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No. 3.

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1st Session, 5th Parliament, 16 Victoria, 1854.

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**BILL.**

An Act to compel the attendance of  
witnesses before the Superior Courts  
in any part of Canada.

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Received and read first time, Wednesday, 13  
September, 1854.

Second reading, Monday, 18th September, 1854.

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Honorable J. H. CAMERON.

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QUEBEC:

PRINTED BY JOHN LOVELL, MOUNTAIN STREET.

An Act to enable the Superior Courts of Law and Equity to issue process to compel the attendance of Witnesses out of their jurisdiction, and to give effect to the service of such process in any part of Canada.

WHEREAS great inconvenience arises in the administration of justice from the want of a power in the Superior Courts of Law and Equity to compel the attendance of witnesses resident in one part of Canada at a trial in another part, and the examination of such witnesses by commission is not in all cases a sufficient remedy for such inconvenience: Be it therefore enacted, &c., as follows:

Preamble.

I. If in any action or suit now or at any time hereafter depending in any of Her Majesty's Superior Courts of Law or Equity in Canada, it shall appear to the Court in which such action is pending, or if such Court is not sitting, to any Judge of any of such Courts, that it is proper to compel the personal attendance at any trial, of any witness who may not be within the jurisdiction of the Court in which such action or suit is pending, it shall be lawful for such Court or Judge, if in their or his discretion it shall so seem fit, to order that a writ called a writ of subpoena ad testificandum or of subpoena duces tecum shall issue in special form, commanding such witness to attend such trial, wherever he shall be in Canada, and the service of any such writ or process in any part of Canada shall be as valid and effectual to all intents and purposes, as if the same had been served within the jurisdiction of the Court from which it issues, according to the practice of such Court.

Subpoenas in special form may issue to compel the attendance of witnesses in Canada, but out of the local jurisdiction of the Court.

III. Every such writ shall have at the foot or in the margin thereof, a statement or notice that the same is issued by the special order of the Court or Judge making such order, and no such writ shall issue without such special order.

Special notice required on such subpoenas.

IV. In case any person so served shall not appear according to the exigency of such writ or process, it shall be lawful for the Court out of which the same issued, upon proof made of the service thereof, and of such default, to the satisfaction of such Court, to transmit a certificate of such default, under the seal of the same Court, to any of Her Majesty's Superior Courts of Law or Equity in that part of Canada in which the person so served shall reside, being out of the jurisdiction of the said Court so transmitting such certificate, and the said Court to which such certificate is so sent shall and may thereupon proceed against and punish such person so having made default, in like manner as they might have done if such person had neglected or refused to appear to a writ of subpoena or other similar process issued out of such last mentioned Court:

Proceedings for punishment of persons disobeying such subpoenas.

Provide : no such proceeding to be had unless reasonable expenses have been tendered to the Witness.

Provided always, that no such certificate of default shall be transmitted to any Court, nor shall any person be punished for neglect or refusal to attend any trial in obedience to any such subpoena or other similar process, unless it shall be made to appear to such Court, that a reasonable and sufficient sum of money, according to the rate per diem and per mile allowed to witnesses by the law and practice of the Superior Courts of Law within the jurisdiction of which such person shall be found, to defray the expenses of coming and attending to give evidence and of returning from giving such evidence, had been tendered to such person at the time when such writ of subpoena, or other similar process, was served upon such person. 5 10

Act not to prevent the issue of commissions to examine witness.

V. Nothing herein contained shall alter or affect the power of any such Courts to issue a commission for the examination of witnesses out of their jurisdiction, in any case in which, notwithstanding this Act, they shall think fit to issue such commission.

Nor to affect the admissibility of any evidence offered on the ground of any witness being out of the jurisdiction of the Court.

VI. Nothing herein contained shall alter or affect the admissibility of any evidence at any trial or proceeding where such evidence is now by law receivable, on the ground of any witness being beyond the jurisdiction of the Court, but the admissibility of all such evidence shall be determined as if this Act had not been passed. 15