

behalf authorized, unto the Lord High Chancellor, &c., or unto any of the Courts, &c., or unto a Judge of any of the Courts, &c., in which the business contained in such bill, or the greatest part thereof in amount or value was transacted, and upon the submission of the said party or parties, &c., to pay the whole sum that upon taxation of the said bill should appear to be due to the said Attorney or Solicitor respectively, it should be lawful for the said Lord High Chancellor, Court, Judge, &c., to refer the bill and the Attorney or Solicitor's demand thereupon (although no action or suit should be depending in such Court touching the same) to be taxed and settled by the proper officer of such Court without any money being brought into the Court for that purpose.

"3. That if the Attorney or Solicitor, or party or parties chargeable by such bill having due notice, should refuse or neglect to attend the taxation the officer might proceed to tax the bill *ex parte*, pending which reference and taxation no action should be commenced or prosecuted touching the demand.

"4. That upon the taxation and settlement of such bill and demand the party or parties should forthwith pay to the Attorney or Solicitor, &c., the whole sum that should be found to be or remain due thereon, which payment should be a full discharge of the said bill and demand, and in default thereof should be liable to an attachment or process of contempt or other proceeding at the election of the Attorney or Solicitor.

"5. That if upon the taxation and settlement it should be found that the Attorney or Solicitor was overpaid, then the Attorney or Solicitor should forthwith refund all such monies as the taxing officer should certify to have been overpaid, and in default that the Attorney or Solicitor should in like manner be liable to an attachment or process of contempt.

"6. That the costs of such taxations should be awarded according to the event of the taxation of the bill, that is to say, if the bill taxed be less by a sixth part than the bill delivered, then the Attorney or Solicitor should pay the costs of the taxation, and if not less the Court in its discretion should charge the Attorney or client in regard to the reasonableness and unreasonableness of such bills."

Without discussing the various provisions of this Statute we may remark, that as compared with subsequent Statutes the following appear to be some of its distinguishing characteristics. The power to tax was after delivery of bill. The time for the application was according to the intention of the Act, within a month after delivery. The applicant was required to be the party chargeable. It applied only to business transacted in some one or other of the Courts. The application was required to be made to

the Court in which the business contained in such bill, or the greatest part thereof in amount or value was transacted.

In Upper Canada the power to refer a bill to taxation until the passing of the Stat. 16 Vic., cap. 175, appears to have been derived entirely from the Eng. Stat. 2 Geo. II. cap. 23, s. 23. (*In re Jones* 3 U. C. L. J. 167.)

The 16 Vic., cap. 175, was in some respects an extension of the provisions of the old Act.

It expressly allowed an application after the expiration of one month from delivery with such directions and subject to such conditions as the Court or Judge making such reference should decide proper, but provided that no such reference should be made after a verdict obtained or writ of enquiry executed in any action for the recovery of the demand or after the expiration of twelve months from the delivery of the bill, except under special circumstances to be proved to the satisfaction of the Court or Judge.

The reference was permitted to the proper officer of the Court in which any of the business charged was done. It empowered the officer to whom the reference was made to request the proper officer of any other Court to assist in taxing and settling any part of the bill. If more than a sixth were disallowed the Attorney was required to pay the costs of taxation. If less, the party chargeable. In the former Act on this latter point the Court had a discretion.

The Courts also were empowered in cases when authorized to refer a bill when delivered, if no bill were delivered to order the delivery of the same, and to make an order for the delivery up of deeds, documents, and papers in the possession, custody, or power of the Attorney (s. 20), provided for a reference upon the application of a party liable to pay though not the party chargeable (s. 21), and also for the delivery of a bill to a party liable though not chargeable (s. 22).

It also in express terms declared that the payment of any such bill should in no case preclude the Court or Judge from referring the bill, if the special circumstances of the case in the opinion of the Court or Judge appeared to require the same; upon such terms and conditions, and subject to such directions as to such Court or Judge should seem right, provided the application were made within twelve months after payment (s. 23).

Such was the law until the passing of the Consolidated Act of Upper Canada, cap. 35. The whole law on the subject is now contained in eighteen sections of that Act, numbering from s. 27 to s. 44 inclusive. They are substantially a re-enactment of the old Statute of 2 Geo. II. c. 23, s. 23, and 16 Vic. c. 175, s. 20, 21 and 22.

Our 16 Vic. cap. 175 appears to have been based upon the Eng. Stat. 6 & 7 Vic. c. 73, s. 37, 38 and 39, which repealed and re-enacted the Eng. Stat. 2 Geo. II. cap. 23