



No. 41.

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**B I L L .**

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

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**The Hon. Mr. Atty. Genl. RICHARDS.**

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BILL.

An Act to repeal the Acts therein mentioned, and to improve the Law of Evidence in Upper Canada.

**W**HEREAS the inquiry after truth in Courts of Justice is often obstructed by incapacities created by Law, 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-write 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 Injury, 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.

Preamble.

Persons offered as witnesses not to be excluded for certain causes.

Proviso: parties to suits not to be witnesses: unless called as such by the opposite party.

A party to any civil suit may be summoned as a witness by the opposite party: and how: Penalty on such party not attending.

II. That whenever any party in such proceeding shall desire to call the opposite party as a witness, he shall either subpoena 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 Subpœna, 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.

Commission when the party to be examined resides out of Upper Canada: penalty if such party refuse to attend.

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.

Proviso.

Party charged with a criminal offence, not to give evidence for or against himself, &c.

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.

Probate of Will of a person dying out of U. C. but in Her Majesty's possessions, may

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  
 5 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  
*prima facie* evidence in any Court of Law or Equity in Upper  
 Canada, in any proceeding concerning such Real Estate, of  
 10 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  
 15 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  
 20 Real Estate as aforesaid, and shall make a rule or order dis-  
 allowing the production of such Probate.

be received in  
evidence.

Proviso : notice  
to be given.

Proviso : if the  
Judge see cause  
to doubt suffi-  
ciency of exe-  
cution.

VI. And be it enacted, That the production of the certificate  
 in the next preceding section mentioned, shall be sufficient  
*prima facie* evidence of the facts therein stated, and of the  
 25 authority of the Judge, Registrar or Clerk without any proof of  
 his appointment, authority or signature.

Certificate to be  
*prima facie*  
evidence of facts  
therein stated.

VII. 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,  
 30 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  
 35 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  
 40 to the said Court or Judge : Provided also that such applica-  
 tion 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  
 45 section of the Act passed in the twelfth year of Her Majesty's  
 Reign, intituled, *An Act to make further provision for the ad-  
 ministration 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.*

Judge may  
compel a party  
to allow oppo-  
site party to  
inspect docu-  
ments, &c.

Proviso.

Act 12 V. c. 63.

Copies of books or documents to be evidence in certain cases.

VIII. 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 intrusted, 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 *four pence* for every five folios 15 of ninety words each.

Officer having charge thereof, to give certified copies.

Punishment of Officers giving false certificates.

IX. 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.

Punishment of persons forging documents &c., or using them knowing them to be forged.

X. 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 Gaol or House of Correction with hard labour for any term not exceeding *One* year or less than 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.

Document may be impounded on request of party against whom it may have been used.

When offenders may be tried.

XI. 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.

Certain allegation not necessary in setting out legal proceedings.

XII. 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.

Act 12 V. c 70, and

14 & 15 V. c. 66 repealed.

Proviso.

XIII. And be it enacted, That this Act shall apply only to Upper Canada, except in so far only as herein otherwise expressly provided, and shall come into force and take effect upon, from and after the first day of January next, and not before.

Extent of Act, and when to come into force.