



No. 174.

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1st Session, 4th Parliament, 16 Victoria, 1852.

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## **BILL.**

**An Act to facilitate the examination of  
Witnesses in Civil Causes in Lower  
Canada.**

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Received and read a first time, Monday, 18th  
October, 1852.

Second reading, Wednesday, 20th October, 1852

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**MR. STUART.**

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**QUEBEC :**

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**B I L L .**

**An Act to facilitate the examination of Witnesses in Civil Causes in Lower Canada.**

**W**HEREAS doubts have arisen and do exist in relation to the interpretation to be given to the twelfth Section of the Ordinance passed in the twenty-fifth year of the Reign of His late Majesty King George the III, cap. 2, intituled, "*An Ordinance to regulate the proceedings in the Courts of civil judicature, and to establish trials by Juries in actions of a commercial nature and personal wrongs, to be compensated in damages,*" and whereas it is expedient to remove those doubts and to make better provision for the examination of witnesses in civil causes in certain cases ; Be it therefore enacted, &c.,

Preamble.  
25 Geo. III, cap.

10 That the said twelfth Section of the said Ordinance shall be and is hereby repealed.

Sect. 12 repealed.

15 II. And be it enacted, That in case of sickness, when without the immediate examination of the witness, his testimony would be for ever lost, and where such witness cannot attend the Court, it shall be lawful for the Court wherein the cause is pending, or for any Judge thereof, upon proof by affidavit to the satisfaction of such Court or Judge, that such examination is of evident necessity, to order at any time after the issuing of the Writ of Summons, the examination of such witness, at such time and place as to the Court or Judge it may seem advisable, of which order notice shall be given to the party or parties adversely interested, and after such notice shall have been given, it shall be lawful for any Judge of the Court in which the cause is pending, to proceed at the time and place appointed, to the examination of such witness in the usual and accustomed manner, and the evidence so taken shall be received and filed in the cause and shall avail as if taken in the ordinary course.

Mode of procuring the examination of witnesses, whose testimony would otherwise be lost.

20 III. And be it enacted, That when any witness may be about to leave Lower Canada, and that thereby either party in a cause might be deprived of the testimony of such witness, it shall be lawful for the Court or any Judge of the Court in which the cause is pending, upon proof by affidavit of the necessity of examining such witness, to order at any time after the issuing of the Writ of Summons, the examination of such witness, at such time and place as to such Court or Judge may seem fit, of which order notice shall be given to the party or parties adversely interested, and after such notice shall have been given, it shall be lawful for any Judge of the Court in which the cause is pending, to proceed at the time and place appointed to the examination of such witness, in the usual and accustomed manner, and the evidence so taken shall be received and filed as if taken in the ordinary course.

And the examination of a witness about to leave Lower Canada.

In what stage  
of the cause  
such examina-  
tion may be  
had.

IV. Provided always, and be it enacted, That no witness shall by virtue of the foregoing Sections, be examined in any cause on the part of the plaintiff, unless the declaration containing the demand shall have been fyled, nor shall any witness be examined on the part of a defendant, until this answer or plea to the action shall have been fyled, or in lieu thereof a brief statement of the facts to be relied on in his defence.

Evidence to  
be read to the  
Jury.

V. And be it enacted, That any testimony received and fyled under the authority of this Act, shall, if the cause be tried by a Jury be received and read as evidence at such trial.

Extent of Act.

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