

A Member for any place in Canada West accepting an office of profit or becoming accountable for the public monies, shall thereby vacate his seat.

Proviso;— such Member may be re-elected.

the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, intituled, *An Act to Re-unite the Provinces of Upper and Lower Canada, and for the Government for Canada*, and it is hereby enacted by the authority of the same, that if any person chosen and returned as a Representative or Member of the Legislative Assembly of this Province for any place within that part of this Province, which formerly constituted the Province of Upper Canada, shall accept of any office of profit from the Crown, or accept, as a Commissioner or otherwise, any appointment from the Crown whereby he shall become accountable for any public money, his election shall be void, and the Seat of such Member shall thereafter become and be vacant, and a writ shall forthwith issue for a new Election as if such person so accepting such Office, Commission or Appointment as aforesaid, were naturally dead; any Law, usage or custom to the contrary notwithstanding: Provided always, that such person shall nevertheless be as capable of being re-elected to serve as a Representative or Member of the Legislative Assembly during the same or any ensuing Parliament, as if his Election had not been made void and his Seat become vacant as aforesaid.

This Act not to extend to Officers in the Navy or Army or in the Militia except on the Staff.

II. Provided always, and be it enacted, that nothing herein contained shall extend or be construed to extend to any Member of the Legislative Assembly, being an Officer in Her Majesty's Navy or Army, or in the Militia of this Province, who shall be appointed or receive any new Commission in the Navy or Army, or in the Militia of this Province respectively, excepting only Officers on the Staff of the Militia receiving permanent salaries.

CAP. III.

An Act for the qualification of Justices of the Peace.

[12th October, 1842.]

Preamble.

From and after the first of January, 1843, Justices of the

WHEREAS as well by the Criminal Laws of England, in force in this Province, as by divers Provincial Acts, Justices of the Peace are invested with great powers and authority, wherefore it is become of the utmost consequence to all classes of Her Majesty's Subjects, that none but persons well qualified should be permitted to act as Justices of the Peace: and whereas the Laws now in force in this Province, are insufficient for that purpose; Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council, and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in

in the Parliament of Great Britain and Ireland, intituled, *An Act to Re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, that from and after the first day of January, in the year of Our Lord one thousand eight hundred and forty three, all Justices of the Peace to be appointed in the several Districts of this Province, shall be of the most sufficient persons, dwelling in the said Districts, respectively.

II. And be it enacted, that no Attorney, Solicitor, or Proctor in any Court whatsoever, shall, from and after the said first day of January, one thousand eight hundred and forty three, be capable of being or continue to be a Justice of the Peace in and for any District of this Province, during such time as he shall continue to practice as an Attorney, Solicitor or Proctor.

III. And be it enacted, that from and after the said first day of January, one thousand eight hundred and forty three, no person shall be a Justice of the Peace, or act as such within any District of this Province, who shall not have in his actual possession, to and for his own proper use and benefit, a real Estate either in free and common soccage, or *en fief*, or *en rôtture*, or *en franc alleu*, in absolute property, or for life, or by *emphytéose*, or lease for one or more lives, or originally created for a term not less than twenty-one years, or by usufructuary possession for his life in lands, tenements or other immoveable property, lying and being in this Province, of or above the value of three hundred pounds, currency, over and above what will satisfy and discharge all incumbrances affecting the same, and over and above all rents and charges payable out of or affecting the same, or who shall not before the said first day of January, one thousand eight hundred and forty three, or before he takes upon himself to act as a Justice of the Peace after the said first day of January, one thousand eight hundred and forty-three, take and subscribe the Oath following, before some Justice of the Peace for the District for which he intends to act, that is to say:—"I, A. B. do swear, that I truly and *bonâ fide*, have to and for my own proper use and benefit, such an Estate (*specifying the nature of such Estate, whether land, and if land, designating the same by its local description, rents, or any thing else*) as doth qualify me to act as Justice of the Peace for the District of _____ according to the true intent and meaning of an Act of the Provincial Parliament, made in the sixth year of the Reign of Her Majesty, Queen Victoria, and intituled, *An Act for the qualification of Justices of the Peace*; and that the same is lying and being (or issuing out of lands, tenements or hereditaments, situate) within the Township, Parish, or Seigniority of _____, (or in the several Townships, Parishes, or Seigniorities of _____) (or as the case may be.)—So help me God."—A certificate of which oath having been so taken and subscribed as aforesaid, shall be forthwith deposited by the said Justice of the Peace, who shall have taken the same at the

Peace, to be appointed in the several Districts of this Province, to be of the most sufficient persons dwelling in the said Districts respectively.

No Attorney, Solicitor or Proctor, to be a Justice of the Peace, during the time he shall continue to practice as such.

Qualification required of all persons that shall be appointed Justices of the Peace.

To take an Oath.

The Oath.

The certificate of such Oath to be deposited at

Office

See 12 Vic. c. 78. sec 37

the Office of
the Peace.

Office of the Clerk of the Peace for the District, and be by the said Clerk filed among the records of the Sessions of the said District.

Clerks of the
Peace to deli-
ver on de-
mand an at-
tested Copy of
such Oath.

IV. And be it enacted, that every such Clerk of the Peace, shall upon demand for that purpose made, forthwith deliver a true and attested copy of the said Oath in writing to any person paying the sum of one shilling, and no more for the same; which copy being produced as evidence on trial of any issue in any action or suit brought upon this Act, shall have the same force and effect as the record of the said Oath would have, if so produced.

Penalty on
Justices of the
Peace acting
without hav-
ing taken the
Oath and not
being quali-
fied.

V. And be it enacted, that from and after the said first day of January, one thousand eight hundred and forty three, any person, who shall act as Justice of the Peace in and for any District in this Province, without having taken and subscribed the said Oath as aforesaid, or without being qualified according to the true intent and meaning of this Act, shall for every such offence forfeit the sum of twenty five pounds currency, one moiety to Her Majesty, and the other moiety to such person or persons as shall sue for the same, to be recovered, together with full costs of suit, by civil action, or by plaint or information, in any Court having competent jurisdiction in the District wherein the offence shall have been committed, and in every such action, suit or information, the proof of his qualification shall be upon the person against whom the suit shall be brought.

Manner of
proceeding in
actions where-
in the defend-
ant shall pre-
tend to found
his right upon
any lands not
specified in
the Oath, as
constituting
his qualifica-
tion to act as a
Justice of the
Peace.

VI. Provided always, and be it enacted, that if the Defendant in any such action, suit or information, shall intend to insist upon any lands, tenements or real estate, not mentioned in the oath aforesaid, as constituting the whole or any part of his qualification to act as a Justice of the Peace, at the time of the offence alleged against him, he shall at or before the time of his pleading, deliver to the plaintiff or informer, or to his Attorney, notice in writing, specifying such lands, tenements or real estate (other than those mentioned in the said oath) and the Township, Parish, Seignior, or place, and the County or Counties in which the same may be respectively situate, and if the plaintiff or informer in any such action, suit or information, shall think fit thereupon not to proceed any further, he may, with leave of the Court, discontinue such action, suit or information, on payment of such costs to the defendant, as such defendant may be entitled to, according to the course and practice of the Court.

The issue
joined, no lands
&c. not men-
tioned in such
Oath or notice,
to be insisted
upon by the
defendant.

VII. Provided always, and be it enacted, that upon the trial of any issue in any such action as aforesaid, no lands, tenements, or real estate which are not mentioned in such oath or notice as aforesaid, shall be insisted upon by the defendant as part of his said qualification.

VIII.

VIII. And be it enacted, that when the lands, tenements, or real property, mentioned in the said Oath or notice, are, together with other lands, tenements or real property, belonging to the person taking such Oath or delivering such notice, liable to any charges, rents, or incumbrances, then and in that case, within the true intent and meaning, and for the purposes of this Act, the lands, tenements and real property mentioned in the said oath or notice, shall be deemed and taken to be liable and chargeable only so far as the other lands, tenements and real property so jointly charged, are not sufficient to pay, satisfy or discharge the same.

If the lands belonging to the persons taking such oath and those mentioned in the same, be liable to any charge, the latter to be chargeable only so far as the lands so jointly charged may be insufficient to discharge the charges.

IX. Provided always, and be it enacted, that when the qualification hereby required on any part thereof, consists of rent, it shall be sufficient to specify in such oath or notice as aforesaid, so much of the lands, tenements, or real property, out of which such rent is issuing, as shall be of sufficient value to secure such rent.

If such qualification consists of a rent, then so much of the lands as may suffice to secure the same to be specified in such oath.

X. Provided always, and be it enacted, that in case the plaintiff or informer in any such action, suit or information, shall discontinue the same, otherwise than as aforesaid, or judgment be given against him, then and in every such case, the defendant shall recover treble costs.

Defendant if successful to recover treble costs.

XI. Provided always, and be it enacted, that when an action, suit or information shall be brought, and due notice thereof shall be given to the person against whom such action, suit or information shall be brought, no proceedings shall be had upon any subsequent action; suit, or information against the same person, for any offence committed before the time of giving such notice; but the Court where- in such subsequent action, suit or information shall be brought, may upon the defendant's motion, stay proceedings upon every such subsequent action, suit or information; Provided such first action, suit or information, be prosecuted without fraud and with effect, it being hereby declared, that no action, suit or information, shall be deemed or construed to be an action, suit or information within the intent and meaning of this Act, unless it shall be so prosecuted.

When an action is brought and due notice is given, proceedings to be stayed in any subsequent action for any offence committed before the time of giving such notice provided the first action be prosecuted without fraud.

XII. And be it enacted, that the Court in which any action, suit or information shall be brought for the recovery of any penalty imposed by this Act, shall require from the plaintiff or informer, his declaration upon oath that such action, suit or information has been brought without fraud, and not for the purpose of protecting the defendant from any action, suit or information, which might be brought by any other person, by reason of the same offence: and that if such declaration be not made to the satisfaction of the Court, the action, suit or information, shall be immediately dismissed with costs.

Manner of proceeding in actions instituted for the recovery of penalties under this Act.

XIII.

Persons making false statements in Oath, guilty of wilful perjury.

XIII. And be it enacted, that if the statement in any oath, or in any declaration under oath, taken or made in pursuance of the requirements of this Act, to the knowledge of the person making the same, be false, such person shall be guilty of wilful and corrupt perjury, and subject to all the pains and penalties attendant on that offence.

Limitation of action.

XIV. Provided always, and be it enacted, that every action, suit or information given by this Act, shall be commenced within the space of six calendar months next after the fact, upon which the same is grounded, shall have been committed and not afterwards.

Provisions contained in this Act not to extend to persons holding certain situations therein named.

XV. Provided always, and be it enacted, that nothing in this Act contained shall extend to the Members of Her Majesty's Legislative Council, or to the Members of Her Majesty's Executive Council, or to the Judges of any Court of King's Bench or of Queen's Bench, or to the Vice Chancellor of Canada West, or to the Provincial Judges of the Inferior District of St. Francis and the Inferior District of Gaspé, or to any District Judge, or to Her Majesty's Attorney General, Solicitor General, Advocate General, or any of Her Majesty's Counsel in the Law.

Sheriffs and Coroners acting as such, disqualified from acting as Justices of the Peace.

XVI. And be it enacted, that no person or persons having, using or exercising the Office of Sheriff or Coroner in and for any District in this Province, shall be competent or qualified to be a Justice of the Peace or to act as such for any District wherein he or they shall be Sheriff or Coroner, during the time that he or they shall have used or exercised such Office, under the penalties aforesaid; and that all and every act and acts to be done by any such Sheriff or Sheriffs, Coroner or Coroners, by the authority of any Commission of the Peace during the time aforesaid, shall be absolutely void and of none effect.

Fines and penalties to be payable to Her Majesty and be at the disposal of the Provincial Parliament, and to be accounted for to Her Majesty.

XVII. And be it enacted, that the fines and penalties which shall be incurred and payable to Her Majesty, Her Heirs and Successors, by virtue of this Act, shall be paid into the hands of the Receiver General, and shall remain at the disposal of the Provincial Parliament for the public uses of the Province, and shall be accounted for to Her Majesty, Her Heirs and Successors, through the Lords Commissioners of Her Majesty's Treasury for the time being, in such manner and form as Her Majesty, Her Heirs and Successors shall direct.