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E.

BILL.

An Act for the FURTHER PROMOTION
of JUSTICE.

Received and read first time, Thursday, 7th Oct., 1852.
Second Reading, Monday, 11th October, 1852.

[250 Copies.]

HON. JOHN ROSS.

BILL.

An Act for the FURTHER PROMOTION of JUSTICE.

WHEREAS as the law now stands suits for the same cause of action may be and have been instituted in Upper Canada while actions for such cause are pending in Lower Canada; and whereas great inconvenience and injustice may result therefrom, and it is desirable and expedient to provide for the remedy and prevention thereof in both Upper and Lower Canada;

Be it therefore enacted by, &c., &c., That in any action heretofore brought and now pending or hereafter brought or to be brought in any Court of Law of Record in Upper Canada for a cause of action for which a suit or action was at the time of the institution thereof in Upper Canada, or shall hereafter be at the time of the institution thereof pending in any Court of Law of Record in Lower Canada, whether the said suit or action be or shall have been instituted against the same party or parties or the same party or parties and others jointly interested with him or them, or in which a new trial shall have been or shall be ordered, it shall and may be lawful for the defendant or defendants in such action in such Court in Upper Canada to plead that there is another action depending for the same cause of action in the Court or Courts in which the same shall then be depending in Lower Canada, Whereupon the Writ and declaration in such action in such Court in Upper Canada shall by the adjudication of such Court be quashed: Provided always that a certificate under the hand of the Prothonotary or Clerk of the said Court in Lower Canada, and also under the seal of the said Court, that an action was at the time of the date thereof then pending or that a new trial had been ordered thereon, for the cause of action which shall be stated in the said certificate (which certificate shall also state the date of the commencement of such action) shall be attached to the said plea of the Defendant or Defendants, and such plea shall be further supported by an affidavit of the truth thereof in substance and fact, and no other or further proof of the truth of the statements in such plea contained than the said certificate and affidavit shall be required to be adduced; and further provided always that it shall appear to the satisfaction

of such Court in Upper Canada that the cause of action is the same in both suits.

II. And be it also enacted, That if an action shall be brought in Lower Canada, or is now brought there, for which a suit or action shall have been or shall be brought in Upper Canada previously to the institution thereof in Lower Canada, and whether the said action shall be between the same parties or the same party or parties and others jointly interested with them or either of them, provided always that both the said actions be for the same cause of action, it shall and may be lawful for the said Defendant or Defendants to plead that the affair is in *litispendance* and that an action for the same cause of action hath already been instituted in Upper Canada, whereupon on the production with the said plea of the proof hereinafter provided for and on its appearing therefrom to the satisfaction of such Court in Lower Canada that the cause of action in both suits is the same, the said action shall by the adjudication of the said Court be thence dismissed.

III. And be it enacted, That in proof of the allegations of such plea the said Defendant or Defendants shall be required to produce and fyle with such plea a certificate under the hand of the Clerk and under the seal of the Court in Upper Canada in which such action is then depending to the effect that an action is pending in the said Court between the parties and for the cause of action which the said certificate shall certify, and the said certificate shall also contain the date of the commencement of such action, and such plea shall also be accompanied with an affidavit of the truth of the allegations of such plea, and no other or further proof shall be required thereof than the said certificate and the said affidavit.