

EX PARTE POUSSETTE AND THE COURT OF QUARTER SESSIONS OF
THE COUNTY OF LAMBTON.

Clerks of the Peace—Their fees—Tariff 1862

Con. Stat. U. C. cap. 24 sec. 145; Con. Stat. U. C. cap. 31 sec. 78; Con. Stat. U. C. cap. 19, sec. 6, 8, 15.

- Held*, 1. That clerks of the peace are entitled only to payment for one general quarterly return of all convictions which have taken place before any justice or justices or before the court of quarter sessions, and not to payment for separate returns of the convictions had before each individual justice of the peace—in fact to payment for only four lists or schedules annually.
2. That the proceedings required under sec. 78 of the Jury Act for drafting the panel from the jury list, are not to be considered tantamount to a "special sessions of the peace," so as to entitle clerks of the peace to make a charge therefor.
3. That clerks of the peace are not entitled to charge for filing orders fixing the times and places of holding division courts, or for communicating the same to the clerks of the respective courts, but only for orders of session—arranging, fixing or altering the limits of division courts, or other acts of the court of quarter sessions.

(Easter Term, 1863)

Christopher Robinson in Hilary Term last obtained a rule nisi calling upon the Court of Quarter Sessions in and for the county of Lambton to shew cause why a writ of *mandamus* should not issue, commanding them to allow the following charges made in Mr. Pousette's account as Clerk of the Peace:

Drawing up quarterly returns of convictions from 18 lists of justices, for each list, \$1.....	\$18 00
Attending special sessions of justices to draft jurors for September sessions.....	2 50
Filing order for the times and places of holding division courts in the month of June.....	0 08
Entering above order in the book of orders.....	1 00
Copy for Provincial Secretary.....	1 00
Copies for clerks of seven courts.....	7 00

R. A. Harrison shewed cause, contending—1. That the clerk of the peace was entitled to charge only for one general return, and not for a separate return of the convictions of each magistrate, as charged. 2. That the meeting of justices to draft jurors is not a special session within the meaning of the tariff, and so charge therefor properly rejected. 3. That clerks of the peace have nothing whatever to do with the times and places of holding division courts, and so all charges in respect thereof properly disallowed.

Christopher Robinson supported the rule.

The statutes referred to in the argument are mentioned in the judgment of the court.

HAGARTY, J.—I do not feel any reasonable doubt as to the construction to be placed on cap. 124 Consolidated Statutes Upper Canada.

Every justice of the peace is by section 1 bound to make a return of every conviction to the next ensuing general quarter sessions, (and when two justices act the return is to be immediate) and he is also to make return of monies paid to him thereon, which return the clerk of the peace is to file with the records of his office.

Sec. 4 enacts that the clerk of the peace shall, within seven days after adjournment of the quarter sessions publish such returns, and also fix in his office for public inspection "a schedule of the returns so made by such justices," to remain up for a specified time; and for every schedule so made and exhibited by the said clerk of the peace, he shall be allowed in his accounts \$1, besides expense of publication.

Sec. 5 directs the clerk of the peace within twenty days after the end of the quarter sessions to transmit to the Minister of Finance "a true copy of all such returns made within his county." Cap. 23 Consol. Stats. Canada, sec. 36, directs all clerks of the peace to return to the Board of Registration and Statistics, in triplicate, lists of all convictions had before either courts of quarter sessions or before individual magistrates in their respective counties.

I have no doubt that the act first cited merely contemplates one general schedule to be periodically prepared by the clerk of the peace, embracing all the returns made by the justices to such period, and that the sum of \$4 is his fixed fee therefor.

We were referred to the Tariff of Fees settled by the judges in 1862.

No. 57 of that tariff allows a fee of \$1 for making out and

transmitting to the Inspector General a return or schedule of all convictions which has taken place before any justice or justices or before the court, each list \$1.

This, I think, means each list sent by him, as directed by the statute, within twenty days after some court of quarter sessions—in fact only four lists or schedules annually.

I cannot consider the proceedings on drafting of the panel from the jury list, under sec. 78 of the Jury Law, cap. 31 U. C. Con. Stats., as tantamount to "a special sessions of the peace." The sheriff attends according to public notice at the office of the clerk of the peace, and in presence of the clerk of the peace and any two justices proceeds to draft. By sec. 83 he draws a ballot and declares the number, whereupon the clerk of the peace, or one of the justices of the peace present, declares the number aloud, and by sub-sec. 3 the sheriff marks down the name corresponding thereto, and, when all is done, the names of the sheriff or deputy and of the clerk of the peace and justices present, or at least of two of them, shall be entered in the book and attested by them, &c.

Nothing herein seems to indicate the acts of a court, nor is the clerk of the peace as such directed to record anything as the act of a court.

It remains to consider a class of charges made by Mr. Pousette, such as—"Filing order for times and places for holding division courts in month of June; entering that order in the book of orders; copy for Provincial Secretary; and copies for clerks of seven courts."

The point in dispute seems to stand thus. After each division court the judge names the time and place for the ensuing court, and the charges are all made in reference to this. The magistrates urge that unless some change be made by them in the limits of the division courts the charges are improper.

In the schedule of services performable by the clerk of the peace, attached to chapter 120 Consol. Statutes Upper Canada are several items:—

"Making up books and orders of sessions declaring the limits of division courts, and entering the times and places of holding the courts."

"Making out and transmitting copies (with letter) to the clerk of each division court of the divisions made by the quarter sessions."

"Drawing orders of sessions for altering limits of division courts."

"Making out and transmitting copies of such orders to the Government."

"Making out and transmitting copies of such orders to each division court affected by the alteration."

The items in the tariff of 1862, Nos. 38, 39, 40, 41, 42, 43, fixing fees for such services, describe them exactly as in the statute.

I am of opinion that these charges refer to the cases of fixing or altering the limits of division courts by the court of quarter sessions, under the authority vested in them by cap. 19 U. C. Consolidated Statutes known as the Division Courts Act.

Sec. 8 gives the power, and sec. 15 directs the clerk of the peace to record the divisions declared and appointed, and the time and place of holding the courts, and the alterations from time to time made therein, and he shall forthwith transmit to the Government a copy of the record.

Sec. 6 directs that a court be held in each division once in every two months, or oftener, in the discretion of the judge, and the judge may appoint and from time to time alter the times and places within such divisions, when and at which such courts shall be holden.

I cannot believe that the legislature intended to impose the duty on the clerk of the peace of notifying the Provincial Secretary and each of the seven clerks of division courts every two months of the days appointed by the judges for holding the ensuing courts.

It seems to me his duty is confined to recording and notifying to the Government and to the different clerks every act done by the court of quarter sessions, under the authority of the statute, as to the errand, fixing or altering the limits of the different courts.

Both statute and tariff seem to me clearly so to indicate.

It is quite true that in the list of services attached to the statute