

*The Provincial Statutes of Canada*, passed in the year 1841. Kingston: Stewart Derbishire & George Desbarats, 1841.

4 & 5 Victoria – Chapter 8

**An Act to alter and amend the Laws now in force in that part of this Province formerly Upper Canada regulating the District Courts. 18th September, 1841.**

Whereas the Law now in force in Canada West, for establishing District Courts and regulating the practice thereof, requires amendment:— 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*; audit is hereby enacted by the authority of the same, that so much of the twenty-seventh and twenty-eighth sections of an Act of the Legislature of Upper Canada, passed in the second year of the Reign of His late Majesty King George the Fourth, and intituled *An Act to reduce into one Act the several Laws now in force for establishing District Courts and regulating the practice thereof, and also to extend the powers of the said District Courts*, as relates to the fees payable to the Judges and Clerks of the said Courts, and to the receipt of any fees by the Judges and Clerks of the said Courts, and by Sheriffs, for their respective duties and services under the said Act be and the same is hereby repealed.

II. And be it enacted, that from and after the passing of this Act, no person shall be appointed to be a Judge of any District Court in Canada West, who shall not be a Barrister at law of this Province.

III. And be it enacted, that from and after the first day of January one thousand eight hundred and forty two, no person shall remain or be appointed a District Judge for any District in Canada West, who shall not be a resident in the District of which he shall be Judge.

IV. And be it enacted, that every Judge so to be appointed, before he shall be qualified to act as such, shall take the following oath, before some person to be appointed by the Governor of this Province to administer the same, that is to say:

I, \_\_\_\_\_ do swear that I will truly and faithfully, according to my skill and knowledge, execute the several duties, powers and trusts of Judge of the District Court of the District of \_\_\_\_\_ and of the several division Courts within the same, without fear, favour or malice: So help me God.

V. And be it enacted that the Treasurer of every such District shall be the Receiver General of fees of the Distinct Court within his District.

VI. And be it enacted, that every such Treasurer shall be paid by a per centage of three pounds on every hundred pounds, and no more, of the gross produce of the fees of the District Court, and

that every Judge and Clerk shall be paid by a certain salary, the salary of a Judge being (including the amount he may be entitled to under the provisions of an Act passed during the present Session intituled *An Act to repeal the Laws now in force in that part of this Province called Upper Canada, for the recovery of small debts, and to make other provisions for that purpose,*) in no case more than five hundred pounds, or less than one hundred and fifty pounds, and the salary of the Clerk being in no case more than two hundred and fifty pounds, or less than seventy pounds: And the Governor in Council shall fix the remuneration to be paid to the Judges and Clerks respectively, having due regard as well to the population of the several Districts, as to the amount of fees received by the Treasurer of each District under this and the said above mentioned Act; and the remuneration of the Judge and Clerks may be increased, or as vacancies shall occur, may be diminished by the same authority by which they were at first fixed: Provided always, that over and above the salary to be so paid as aforesaid, the said Clerks shall be entitled to demand and receive the sum of one shilling for every search made by any person into and among the records and proceedings in their respective offices.

VII. And be it enacted, that the Clerk of every District Court shall keep an account of all summonses, writs of *Capias ad respondendum*, executions, subpoenas and all other writs as proofs of the Court, and of all other proceedings whatsoever mentioned and included in the Schedule hereto annexed, and shall receive and take all fees payable on every such writ or other proceeding, and shall duly and regularly enter an account of all such fees in a book to be kept by him for that purpose, which book shall be open to all persons desirous of searching the same, on payment of one shilling for each search, and shall, from time to time, at such times as shall be directed and appointed by the Governor, submit his accounts to be audited or settled by the Treasurer of his District.

VIII. And be it enacted, that there shall be payable on every proceeding in the District Courts, the fees which are set down for such proceedings, respectively, in the Schedule to this Act annexed, or which shall be set down in any Schedule of reduced fees under the power hereinafter contained for that purpose and none other; and a table of such fees shall be hung up in some conspicuous place in the offices of the several Clerks of the District Courts.

IX. And be it enacted, that the Clerk of each and every District Court shall from time to time, as often as he shall be required so to do by the Treasurer of his District, deliver to him a full account in writing of the fees received in such Court under the authority of this Act; and the amount of such fees received by the said Clerk shall be paid over from time to time by him to the Treasurer, and at least once in every three months; and such amount or so much thereof as may be necessary, shall be applied by such Treasurer in payment of the salaries of the Judges and Clerks of the said Courts.

X. And be it enacted, that the Treasurer of every District shall on or before the thirtieth day of June and thirty first day of December in every year, render to the Inspector General of this Province, a true account in writing, of all monies received and of all monies disbursed by him on account of the said Courts, during the period comprised in such accounts, in such form and with such particulars as the said Inspector General shall from time to time require, and shall within ten days after the rendering of every such account, pay over the amount of any surplus of such fees to

the Receiver General of this Province; and if default shall be made in such payment, the amount due by such Treasurer shall be deemed a specialty debt to Her Majesty.

XI. And be it enacted, that in case the amount of fees received in any of the said Courts shall not be sufficient to defray the disbursements required on account of the said Courts, during the period comprised in the said account it shall be lawful for the Governor of this Province, forthwith to issue his warrant in favour of the Treasurer for the amount which shall be required to make up the salaries of the said Judges and Clerks, and the amount of such warrant shall be charged upon the consolidated fund of this Province.

XII. And be it enacted, that the accounts to be kept by the several Treasurers on account of the said Courts, shall be deemed public accounts, and shall be inquired into and audited and shall be within any provisions of Law now or hereafter to be in force for auditing public accounts.

XIII. And be it enacted, that if any person having resigned or having been removed from the office of Treasurer of any District, or of Clerk of any District Court, shall neglect after twenty one days notice to such person to account for and pay to the Treasurer of the District for the time being, or to such person as he shall appoint to receive the same, all such sums as shall remain in his hands of monies received under the authority of this Act, it shall be lawful for such Treasurer the time being, in his own proper name only, or by his name and description of office, to sue for and recover the same from such person, with double costs of suit, in any Court of Record in this Province having competent jurisdiction, by action of debt, in which action it shall be sufficient for such Treasurer to declare, as for money had and received to the use of such Treasurer for the purposes of this Act; and the Court in which such action shall be brought, may at the instance of either of the parties, refer the account in dispute in a summary manner to be audited by any officer of the Court or other fit person, who shall have power to examine both plaintiff and defendant upon oath; and upon the report of the referee (unless either of the parties shall show good cause to the contrary,) the Court may make a rule either for the payment of such sum as upon the report shall appear to be due, or for staying the proceedings in the action, and upon such terms and conditions as to the Court shall appear reasonable; or the Court may order judgment to be entered up by confession for such sum as upon the report shall appear to be due.

XIV. And be it enacted, that in case of the death of any person during the time that he shall be holding the office of Treasurer or Clerk, or after he shall have resigned or been removed from such office, the Treasurer for the time being may in his own proper name only, or by his name and description of office, sue for and recover from the executors or administrators of such person deceased, all such sums as shall have been remaining in his hands of monies received under the authority of this Act, and by an action of debt in any Court of Record in this Province, having competent jurisdiction; in which action it shall be competent for the plaintiff to declare that the deceased was indebted to the plaintiff for money had and received to his use for the purposes of this Act, whereby an action hath accrued to the plaintiff to demand and have the same from such executors or administrators, and a like action may be brought against any executors or administrators of executors or administrators; and in all such actions the defendant or defendants may plead in like manner and avail themselves of the like matters in defence, as in any action

founded upon simple contracts of the original testator or intestate, and the Court may refer the account in dispute to be audited by any officer or person, and may proceed upon the report of such referee in like manner as is hereinbefore mentioned.

XV. And be it enacted, that in all actions to be brought as well as in all proceedings whatsoever to be instituted or carried on by any Treasurer by virtue of this Act, proof of his acting in the execution of the office of Treasurer shall be sufficient evidence of his holding such office, unless the contrary shall be shewn in evidence by the defendants in such actions, or the parties against whom such proceedings shall be instituted and carried on.

XVI. And be it enacted, that the Treasurers and Clerks who shall receive any monies in the execution of their duty, shall give security for such sum, and with as many sureties and in such manner and form as the Governor of this Province shall see reason to direct, for the due performance of their several offices and for the due payment of all monies received by them under any provision of this Act.

XVII. And be it enacted, that no other or greater fee than is set down in the Schedule hereunto annexed, shall be received or taken for any business done or service rendered by any Judge, Clerk or Sheriff in any District Court.

XVIII. And be it enacted, that the Judge of the District Court, being also a Justice of the Peace for such District, shall also preside as Chairman at the General Quarter Sessions of the Peace, for the District of which he shall be the Judge.

XIX. And be it enacted, that each and every Clerk of such District Court shall hold his office in the District Town in each and every District, and shall keep such office open for the transaction of business pertaining to such Office on each and every day (Sundays and the usual legal Holidays excepted) from the hour of ten o'clock in the forenoon to the hour of three in the afternoon.

XX. And be it enacted, that the word "Governor" in this Act, shall mean the Governor, Lieutenant Governor, or person administering the Government of this Province, and the words "Canada West," shall mean all that part of this Province which formerly constituted the Province of Upper Canada.

XXI. Provided always, and be it enacted, that nothing in this Act or in an Act passed during the present Session of the Legislature, and intituled *An Act to repeal the Laws now in force in that part of this Province formerly called Upper Canada for the recovery of small debts and to make other provision therefor* shall be construed to prevent any person who was a Judge of any District Court in that part of the Province formerly called Upper Canada, at the time of the passing of the said Act or of this Act, and who also now is a Member of the Legislative Assembly of this Province, from continuing to sit and vote in the said Assembly during the present Parliament; any thing in the said Act or in this Act to the contrary notwithstanding.

### Schedule of Fees.

	S.	D.
Every Writ of Summons . . . . .	5	0
every Capias ad Respondendum . . . . .	5	0
Every Subpoena . . . . .	2	6
Every Verdict . . . . .	5	0
Every Judgment entered including taxation of costs . . . . .	10	0
Every taxation of costs where no Judgment entered . . . . .	2	6
Every rule requiring a motion in open Court and every rule or order of reference . . . . .	5	0
Every other rule . . . . .	2	6
Every recognizance of Bail . . . . .	2	6
Every Affidavit by Judge or Clerk on oath to a Witness . . . . .	1	0
Every Writ of Execution . . . . .	5	0

### To the Sheriff.

Every Jury sworn . . . . .	5	0
Every Summons or Capias served . . . . .	2	6
Every Declaration, Rule, Demand of Plea or Notice served . . . . .	1	3
Every Execution received . . . . .	1	3
Every Return of Execution made . . . . .	2	6
Every other Return of Execution . . . . .	1	3
Poundage on all Writs of Execution, £2 10s per cent.		
Mileage four pence per mile on all Writes Executed		
Every Bail Bond . . . . .	2	6
Every Assignment . . . . .	2	6