

therein mentioned: 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 the Parliament of the United Kingdom of Great Britain and Ireland, and 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 all the powers vested by the first, eleventh, twelfth and fourteenth sections of the Act mentioned in the preamble to this Act, in any two or more Judges of the Superior Court in vacation, shall and may, in each of the Districts in Lower Canada, except the Districts of Quebec and Montreal, be exercised by any one of the Judges of the said Court in vacation; and all the provisions and enactments of the said Act having reference to the said powers, shall be construed and have effect accordingly.

Powers vested by sec. 1, 11, 12 and 14, of 12 Vic cap. 41, in two Judges, may be exercised by one, except in certain cases.

II. And be it enacted, That so much of the sixteenth section or of any other part of the said Act, as directs in what manner Writs of *Certiorari* shall be applied for and issued, and what proceedings shall be had thereon or with regard thereto, shall be and is hereby repealed; and the law with regard to applications for Writs of *Certiorari*, the proceedings thereon, and all matters incident thereto, shall be as it would have been if the said Act had not been passed: Provided always, that no part of the said section which exempts parties suing out such Writs of *Certiorari* from the necessity of giving security, or which does away with the necessity of issuing *Alias Writs*, or which provides for the manner of making orders subsequent to the issuing of the first writ, or of making services and returns, is or shall be repealed: and provided also, that costs shall be awarded to the party in whose favor judgment shall be given.

Provisions as to *certiorari* repealed.

Proviso.

III. Provided always, and be it enacted, That with regard to all Writs of *Certiorari* issued between the time when the said Act came into force and effect and the passing of this Act, and to all proceedings thereupon and matters incident thereto, the provisions of the said Act shall apply as if this Act had not been passed.

Exception as to writs issued before the passing of this Act.

C A P . X X X V I I .

An Act to assign fixed Annual Salaries to certain Officers of Justice in Lower Canada, and to form a Special Fund out of the Salaries, Fees, Emoluments and Pecuniary Profits attached to their Offices.

[10th August, 1850.]

WHEREAS it is just and proper to form a Special Fund out of all the Salaries, Fees, Emoluments and Pecuniary Profits attached to certain Offices connected with the administration of Justice in Lower Canada, and to assign Annual and Fixed Salaries to the Officers holding and filling such Offices: 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 the Parliament of the United Kingdom of Great Britain and Ireland, and 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 this Act shall commence and be in force at and after the expiration of one month from the day of its passing.

Preamble.

II. And be it enacted, That upon, from and after the day on which this Act shall commence, the Public Officers hereinafter mentioned shall respectively cease to have the right of demanding and receiving for their own use and benefit, the Salaries, Fees, Emoluments and Pecuniary Profits whatsoever, which are now or may hereafter be attached to their respective Offices, that is to say:

Commencement of this Act.

Public Officers who shall cease to receive fees on their own account.

First.—The Sheriffs of the Districts of Montreal, Quebec, Three-Rivers and Saint Francis;

Second.—The Prothonotaries or Clerks of the Superior Court in the said Districts;

Third.—The Clerks of the Circuit Courts in the Circuits respectively called the Circuits of Quebec, Montreal, Three-Rivers and Sherbrooke;

Fourth.—The Clerks of the Crown in the Districts aforesaid ;

Fifth.—The Clerks of the Peace in the Districts aforesaid ;

Sixth.—The Clerk of the Court of Queen's Bench, called "The Clerk of Appeals."

Special fund created
out of fees, &c.

III. And be it enacted, That upon, from and after the said day, all Salaries, Fees, Emoluments and Pecuniary Profits whatsoever, which are now or may hereafter be attached to the said Offices respectively, under any authority whatsoever, shall form a Special Fund to be employed as hereinafter appointed, and shall for this purpose be paid over by the proper Officers to the Receiver General of the Province, in the manner hereinafter mentioned ; they shall continue to be and shall be demanded and collected as heretofore by the Officers aforesaid respectively, in their respective Districts or Circuits ; the said Officers shall render a faithful and detailed account thereof, every three months, to the Inspector General of Public Accounts for the Province, in such form and in conformity with such instructions as shall from time to time be prescribed by or by order of the said Inspector General ; and the said Officers shall respectively pay over the balance of such Accounts to the Receiver General within the fifteen days immediately following the rendering thereof.

Officers to render
accounts.

Annual and fixed
salaries allotted in
place of fees, &c.

IV. And be it enacted, That from and out of the amount collected in every year of such Salaries, Fees, Emoluments and Pecuniary Profits of what kind soever, attached to each of the aforesaid Offices, it shall be lawful for the Governor from time to time to assign to the said Officers respectively, the annual and fixed Salaries hereinafter mentioned ; which Salaries it shall also be lawful for the Governor to modify from time to time as he shall judge expedient, that is to say :

IN THE DISTRICT OF QUEBEC :

First.—To the Sheriff, a sum not exceeding Five hundred pounds currency ;

Second.—To the Prothonotary or Clerk of the Superior Court, a sum not exceeding Five hundred pounds currency ;

Third.—To the Clerk of the Circuit Court for the Circuit called "The Quebec Circuit," a sum not exceeding Two hundred and fifty pounds currency ;

Fourth.—To the Clerk of the Crown, a sum not exceeding Two hundred and fifty pounds currency ;

Fifth.—To the Clerk of the Peace, a sum not exceeding Three hundred and fifty pounds currency—

IN THE DISTRICT OF MONTREAL :

First.—To the Sheriff, a sum not exceeding Five hundred pounds currency ;

Second.—To the Prothonotary or Clerk of the Superior Court, a sum not exceeding Five hundred pounds currency ;

Third.—To the Clerk of the Circuit Court for the Circuit called "The Montreal Circuit," a sum not exceeding Two hundred and fifty pounds currency ;

Fourth.—To the Clerk of the Crown, a sum not exceeding Two hundred and fifty pounds currency ;

Fifth.—To the Clerk of the Peace, a sum not exceeding Three hundred and fifty pounds currency—

IN THE DISTRICT OF THREE-RIVERS :

First.—To the Sheriff, a sum not exceeding Three hundred pounds currency ;

Second.—To the Prothonotary or Clerk of the Superior Court, a sum not exceeding Three hundred pounds currency ;

Third.—To the Clerk of the Circuit Court for the Circuit called "The Three-Rivers Circuit," a sum not exceeding One hundred and fifty pounds currency ;

Fourth.—To the Clerk of the Crown, a sum not exceeding Fifty pounds currency ;

Fifth.—To the Clerk of the Peace, a sum not exceeding Two hundred pounds currency—

IN THE DISTRICT OF ST. FRANCIS :

First.—To the Sheriff, a sum not exceeding one hundred and fifty pounds currency ;

Second.—To the Prothonotary or Clerk of the Superior Court, a sum not exceeding one hundred and fifty pounds currency ;

Third.—

Third.—To the Clerk of the Circuit Court for the Circuit called “The Sherbrooke Circuit,” a sum not exceeding fifty pounds currency ;

Fourth.—To the Clerk of the Crown, a sum not exceeding fifty pounds currency ;

Fifth.—To the Clerk of the Peace, a sum not exceeding fifty pounds currency—

COURT OF QUEEN'S BENCH :

To the Clerk of this Court, called “The Clerk of Appeals,” a sum not exceeding two hundred and fifty pounds currency.

Which salary so assigned in every year to each of the above named officers, shall be paid to him every three months, but solely out of the amount of the said salaries, fees, emoluments and pecuniary profits attached to his office and collected as aforesaid by him during such year : Provided always, that the amount so collected by him during such year, be sufficient to cover his salary after deducting therefrom the pecuniary remuneration to be paid by him to his Deputy and Clerks, as hereinafter directed ; otherwise his salary for such year shall not in any such case exceed such net amount.

How such salaries shall be paid provided the amount collected be sufficient.

V. And for the avoidance of all doubt in this behalf, Be it enacted, That the words “Salaries, Fees, Emoluments and Pecuniary Profits,” in the foregoing sections, shall include and be held to include for the purposes of this Act, the commission or remuneration of two and a half per cent or any other commission or remuneration which, under the laws now or then in force, the said Sheriffs are or may hereafter be authorized to charge upon and retain out of moneys levied by execution or otherwise, and also all other sums of money which the public officers aforesaid receive or may be entitled to receive for their use and benefit by virtue of their said respective offices, and under any authority whatsoever.

Interpretation of the words, salaries, fees, &c.

VI. And be it enacted, That whenever any two or more of the offices hereinbefore mentioned, shall at any time be held and filled by the same person, then it shall be lawful for the Governor to reduce and fix at such sum as he shall deem expedient, the united Salaries of the said offices, and in such case; the sum so established shall form the whole of the Salary which such person shall be entitled to receive by reason of the said offices so held and filled by him ; and the remainder of the Salaries assigned to the said offices, respectively, shall then form part of the Special Fund hereinbefore mentioned.

Case where two offices shall be held by the same person.

VII. And be it enacted, That each of the Public Officers above mentioned, who is not now by law obliged to have and appoint a Deputy, shall hereafter be obliged to have and appoint one to assist him in discharging the duties of his office, and shall appoint such Deputy by an Instrument under his hand and seal ; and such Deputy is hereby authorized to perform the duties of the Public Officer who shall have so appointed him as his Deputy, and shall continue to perform the said duties in the event of the decease, dismissal, suspension or resignation of the said Officer, until a person shall have been appointed to succeed such Officer in his said office ; and the Instrument appointing such Deputy shall be entered at full length in the Register of the Court ; but it shall be lawful at all times for any such Officer to remove his Deputy and appoint another in his stead : Provided always, that all the above mentioned Officers, may, if they think proper, respectively appoint in the manner and with the formalities prescribed in relation to the appointment of their first Deputy (and with like power of removal) other Deputies to assist them in that capacity, in the performance of any particular portion whatsoever of the duties of their office, such portion being specially and clearly described in the Instrument appointing any such Deputy ; and every such Deputy is hereby authorized to perform the duties so specially assigned to him in like manner as the Public Officer who shall have appointed him : Provided always and it is hereby declared that the said Public Officers shall be and continue to be responsible to all intents and purposes, for the conduct of each of their Deputies respectively.

Appointment of deputies and their powers.

Proviso : Deputies for special purposes.

Proviso :

VIII. And be it enacted, That upon, from and after the day of the commencement of this Act, the Criers, including the Tipstiffs attached to the Court of Queen's Bench and to the Superior Court in each of the Districts above mentioned, and to the Circuit Court in the

Criers to cease to receive fees, &c.

the Circuits above mentioned, or such persons as shall be acting in that capacity in the said Courts respectively, shall cease to be entitled to demand and receive for their own use and benefit, the Salaries, Fees, Emoluments and Pecuniary Profits, which now are or hereafter may be allowed to or for the services of such Criers respectively ; and that upon, from and after the said day, the said Salaries, Fees, Emoluments and Pecuniary Profits shall form part of the Special Fund above mentioned, and shall not be demanded and collected by the said Criers, but by the Prothonotaries or Clerks of the said Courts, respectively, in the respective Districts and Circuits above mentioned ; and it shall be the duty of the said Prothonotaries or Clerks to account therefor to the Inspector General and to pay over the amount thereof to the Receiver General, in like manner and at the same time as they are required to account for and pay over the Fees, Emoluments and Pecuniary Profits attached to their own offices respectively.

Prothonotaries to collect them as part of the special fund.

Salary allotted to criers.

IX. And be it enacted, That from and out of the amount annually collected as aforesaid, of the said Fees, Emoluments and Pecuniary Profits so allowed for the said Criers including the Tipstiffs, it shall be lawful for the Governor from time to time to assign an annual and fixed Salary to each of the said Criers, and also from time to time to modify the same as he shall deem expedient, which Salary shall in no case exceed the sum of one hundred and fifty pounds currency, and shall be paid to the said Criers every three months by the Prothonotaries or Clerks of the said Courts respectively, but only out of the amount of the Fees, Emoluments and Pecuniary Profits, which without this Act the Crier himself would have been entitled to demand and collect during the year, and which shall have been collected by the said Prothonotaries or Clerks as aforesaid : Provided always, that the amount so collected during such year, shall be sufficient to cover the Salary of the Crier, otherwise his Salary for such year shall not in such case exceed such amount.

Proviso.

Necessary clerks and Deputies allowed.

X. And be it enacted, That each of the Public Officers mentioned in the first section of this Act, shall have a sufficient number of Clerks for the due performance of the duties of his office ; to each of whom, as well as to the Deputies of such Officer, a reasonable remuneration may be granted, subject to the previous approval of the Governor ; and for this purpose, the said Officer shall furnish every year to the Provincial Secretary, and oftener if thereunto required, a list of the Deputies and Clerks employed by him as aforesaid ; and as regards their number and remuneration, he shall conform to such instructions as shall from time to time be transmitted to him in that behalf by the Provincial Secretary ; the amount of which remuneration shall be paid by such Officer and by him entered under the head of expenses in the accounts rendered by him to the Inspector General as aforesaid.

Officers to take credit for salaries.

XI. And be it enacted, That the said Public Officers shall, in all accounts rendered by them as aforesaid to the Inspector General, be entitled respectively to retain and enter under the head of expenses, such portion of the annual and fixed Salary to them assigned by the Governor as aforesaid, as shall correspond with the period comprised in the account so rendered ; and that after deducting therefrom their fixed Salary, the remuneration of their Deputies and Clerks, and the Salary of the said Criers by them paid as aforesaid, the said Public Officers shall respectively be entitled for their own use and benefit, to a Commission of ten per cent on the balance of the sums acknowledged by them in such account as remaining in their hands ; and after the Inspector General shall have examined and approved such account, it shall be lawful for the said Officers to retain the amount of the said Commission to which they are entitled on the balance of such account, and to enter the same under the head of expenses in their next account.

Commission on the balance.

Distinct accounts to be kept for each District.

XII. And be it enacted, That the Inspector General shall keep separate and distinct accounts for each of the Districts above mentioned, of the portion of the said Special Fund created by this Act which shall be collected in such District.

Compilation of reports and judicial decisions.

XIII. And be it enacted, That from and out of the whole of the said Special Fund, or any part thereof collected in any of the Districts aforesaid and paid into the hands of the Receiver General, a reasonable sum may from time to time be taken and applied (according

(according to such regulations as shall be from time to time made by the Governor) to defray the expense of compiling and publishing the decisions of the Tribunals of Lower Canada, and to the payment of a fit Salary to such person or persons as the Governor may from time to time entrust with the said compilation and publication, which persons shall conform to such instructions as may from time to time be given to them by order of the Governor.

XIV. And be it enacted, That the amount of each of the said portions of the said Special Fund, or the balance of each portion remaining after the deduction (if any) of the sum necessary to meet the expenses authorized by the foregoing section, may be employed in such manner as shall be directed and ordered from time to time by the Governor, in repairing the Court Houses, or for other purposes connected with the administration of Justice, in the District wherein such portion shall have been collected.

XV. And be it enacted, That in aid of the compilation and publication of the decisions of the Tribunals in Lower Canada as authorized by the thirteenth section of this Act, each of the persons hereinafter designated and residing in any of the Districts above mentioned, shall pay in each year, between the first of October and the thirty-first of December, to the Prothonotary or Clerk of the Superior Court in the District in which he shall reside, the sum of One pound five shillings currency, to wit :

First.—The Judges and Prothonotaries or Clerks of the Court of Queen's Bench, the Superior Court, and the Circuit Court ;

Second.—The Advocates and Attorneys ;

Third.—The Sheriffs ;

Fourth.—The Clerks of the Peace.

And whenever the said office of Sheriff, or of Prothonotary or Clerk shall be held by more than one person, each such person individually shall pay the said sum of One pound five shillings currency ; and in default of payment within the time above directed, the Prothonotary or Clerk to whom such payment ought to be made, shall in his said quality, have the right and shall be bound to sue by personal action in the Circuit Court, for the recovery of the said sum of One pound five shillings currency, each of the persons above mentioned who shall have neglected to pay the said sum in manner aforesaid ; and when judgment shall be rendered in favor of the said Prothonotary or Clerk, it shall be rendered with Costs ; and such judgment shall be executory in the same manner as any other judgment of the said Circuit Court : Provided always, that when any such judgment shall have been rendered against any Advocate and Attorney, then in default of payment by him of the amount of the principal sum and costs of the action, within two months after judgment shall have been rendered therein, he shall after the said two months shall have expired, cease to enjoy the right of practising the said profession of Advocate and Attorney in any of the Courts of Law in Lower Canada, until he shall have satisfied the whole amount of the said judgment.

XVI. And be it enacted, That the said sum of One pound five shillings currency, shall be payable for the present year one thousand eight hundred and fifty, at the time above mentioned, as well as for subsequent years—it shall form part of the Special Fund created by this Act—but shall be solely applied to the purpose mentioned in the thirteenth section ; and the provisions of this Act relating to the responsibility of the said Prothonotaries or Clerks, to the payment over by them of the amount received by them, and to their commission of ten per cent. shall apply to this portion of the said Special Fund as well as to the other portions thereof.

XVII. And be it enacted, That none of the foregoing provisions shall extend or be construed to extend to deprive the above mentioned Courts of Justice or the Judges thereof, of the power now possessed by them, or to relieve them from the obligation imposed on them by the now existing laws of Lower Canada, to make and establish, from time to time, tariffs of fees for the officers of the said Courts respectively, and for the Counsel, Advocates and Attorneys practising therein, and from time to time as need shall be, to revoke or amend such tariffs.

XVIII. And whereas several of the offices before mentioned, are now held by two or more persons conjointly, to wit :

Application of balances.

Judges, advocates, &c. to contribute yearly to the expense of publishing decisions.

As to offices held by more than one person.

Prothonotary to sue defaulters.

Proviso as to advocates and attorney..

The said sum to be payable for the present year, and to form part of the special fund.

The courts and judges to continue to make tariffs of fees.

Case where one office is held by two or more persons.

IN THE DISTRICT OF MONTREAL :

The offices of Sheriff, of Prothonotary or Clerk of the Superior Court, and of Clerk of the Peace ;

IN THE DISTRICT OF QUEBEC :

Those of Prothonotary or Clerk of the Superior Court and of Clerk of the Peace :

Governor may add to the fixed salary.

Be it enacted, That it shall be lawful for the Governor to add to the annual and fixed Salary which under the foregoing provisions he is authorized to assign to each of the said Offices respectively, the sums hereinafter mentioned, to wit :

IN THE DISTRICT OF MONTREAL :

First.—To the Office of Sheriff, a sum not exceeding five hundred pounds, currency, yearly ;

Second.—To the Office of Prothonotary or Clerk of the Superior Court, a sum not exceeding seven hundred pounds, currency, yearly ;

Third.—To the Office of Clerk of the Peace, a sum not exceeding three hundred and fifty pounds, currency, yearly ;

IN THE DISTRICT OF QUEBEC :

First.—To the Office of Prothonotary or Clerk of the Superior Court, a sum not exceeding six hundred pounds, currency, yearly ;

Second.—To the Office of Clerk of the Peace, a sum not exceeding three hundred and fifty pounds, currency, yearly ;

Out of what portion of the special fund such sum shall be taken.

Each of which said sums shall only form part of the salary attached to the office to which it shall be so granted, so long as such office shall so continue to be held by more than one person as aforesaid ; and provided always, that such sum as aforesaid shall be taken solely out of the amount of the portion of the special fund created by this Act, which shall have actually been paid into the hands of the Receiver General as arising from such office for the year during which such increase of salary shall be assigned to such office ; and if the said amount be not sufficient to cover the increase of salary so assigned to such office, then such increase of salary shall not for that year exceed such amount ; and provided also, that it shall be lawful for the Governor to apportion such increase of salary among the persons conjointly holding and filling such office, in such manner as he shall deem expedient, having a due regard to the length of service of each of the persons in the performance of the duties of such office, or of a similar office in any other Court of any other District.

Proviso : Governor to apportion such increase.

Accounts to be sworn to.

XIX. And be it enacted, That the accounts which shall be rendered to the Inspector General under this Act by each of the above mentioned Public Officers, shall be by such Officer sworn to as true and faithful, on oath to be taken before one of the Judges of any of the Courts aforesaid.

Lower Canada.

XX. And be it enacted, That this Act shall apply to Lower Canada only.

CAP. XXXVIII.

An Act to facilitate the swearing of *Experts* and Arbitrators appointed by the Courts of Justice in Lower Canada, and of Witnesses and others to be heard before them.

[10th August, 1850.]

Preamble.

WHEREAS it is expedient to facilitate the swearing of *Experts*, Arbiters and Arbitrators appointed, either by the Courts of Justice in Lower Canada, or by consent of the parties in causes pending before the said Courts, and of the witnesses to be examined before such *Experts*, Arbiters or Arbitrators : 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 the Parliament of the United Kingdom of Great Britain and Ireland, and 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 it shall be lawful for the Courts of Justice in Lower Canada, to authorize all such *Experts*, Arbiters or Arbitrators, without regard

Courts may authorize the oath of office to be taken before Commis-