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No. 143.

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1st Session, 6th Parliament, 21 Victoria, 1858.

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## BILL.

An Act to diminish the expense for Witnesses in Criminal cases in Lower Canada.

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Received and read 1st time, Friday, 7th  
May, 1858.

Second reading, Friday, 11th May, 1858.

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Hon. Mr. Atty. Genl. CARTIER.

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S. Derbishire & G. Desbarats, Queen's Printer.

An Act to diminish the Expenses for Witnesses, and to facilitate the enforcing of forfeited recognizances, in Criminal Cases in Lower Canada.

**W**HEREAS it is expedient to restrict the allowance to Witnesses on behalf of the Crown in Criminal Cases in Lower Canada, to such amount as will indemnify them for their actual disbursements; except only in the case of poor and needy witnesses, and to make certain other provisions for diminishing the expense borne by the Province in Criminal Cases in Lower Canada: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

Preamble.

1. No witness at the trial of any case of felony or misdemeanor, shall receive any allowance as such out of any public money, nor shall any order be made by any Court, Judge, Recorder, Inspector and Superintendent of Police, or Justice of the Peace, for the payment of any such witness out of public money, except upon the certificate of the Attorney General or Solicitor General or other prosecuting Officer on the part of the Crown, or of the Clerk of the Peace or other Public Officer prosecuting a felony or other offence in the Court of Quarter Sessions or Recorder's Court, that such witness, being subpoenaed or bound by recognizance to give evidence on the part of the Crown in such case, is entitled under this Act to the sum mentioned in such certificate, which sum shall be ascertained as follows:

Witnesses not to receive allowance out of public money, except in certain cases and on certain conditions.

1. Unless the witness be poor and needy, he shall be entitled only to his actual travelling expenses from the place of his residence to the Court and back, and his actual disbursements for board and lodging while detained in attending the Court at a place where he does not reside;

Disbursements only, unless poor and needy.

2. If the witness makes affidavit before the Court, Judge, Recorder, Inspector and Superintendent of Police, or Justice of the Peace, that he is poor and needy, he may also be allowed a reasonable sum for his trouble and loss of time, not exceeding in any case the rate of \_\_\_\_\_ per day;

If poor and needy, allowance for loss of time.

3. Any witness may, before receiving such certificate, be required to make affidavit that the sum he demands for disbursements or for trouble and loss of time, or both, are true and correct, and to answer on oath any pertinent question touching the same, which shall be put to him by the Court,

Affidavit that the amount demanded is correct, &c.

Judge, Recorder, Inspector and Superintendent of Police or Justice of the Peace, or by the prosecuting Officer or person who is to sign the certificate.

Order of Judge, &c., to be required to enable defendant in felony to obtain subpoenas without paying fees.

II. The defendant in any case of felony, shall not obtain Subpœnas for necessary witnesses for his defence without payment of fees, in the manner now used, except upon the order of some Judge of the Court in which the case is to be tried, or of the prosecuting Officer in the case, which order shall be granted on the affidavit of the Defendant that he is poor and needy, and that such witnesses are necessary to the defence, and the lawful fees of the proper officer issuing such Subpœnas, shall then (but not otherwise) be paid as they now are ; but no expenses of serving such Subpœnas shall hereafter be paid out of any public money ; Provided always, that in cases of misdemeanor or other offences less than felony, no expenses for subpoenas or service of subpoenas on the part of the Defendant, shall be paid out of any public money, in whatever Court such case be tried.

Proviso.

Forfeited recognizances to be certified to the Superior Court.

III. Whenever default is made in the condition of any recognizance lawfully entered into or taken in any criminal case, proceeding or matter in Lower Canada, so that the penal sum therein mentioned becomes forfeited and due to the Crown, such recognizance shall thereupon be estreated or withdrawn from any record or proceeding in which it may be, or a certificate or minute of such recognizance under the seal of the Court shall be made from the records of such Court where the recognizance has been entered into orally in open Court, and such recognizance, certificate or minute, (as the case may be,) shall be transmitted by the Court, Recorder, Inspector and Superintendent of Police, Justice of the Peace, or Magistrate or Functionary before whom the cognizor (or the principal cognizor where there is a surety or sureties) was bound to appear or to do that by his default to do which the condition of the recognizance is broken, to the Superior Court in the District in which the place where such default was made is included for civil purposes, with the certificate of the Court, Recorder, Inspector and Superintendent of Police, Justice of the Peace, Magistrate or other Functionary as aforesaid, of the breach of the condition of such recognizance, of which and of the forfeiture to the Crown of the penal sum therein mentioned such certificate shall be conclusive evidence : And the date of the receipt of such recognizance or minute and certificate by the Prothonotary of the said Court shall be indorsed thereon by him, and he shall enter judgment in favor of the Crown against the cognizor (or cognizors) for the penal sum mentioned in such recognizance, and execution may issue therefor after the same delay as in other cases, which shall be reckoned from the time when the recognizance or minute and certificate were received by the Prothonotary of the said Court, and such execution shall issue upon fiat or præcipe

Judgment to be entered thereon.

of the Attorney General or Solicitor General for Lower Canada, Execution on  
 or of any person thereunto authorized in writing by either of fiat of Attor-  
 them; and the Crown shall be entitled to the costs of execu- ney General,  
 tion and to costs on all proceedings in the case subsequent &c.  
 5 execution, and to such costs for the entry of the judgment as  
 may be fixed by any tariff: Provided always, that nothing  
 herein contained shall prevent the recovery of the sum for-  
 feited by the breach of any recognizance from being recovered  
 by suit in the manner now provided by law, in any case where  
 10 the same cannot for any reason be recovered in the manner  
 provided in this section.

IV. This Act shall apply only to Lower Canada; and so much of the thirty-fifth section of the Act of the Legislature of  
 Lower Canada, thirty-fourth George the Third, chapter six,—  
 15 or of the twenty-fourth section of the Act of the said Legisla-  
 ture, thirty-ninth George the Third, chapter nine,—or of the  
 first section of the Ordinance of the Legislature thereof,  
 second Victoria, chapter fifty-six,—or of the twenty-third or  
 20 forty-ninth section of the Act of the Legislature of Canada,  
 fourth and fifth Victoria, chapter twenty-four,—or of the  
 ninety-seventh section of the Act of the said Legislature, twelfth  
 Victoria, chapter thirty-eight,—or of the third, eighth or fif-  
 teenth section of the Act of the said Legislature, fourteenth and  
 25 fifteenth Victoria, chapter ninety-five,—or of the thirteenth sec-  
 tion of Act of the said Legislature, passed in the same year,  
 chapter ninety-six,—or of any other part of the said Acts or  
 Laws or of any other Act or Law, as may be inconsistent with  
 any provision of this Act, shall be and is hereby repealed,  
 30 shall remain in force and apply to the cases to which this  
 Act applies.

V. The word “cognizor” in this Act shall include any Interpretation.  
 number of cognizors in the same recognizance, whether as  
 principals or sureties, unless such interpretation be inconsis-  
 35 tent with the context.