



3d Session, 3d Parliament, 13 Victoria, 1850.

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## BILL.

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

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Received and Read a first time, Monday, 3rd  
June, 1850.

Second Reading, Monday, 10th June, 1850.

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Hon. MR. BADGLEY.

48.

BILL.

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

WHEREAS 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.

Preamble.

- 10 And it is hereby enacted by the authority of the same, 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
- 15 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
- 20 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,
- 25 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; Pro-
- 30 to any suit, action or proceeding individually named in the Record, or the husband or wife of such party respectively, or 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
- 35 the husband or wife respectively of such person; Pro-
- 40 the effect of preventing any party, 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, if such party shall be minded or advised to adopt or employ such form or mode of examination.

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

Proviso.

Proviso.

Relationship  
not to be an  
objection in  
examining a  
witness.

II. And be it enacted, That no person offered as a witness as aforesaid, shall hereafter be excluded by reason that he or she is in the service of any party adducing him or her as such witness, or that he or she is the father or mother, 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 such party adducing such witness; nor shall it be competent to any witness to decline to be examined and give evidence on the 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 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, 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 said Article and Act are severally hereby abrogated and repealed.

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c. 8, repealed.

Nothing here-  
in to have the  
effect of abro-  
gating *juram-  
entum decisio-  
rium, &c.*

III. Provided always, and be it enacted, That nothing herein contained shall have the effect of abrogating the *juramentum decisorium, juramentum judiciale, 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 be used and enforced in Lower Canada, according to the law thereof, as if this Act had not been made.

One witness  
only required  
in all civil  
cases.

IV. 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 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 establish such fact, subject to contradiction and disproof as aforesaid, any law, usage or custom in Lower Canada to the contrary thereof notwithstanding.

Extent of Act.

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