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No. 5.

2nd Session, 3rd Parliament, 12 Victoria, 1849.

BILL.

An Act to improve the Law of Evidence
and to abolish unnecessary Oaths.

Received and Read a first time, Monday, 22nd
January, 1849.

Second Reading, Monday, 29th January, 1849.

HONBLE. MR. BADGLEY.

PRINTED BY LOVELL, AND GIBSON.



BILL.

An Act to improve the Law of Evidence and to abolish unnecessary Oaths.

WHEREAS the inquiry after truth in Preamble.
Courts of Justice is often obstructed
by incapacities created by, or existing under
the present Law, and it is desirable that full
5 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 wit-
10 nesses adduced, and on the truth of their tes-
timony: And whereas the Law of Evidence
and the mode of adducing the same have
in certain other respects been found incon-
venient and inconsistent with the ends of
15 justice, and therefore require amendment;
And whereas it is expedient to substitute
declarations for oaths in certain cases, and
to facilitate the admission in evidence of
various certificates, official and public docu-
20 ments, proceedings of corporations and other
companies, received in evidence of certain
particulars in Courts of Justice, provided
they be legally authenticated, and to remove
the difficulty of proving that the said
25 documents are genuine: Be it therefore
enacted, &c.

And it is hereby enacted by the authority of
the same, That no person offered as a wit-
ness shall hereafter be excluded by reason
30 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 pro-
35 ceeding, civil or criminal, in any court, or

No person hereafter to be excluded from giving evidence from incapacity, &c.

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; Provided that this Act shall not render competent any party to any suit, action or proceeding individually named in the Record, or the husband or wife of such party respectively, any lessor of the plaintiff or tenant of premises sought to be recovered by ejectment, or the landlord or other person in whose right any defendant in replevin may make cognizance, of any person in whose individual behalf any suit, action or proceeding may be individually brought and instituted or defended, either wholly or in part, or the husband or wife respectively of such person; Provided that in any Court of Law or Equity now or hereafter to be constituted in the said Province of Canada, any defendant in any cause, in any such Court, may be examined *viva voce*, as a witness on behalf of the plaintiff, or of any co-defendant in any such cause, saving just exceptions, and any plaintiff in any such cause may be examined *viva voce* as a witness on the behalf of the defendant in any such cause, saving just exceptions; and that any interest which such defendant or plaintiff so to be examined may have in the matters, or any of the matters in question in the cause, shall not be deemed a just exception to the testimony of such defendant or plaintiff, but shall only be considered as affecting or

Proviso.

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tending to affect the credit of such defendant or plaintiff as a witness; Provided Proviso. always, that nothing herein contained shall have the effect of preventing any party, 5 plaintiff or defendant in any suit or action in any Court of Law in Lower Canada from adopting or employing the form or mode of examination by interrogatories on *faits et articles* as allowed by the Law of Lower Canada, 10 if such party shall be minded or advised to adopt or employ such form or mode of examination.

II. And be it enacted, That from and after the passing of this Act it shall, in Lower Canada, 15 be no objection to the admissibility of any witness that he or she is in the service of any party adducing him or her as a witness in any action, cause, prosecution or judicial proceeding, or that he or she is the father or mother, 20 or son or daughter, or brother or sister by consanguinity or affinity, or uncle or aunt, or nephew or niece by consanguinity, or cousin german, or a relation or connection in any degree, by consanguinity or affinity of any 25 party adducing such witness in any action, cause, prosecution or other judicial proceeding, civil or criminal; nor shall it be competent to any witness to decline to be examined and give evidence on the 30 ground of any such service or relationship, notwithstanding any statute, law, usage or custom to the contrary, and specially notwithstanding the eleventh Article of the twenty-second title of the *Ordonnance Civile* of the 35 month of April, one thousand six hundred and sixty-seven, in force in Lower Canada, and notwithstanding the Act of Lower Canada, passed in the forty-first year of the Reign of His late Majesty, George the Third, 40 intituled, "*An Act to amend an Article of the Code Civil, with its derogations, as it has been received in this Province, which directs and fixes the degrees of affinity and consanguinity of witnesses in Civil Suits.*" which 45 said Article and Act are severally hereby abrogated and repealed.

Relationship not to be an objection in examining a witness.

11th Article of 22d Title of Ord. Civile of April, 1667. and Act of L. C. 41 Geo. 3, c. 8, repealed.

A witness who has been present in Court during trial, not to be objected to.

III. And be it enacted, That in any trial a witness, in any Court civil or criminal, in the Province of Canada, it shall not be imperative on the Court to reject any witness against whom it is objected that such witness has 5 without the permission of the Court and without the consent of the party objecting, been present in Court during all or any part of the proceedings, but it shall be competent for the Court, in its discretion to admit the wit- 10 ness, when it shall appear to the Court that the presence of the witness was not the consequence of culpable negligence or criminal intent, and that the witness has not been unduly instructed or influenced by what took 15 place during his presence, or that injustice will not be done by his examination.

Nothing herein to have the effect of abrogating *juramentum decisorium*, &c.

IV. Provided always, and be it enacted, That nothing herein contained shall have the effect of abrogating the *juramentum decisorium*, *juramentum judiciaire*, *juramentum suppletorium*, and *juramentum in litem*, in any action, suit or proceeding in any Court in Lower Canada, but that all and every the said oaths shall continue and shall and may 25 be used and enforced in Lower Canada, according to the law thereof, as if this Act had not been made.

Provision with respect to signatures to notes, &c.

V. And be it enacted, That from and after the passing of this Act, in all actions or suits 30 in any Court of Justice in this Province, founded upon bills, notes or other simple contracts, in which by the heretofore practice of the said Courts, or by law, proof was required to be made of the signature of the maker, 35 indorser or acceptor of such bills or notes, or of the party subscribing such contracts, such proof shall no longer be required, but the signature aforesaid shall be received in evidence without proof of the handwriting 40 thereof in all cases, whether by default or on contestation, unless in cases of contestation aforesaid, the validity of the said signature shall be specially denied in pleading, in which

case the party producing the said bill, note or contract shall be held and required to prove the signature thereto, as is now required in such cases.

5 VI. And be it enacted, That from and after the passing of this Act, in all cases in which by the law in force in Lower Canada, and by the practice of the Courts therein, the testimony of two witnesses is required to establish
 10 the truth of any fact in any civil suit or proceeding before such Courts, subject to be contradicted or disproved in the manner provided by law, the testimony of one such witness shall alone be required and be held to
 15 establish such fact, subject to contradiction and disproof as aforesaid, any law, usage or custom in Lower Canada to the contrary thereof notwithstanding.

One witness only required in all civil cases.

20 VII. And be it enacted, That in any suit or action brought or to be brought in any Court of Civil Jurisdiction in Lower Canada, it shall not be necessary to reduce to writing the testimony of the witnesses adduced in such suit or
 25 *vivâ voce* in open Court, any law, custom or usage to the contrary notwithstanding: Provided always, that if any such suit or action be of the class of suits or actions in which
 30 by any Act or Acts made or to be made, an appeal may lie to a higher tribunal in the said heretofore Province of Lower Canada, it shall be the duty of the Judges or Judge before whom such testimony is adduced,
 35 or before whom the said cause may be tried, to take notes in writing of the material parts of such testimony, and to sign the same, which notes so signed shall be fyled and remain of
 40 effect as the written depositions of the said witnesses fyled in the cause would have had, according to the law heretofore in force in that behalf.

Testimony need not be reduced to writing.

Proviso.

In certain cases a declaration may be substituted for an oath.

VIII. And whereas it is highly desirable that oaths should not be administered unnecessarily by public authority: Be it therefore enacted, That from and after the passing of this Act, in every case in which by any Act or Acts made in either Lower Canada or Upper Canada, or made or to be made in this Province, or by law, or by any official regulation in any department of the Provincial Government, or rule or by-law of any public or private Institution, whether incorporated or not, any oath, solemn affirmation or affidavit now is, or hereafter may be made or taken, or but for the passing of this Act might be required to be made or taken by any persons on the doing of any act, matter or thing, or the verifying of any book, entry or return, or the verifying or proving of any will or codicil, deed or instrument in writing, or of the signing, sealing, publication or delivery of the said will or codicil, or by any person on his election to or assumption of any office in virtue of any Act or Acts aforesaid, or for any other purpose whatsoever, it shall be lawful to substitute a declaration to the same effect as the oath, solemn affirmation or affidavit, which might be required to be made or taken; and the persons who might under the Act or Acts imposing the same be required to make or take such oath, solemn affirmation or affidavit, shall in presence of any officer or person empowered by such Act or Acts to administer the same, make and subscribe such declaration which every such Officer or person is hereby empowered and required to administer accordingly: Provided always, that nothing in this Act contained shall extend to the oath of allegiance in any case in which the same now is or may be required to be taken by any person who may be appointed to any office, nor to any oath, solemn affirmation or affidavit, which now is or hereafter may be made or taken, or be required to be made or taken in any judicial proceeding in any Court of

Proviso.

Justice in the said Province, or in any ministerial proceeding of or before any Judge, or in any proceeding before a Judicial Officer in any suit or proceeding in any such Court
 5 save as hereinbefore excepted, or in any proceeding by way of summary proceeding before any Justice or Justices of the Peace in the said Province, or to any oath or affirmation required to be taken in virtue or
 10 under the provisions of any law of Lower Canada or Upper Canada, or of this Province now or hereafter to be in force touching the election of Members to serve in the Legislative Assembly of this Province,
 15 but that such oath of allegiance, and such oath, solemn affirmation and affidavit, shall continue to be required and to be administered, taken and made as well and in the same manner as if this Act had not been
 20 passed.

IX. And be it enacted, That from and after the passing of this Act, in all cases in which by any Act or Statute in force in Upper Canada, affidavits are required to be
 25 sworn before any Chief Justice or Judge of any Supreme Court of any Colony belonging to the Crown of Great Britain, such affidavits shall be no longer required to be taken in Lower Canada, and a solemn declaration
 30 or affirmation as provided by this act shall be substituted therefor, which shall be received by any Judge of any Court of civil jurisdiction in Lower Canada or before any Commissioner duly appointed to take affidavits in
 35 Lower Canada; and if a Commissioner shall receive such declaration or affirmation, a certificate of verification of his appointment and official signature to the said declaration or affirmation as such Commissioner, sub-
 40 scribed by any Chief Justice or Judge aforesaid, shall operate to give the same effect and validity to the said declaration and affirmation as if the same had been received by such Chief Justice or Judge aforesaid.

Provision with respect to certain affidavits which are now required.

Declarations
to be in form
of No. 1 of
Schedule.

X. And be it enacted, That in all cases where a declaration in lieu of an oath, solemn affirmation or affidavit shall have been substituted by this Act, or where a declaration is directed or authorized to be made and subscribed under the authority of this Act, although the same be not substituted in lieu of an oath, solemn affirmation or affidavit heretofore legally taken, such declaration shall be in the form prescribed in the Schedule hereunto annexed under the Number One. 5 10

Persons making false declarations, guilty of a misdemeanor.

XI. And be it enacted, That in any case where a declaration is substituted for an oath, solemn affirmation or affidavit under the authority of this Act, or is directed or authorized to be made and subscribed under the authority of this Act, any person who shall wilfully and corruptly make and subscribe any such declaration, knowing the same to be untrue in any material particular, shall be deemed guilty of a misdemeanor, and shall be, at the discretion of the Court before which the conviction shall be had, liable to undergo the pains and penalties now by law imposed upon persons guilty of wilful and corrupt perjury. 15 20 25

Declaration No. 2 in Schedule to be made by Bankrupts, &c.

XII. Provided always, and be it enacted, That all persons who are now or hereafter shall be declared Bankrupt or insolvent under any commission or *fiat*, under any Act or Acts of the said Province, for regulating matters of Bankruptcy or Insolvency, shall and may be hereafter examined before the persons acting as Commissioners in Bankruptcy or Insolvency without being sworn, but after making and subscribing the declaration contained in the Schedule hereunto annexed under the Number Two. 30 35

Penalty on Bankrupts, &c., making false statement.

XIII. And be it enacted, That if any such person so to be examined in Bankruptcy or Insolvency, shall in the course of such examination wilfully make any false statement, 40

such person may be thereupon convicted of a misdemeanour, and shall be, at the discretion of the Court before which the conviction shall take place, liable to undergo the pains and penalties now by law imposed upon persons guilty of wilful and corrupt perjury.

XIV. Provided always, and be it enacted, That nothing herein contained shall in any wise affect the right of the said Commissioners in Bankruptcy or Insolvency, to judge how far the answers to be made are satisfactory, or to commit to prison in case they shall hold such answers to be unsatisfactory, nor the right of any such Commissioner or the creditor of any such Bankrupt or Insolvent, to withhold his signature from the Certificate of conformity.

Nothing to affect right of Commissioner of Bankrupts, &c., to judge how far answers are satisfactory, &c.

XV. And whereas a practice has prevailed in the said Province of receiving and administering oaths and affidavits voluntarily made and taken in matters on the subject of any judicial inquiry not in any wise pending or at issue before the Justice of the Peace or other person by whom such oaths and affidavits have been administered or received; And whereas doubts have arisen, whether or not such proceeding is illegal, for the more effectual suppression of such practice and removing such doubts, Be it therefore enacted, That from and after the passing of this Act, it shall not be lawful for any Justice of the Peace or other person in the said Province, to administer or receive, or cause or allow to be administered or received, any oath, solemn affirmation or affidavit touching any matter or thing whereof such Justice or other person hath not jurisdiction or cognizance by some statute in force at the time being; Provided, that nothing herein contained shall be construed to extend to any oath, solemn affirmation or affidavit before any Commissioner, appointed in Lower Canada under and by virtue of any statute there in force to take affidavits therein, or before any Justice

Recital.

No Justice, &c., to administer oaths touching any matter whereof he may not by law have cognizance.

Proviso.

of the Peace in any matter or thing touching the preservation of the peace, or the prosecution, trial or punishment of offences, or touching any proceedings before either the Legislative Assembly or Legislative Council of this Province, or any Committees thereof respectively, nor to any oath, affidavit or affirmation which may be required by the laws of any foreign country, to give validity to instruments in writing designed to be used in such foreign countries respectively. 5 10

Provisions with respect to public documents admitted as evidence.

XVI. And be it enacted, That whenever by any Act now in force or hereafter to be in force in this Province, any certificate, official or public document, or document or proceeding of any corporation, or of any incorporated joint stock or other company, or any certified copy of any document, by-law, entry in any register or other book, or of any other proceeding, shall be receivable in evidence of any particular in any Court of Justice in this Province, or before any legal tribunal or either house of the Provincial Parliament, or any Committee of either House, or in any judicial proceeding, the same shall respectively be admitted in evidence, provided they respectively purport to be sealed or impressed with a stamp, or sealed and signed or signed alone as required, or impressed with a stamp and signed, as directed by the respective Acts made or to be hereafter made, without any proof of the seal or stamp, where a stamp is necessary, or of the signature or of the official character of the person appearing to have signed the same, and without any further proof thereof in every case in which the original record could have been received in evidence. 15 20 25 30 35

All Courts, &c., to take judicial notice of signatures of all Judges, &c.

XVII. And be it enacted, That all Courts, Judges, Justices, Masters in Chancery, Masters of Courts, Commissioners judicially acting, Prothonotaries, Sheriffs, and other Judicial Officers, shall henceforth take judicial notice of the signature of any of the Judges 40

of the Courts of Appeals, Equity or Common Law Judges of the Superior Courts, District and Circuit Judges, and Commissioners for Bankrupts in this Province, provided such
 5 signature be attached or appended to any decree, judgment, order, certificate, or other judicial or official document.

XVIII. And be it enacted, That all copies
 of private and local and personal Acts of the
 10 Provincial Parliament not Public Acts, if pur-
 porting to be printed by the Queen's Printer,
 and all copies of the Journals of the Legis-
 lative Assembly or Legislative Council of
 15 the said Province, and of Royal Proclamations,
 purporting to be printed by the Queen's
 Printer aforesaid, or by the Printer to
 either of the said Houses of the Provincial
 Parliament, or by any or either of them, shall
 be admitted as evidence thereof by all Courts,
 20 Judges, Justices, Commissioners and others,
 without any proof being given that such
 copies were so printed.

XIX. And be it enacted, That if any
 person shall forge the seal, stamp or signa-
 25 ture of any such certificate, official or pub-
 lic document, or document or proceeding
 of any corporation or joint stock or other
 company, or of any certified copy of any
 document, by-law, entry in any register, book
 30 or other proceeding as aforesaid, or shall ten-
 der in evidence any such certificate, official
 or public document or document or pro-
 ceeding of any corporation or joint stock or
 other company, or any certified copy of any
 35 document, by-law, entry in any register or
 other book, or of any other proceeding, with
 a false or counterfeit seal, stamp or signature
 thereto, knowing the same to be false or
 counterfeit, whether such seal, stamp or sig-
 40 nature be those of or relating to any Corpo-
 ration or incorporated joint stock or other
 company already established or to any Cor-
 poration, joint stock or other Company to be
 hereafter established, or if any person shall

Act, &c.,
 printed by
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Penalty on
 persons forg-
 ing seals, &c.
 of public docu-
 ments.

forge the signature of any such Judge or
 Commissioner as aforesaid to any order,
 judgment, decree, certificate or other judi-
 cial or official document, or shall tender in
 evidence any order, judgment, decree, cer- 5
 tificate or other judicial or official document
 with a false or counterfeit signature of any
 such Judge or Commissioner as aforesaid
 thereto, knowing the same to be false or
 counterfeit, or if any person shall print any 10
 copy of any Private Act or of the Journals of
 either House of the Provincial Parliament
 as aforesaid, which copy shall falsely purport
 to have been printed by the Queen's Printer
 aforesaid or by the printer to either House 15
 of the Provincial Parliament aforesaid, or by
 any or either of them, or if any person shall
 tender in evidence any such copy knowing
 that the same was not printed by the person
 or persons by whom it so purports to have 20
 been printed, every such person shall be
 guilty of felony, and shall upon conviction be
 liable to imprisonment for any term not less
 than one year with hard labour in the prison
 of the District in which such conviction shall 25
 take place; Provided also, that whenever
 any such document as before mentioned shall
 have been received in evidence by virtue of
 this Act, the Court, Judge, Commissioner or
 other person officiating judicially who shall 30
 have admitted the same, shall on the request
 of any party against whom the same is so
 received, be authorized at its or at his own
 discretion to direct that the same shall be
 impounded and be kept in the custody of 35
 the Master, Clerk, Prothonotary, or some
 officer of the Court or other proper person
 until further order touching the same shall be
 given, either by such Court or by the Court to
 which such Master, Clerk, Prothonotary or 40
 other officer belonged, or by the persons or
 person who constituted such Court, or by
 some one of the said Judges or Commissioners
 of Bankrupts, on application being made
 that purpose. 45

Proviso

XX. And be it enacted, That all words Interpretation
of words. in this Act importing the singular number or the masculine gender only, shall be held to include more persons or things of the
5 same kind than one, and females as well as males, unless there be something in the context inconsistent with, or repugnant to, such construction.

Schedules referred to in the foregoing Act. Schedule No. 1.

NUMBER ONE.

I, A. B., do solemnly and sincerely declare that, &c. And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the
year of the Reign of Her present Majesty, Queen Victoria, intituled, "An Act to improve the Law of Evidence, and to abolish unnecessary oaths."

NUMBER TWO.

No. 2.

I, A. B., the person declared a Bankrupt or Insolvent, do solemnly promise and declare that I will make true answers to all such questions as may be proposed to me respecting all the property of me the said A. B., and all dealings and transactions relating thereto, and will make a full and true disclosure of all that has been done with the said property, to the best of my knowledge, information and belief.

(Signed,)

A. B.