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4th Session, 3d Parliament, 14 & 15 Vict., 1851.

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## **BILL.**

**To improve the Law of Evidence in  
Lower Canada.**

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Received and read a first time, Thursday, 3rd  
July, 1851.

Second reading, Monday, 7th July, 1851.

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**HON. MR. BADGLEY.**

# BILL.

## An Act to improve the Law of Evidence in Lower Canada.

- W**HEREAS the inquiry after truth in Courts of Justice is often obstructed by incapacities created by or existing under the present law, and it is desirable that full information of the facts in issue, both in criminal and in civil cases, should be laid before the persons 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, &c.,
- 10 That no person offered as a witness shall hereafter be excluded by reason of incapacity, from crime or interest, from giving evidence 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 the consent of parties authority to hear, receive or examine evidence; but that every person so offered may and shall be admitted 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.
11. And be it enacted, That whenever any person has died or shall hereafter die in any of Her Majesty's possessions out of Lower Canada, having made a will sufficient according to the laws in force in such possession where the will is executed to pass real or personal estate as the case may be, and whereby real estate in Lower Canada, or whereby real estate in Lower Canada shall be bequeathed or given, shall be devised, charged or affected, or whereby any personal estate in Lower Canada shall be bequeathed or given, and such Will shall have been duly proved in any Court having the proof and issuing of probate of Wills in any of such possessions, and shall remain filed in such court, the production of the probate of such Will, and a certificate of the Judge, Registrar or Clerk, or proper officer of such
- Preamble.
- No person to be excluded as a witness by reason of incapacity from crime or interest.
- Probate of Wills in any of H. M. Possessions to be received in L. C.

Court, that the original is fyled and remains in such Court, and purports to have been duly executed according to the the law of such possession, shall be sufficient *prima facie* evidence in any Court of Justice in Lower Canada, or before any Judge in any proceeding concerning such estate, of such will, and of the same having been executed so as to pass such estate, without the production of the original will: Provided always that such probate shall not be used if upon cause shewn before any such Court 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 estate as aforesaid, and shall make a rule or order disallowing the production of such probate.

*Proviso: if the Judge doubts the sufficiency of the execution.*

*Wills in English form with two witnesses made valid.*

III. And be it enacted, That from and after the passing of this Act any Will affecting land or real estate, executed in Lower Canada according to the forms prescribed by the laws of England, in the presence of and attested by two or more witnesses, shall have the same validity and effect as if executed in the presence of and attested by three witnesses, and that it shall be sufficient if the said witnesses shall subscribe the said Will in presence of each other, although their names may not be subscribed in presence of the testator, any former law to the contrary notwithstanding.

*Extent of Act.*

IV. And be it enacted, That this Act shall apply only to Lower Canada.