

Laws of Her Majesty's Province of United Canada, passed in the year 1854. Quebec: Stewart Derbyshire and George Desbarts, 1854.

18 Victoria – Chapter 9

An Act to enable the Superior Courts of Law and Equity to issue process to compel the attendance of Witnesses out of their jurisdiction, and to give effect to the service of such process in any part of Canada. Assented to 18th December, 1854.

Whereas great inconvenience arises in the administration of justice from the want of a power in the Superior Courts of Law and Equity to compel the attendance of witnesses resident in one jurisdiction of Canada at a trial or *enquête* in another jurisdiction, and the examination of such witnesses by commission is not in all cases a sufficient remedy for such inconvenience: 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, as follows:

I. If in any action or suit now or at any time hereafter depending in any of Her Majesty's Superior Courts of Law or Equity in Canada, it shall appear to the Court in which such action is pending, or if such Court is not sitting to any Judge of any such Courts, that it is proper to compel the personal attendance at any trial or *enquête* or examination of witnesses, of any witness who may not be within the jurisdiction of the Court in which such action or suit, is pending, it shall be lawful for such Court or Judge, if in their or his discretion it shall so seem fit, to order that a writ called a writ of *subpœna ad testificandum* or of *subpœna duces tecum* shall issue in special form, commanding such witness to attend such trial or *enquête* or examination of witnesses wherever he shall be in Canada; and the service of any such writ or process in any part of Canada, shall be as valid and effectual to all intents and purposes, as if the same had been served within the jurisdiction of the Court from which it issues, according to the practice of such Court; Provided always, that no such writ shall be issued in any case in which an action is now pending or shall be hereafter, or has been already brought for the same cause of action, in that section of the Province, whether Upper or Lower Canada respectively, within which such witness or witnesses may reside.

II. Every such writ shall have at the foot or in the margin thereof, a statement or notice that the same is issued by the special order of the Court or Judge making such order, and no such writ shall issue without such special order.

III. In case any person so served shall not appear according to the exigency of such writ or process, it shall be lawful for the Court out of which the same issued, upon proof made of the service thereof, and of such default, to the satisfaction of such Court, to transmit a certificate of such default, under the Seal of the same Court, to any of Her Majesty's Superior Courts of Law or

Equity in that part of Canada in which the person so served shall reside, being out of the jurisdiction of the said Court so transmitting such certificate, and the said Court to which such certificate is so sent, shall and may hereupon proceed against and punish such person so having made default, in like manner as they might have done if such person had neglected or refused to appear to a writ of subpoena or other similar process issued out of such last mentioned Court: Provided always, that no such certificate of default shall be transmitted by any Court, nor shall any person be punished for neglect or refusal to attend any trial or *enquête* or examination of witnesses, in obedience to any such subpoena or other similar process, unless it shall be made to appear to the Court transmitting and also to the Court receiving such certificate, that a reasonable and sufficient sum of money, according to the rate per diem and per mile allowed to witnesses by the law and practice of the Superior Courts of Law within the jurisdiction of which such person shall be found, to defray the expenses of coming and attending to give evidence and of returning from giving such evidence, had been tendered to such person at the time when such writ of subpoena, or other similar process, was served upon such person: And provided also, that the service of such writs of subpoena or other similar process in Lower Canada, shall be proved by the certificate of a Bailiff within the jurisdiction where the service is made, under his oath of office, and such service in Upper Canada by the affidavit of service endorsed on or annexed to such writ by the person or persons serving the same.

IV. The costs of the attendance of any such witness shall not be taxed against the adverse party to such suit, beyond the amount that would have been allowed on a commission *rogatoire*, or to examine witnesses, unless the Court or Judge before whom such trial or *enquête* or examination of witnesses is had, shall so order.

V. The several provisions of this Act shall apply to the summoning of witnesses residing within the jurisdiction of the Circuit Court held at any one place, to attend at any trial or *enquête* before the Circuit Court at any other place in Lower Canada.

VI. Nothing herein contained shall alter or affect the power of any such Courts to issue a commission for the examination of witnesses out of their jurisdiction, in any case in which, notwithstanding this Act, they shall think fit to issue such commission.

VII. Nothing herein contained shall alter or affect the admissibility of any evidence at any trial or proceeding, where such evidence is now by law receivable on the ground of any witness being beyond the jurisdiction of the Court, but the admissibility of all such evidence shall be determined as if this Act had not been passed.