

*Ordinances of the Lieutenant Governor and Council of His Majesty's Province of Cape Breton passed in the year 1805.* National Archives of the United Kingdom CO 219/2.

45 George III – Chapter 1

**An Ordinance for the Alteration and amendment of an Ordinance Entitled an Ordinance for the Regulation of Establishment of Fees of Office.**

Whereas the Fees heretofore Claimed by and allowed to the respective Officers conceived in the Administration of Justice by virtue of an Ordinance entitled an Ordinance for the Regulation and Establishment of Fees of Office have been found to be unconformable to the Constitution of the Supreme Court and oppressive upon the Parties litigating therein, And Whereas the Subject ought to have the benefit of the Laws of England and the Ordinances of this Island without being burthened with Expences which in many instances render the Remedy to which he is entitled unavailing and abortive – For prevention thereof Be it Ordained and Ordered by His Honor the President of His Majesty's Council for the Island of Cape Breton and its Dependencies by and with the advice and consent of the said Council, and by the Authority of the same, That from and after the Publication herein no Officer or other Person or Persons whatsoever shall be Entitled to demand for any service or services by him or them done or performed in or by reason of their respective Offices hence after mentioned, any greater or other Fee or Fees, sum or sums of Money than is or are hereafter mentioned, allowed and established for the same – That is to say

Supreme Court

For taking Affidavit and indorsing Writ for Bail to Chief Justice or person by him Authorized for that purpose.....	} .....	2..	0..
Entry of every cause or information.....	.....	5..	—
Every cause or Information called in Court, and default, compromise, reference, or Verdict or Judgment therein.....	} ...	10..	—
Signing Judgement Roll or other Record	.....	2..	6..
Taking Bill of Costs.....	.....	2..	6..
On every Rule or Summons granted out of Court.....	} .....	2..	6..
Taking special Bail out of Court to Chief Justice or person by him Authorised for that purpose.....	} .....	2..	0..
In every Certiorari.....	—	5..	—

### Judge of Probate

For taking Probate of Will, granting Administration or Letters of guardianship each.....	1.	—	—
Letters Ad colligendum.....	—	10.	—
Warrant of Appraisement.....	—	9.	—
Decree of Distribution.....	1.	—	—

### Register of Probate

For probate of an Registering Will, Writing and Registering Administration and Guardianship - each.....	}	1.	—	—
Drawing Bond and Attending execution thereof.....				
Drawing and Registering Letters ad collegendum.....	}	—	10.	—
Citation and Service.....				
Filing Inventory, Accounts &c. ....	—	1.	—	—
Every Search.....	—	2..	6.	—
Copy of Will & Probate per folio of 72 words Certificate and Seal.....	—	1.	—	—
Drawing and Registering Decree of Distribution.....	}	—	6.	8.
Warrant of appraisement signed and sealed				
Every Exhibit.....	—	—	6.	—

### Justice of the Peace

For Issuing any Summons or Warrant.....	—	2.	6.	—
Subpena.....	—	2.	6.	—
Judgement.....	—	2.	6.	—
Execution.....	—	2.	6.	—
Every Bond or Recognizance at length	—	3.	—	—
Every Affidavit or examination in Writing	—	2.	6.	—
On every Appeal to Sessions or Certiorari to the Supreme Court (the expence of Appeal or Removal by Certiorari to be paid by the party Appealing or removing) proceedings per folio of 72 Words.....	}	—	1.	—

Party Acting as Attorney & Council

Retainer and taking Instructions.....	1.	10.	—
Warrant to prosecute & having the same filed	—	3.	4.
Drawing Affidavit to hold to Bail.....	—	3.	4.
Drawing any Writ, Summons or other process whatsoever.....	—	6.	8.
Every Copy thereof with such Notices as thereto belongs.....	—	1.	3.
Attending Chief Justice or person by him for such purpose Authorised to take such Affidavit & endorse the writ thereupon	—	3.	4.
Drawing any Declaration, Indictment or other pleading except the General Issue.....	—	7.	6.
Copy thereof for service on filing and serving or filing the same.....	—	2.	6.
Making out and delivering a Bill of particulars	—	3.	4.
Copy thereof.....	—	1.	3.
Making up Issue.....	—	3.	4.
Copy thereof with notice of Trial endorsed thereon and service.....	—	2.	6.
Making up the Record.....	—	3.	4.
Drawing up Brief.....	—	11.	8.
Conducting the Cause as Counsel in Court.....	1.	13.	4.
Junior Counsel (if any employd) Copy of Brief	—	6.	8.
Fee as Counsel in Court.....	—	11.	—
Entry of the Cause for Trial.....	—	1.	3.
Drawing Supoena for Witnesses.....	—	3.	4.
Every Ticket upon a Subpoena.....	—	1.	3.
Travel for service of Notice of Trial or of executing a Writ of enquirey or for service of Subpoena or for any other service whether the same be required by Law or Order of Court to be personal or allow'd to be in lieu of personal Service per mile.....	—	1.	6.
Making up Costs and giving Notice of taxing the same.....	—	5.	—
Attending Chief Justice with the Record or Judgment Roll.....	—	3.	4.
Attending the Taxation thereof.....	—	3.	4.
Term fee.....	—	3.	4.
Notice of Executing a Writ of Enquirey.....	—	2.	6.
Attending the Inquisition.....	1.	3.	4.
Countermand of Notice of Trial or Writ of Enquirey.....	—	2.	6.
Drawing any Arbitration Bond if the same be executed before declaration be filed or delivered.....	—	6.	8.

Ditto if after Declaration be filed or Delivered	—	5.	—
Drawing entry of satisfaction on the Record	—	3.	4.
Entering appearance for Defendant.....	—	2.	6.
Searching if any Declaration be filed.....	—	2.	6.
Taking Copy of Declaration.....	—	2.	6.
Drawing General Issue and delivering the same	—	2.	6.
Copying Issue and Notice of Trial.....	—	2.	6.
Attendance at Chief Justices each.....	—	3.	4.
Drawing Common or Ordinary Affidavits, each	—	2.	6.
Drawing Affidavits of special Circumstances to be allowed for in the discretion of the Chief Justice not exceeding.....	}—	6.	8.
Motions of course - each.....	—	3.	4.
Motions requiring Grounds to support the same to be stated to the court.....	}—	7.	6.
Making the same absolute (if not so in the first instance or no cause be shewn) each.....	}—	5.	—
Arguing points of Save.....	—	11.	8.
Drawing Rules on Motions which are Granted	—	3.	4.
Copy and Service thereof.....	—	2.	6.
Drawing Declaration in Ejectment and Notice to appear and defend.....	}—	7.	6.
Copy and service thereof.....	—	2.	6.
Affidavit of service thereof.....	—	2.	6.
Affidavit of Lease, entry and Ouster and of service of Declaration where no Servant is in possession of the premises.....	}—	1.	—

#### Clerk of the Supreme Court

For filing Affidavit of Debt or Warrant to prosecute and entering the same each	}—	1.	—
Signing and sealing every Writ or other process	—	1.	6.
Endorsing entry of Warrant to prosecute thereon.....	}—	1.	—
Filing every Writ or process and entering the return thereof.....	}—	1.	—
Entering each Action and each appearance.....	—	1.	—
Entering and filing every Rule.....	—	1.	6.
Copy of every Rule given by the Clerk.....	—	1.	—
Copy of every Record or pleading per folio of 72 words.....	}—	1.	—
Filing every Affidavit.....	—	—	8.
Taking and filing every Bail piece.....	—	1.	6.
Taking and Entering every Recognizance.....	—	1.	6.

Signing and Sealing every Subpoena.....	—	1.	6.
Swearing and empanneling Jury.....	—	1.	6.
Swearing each witness.....	—	1.	6.
Taking and entering Verdict.....	—	1.	6.
Entering the Judgement.....	—	1.	6.
Entering Default, Retraxit or other Discontinuance.....	}—	1.	6.
Entering Confession of Lease, Entry and Ouster in Ejectment.....	}—	1.	6.
Searching the Records.....	—	1.	6.
Attending the striking special Jury and Delivering a copy of the Pannel to each party	}—	5.	—
Filing the Roll in each Action.....	—	1.	—
Entering Notice of Taxation of Costs and Exhibiting Copy thereof.....	}—	1.	6.

Provost Marshall

For service of every Writ or process (except Venire Facias and Writ of Possession.....	}—	2.	6.
Caption Fee in Bailable process.....	—	11.	8.
Travel per Mile for any purpose in the Performance of his duty to be computed from the place where the process is returnable to the place where the party is taken or served If the progress be extraordinarily expensive Additional attendance to be in the Discretion of the Chief Justice on Affidavit of the Circumstances.....	}—	1.	6.
Bail Bond for each Surety.....	—	3.	4.
Swearing Appraisers and appraising property...	—	3.	4.
Each appraiser.....	—	3.	4.
Serving, Receiving and paying all Monies on Execution of £100 if in the £. and above £100 6. in the £ to £500 and above £500 3d. In the £.			
Service of Venire Facias and returning the pannel in each cause.....	}—	11.	8.
Service of Writ of Possession.....	—	11.	8.
Returning pannel for special Jury.....	1.	3.	4.
Making return of every Writ.....	—	2.	6.
Executing Writ of Inquirey summoning the Jury and returning Inquisition Bringing up a prisoner by Habeas Corpus.....	}—	7.	6.
Attending with Prisoner before Chief Justice or Grand Jury.....	}—	5.	—
Custody Fee for every Prisoner whatever payable on Discharge.....	}—	10.	—

Goaler

Fee payable on discharging every prisoner..... — 10. —

Jurors

For every Cause tried by a Common Jury each Juryman.....	} —	1.	—
Ditto by a special Jury each Juryman.....	—	2.	6.
The fees for taking a view to be taxed at the Discretion of the Court.....			

Witnesses

For each days attendance in Court.....	—	3.	6.
Travel per Mile to be Computed from the place of residence to the Court House.....	} —	1.	6.
The Expence of Travel and Conveyance of Aged and infirm Witnesses to be taxed at the discretion of the Court on Affidavit of the Circumstances			

Cryer

For every Cause called in Court.....	—	1.	—
Calling the Jury for their Verdict.....	—	1.	—
Calling each Witness or Constable.....	—	—	6.
Every prisoner discharged by proclamation.....	—	—	6.

Coroners

For taking Inquest of Office in lieu of all other fees.....	} 2.	10.	—
The same to be paid out of the Estate of the Decreased if it be sufficient otherwise to be paid out of such Public Funds, as the Governor or President for the time being shall think proper, the Funeral Expences not exceeding 20/— to be paid in like manner, the Jury fees and allowance of Travel to be the same as in other Cases.....			

And Whereas the expence of prosecuting Seizures for the breach of the Laws of Revenue and Trade and of an Ordinance of this Island made for the Prevention of illegally taking and carrying away Coal from His Majesty's Mines has hitherto been unreasonably great and has far exceeded the Expence of proceeding to the Condemnation of Prizes in the Admirable Court as directed by the 71st Article of His Majesty's General Instructions, in order therefore to Curtail Expence heretofore incurred in prosecuting such Seizures and to restrain the same in future within reasonable Bounds.

Be it Ordained and ordered by the Authority aforesaid that from and after the Publication hereof in and case wherein a prosecution shall be instituted for forfeiture or Condemnation of and Seizure made for the breach of any of the said Laws or of the Ordinance aforesaid, the Fees demandable and payable for the same shall be as follows – That is to say

#### Supreme Court

For entry of the Inforation.....	—	5.	—
Every Information Called on in Court.....	—	10.	—
Signing Judgement Roll.....	—	2.	6.
Taxing Bill of Costs.....	—	2.	6.
Every Rule or Summons relating thereto granted	—	2.	6.
Hearing Argument on any Point of Law.....	—	5.	—

#### Attorney General

Attending and Examing Proofs.....	1.	3.	4.
Drawing Information.....	—	15.	—
Copy thereof and filing the same.....	—	8.	—
Citation of party Claiming to appear and make claim and delivery thereof to the Clerk in court	—	8.	—
Drawing up Brief.....	—	15.	—
Conducting the Cause in Court.....	2.	6.	8.
Motion for proclamation for Claimants.....	—	3.	4.
Motion for trial.....	—	3.	4.
Motion for Information to be read.....	—	3.	4.
Motion for Judgement by Default of Claimant...	—	3.	4.
Making up record.....	—	5.	—
Making up Costs and giving Notice of taxing the same.....	—	5.	—
Attending taxation thereof.....	—	3.	4.
Attending to sign the Roll.....	—	3.	4.

Clerk in Court

Reading and filing Information.....	—	6.	8.
Entering and Affixing Citation.....	—	2.	6.
Swearing Evidence - each.....	—	1.	—
Entering each Motion and Rule thereon.....	—	1.	6.
Entering Judgement.....	—	1.	6.

Cryer

Calling Claimants and Evidence.....	—	3.	4.
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And be it Ordained & Ordered by the Authority aforesaid that in Case any such prosecution should be unavoidably protracted or by Attended by Circumstances of a special Nature that such Additional Costs and Charges may be allowed by the Court as to the discretion of the Chief Justice may seem Reasonable and proper.

And Whereas the Expence of Escheating Land which has become forfeit by Non performance of the Conditions of the Grant, have heretofore been so unnecessarily high as to operate to the discouragement of Parties desirous of obtaining Grants of Land so forfeit and liable to Escheat – For remedy whereof, Be it Ordained and Ordered by the Authority aforesaid that the Fees of the Officers herein after mentioned in proceedings in relation, to the premises shall be as follows.

Court of Escheats

Commissioner.....	5.	16.	8.
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Attorney General

Drawing Information and filing the same.....	—	12.	—
Copy thereof.....	—	6.	8.
As Counsel in Court.....	1.	3.	4.
Each Motion.....	—	3.	4.
Attending Commissioner to sign Judgement.....	—	3.	4.



### Clerk and Register

Drawing Citation.....	—	3.	4.
Each Copy and affixing the same.....	—	2.	6.
Drawing Inquisition and filing the same.....	1.	3.	4.
Making out Counterpart thereof for Attorney General.....	—	10.	—
Swearing and Impannelling the Jury.....	—	1.	6.
Sweareing each Witness.....	—	1.	—
Every Copy of Inquisition per folio of 72 words	—	1.	—

### Provost Marshall

Summoning Jury and returning pannel.....	1.	3.	4.
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### Jurors

The same as in Cases of Special Jury

### Witnesses

The same as in other cases

### Cryer

Making Proclamations each.....	—	1.	3.
Calling Witnesses, each.....	—	—	6.

And for the more certain speedy and regular payment of the said Fees to the respective Officers, and others thereto entitled

Be it Ordained and Ordered by the Authority aforesaid that (except in Cases wherein for special reasons the Chief of Justice may think proper to postpone the same) taxation of the Costs and Charges of each Action or of any proceeding at Law shall be made within one Calender [Calendar] Month after the Expiration of the Term in which such Action shall have been tried and finally determined, or such proceedings, shall have been had and that Notice of the Day and Hour of such taxation (such Day and Hour being convenient to the Chief Justice) shall be delivered in Writing by the Part or his Attorney to the Clerk in Court fourteen Days at least previous to such intended taxation in order that any Person or Persons whose Claim to Costs and Charges in or by reason of the Premises may not have been satisfied, may attend prefer such ^ prefer such his, her, or their Claim.

And be it Ordained and Ordered by the Authority aforesaid that such Notice of taxation shall be agreeable to the form followings – That is to say – Supreme Court \_\_\_\_\_ Term in the Year of the Reign of King George the Third &ca

Notice of taxation of Costs and Charges in the (Action Information or whatever the Proceeding has been) as A. agr B. K. agr C. or B. agr A. (as the case may be) at the place of taxation on Day of \_\_\_\_ at the Hour of \_\_\_\_\_ D. Q. Attorneys name which Notice shall be entered by the Clerk of the Supreme Court, and be affixed on some visible part of all parties concerned to whom it shall be deemed sufficient Notice of taxation of the Costs and Charges relating to the Action or proceeding therein mentioned.

And be it Ordained and Ordered by the Authority aforesaid that if any claim or Claims which shall be made at the time of taxation shall appear to the Chief Justice to be legal and proper, and the same be unsatisfied, that in such Case the Chief Justice may refuse to tax the Bill of Costs and Charges, in such Action, Suit, or Proceeding, Provided nevertheless that if the Part entitled to Costs shall at any future time be desirous to avail himself of the Verdict or Adjudication in his favour, He shall and may upon giving fourteen Days Notice in manner aforesaid, have such Bill of Costs and Charges taxed, proof being produced to the satisfaction of the Chief Justice at the time of such taxation if the said Claim or Claims having been adjusted either by payment thereof pursuant to legal Adjudication, or by the same having been disallowed by some Court Competent to enquire thereinto or by other satisfaction thereof –

And whereas it is expedient and just that the party entitled to the benefit of a Verdict or Adjudication in their favour should not be unnecessarily delayed in obtaining the fruits of such Verdict or Adjudication – Be it Ordained and Ordered by the Authority aforesaid that if any Person or Persons who shall have made any Claim or Claims at the time of taxation of any Bill of Costs and Charges as aforesaid shall neglect to prosecute such Claim or Claims in some Court Competent to entertain the Suit of shall refuse the sum or sums Claimed or tender thereof between the time of such taxation of the Costs and Charges as aforesaid, and the time appointed for the taxation of the Costs and Charges incurred in the Course of any Action or proceeding at Law tried or had in the next Term following that in any such case upon application for such purpose made by the party desirous to tax the Costs and Charges, the Chief Justice shall proceed upon a day by him appointed, and of which the Party so applying shall give notice as aforesaid to tax the Costs and Charges in such Action or proceeding at Law; upon a review of the proceedings or by such means of ascertaining the same as Circumstances may afford, and such Person or Persons so having made such Claim or Claims as aforesaid and having neglected to such an Adjustment of the same and every and all Person or Persons who shall neglect to make or prefer any Claim to his or their Costs or Charges in relation to the premisses at the time of Taxation, shall in case of prosecuting the same against the Party whom they either have so delayed in respect of the Taxation of the Bill of Costs or have omitted to apprise of such Claim in due time be entitled in case of a Verdict in their favour to no damages for the detention of their Debt nor Costs of suit, and if nonsuited discontinuing their suit, or Verdict against him, her, or the shall be liable to double Costs

And further to prevent unnecessary delay in respect to the succesful Party obtaining the fruits of the Verdict or Adjudication in his, her, or their favour – Be it Ordained and Ordered by the Authority aforesaid that whenever the Attorney in the Cause or other proceeding at Law shall wilfully or negligently omit to give such Notice as aforesaid and forthwith to proceed to the taxation of the Bill of Costs within the time herein before mentioned of shall unjustly have neglected or refused to pay any fee or charge, which he was liable to disburse in the Prosecution of the suit in which he was retained or which he under took to Conduct, in every such case such Attorney shall not be entitled to any remuneration fee or gratuity for making up Costs Attending the taxation thereof, nor to his term fee or any or either of such Fees, such disallowance to be in the discretion of the Chief Justice, and the same being exclusive of any remedy of Law, to which the Party agrieved may be entitled and of the Controul incident to every Court over the Officers thereof

Be it further Ordained and Ordered by the Authority aforesaid, that in every Case wherein Judgement shall be given for the Plaintiff or Plaintiffs, all fees which shall have been paid, or shall be due owing or payable by such Plaintiff or Plaintiffs by virtue of this Ordinance shall be taxed against, and by paid by the Defendant or Defendants in such Cause or Causes, and that in all Causes which shall be instituted in the Supreme Court and which shall be retracted or discontinued without leave of the Court or Consent of the Defendant or Defendants or wherein Judgement shall be given for the Defendant or Defendants, all fees, Costs and Charges which shall have been paid or shall be due, owing or payable by such Defendant or Defendants by Virtue of this Ordinance, which shall be taxed against and by paid by such Plaintiff or Plaintiffs.

And be it further Ordained and Ordered by the Authority aforesaid, that none of the Fees by this Ordinance allowed and established for Attornies shall be taxed or allowed to any but sworn Attornies regularly admitted to Practice, and in no Cause or Causes wherein any Attorney is not actually employed and for no other Services than such as he shall actually have done and performed in such Cause – Provided always that this shall not prejudice or effect the right to payment of Costs and Charges by the unsuccessful Party where no Attorney shall have been employed by the Party entitled to the same.

And be it also Ordained and Ordered that no fee, costs or charges allowed and established by the Ordinance shall be charged to the Defendant or Defendants, Plaintiff or Plaintiffs in or by reason of any Action or Proceeding at Law, unless a Bill of the particulars of such Fees, Costs, and Charges is first examined and taxed by the Chief Justice, or the Person or Persons Administering his Duties, and a Copy thereof delivered to the adverse Party if required and notice of the taxation shall have been given as aforesaid

Approved, Ordained & Ordered  
accordingly in Council this  
28th Day of January 1805  
and in the 45th Year of His  
Majesty's Reign.

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Passed in Council  
the 28th Jany 1805

John Despard Majr General  
& President of Council