

The Legal News.

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APPEALS FROM THE CIRCUIT COURT.

In appeals from the Circuit Court to the Court of Queen's Bench is it obligatory on the parties to file factums?

The origin of the *factum* or case in our Court of Queen's Bench, as an obligatory proceeding, seems to be a rule of Practice, No. xxi, published by the Provincial Court of Appeals on the 19th of January, 1809.* It is as follows:—

"That the cases of the appellant and respondent in each suit and appeal to the number of six on each side, shall from henceforth be filed by the appellant or respondent respectively, in the office of the clerk of this Court, within ten days after the filing of the reasons of Appeal, and be by him distributed to the members of this Court who shall sit for hearing of such suit and appeal, &c."

The authority of the Court of Appeals to make this rule cannot be questioned. See Ord. 27 Geo. III. cap. 4, and 41 Geo. III cap. 7, sect. 16. The rule remained in force till 1849, then the 12th Vict. cap. 37, sect. 16, enacted:—

"That all and every the Laws, which immediately before the coming into force of the Act hereinbefore cited and repealed, were in force in Lower Canada, to govern and direct the proceedings and practice of the Provincial Court of Appeals abolished by the said Act,

* See Rules and Orders of Practice for the Court of King's Bench, District of Montreal, February Term, 1811. Amended and augmented till the 20th June, 1823, to which is added the rules and orders of Practice in the Provincial Court of Appeals. Montreal, printed by T. A. Turner, No. 16, Notre Dame street, for Joseph Nickless, book-seller, 1823. It may be interesting to know who were present in the Provincial Court of Appeals when these rules were promulgated. They were: The Hon. Jonathan Sewell, Chief Justice of the Province, the Hon. and Right Rev. the Lord Bishop of Quebec, the Hon. James Monk, Chief Justice of the Court of King's Bench for the District of Montreal.

The Hon. Thomas Dunn, Jenkin Williams,
Francis Baby, P. Louis Panet,
James McGill, P. Amable Debonne,
John Young, John Richardson.

in so far as they are not repealed or varied by this Act, or by any other Act of this session, or inconsistent with the provisions of such Act or of this Act, shall continue to be in force and shall apply to and be observed in and by the Court hereby established, in the same manner as though they would have applied to and been observed in and by the said Provincial Court of Appeals, if neither the said Act nor this Act had been passed."

Section 17 further enacted:

"That the said Court, shall and may (and it shall be the duty of the Court so to do, within one year from the time when this Act shall come into effect,) make and establish a Tariff of Fees for the officers of the said Court and the Council, Advocates and Attorneys practising therein, and also such rules of Practice as shall be requisite for regulating the due conduct of the causes, matters and business before the said Court or the Judges thereof, or any of them, and in term or out of term, and all process and proceedings therein or thereunto relating; which tariff of fees and rules of Practice the said Court shall have full power and authority to repeal, alter and amend from time to time: Provided always, that no such rule of Practice shall be contrary to or inconsistent with this Act, or any other Act or law in force in Lower Canada, otherwise the same shall be null and void: And provided also, that until such tariff of Fees and Rules of Practice shall be made and duly established by the said Court, the Tariff of Fees and Rules of Practice in force immediately before the coming of this Act into full effect, with regard to the "Court of Appeals for Lower Canada," established by the Act hereinbefore cited and repealed, shall continue to be in force and shall apply to the Court hereby established and the proceedings therein, subject to such amendments and alterations as shall be from time to time made therein by the said Court."

The 12th July, 1850, rules were passed under the authority of the 12 Vict., the 14th of which is as follows:—

"That the cases of the appellant and respondent or plaintiff and defendant in error, in every suit in appeal, or error, to the number of ten (now forty, see rule of 21st June, 1879) on each side, shall be delivered by the