

Provincial Statutes of Canada, passed in the year 1845. Montreal: Stewart Derbishire & George Desbarats, 1845.

8 Victoria – Chapter 4

An Act to provide for the Management of the Customs and of matters relative to the Collection of the Provincial Revenue. (17th March, 1845.)

Whereas it is expedient to repeal the Acts, Ordinances and Provisions of law hereinafter mentioned, relative to the management of the Customs and of matters relative to the Collection of the Provincial Revenue, to the end that the provisions of law relative to the matters aforesaid may be amended, consolidated and made uniform throughout this Province: 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 the Act of the Legislature of the Province of Lower Canada, passed in the fourth year of the Reign of His late Majesty King George the Fourth, and intituled, "An Act to authorize the Governor, Lieutenant Governor, or Person administering the Government of the Province, to restore Goods and Vessels seized to the proprietor or proprietors, on the terms and conditions therein mentioned;" and the Act of the said Legislature, passed in the seventh year of the Reign last aforesaid, and intituled, "An Act to establish the manner of issuing Licenses on which duties are imposed by any laws in force in this Province;" and the Act of the said Legislature, passed in the sixth year of the Reign of His late Majesty King William the Fourth, and intituled, "An Act to regulate and establish the Salaries of the Officers of the Customs at the inland Ports in this Province, and for other purposes therein mentioned; and so much of the Act of the Legislature of Upper Canada, passed in the forty-fifth year of the Reign of His Majesty King George the Third, intituled, "An Act for altering the time of issuing Licenses for keeping a House of Public Entertainment, or for the Retailing of Wine, Brandy, Rum, or any other Spirituous Liquors, or for the having and using of Stills for the purpose of Distilling Spirituous Liquors, and for repealing so much of an Act passed in the forty-third year of His Majesty's Reign as relates to the period, of paying into the hands of the Receiver General the Monies collected by the Inspector of each and every District throughout this Province for such Licenses;" or of the Act of the said Legislature, passed in the fourth year of the Reign of His late Majesty King George the Fourth, and intituled, "An Act to repeal an Act passed in the forty first year of His late Majesty's Reign, intituled: 'An Act for granting to His Majesty, His Heirs and Successors, to and for the uses of this Province, the like Duties on Goods and Produce brought, into this Province from the United States of America, as are now paid on Goods and Merchandize imported from Great Britain and other places;" and also, an Act passed in the forty-third year of His late Majesty's Reign, intituled, "An Act to explain and amend an Act passed in the forty-first year of His Majesty's Reign, intituled, 'An Act for granting to His Majesty, His Heirs and Successors, to and for the uses of this Province, the like Duties on Goods and Merchandize brought into this Province from the United States of America, as are now paid on Goods and Merchandize imported from Great Britain and other places and to provide more

effectually for the collection and payment of Duties on Goods and Merchandize coming from the United States of America into this Province, and also, to establish a fund for the erection and repairing of Light Houses, and to make more effectual provision for the due collection of Duties on Goods imported into this Province;” or of the Act of the said Legislature, passed in the seventh year of the Reign of His late Majesty King William the Fourth, and intituled, “An Act to amend the laws relating to the collection of duties on Imports from the United States into this Province, and for other purposes therein mentioned;” or of the Act of the said Legislature, passed in the third year of Her Majesty’s Reign, and intituled, “An Act to regulate the time for making returns and payments by Collectors and other persons receiving the Public Revenues of this Province, and for other purposes;” or of the Act of the said Legislature, passed in the same year of the same Reign, and intituled, “An Act for further regulating the manner of granting Licenses to Inn Keepers, and to the Keepers of Ale and Beer houses within this Province;” or of any other Act, Ordinance or Law, whether of the Legislature of this Province or of the Legislature of Lower Canada or of Upper Canada, as may be in any wise inconsistent with or repugnant to the provisions of this Act, shall be and the said Acts, parts of Acts, Laws and provisions of Law are hereby repealed from and after the Fifth day of April, one thousand eight hundred and forty-five, and that the following provisions of this Act shall commence and have force and effect from and after the sixth day of April, in the year of our Lord, one thousand eight hundred and forty-five, and not before.

II. And be it enacted, That all commissions and appointments of any officers or persons employed in the collection or management of the Revenue, or in accounting for the same, in force at the time this Act shall commence, shall continue in force, and the nature of the duties and local extent of the powers of each office, shall, until they be expressly altered, remain the same as if granted or made under the authority of this Act, subject always to the provisions and enactments thereof; and that all bonds which shall have been given by such officers or persons, or their sureties, shall remain in full force and effect.

III. And be it enacted, That in so far as may be consistent with the Acts of the Parliament of the United Kingdom in force in this Province, it shall be lawful for the Governor of this Province in Council from time to time to determine what officers or persons it may be necessary to employ in collecting, managing, or accounting for the Provincial Revenue, and in carrying into effect the laws thereunto relating, or for preventing any contravention of such laws, and to assign their names of office, and to grant to such officers or persons as aforesaid such salaries or pay for their labour and responsibility in execution of the duties of their respective offices and employments, as to the said Governor in Council shall seem reasonable and necessary, and to appoint the times and manner in which the same shall be paid: Provided always, that no officer or person as aforesaid, appointed under the authority of this Act, shall be paid a higher annual salary than five hundred pounds currency.

IV. And be it enacted, That the salary or pay allowed to any such officer or person as aforesaid shall be in lieu of all fees, allowances or emoluments of any kind whatsoever, except actual and authorized disbursements, shares of seizures, forfeitures and penalties excepted, and that no person, whether appointed before or after this Act shall come into force, who shall receive a salary at or exceeding the rate of two hundred and fifty pounds, currency, per annum, shall exercise any

other calling, profession, trade or employment whatsoever, with a view to derive profit therefrom, directly or indirectly, or shall hold any other office of profit whatsoever, except it be an office relating to the management and collection of the Revenue and the accounting for the same, and held by such officer or person with the permission of the Governor in Council.

V. And be it enacted, That it shall be lawful for the Governor in Council, from time to time, to make all such new divisions of the Province into Districts or otherwise, as may be required with regard to the collection or management of the Revenue, and to assign the officers or persons by whom any duty or service relative to any such purpose shall be performed within or for any such District or division, and the place or places within the same, where such duty or service shall be performed; and to make all such regulations concerning such officers and persons, and the conduct and management of the business to them intrusted, as may be consistent with the law, and as he may deem expedient for carrying it into effect, in the manner best adapted to promote the public good; and any general regulation or order made by the Governor in Council for any purpose whatever for which an order or regulation may be so made under the provisions of this Act, shall apply to each particular case within the intent and meaning of such general regulation or order, as fully and effectually as if the same had been made with reference to such particular case, and the officers, functionaries or parties concerned had been specially named therein: Provided also, that a printed copy of any regulation or order of the Governor in Council, printed by the Queen's Printer, or a written copy thereof attested by the signature of the Clerk of the Executive Council, shall be evidence of such regulation or order; and any order in writing, signed by the Provincial Secretary, and purporting to be written by command of the Governor, shall be received in evidence as the order of the Governor.

VI. And be it enacted, That every person employed on any duty or service relating to the collection or management of the Revenue, by the orders or with the concurrence of the Governor in Council (whether previously or subsequently expressed) shall be deemed to be the proper officer for that duty or service; and that every act, matter or thing required by any law at any time in force to be done or performed by, to, or with any particular officer nominated in such law for that purpose, being done or performed by, to, or with any person appointed or authorised by the Governor in Council to act for or in behalf of such particular officer, shall be deemed to be done or performed by, to, or with such particular officer; and every act, matter or thing required by any law, at any time in force, to be done or performed at any particular place within any port, or within any such District or division of this Province, as aforesaid, being done or performed at any place within such port, District or division, appointed by the Governor in Council for such purpose, shall be deemed to be done or performed at the particular place so required by law.

VII. And be it enacted, That any officer or person employed in the collection, management or accounting for any branch of the Revenue, may be employed in the collection, management or accounting for any other branch thereof, whenever it may be deemed advantageous for the public service so to employ him.

VIII. And be it enacted, That it shall be lawful for the Governor in Council, from time to time, to appoint the hours of general attendance of the officers and persons employed in the collection

and management of the Revenue, at their proper offices and places of employment, and also to appoint the times during such hours, or the seasons of the year, at which any particular parts of the duties of such officers or other persons shall be performed by them respectively: Provided always, that a notice of the hours of general attendance so appointed shall be kept constantly posted up in some conspicuous place in such offices and places of appointment.

IX. And be it enacted, That no day shall be kept as a public holiday by the officers and persons employed in the collection and management of the Revenue, except Christmas day, New Year's day and Good Friday in every year, any days appointed by Proclamation of the Governor for the purpose of a general fast, or of a general thanksgiving, and such days as shall have been appointed for the celebration of the birth-days of Her Majesty and Her Royal Successors, and such other days as may be from time to time appointed as holidays by the Governor in Council.

X. And be it enacted, That it shall be lawful for the Governor in Council, from time to time to appoint the times and mode in which any officer or person employed in the collection, management or accounting for any part of the Revenue, shall account for and pay over the public monies which may come into his hands, to the officer appointed to receive the same, and to determine the times, manner and form in which, and the officer by whom all Licenses on which any duty shall be payable are to be issued: Provided that such accounts and payments shall be rendered and made by such officers respectively, at least once in every three months.

XI. And be it enacted, That it shall be lawful for the Governor in Council, to direct any officer or person employed in collecting, managing or accounting for any branch of the Provincial Revenue, to keep any books or accounts which they may deem it advisable to direct to be kept for the purpose of obtaining any statistical information concerning the trade or commerce of the Province, the public works thereof, or other matters of public interest, and to authorize and allow any necessary expense incurred for such purpose.

XII. And be it enacted, That every person who shall be appointed, after the commencement of this Act, to any office or employment relative to the collection or management of the Revenue, or in accounting for the same, shall at his admission to such office or employment take the following oath, before such officer as the Governor shall appoint to receive the same; that is to say:

"I, A. B. do swear to be true and faithful in the execution, to the best of my knowledge and power, of the trust committed to my charge, by my appointment as _____ and that I will not require, take or receive any fee, perquisite, gratuity or reward, whether pecuniary or of any other sort or description whatever, either directly or indirectly, for any service, act, duty, matter or thing done or performed or to be done or performed in the execution or discharge of any of the duties of my said office or employment, on any account whatever other than my salary, or what shall be allowed me by law, or by order of the Governor of this Province in Council.—So help me God."

XIII. And be it enacted, That if any officer or any person acting in any office or employment connected with the collection and management of the Revenue or the accounting for the same, shall take or receive any fee, perquisite, gratuity or reward, whether pecuniary or of any other sort

or description whatever, directly or indirectly, from any person (not being an officer or person legally authorized to pay or allow the same,) on account of any thing done by him in any way relating to it is office or employment, except such as he shall receive by order or with the permission of the Governor in Council, every such officer or person so offending shall on proof thereof, to the satisfaction of the Governor, be dismissed from his office or employment, and if any person (not being an officer duly authorized to pay or allow the same,) shall give, offer or promise any such fee, perquisite, gratuity, or reward, such person shall for every such offence, incur a penalty of one hundred pounds currency, which penalty shall be recoverable in any Court having jurisdiction in civil cases to a like amount.

XIV. And be it enacted, That in all cases wherein proof on oath or by affirmation or declaration shall be required by any law relating to the collection or management of the Revenue or to the accounting for the same, or shall be necessary for the satisfaction or consideration of the Governor in Council, in any matter relating to the collection or management of the Revenue or to the accounting for the same, and no person or officer shall be specially named as the officer or person before whom the same is to be made, it may be made before any Collector or Chief officer of the Customs for the port or place where such proof is required, or before the persons acting for them respectively, or before such other officer or person as shall be appointed to receive the same by the Governor, and such officers and persons are hereby authorized and empowered to administer such oath or affirmation or receive such declaration; and in any case or class of cases, where an oath is or shall be required by this Act or by any law in force or to be hereafter in force, in any matter relating to the collection or management of the Revenue or the accounting for the same, it shall be lawful for the Governor in Council, if he shall deem it fit, to authorize the substitution for such oath, of a solemn affirmation or of a declaration, which shall then avail to all intents and purposes as such oath would have done.

XV. And be it enacted, That upon all examinations and inquiries made by order of the Governor in Council, for ascertaining the truth as to any fact relative to any matter concerning the collection or management of the Revenue, or the accounting for the same, or the conduct of officers or persons employed therein, and upon like examinations and inquiries made by the Collector of the Customs, or by the chief officer employed in the collection and management of the Revenue, in or at any port, district or place, or by any person or officer authorized by the Governor in Council to make such examinations and inquiries, any person to be examined as a witness shall deliver his testimony on oath to be administered to him by the officer or person making the examination or inquiry, who is hereby authorized and empowered to administer the same: and any person wilfully making any false statement, in any such examination upon oath or in any solemn affirmation or declaration substituted as aforesaid for an oath, whether such oath shall have been required by this Act or by any other Act relating to the Revenue, shall be deemed guilty of wilful and corrupt perjury, or of a misdemeanour punishable in the same manner as wilful and corrupt perjury, and shall on conviction be liable to be punished accordingly.

XVI. And be it enacted, That all books, papers, accounts, and documents of what kind soever, and by whom and at whose cost soever the paper and materials thereof may have been procured or furnished, which shall have been kept by or used, or shall have been received or taken into the

possession of any officer or person employed or having been employed in the collection or management of the Revenue or in accounting for the same, by virtue of his employment as such, shall be deemed to be chattels belonging to Her Majesty, and all monies or valuable securities which shall have been received or taken into his possession by virtue of his employment shall be deemed to be monies and valuable securities belonging to Her Majesty; and if any such officer or person shall at any time fraudulently embezzle any such chattel, money or valuable security, (and any refusal or failure to pay over or deliver up any such chattel, money or valuable security to any officer or person who being duly authorized by the Governor in Council, shall demand the same after the passing of this Act, shall be a fraudulent embezzlement thereof,) he shall be deemed to have feloniously stolen the same, and may be indicted and proceeded against, and being convicted thereof shall be liable to be punished, in the same manner as any servant who having fraudulently embezzled any chattel, money, or valuable security, received or taken into his possession by virtue of his employment, for or on the account of his master and being in law deemed to have feloniously stolen the same, may be indicted, proceeded against and punished: Provided always, that nothing herein contained shall prevent, lessen or impeach any remedy which Her Majesty or any other party may have against such offender or his sureties, or against any other party whomsoever; but nevertheless the conviction of any such offender shall not be received in evidence in any suit or action at law or in equity, against him.

XVII. And be it enacted, That if at any time it shall appear clearly, by the books or accounts kept by or in the office or any officer or person employed in the collection or management of the Revenue or in accounting for the same, or by his written acknowledgment or confession, that such officer or person hath by virtue of his office or employment received monies belonging to Her Majesty, and amounting to a sum certain, which he hath refused or neglected to pay over to the officer duly appointed to receive the same, and in the manner and at the time lawfully appointed, then upon affidavit of the facts, made by any officer cognisant thereof, thereunto authorized by the Governor in Council, before a Justice or Judge of any Court having jurisdiction in civil matters to the amount of the sum so ascertained as aforesaid, it shall be lawful for such Justice or Judge to cause to be issued against, and for the seizure and sale of the goods, chattels and lands of the officer or person so in default as aforesaid, such writ or writs as might have issued out of such Court, if the bond given by him had been put in suit, and judgment had been thereupon obtained in favour of Her Majesty, for a like sum, and any delay by law allowed between judgment and execution had expired; and such writ or writs shall be executed by the Sheriff or other proper officer, and such sum as aforesaid shall be levied under them with costs, and all further proceedings shall he had, as if such judgment as aforesaid had been actually obtained.

XVIII. And be it enacted, That no officer or person regularly employed in the collection or management of the Revenue, or in accounting for the same, shall while he shall be such officer or so employed, be compelled to serve in any other public office, or in any municipal or local office, or on any jury or inquest, or in the militia; any law, usage or custom to the contrary notwithstanding.

XIX. And whereas it is expedient that the Executive Government should be empowered to relax the strictness of the laws relative to the collection of the Revenue, in cases where without such relaxation great public inconvenience or great hardship and injustice to individuals could not be

avoided: Be it therefore enacted, That it shall be lawful for the Governor of this Province when he shall deem it right and conducive to the public good, to remit any duty or toll payable to Her Majesty, imposed, or authorized to be imposed by any Act of the Provincial Legislature, or any forfeiture or pecuniary penalty imposed or authorized to be imposed by any such Act, for any contravention of the laws relating to the collection of the Revenue or to the management of any public work producing toll or revenue, although any part of such forfeiture or penalty be given by law to the informer or prosecutor, or to any other party; and such remission may be made by any general regulation or by any special order in any particular case, and may be total or partial, unconditional or conditional, and if conditional, and the condition be not performed, the order made in the case shall be null and void, and all proceedings may be had and taken as if it had not been made: Provided always, that a detailed statement of all such remissions as aforesaid, shall be annually submitted to the several branches of the Legislature, within the first fifteen days of each ensuing session thereof.

XX. Provided always, and be it enacted, That if the Governor of this Province shall direct, that the whole or any part of any penalty imposed by any Act relating to the Revenue be remitted or returned to the offender, such remission or return shall have the effect of a pardon for the offence for which the penalty shall have been incurred, which shall thereafter have no legal effect prejudicial to the party to whom such remission shall have been granted: Provided also, that it shall be lawful for Her Majesty's Attorney General or other law officer to sue for and recover in Her Majesty's name, any penalty or forfeiture imposed by any Act relating to the Revenue, before any Court or other judicial authority, before which such penalty or forfeiture shall be recoverable under such Act, (and in such case, the whole of such penalty or forfeiture, shall belong to Her Majesty for the public uses of the Province, unless the Governor in Council shall, as he is hereby empowered to do, allow any portion thereof to the seizing officer or other person by whose information or aid the penalty or forfeiture shall have been recovered,) or to direct the discontinuance of any suit for any such penalty, by whom or in whose name soever, the same shall have been brought; any thing in any Act, whether passed during the present Session or otherwise, or in any law to the contrary notwithstanding.

XXI. And be it enacted, That the words " Governor " or " Governor of this Province, " whenever they occur in this Act, shall be understood to mean and include the Lieutenant Governor, or person administering the Government; and whenever anything is directed to be done by the " Governor in Council, " it shall be understood that the same is to be done by the Governor, Lieutenant Governor, or person administering the Government of this Province, by and with the advice and consent of the Executive Council thereof; and the words " Provincial Revenue " or " Revenue, " shall be understood to mean and include and apply to all Provincial Revenue and branches thereof, and public monies, whether arising from duties of Customs or other duties, or from tolls for the use of any public works, or from penalties or forfeitures, or other source whatsoever, in so far as the collection, management and accounting for the same, shall be respectively subject to the control of the Provincial Legislature; and any officer, functionary, or person whose duty it shall be to receive any monies forming part of the Revenue, or who shall be entrusted with the custody or expenditure of any such monies, although he may not be regularly employed in collecting, managing or accounting for the same, shall be subject to the provisions of

this Act, so far as regards the accounting for and paying over such monies, whatever be the office or employment by virtue of which he shall receive or be entrusted with the same; and words importing the singular number only shall be understood to include several persons, matters or things of the same kind, as well as one person, matter or thing, unless it be otherwise specially provided, or there be something in the subject or context, repugnant to or inconsistent with such construction.

XXII. Provided always, and be it enacted, That nothing in this Act contained, shall be construed to repeal or alter any enactment in the Act passed in the Session held in the fourth and fifth years of Her Majesty's Reign, and intituled, "An Act for the Disposal of the Public Lands," but this Act shall apply to Revenue derived from the lands in the said Act mentioned, and to the officers and persons employed in collecting, managing, and accounting for the same, in so far only as its provisions shall be consistent with those of the said Act.

XXIII. And be it enacted, That this Act may be altered, varied or repealed by any Act to be passed during the present Session.

XXIV. And be it enacted, That this Act shall remain in force until the fifth day of April, one thousand eight hundred and forty-eight, and thence until the end of the then next Session of the Provincial Parliament, and no longer.