

*Laws of Her Majesty's Province of United Canada*, passed in the year 1851. Quebec: Stewart Derbyshire and George Desbarts, 1852.

16 Victoria – Chapter 19

**An Act to repeal the Acts therein mentioned, and to improve the Law of Evidence in Upper Canada. 10th November, 1852.**

Whereas the inquiry after truth in Courts of Justice is often obstructed by incapacities created by Laws, and it is desirable that full information as to the facts in issue, both in Criminal and in Civil cases, should be laid before the persons who are appointed to decide upon them, and that such persons should exercise their judgment on the credit of the witnesses adduced and on the truth of their testimony: 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-mite 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 no person offered as a witness shall hereafter be excluded by reason of incapacity from Crime or interest, from giving evidence, either in person or by deposition, according to the practice of the Court, on the trial of any Issue joined, or of any Matter or Question, or on any Inquiry arising in any Suit, Action or Proceeding, Civil or Criminal, in any Court, or before any Judge, Jury, Sheriff, Coroner, Magistrate, Officer or Person having by Law or by consent of parties authority to hear, receive and examine evidence, but that every person so offered, may and shall be admitted and compellable to give Evidence on Oath, or solemn affirmation in those cases wherein affirmation is by Law receivable, notwithstanding that such person may or shall have an interest in the matter in question or in. the event of the trial of any Issue, Matter, Question or Inquiry, or of the Suit, Action or Proceeding in which he is offered as a witness, and notwithstanding that such person offered as a witness may have been previously convicted of any crime or offence: Provided that this Act shall not render competent or authorize or permit any party to any suit or proceeding, individually named in the Record, or any Plaintiff, Lessor of the Plaintiff or Tenant of premises sought to be recovered in Ejectment, or the Landlord or other 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 wife of such persons respectively, to be called as a witness on behalf of such party, but such party may in any Civil proceeding be called and examined as a witness in any suit or action at the instance of the opposite party: Provided always, that the wife of the party to any suit or proceeding named in the Record, shall not be liable to be examined as a witness by or at the instance of the opposite party.

II. And be it enacted, That whenever any party in such proceeding shall desire to call the opposite party as a witness, he shall either subpœna such party or give to him or his Attorney at least eight days' notice of the intention to examine him as a witness in the cause, and if such party shall not attend on such notice or Subpoena, such non attendance shall be taken as an admission *pro confesso* against him in any 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.

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 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 nothing herein contained shall render any person, who, in any proceeding, is charged with the Commission of any indictable offence, or any offence: punishable on summary conviction, competent or compellable to give evidence for or against himself or herself, or shall, in any such proceeding, render any husband competent or compellable to give evidence for or against his wife, or any wife competent or compellable to give evidence for or against her husband, or shall, in any civil proceeding, render any person compellable to answer any question tending to criminate himself or herself, or to subject him or her to any prosecution for any penalty.

V. 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 devised, 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 the contents thereof, 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 soused: 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.

VI. 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.

VII. And be it enacted, That whenever in any suit or action pending or hereafter to be brought, in either of Her Majesty's Superior Courts of Law or Equity in Upper Canada, any party is desirous of proving the Execution of the Will of any person, who at the time it shall be necessary to give such proof, may be dead, the production of the Probate of such Will or of Letters of Administration with the Will annexed, shall be received and taken as *primâ facie* evidence of the due execution of such Will and of the contents thereof, in the same manner as if the original Will had been produced, and the execution thereof proven by the subscribing witnesses thereto; subject, nevertheless, to the provisos hereinbefore in the fifth section of this Act contained, as to notice to the opposite party of the intention to use such Probate or Letters in place of the original Will, and to any order that may be made by the Judge or Court disallowing the production of the same as therein mentioned.

VIII. And be it enacted, That whenever any action or other legal proceeding shall henceforth be pending in any of the Superior Courts, or in any County Court in Upper Canada, such Court and each of the Judges thereof, in vacation, may respectively, on application made for such purpose by either of the litigants, compel the opposite party to allow the party making the application, to inspect all documents in the custody or under the control of such opposite party relating to such action or other legal proceeding, and if necessary, to take examined copies of the same, in all cases in which previous to the passing of this Act a discovery might have been obtained by filing a Bill, or by any other proceeding in a Court of Equity, at the instance of the party so making application as aforesaid to the said Court or Judge: Provided also that such application may be made to and granted by a Judge of a County Court in suits depending in the said Superior Courts, in the same manner and under such circumstances as is provided for similar applications in the said Courts, by the thirty-fifth section of the Act passed in the twelfth year of Her Majesty's Reign, intituled, *An Act to make further provision for the administration of Justice by the establishment of an additional Superior Court of Common Law, and also a Court of Error and Appeal in Upper Canada, and for other purposes.*

IX. And be it enacted, That whenever any book or other document is of so public a nature as to be admissible in evidence on its mere production from the proper custody, and no Statute exists which renders its contents provable by means of a copy, any copy thereof or extract therefrom shall be admissible in evidence in any Court of Justice, or before any person now or hereafter having by law or by consent of parties, authority to hear, receive and examine evidence, provided it be proven to be an examined copy or extract, or provided it purport to be signed and certified as a true copy or extract by the Officer to whose custody the original is entrusted, and which Officer is hereby required to furnish such certified copy or extract to any person applying at a reasonable time for the same, upon payment of a reasonable sum for the same, not exceeding six pence for every folio of one hundred words.

X. And be it enacted, That if any Officer authorized or required by this Act, or by any law or usage now in force in Upper Canada, to furnish any certified copies or extracts, shall wilfully certify any document as being a true copy or extract, knowing that the same is not a true copy or extract, as the case may be, he shall be guilty of a misdemeanor, and be liable upon conviction to imprisonment for any term not exceeding Eighteen months.

XI. And be it enacted, That if any person shall forge any seal, stamp or signature of any document in this Act mentioned or referred to, or shall tender in evidence any such document with a false or counterfeit seal, stamp or signature thereto, knowing the same to be false or counterfeit, he shall be guilty of felony, and shall upon conviction be liable to imprisonment in the Provincial Penitentiary for any term not exceeding ten years, or to imprisonment in any Goal or House of Correction with hard labour, for any term not exceeding one year or less than two months. And whenever any such document shall have been admitted in evidence by virtue of this Act, the Court or the person who shall have admitted the same, may, at the request of any party against whom the same is admitted in evidence, direct that the same shall be impounded and be kept in the custody of some Officer of the Court or other proper person, for such period and subject to such conditions as to the said Court or person shall seem meet; and every person who shall be charged with committing any felony under this Act may be dealt with, indicted and tried, and if convicted, sentenced, and his offence may be laid and charged to have been committed in the County or place in which he shall be apprehended or be in custody; and every accessory before or after the fact to any such offence, may be dealt with, indicted and tried, and if convicted, sentenced, and his offence laid to have been committed in any County or place in which the principal offender may be tried.

XII. And be it enacted, That whenever in any legal proceedings whatever, legal proceedings may be set out, it shall not be necessary to specify that any particular person or persons who acted as Jurors had made affirmation instead of oath, but it may be stated that they served as Jurymen, in the same manner as if no Act had passed for enabling persons to serve as Jurymen without oath.

XIII. And be it enacted, That the Act passed in the twelfth year of Her Majesty's Reign, and intituled, *An Act to improve the Law of Evidence in Upper Canada*, and the Act passed in the Session held in the fourteenth and fifteenth years of Her Majesty's Reign, and intituled, *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*, shall be and are hereby repealed: Provided always, that all things lawfully done under the said Acts or either of them, shall remain as valid and effectual to all intents and purposes whatsoever as if the said Acts respectively were not repealed, and the said Acts shall be held and construed to extend to all actions commenced between the thirtieth day of August, in the year of our Lord one thousand eight hundred and fifty- one, and the passing hereof.

XIV. And be it enacted, That this Act shall apply only to Upper Canada, except in so far only as herein otherwise expressly provided.