

*Laws of Her Majesty's Province of Upper Canada*, passed in the year 1839. Toronto: Robert Stanton, 1839.

## 2 Victoria – Chapter 3

### **An Act to provide for the payment of Costs, in certain cases of information, at the suit of the Crown, and for other purposes therein mentioned. Passed 11th May, 1839.**

Whereas it is expedient to make provision for the payment and recovery of Costs, in certain cases of Information, for intrusion upon lands of the Crown, for penalties, and for condemnation of Vessels, Carriages, and other conveyances and articles, seized for alleged infraction of the Revenue Laws, where there are claimants for the same, and in suits brought for debt due to the Crown: And whereas, great injustice frequently arises, from the want of authority to order the payment of Costs, in any cases of a like description: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled "*An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled, 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province,'*" and by the authority of the same, That it shall and may be lawful for the Judge before whom any such Information shall be tried, in case of a verdict for the Crown, to certify, on the back of the Record thereof, that it is a proper case for the allowance of Costs to be paid by the Defendant in such Information; and in every such case, the Clerk of the Crown shall, on the entry of the Judgment, tax Costs, as in ordinary cases under the orders and rules of the Court of King's Bench, now or hereafter to be in force; and such Costs shall form part of the Judgment.

II. And be it further enacted by the authority aforesaid, That when any Costs shall be taxed and awarded against any Defendant, they shall be levied and recovered in the same manner as is now by law provided for the levying any penalty adjudged to the Crown.

III. And be it further enacted by the authority aforesaid, That when a Verdict for the Defendant in any such Information shall be rendered, it shall be lawful for the Judge who tries the same, in his discretion, to certify that it is a proper case for the allowance of Costs to the Defendant, and further to certify, whether there was reasonable and probable cause for the prosecution; and in case the Judge shall so certify, then and in such case, the Costs shall be taxed, and the amount thereof paid by Warrant of the Lieutenant Governor on the Receiver General, out of the general revenues of this Province; and in case the Judge shall certify that it is a proper case for the allowance of Costs to the Defendant, but shall not certify that there was reasonable and probable cause for the prosecution, then such Costs shall be taxed, and shall be recovered from the Prosecutor, or person at whose instance such Information shall have been preferred, and filed by attachment, after demand duly made.

IV. And be it further enacted by the authority aforesaid, That interlocutory Costs may, in like manner, be allowed to and recovered by either party, on any such information, in the discretion of the Court of King's Bench, or any Judge thereof in vacation.

V. And be it further enacted by the authority aforesaid, That if, after Judgment shall have been rendered in favour of the Crown in any Information of intrusion, and process of execution shall have been executed against the Defendant, such Defendant shall, without lawful authority, again intrude upon and take possession of the same Lands, Tenements and Hereditaments, from which he shall have been expelled and removed, it shall and may be lawful for the Court of King's Bench, or any Judge thereof, upon hearing the parties on affidavit, to order an Alias or Pluries Writ of Execution on the same Judgment, to issue against such Defendant; and to award such further Costs of the Writ and Application, as shall be, from time to time, regulated by the rules and orders of the said Court.

VI. Provided always, and be it further enacted by the authority aforesaid, That nothing in this Act contained shall authorise, or be construed to authorise, Her Majesty's Attorney or Solicitor General, to receive any fee or fees for the personal services which they may at any time render under the authority of the provisions herein contained.