

Laws of Her Majesty's Province of United Canada, passed in the year 1851. York: Stewart Derbyshire and George Desbarts, 1851.

14 & 15 Victoria – Chapter 66

An Act to amend an Act passed in the twelfth year of Her Majesty's Reign, intituled, *An Act to improve the Law of Evidence in Upper Canada*. 30th August, 1851.

Whereas by a Proviso contained in an Act passed in the twelfth year of Her Majesty's Reign, intituled, *An Act to improve the Law of Evidence in Upper Canada*, it is provided, That the said recited 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 of any person in whose right any defendant in *replevin* may make cognizance, or any person in whose immediate or individual behalf any action may be brought or defended, either wholly or in part, or the husband or the wife of such persons respectively: And whereas it is desirable that in no case should there be any exclusion of any person from giving evidence, but that all persons should be admitted to give evidence on oath or affirmation, as the case may be, as hereinafter provided: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That the said Proviso in the said first recited Act be, and the same is hereby repealed: Provided always, that no married woman shall be allowed as a competent witness in any civil proceeding, either for or against her husband.

II. And be it enacted, That any party to any civil proceeding may be examined as a witness in any suit or action, at the instance of the opposite party in such suit or action; Provided always, that such party shall be subpoenaed, or notice of the intention to examine such party shall be given to such party or his Attorney, at least eight days before the time of such examination, and if such party shall not attend upon such notice or subpoena, such non-attendance shall be taken as an admission *pro confesso* against him in such suit or action, unless otherwise ordered by the Court or Judge in which or before whom such examination is pending, and a general finding or judgment may be had against such party thereon, or the plaintiff may be non-suit, or the proceedings in such action or such suit may be postponed by such Court or Judge, on such terms as such Court or Judge shall see fit to impose: Provided also, that no such party shall be compelled in any case to give evidence that may expose or render such party liable to any prosecution for penalties, or to any criminal proceeding whatsoever.

III. And be it enacted, That whenever a party to any such suit or action is resident out of Upper Canada, it shall be lawful for the Court in which such suit or action is brought, or any Judge in Chambers, at the instance of the opposite party, to issue a Commission for the examination of such party, in the same manner as a Commission may now be issued from any of the Superior

Courts for the examination of witnesses, and if such party shall refuse to attend before such Commissioners, such refusal, proved by affidavit or otherwise to the satisfaction of a Judge of the Court in which the suit is had, shall authorize a verdict or judgment to pass against such party, or he shall become non-suit: Provided, that no such Commission shall be issued unless the party requiring such Commission shall state under oath by affidavit the facts intended to be proved before such Commission, and then the said Judge after being satisfied that such Commission is applied for in good faith, and not for purposes of delay, may issue such Commission.

IV. And be it enacted, That whenever any person has died or shall hereafter die in any of Her Majesty's possessions out of Upper Canada, having made a Will sufficient to pass real estate in Upper Canada, and whereby any such estate shall be divided, charged or affected, and such Will shall have been duly proved in any Court having the proof and issuing probate of Wills in any of such possessions, and shall remain filed in such Court, the production of the probate of such Will, or a certificate of the Judge, Registrar or Clerk of such Court, that the original is filed and remains in such Court, and purports to have been executed before two witnesses, shall be sufficient *primâ facie* evidence in any Court of Law or Equity in Upper Canada, in any proceeding concerning such real estate, of such Will, and of the same having been executed so as to pass real estate, without the production of the original Will: Provided always, that notice of the intention to use such Probate or Certificate in the place of the original Will, shall be given to the opposite party in any such proceeding, one month before the same shall be so used: And provided also, that such Probate or Certificate shall not be used if, upon cause shewn before any such Court of Law or Equity, or any Judge thereof, such Court or Judge shall find any reason to doubt the sufficiency of the execution of such Will to pass such real estate as aforesaid, and shall make a Rule or Order disallowing the production of such Probate.

V. And be it enacted, That the production of the Certificate in the next preceding Section mentioned, shall be sufficient *primâ facie* evidence of the facts therein stated, and of the authority of the Judge, Registrar or Clerk, without any proof of his appointment, authority or signature.