

To Mr. Potts succeeded Mr. Johnston, Mr. Levens, Mr. Ogden, Mr. Sewell, and the present possessor of the Office, Mr. Kerr in succession.

Mr. Johnston was appointed in 1769, "with power of taking and receiving such Salary as should thereafter be appointed, and *in the mean time*, to take such profits, advantages and emoluments to the said office belonging, and such Fees as should be approved by His Excellency."

Mr. Kerr was appointed in 1797.

No Salary, (as far as can now be shewn,) was received by Mr. Potts, and no Fees by any of his successors, after a Salary was given, until the year 1809, when Mr. Kerr, under the sanction of his Commission, which authorized him as Mr. Potts was authorized to take and receive "all and every the wages, fees, profits, advantages and commodities whatsoever in any manner due, and anciently belonging to the said Office, according to the Customs of our High Court of Admiralty of England," recommenced the practice of taking Fees.

There can be little doubt that the Judge of the Court of Vice Admiralty in Canada has a right to Fees, but to what Fees? it belongs to the High Court of Admiralty of England to determine, and such has been the import of a recent decision of the Court of King's Bench for the District of Quebec, in the case of Wilson, vs. Kerr, which is annexed to this statement. But whether he has a right to receive a Salary, and at the same time to receive Fees, is a different question, and is in fact the real question.

The proceeding upon facts & articles in this Province, is similar to the proceeding by Bill and answer in Chancery in England; and to the proceeding on facts & articles, recourse was had in the above case of Wilson vs. Kerr.

In the course of this proceeding Mr. Kerr, in answer to an inquiry in these terms:—"Is it not true that the Tariff of Fees in use in the said Court of Vice Admiralty immediately before or at the time that you were appointed Judge of the said Court, contained no item of Fees to the Judge?"—Says, "Yes, an old Table of Fees which was made in the year 1780, (I think,) and which was in use in that Court when I was appointed Judge in the year 1797, (seven years after the Fee Ordinance had expired,) contained no item of Fees to the Judge, nor did it prohibit his taking Fees, but contented itself with giving an intimation that the Judge of the Court of Vice Admiralty had a Salary of £200 per annum in lieu of Fees, thereby alluding to the private and personal arrangement entered into between Governor Carleton, and my Predecessor, Judge Johnston."

The Fee Ordinance to which this answer refers, was passed by the Legislative Council of Quebec, in the year 1780, and contains the following declaration.

"Fees to be taken in the Court of Vice Admiralty."

Ordinances (Folio Edition,) of 19th & 20th Geo. 3. p. 53.

"The Judge of this Court is allowed by His Majesty a Salary of Two hundred pounds sterling per annum, *in lieu of Fees.*"

What arrangement was made between Governor Carleton and Judge Johnston cannot be ascertained, beyond what is stated, from any Document within my knowledge.

(Signed,) J. SEWELL.

Quebec, May, 1829.

A true Copy,

H. Craig, Secretary.