or infirmity is unable to attend, subject to all legal exceptions: Whenever such notes shall be required on any trial, notice thereof shall be given to the Judge who took the same, and the said Judge may produce and read the same in Court, or transmit them to the presiding Judge, to be read by him on such subsequent trial.

7. A copy of any record, document, writing, or any part thereof, filed or deposited in any public office in this Province, certified by the officer having charge thereof, or his deputy, to have been carefully compared with the original and to be a true copy, shall without proof of his official character or hand writing, be evidence in any Court of Law in lieu of the original, or an exemplification, or an examined copy of the same.