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

WHEREAS the examination of parties in Civil causes upon interrogatories *sur faits et articles* has proved in many instances unproductive of the advantages thereby contemplated: And whereas to permit the examination of such parties as witnesses, would greatly tend to extract truth and promote the ends of justice; Therefore Her Majesty, &c., enacts as follows: Preamble.

I. In any and every Civil cause or proceeding now or hereafter pending before any Court or Tribunal having and entertaining jurisdiction in Civil matters in Lower Canada, it shall be competent to any party or parties to such cause or proceeding to examine his or their adverse parties, as his or their witness or witnesses; and such examination shall in all cases be had and taken by and before the Court, or any one of the Judges thereof, before which such cause or proceeding is pending, and shall be conducted by means of interrogatories, to be there propounded, in writing, to such party or parties, and the answers to be given shall also be there reduced to writing, and the party or parties so to be examined may be cross-examined on his or their own behalf, as any other witnesses in the cause; Provided always, that nothing herein contained shall be construed to prevent any party to a suit being examined upon interrogatories *sur faits et articles* as is now practised; Provided, however, that the party or parties, if examined as herein prescribed, shall not be further interrogated *sur faits et articles*, and if interrogated *sur faits et articles*, shall not be examined as witnesses in the manner herein specified. Parties in civil cases may examine adverse parties as witnesses. Proviso. Proviso.

II. The party or parties so to be examined shall be summoned by writ of *subpœna*, and shall be entitled to one clear day's notice, and, in the event of the said party or parties residing at a distance, to an additional day for every five leagues from the place appointed for the examination, between the service of such writ and the day named for his or their attendance: And if on the day appointed, the said party or parties shall fail to appear, and due proof be given of the service of such writ, his or their default shall then, on application of the party issuing such writ, be recorded; and such default shall be held and considered as a confession on the part of the party or parties so in default, that the party or parties requiring his or their attendance, are entitled to a judgment in his or their favor on the issue or issues between them; and in the event of the suit or proceeding being *ex parte*, then that the party so summoning is entitled to a judgment as prayed for against the party so required to attend as a witness; Provided always, that the Court or any of the Judges thereof, or the Judge having jurisdiction over the writ or proceeding, may, at any time before final judgment, relieve the party from his or their default, by allowing the said party to be heard, upon such terms as to costs and delays as the said Court or Judge may order. How parties to be so examined shall be summoned. Proviso.

When the party to be examined shall reside in another District. III. Whenever the party to be examined shall live or be resident in a District other than the one in which the suit or proceeding is instituted, the said party shall and may be examined in the same manner as witnesses can, by the laws now in force, be examined.

Wife may be so examined if she could be examined on *faits et articles*. IV. The wife to any party to a suit or proceeding of a Civil nature may be examined in the manner prescribed by the first section of the Act, in all such cases as by law she would be now compelled to answer upon *faits et articles* in any suit brought by or against her husband. 5

Recital. V. And whereas it is desirable, that in all Civil causes uniformity should be observed with respect to the competency of witnesses by reason of their being related either directly or collaterally to the parties litigating; And whereas, in all facts of a commercial nature, proof is admitted by the testimony of persons so related: It is therefore enacted, that in all causes of a Civil nature, no person shall be held to be incompetent to render or give testimony by reason of such person being related in any degree to either or both of the parties in the suit or proceeding in which such person shall be called as a witness, any law or provision of law to the contrary notwithstanding; Provided always, that in no case shall a husband be deemed a competent witness for or against his wife, nor a wife a competent witness for or against her husband. 10 15 20

Certain doubts as to the *serment judiciaire* removed. VI. And whereas doubts exist and are entertained as to whether in causes of a commercial nature, it is competent for Courts to submit to either party the *serment judiciaire*: It is enacted and declared, that the said Courts may in such causes, as in all others of a Civil nature, defer the *serment judiciaire* to either party in the suit or action before them. 25

Recital. VII. And whereas uncertainty prevails as to whether the Act passed in the tenth and eleventh years of Her Majesty's Reign, intituled, "*An Act to repeal a certain Act therein mentioned, and to make better provision for the limitation of actions in Lower Canada,*" was intended to operate upon and apply to causes of action which had accrued before the passing of the said Act: It is enacted, that no action of account or upon the case, nor any action grounded upon any lending or contract without specialty, which accrued before the passing of the said Act, shall be maintainable in or with regard to any commercial matter, unless such action be commenced within three years next after this Act shall come in force, and all other provisions of the Act herein referred to, except the first section thereof, shall apply to the cases herein provided for. 30 35

As to the causes of action accrued before the passing of Act 10 and 11 Vic, c 11.