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No. 203.

2nd Session, 6th Parliament, 22 Victoriae, 1859.

BILL.

An Act to amend *An Act to facilitate the proof in Lower Canada of certain Instruments executed without that section of the Province.*

As passed by the Legislative Council.

[Printed by Order of the Legislative
Assembly.]

S. Derbishire & G. Desbarats, Queen's Printer.

B I L L .

[As passed by the Legislative Council.]

An Act to amend *An Act to facilitate the proof in Lower Canada of certain Instruments executed without that section of the Province.*

WHEREAS it is expedient to amend the Act passed in the twenty-second year of Her Majesty's Reign, intituled, *An Act to facilitate the proof in Lower Canada of certain Instruments executed without that section of the Province*: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. In all cases where any Power of Attorney purporting to be executed out of Lower Canada, in the presence of one or more witnesses, and to be authenticated by or before any Mayor or other Magistrate, Judge of any Court of Record, British Consul or other Public Officer of the country where it bears date, has been or may be produced by any witness or witnesses who decline to part with such original, it shall be the duty of the Prothonotary or Clerk of the Court in which such cases shall or may be pending, forthwith to make a true and exact copy of such Power of Attorney, at the cost and charges of the party or parties requiring the same, and to certify and deposit the same in such cases; and such copy so certified and deposited shall be taken and received by and before all Courts and elsewhere in Lower Canada, as *prima facie* evidence of the original and of the due execution thereof; and such Power of Attorney shall be held and taken to be authentic and duly proved in the manner aforesaid, unless the authenticity thereof be specially put in issue as hereinafter mentioned.

2. It shall be competent for any interested party to deny the authenticity of the original of any such copy by filing an affidavit before the closing of the evidence or *Enquête* of the party or parties producing such copy, or in whose interest it shall or may be filed, to the effect that he has reason to doubt and does not believe that the same was executed or attested by the person or persons, nor in the manner it purports to be, and by entering security to the satisfaction of a Judge, for all costs attending the execution of any commission to be issued to prove such Power of Attorney; it shall then be incumbent on the party wishing to use the copy to prove the original thereof in due form of law, to which end the party having the custody of such

original shall be bound, on the order of any Judge, to deposit the same in Court, in the cause wherein it is put in issue, receiving in return from the Prothonotary or Clerk thereof, at the expense of the party by whom its authenticity is denied, a copy thereof certified as aforesaid; and it shall be the duty of all Judges and Courts to grant such order on petition, any law or custom to the contrary notwithstanding; and the original may thereupon be annexed to any Commission to be issued for the proof thereof.

3. If such Power of Attorney is duly proved, all costs incurred on the proceedings for proving it shall be taxed against and payable by the party denying the authenticity of the same, whatever may be the final judgment in the cause; and in any case, when the cause is finally decided by a judgment in the last resort or from which there is no appeal, or when the delay to appeal has expired, it shall be the duty of the Prothonotary or Clerk to return the original Power of Attorney to the party who deposited the same or his legal representative on demand, taking a receipt for the same.

4. The said Act now being amended shall apply to all cases pending when the said Act came into force, and to all Notarial copies of Powers of Attorney of the description in the said Act mentioned, filed in such cases; and any person wishing to deny the authenticity of any original Power of Attorney contemplated by that Act, in any such case, where the party may have pleaded before the said Act came into force, shall file the affidavit and give the security mentioned in the second section of the said Act within one month from the day on which this Act shall come into force and effect, in default whereof such original Power of Attorney shall be held and taken to be authentic and duly proved in the manner in the said Act mentioned.