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3rd Session, 5th Parliament, 20 Victoria, 1857.

BILL.

An Act to amend and explain an Act passed in the thirty-third year of the reign of His late Majesty George the Third, intituled "*An Act to establish a Court of Probate in this Province, and also a Surrogate Court in every District thereof.*"

Received and read, first time, Friday, 17th April, 1857.

Second reading, Tuesday, 21st April, 1857.

MR. SOL. GEN. SMITH.

TORONTO:
PRINTED BY JOHN LOVELL, YONGE STREET.

An Act to amend and explain the Act establishing a Court of Probate and Surrogate Courts in Upper Canada.

WHEREAS doubts have arisen as to the legal sufficiency of affidavits taken before Commissioners appointed by the Courts of Queen's Bench or Common Pleas in Upper Canada, in proceedings pending or to be instituted in the Court of Probate or Surrogate Courts of Upper Canada, and it is desirable to remove such doubts and to obviate any necessity for parties deposing to attend either the Court of Probate or Surrogate Courts in person, unless under special circumstances it may be deemed necessary by the Official Principal or Surrogate of such respective Courts: Therefore Her Majesty, &c., enacts as follows:

Preamble.

I. In the Court of Probate of Upper Canada and in each of the Surrogate Courts in Upper Canada now constituted, or hereafter to be constituted, it shall and may be lawful for the Official Principal of the said Court of Probate and the Surrogates of the said Surrogate Courts, in each of their respective Courts, to receive and they are hereby required to receive the necessary affidavits and recognizances in cases of administration and executorship, and in all other matters pending or to be instituted in the said respective Courts, sworn before or administered by Commissioners appointed for taking affidavits and recognizances of bail by the Courts of Queen's Bench or Common Pleas in Upper Canada, or either of the said Courts; and all such Commissioners are hereby authorized and empowered to administer such oaths, or take such recognizances as all persons desire to make or take before them in proceedings pending or to be instituted in the said Court of Probate or any of the Surrogate Courts aforesaid, notwithstanding anything to the contrary thereof contained in the Act passed in the late Province of Upper Canada in the thirty-third year of the reign of His late Majesty King George the Third, intituled "An Act to establish a Court of Probate in this Province, and also a Surrogate Court in every District thereof."

Affidavits taken before Commissioners for receiving affidavits to be used in the Superior Courts of Law, shall be received by the Court of Probate and Surrogate Courts.

Act of U. C. 33 G. 3. c. 8.

II. Provided that nothing herein contained shall be construed to prevent the Official Principal of the said Court of Probate issuing commissions to examine witnesses under the Seal of the said Court in the same manner and with the same effect as is now the practice in the said Court: Provided also, that nothing herein contained shall be construed to prevent either the said Official Principal or any of the said Surrogates in their respective Courts commanding the personal attendance of witnesses in proceedings pending in the said Courts whenever such attendance is deemed necessary to a just determination of any proceeding, matter or thing pending in the said Courts.

Act not to prevent the issue of Commissions.

Proviso: or the summoning of witnesses to attend personally.

III. All affidavits and recognizances which have been received and allowed before the passing of this Act by the Official Principal of the Court of Probate, or by any Surrogate of a Surrogate Court in proceedings had in the said respective Courts, heretofore taken before any such Commissioner as aforesaid, are hereby declared to be valid and effectual to all intents and purposes.

Affidavits and recognizances heretofore taken before Commissioners declared valid.