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No 38.

3rd Session, 5th Parliament, 20 Victoria, 1857.

BILL.

An Act to regulate the Fees of Clerks to Justices of the Peace, in Lower Canada.

Received and read, first time, Wednesday, 4th
March, 1857.

Second reading, Monday, 9th March, 1857.

Mr. SOMERVILLE.

TORONTO:

PRINTED BY JOHN LOVELL, YONGE STREET.

An Act to amend the Law of Lower Canada relative to proceedings of Justices of the Peace out of Sessions, with respect to summary convictions and orders, and to better regulate the costs on such proceedings.

WHEREAS it is expedient in all cases of summary conviction or order made or given by any Justice or Justices of the Peace in Lower Canada, that minutes of the evidence in such cases should be taken, drawn in writing by the Justice or Justices trying such cause, or his or their Clerk, and remain of record, so that copies thereof may be obtained by any person interested, and that in the event of any such conviction or order being removed into a Superior Court upon Appeal or by a writ of *certiorari*, such minutes of evidence should be transmitted along with the record of the conviction or order, so that the Superior Court may be able more readily to determine upon the legality and justice of such appeal or of such conviction or order: And whereas it is also expedient to alter the fees now allowed to the Clerks of Justices of the Peace, and also the fees allowed to Constables or other peace officers for services rendered and performed on and about such cases of summary convictions or orders: And whereas it is also expedient to provide for the payment of the costs of witnesses and parties in such cases: Therefore Her Majesty, &c., enacts as follows:

I. The Act of the Legislature of Lower Canada, passed in the sixth year of the Reign of His late Majesty King William the Fourth, intituled, "An Act to regulate the Fees of persons employed by Justices of the Peace in the Country Parishes as Clerks or Bailiffs in certain cases," and also all tariffs of fees to be paid to the Clerks of Justices of the Peace made or promulgated in compliance with the provisions of the twenty-sixth section of the Act passed in the Session held in the fourteenth and fifteenth years of Her Majesty's Reign, intituled, "An Act to facilitate the performance of the duties of Justices of the Peace out of Sessions with respect to summary convictions and orders," shall be and the same are hereby repealed.

Act 6 W. IV., c. 19, and tariffs made under it or under 14 & 15 V. c. 95, repealed.

II. In all cases before a Justice or Justices of the Peace in which such Justice or Justices shall have power to pronounce a summary conviction or to make an order for the payment of money or otherwise, it shall be the duty of the Justice or Justices trying such cases to take down in writing or to cause to be so taken down by his or their clerk, the exceptions, pleas and defence made by the defendant in the case, and notes of the material parts of the evidence given by each witness examined in such case, and of any objections insisted upon by any of the parties and the adjudication thereon; and such notes shall be read over to the witness, who may have such additions or corrections made thereto or

Notes of evidence, defence, &c., to be taken and signed by Justices, trying any summary conviction case, &c.

therein as shall be necessary to make them truly state the material parts of his evidence, and such witness shall sign his name to the said notice if he can write, they shall then be signed by the Justice or by one of the Justices hearing the case, and shall be kept of record.

What papers shall be transmitted with the conviction in case of appeal, &c.

III. Upon the removal of the record of any summary conviction or order upon or by any appeal or writ of *certiorari*, the information, if it shall have been reduced to writing, the summonses, the exceptions, pleas and defences pleaded by the defendant, and the said notes of evidence, as well as the said summary conviction or order, shall be transmitted to the Court above, and the said documents shall be held to be records in the case. 5 10

Justices bound to furnish copies of proceedings before them, on payment of proper fees to their Clerks.

IV. Any Justice of the Peace who may have heard or tried any case in which any summary conviction shall have been rendered or any order shall have been made, shall upon payment to his clerk of the proper fees, be bound to give and deliver to any of the parties requiring the same, 15 copies of the information, summons, exceptions, pleas, defences, notes of evidence, conviction, order, bills of costs, or other documents in any case, or any of them, as may be required, and which copies shall be attested by such Justice as being true copies, and shall be considered and held as authentic in all Courts of Justice. 20

Fees to Clerk of J. P. to be those in schedule A.

V. From and after the passing of this Act, the fees set forth and enumerated in Schedule A to this Act annexed, and no others, shall be paid to or taken by the Clerk to any Justice or Justices of the Peace in any case of summary conviction or order for payment of money or otherwise, or judgment ordering sureties of the peace to be given: Provided 25 always, that nothing herein contained shall authorize any such Clerk to exact or receive any fee for any service done or performed in or about any proceeding against any person for an indictable offence, and also that nothing herein contained shall affect or repeal any table of fees allowed to be charged by any Clerk of the Peace or Clerk of any Court of weekly 30 or special sessions.

Justices may appoint and swear constables.

Proviso: Bailiffs may act by virtue of their office.

VI. Every Justice of the Peace shall have power to appoint one or more Constables to execute the orders of such Justice of the Peace, to which Constables such Justice is hereby empowered to administer the requisite oath, and every such appointment shall be enregistered on the register 35 of such Justice of the Peace: Provided always, that all Bailiffs of any of Her Majesty's Courts of Law shall in virtue of their office be authorized to act as Constables in the District for which they may have been appointed, without its being necessary that they should be appointed Constables. 40

Fees to constables to be those in schedule B.

No fees in indictable cases.

VII. From and after the passing of this Act the fees set forth and contained in the Schedule B, to this Act annexed, and no others, shall be charged by or paid to any Constable or person acting as Constable for the services therein mentioned: Provided always, that no Constable or person acting as Constable shall be entitled to demand or receive pay- 45 ment for services done in or about any proceedings against any person for an indictable offence from either the person prosecuting or from the defendant or prisoner, but this provision shall not be held to affect the right of Constable or person acting as Constable to obtain payment for such services from the Government in the same manner as he might 50 have obtained payment before the passing of this Act.

VIII. And whereas it is expedient to allow Constables charged with the execution of warrants of distress for levying of any penalties, damages, sums of money and costs payable under summary convictions or orders, after they shall have seized any goods and chattels under any such warrant of distress, to permit the defendant to retain possession of the goods and chattels seized upon his furnishing a proper and responsible person to become security for the safe-keeping of such goods and chattels and for their production on the day and at the place appointed for the sale thereof: Be it therefore enacted, that when any Constable charged with the execution of any warrant of distress, shall seize any goods or chattels in the possession of the person upon whose goods and chattels he is commanded to levy any sum of money in such warrant mentioned, he shall draw out a minute or *procès-verbal* of such seizure, stating the authority under which the seizure is made, the amount to be levied and the time and place of the sale of the goods and chattels seized, and stating also the name and residence of him the said Constable: and the Constable shall also deliver a copy of such minute or *procès-verbal* to the persons whose goods and chattels have been seized, and if the said person then and there offer and procure a good responsible person to become responsible for the safe-keeping and production, on the day and at the place appointed for the sale, of the goods and chattels seized, a minute thereof shall be reduced to writing and signed by the person becoming security therefor, if such person can write, and the Constable shall then allow the goods and chattels to remain in the possession of the owner.

Resital.

Constables executing warrant of distress may allow the goods to remain in possession of defendant until the sale, on his giving security.

IX. If at the time and place appointed for the sale of any goods or chattels seized, and allowed to remain in the owner's possession, under the provisions of the previous section, the goods and chattels, and the whole of them, are not produced by either the owner or the person who became security for the safe-keeping and production thereof; then the Constable shall make a return of his proceedings and of the said facts, to the Justice of the Peace issuing the warrant of distress, and the said return shall have the same effect against the person against whose goods and chattels the warrant was issued, as a return of no goods and chattels whereon to levy the distress; and such further proceedings may thereafter be adopted against him, as may be authorized by law; the said Justice, or any other Justice, shall also have power to issue a warrant of distress, and to levy by distress and sale of the goods and chattels of the person who became security for the safe-keeping and production of no goods and chattels seized as aforesaid, and not produced as aforesaid, the amount contained in the first warrant of distress and all costs incurred, and this whether any further proceedings against the person for whom he was surety, shall be taken or not.

Proceedings if the goods are not forthcoming on the day of sale.

X. The forms annexed to this Act, or others to the same effect, shall be sufficient and valid.

Forms in schedule to be valid.

XI. The Justice or Justices hearing and trying any case in which a summary conviction, order for payment, or other summary proceeding, shall be rendered, given, or had, shall have power to tax and allow persons examined as witnesses in any such case, a reasonable compensation for their expenses and loss of time, occasioned by their attendance as such witnesses, provided always, that no person shall be so allowed or taxed at more than *three shillings and nine pence* currency for each day's attendance, unless such person be a physician, advocate, notary, or land surveyor, in

Justices may tax witnesses and at what rates.

which case he may be allowed *seven shillings and sixpence* per day; And each person who shall reside at a greater distance than one league from the place where he shall be obliged to be present at to give his evidence, shall be allowed a further sum of *sixpence* for each mile over the first three miles of the distance travelled, but nothing shall be allowed for travel returning.

Justices may tax fees to Attorneys.

XII. That the Justice or Justices, in all such cases where any of the parties appear by Attorney, may allow and tax such Attorney a reasonable amount for his services; such amount, however, shall not exceed the sum of *fifteen shillings*, nor be less than *five shillings* in any case. 10

Penalty.

XIII. Any Clerk to a Justice of the Peace, or Constable, charging or receiving other or greater fees than those allowed by this Act, shall incur a penalty of *five pounds*, which penalty shall, together with costs, be recovered in a summary manner before one or more Justices of the Peace, one half of the said penalty to belong to the informer, and the other half to be paid to the Municipal Council of the Municipality within the limits of which the offence shall have been committed.

Act limited to L. C.

XIV. This Act shall apply only to Lower Canada.

SCHEDULE A.

(To be proposed in Committee of the Whole)

Fees payable to Clerks of Justices of the Peace :—

	s.	d.
For drawing information to obtain summons or warrant, when required	2	0
For each Summons or Warrant	2	0
For each Copy of Summons.....	0	6
For each Summons for Witnesses, (only one original to be allowed for each side in a case.).....	1	0
For each Copy of Summons for Witness	0	3
For attendance at return, and entering case	1	3
For each Witness sworn, including the writing down of material parts of evidence	0	6
For entering judgment and drawing conviction or order of dismissal	1	3
For making out each Bill of Costs in detail	0	6
For every recognizance, to be paid by the parties bound.....	2	6
For drawing up and preparing record of conviction, and making a return to a Writ of Certiorari, to be paid by the party at whose instance such writ is issued, and before the same is returned....	7	6
For drawing and preparing the record of an Appeal to the Court of General Quarter Sessions, to be paid by the appellant before the same shall be transmitted.....	7	6
For the Copy of any Judgment, Conviction, paper-writing or proceedings, if not exceeding 150 words	1	0
And exceeding that, at the rate of sixpence for every additional 100 words.		

In cases to obtain sureties of the peace, the Information Summons and service thereof shall be paid by Complainant, but the Recognizance, if one is given, shall be paid by Defendant.

For each Warrant of distress.....	1	3
For each Warrant of Commitment	2	6

SCHEDULE B.

Table of Fees allowed to be charged by Constables and Peace Officers:—

	s.	d.
For Service of any Summons upon a defendant or witness.....	1	0
If there are more than one defendant or witness, the like amount for each.		
For each mile actually travelled to effect services upon defendant and witnesses in any case, the distance travelling in returning not to be reckoned, and not more than one travel to be allowed when more than one service is made on same route.....	0	4
For attendance at trial of case to swear to service if required.....	1	3
Travel for said purpose when domicile is over three miles distant from place of trial, for each mile over three miles.....	0	4
For acting as Crier during trial, for each witness sworn.....	0	2
For executing any warrant of arrest (exclusive of all necessary travel to be allowed for at the rate aforesaid)	3	9
For his recors or assistant.....	2	0
For seizure of goods and chattels under a warrant of distress (exclusive of travel).....	3	9
For his recors or assistant	2	0
For sale of goods and chattels under a warrant of distress (exclusive of travel).....	3	9
For his recors or assistant.....	2	0
For a return of illegal resistance, or of no sufficient distress (exclusive of travel).....	2	6
For his recors or assistant	1	3
For conveying a prisoner to Gaol or House of Correction (exclusive of travel).....	7	6
For his recors or assistant.....	2	6

The recors or assistant, in every case, to be also entitled to travel at the rate of fourpence per mile.

The Constable shall also be allowed at the rate of two shillings and sixpence per day, for each day necessarily occupied in travelling with a prisoner, in order to provide food for him.

The above rates are exclusive of tolls and ferries, but inclusive of all other expenses for Steamboat, Railroad, Coach fare, or any other thing.

FORMS REFERRED TO IN THE FOREGOING ACT.

Minute or *procès-verbal* of seizure by Constable, of Goods and Chattels under a Warrant of Distress.

PROVINCE OF CANADA, }
DISTRICT OF

By virtue of a warrant of distress, under the hand and seal of A. B., Esquire, one of Her Majesty's Justices of the Peace, in and for the district of _____ and bearing date the _____ day of _____ 185 _____ in a certain prosecution or suit wherein C. D. was Prosecutor, and D. E. was Defendant; and commanding me to levy by distress and sale of the goods and chattels of the said D. E., the sums of money therein mentioned, amounting together to _____ pounds _____ shillings _____ pence, together with my costs; I have this day demanded payment of the said amount and costs from the said D. E., and he having neglected to pay the same, I have seized the following goods and chattels, which I found in his possession: —

[Here enumerate articles seized.]

And I have notified the said D. E. that I will proceed to the sale of the said goods and chattels so seized, on _____ the _____ day of _____ at _____ o'clock in the _____ noon at [Here describe the place of sale] and required him to govern himself accordingly.

Thus done at _____ in the said District, on this _____ day of _____ 18 _____ by me, G. H. Constable, residing at [state residence.]

In presence of E. M. of [state residence], Witness, [signature.]

Form of Bond to be given by surety, to enable Defendant to retain possession of goods seized, to be attached to minute or *procès-verbal* of seizure:—

I, P. R. of [residence and profession, or trade] being acquainted with contents of the foregoing Minute or *procès-verbal* of seizure, do hereby become bound, inasmuch as the goods and chattels seized have been left in possession of the said D. E., upon my promising that the same should be safely kept, and be forthcoming at the time and place appointed for the sale thereof, that in the event of the said goods and chattels not being so forthcoming, I will pay the said sums of money and costs for which the said goods and chattels were seized, under the penalties of law.

Signed in presence of }
G. H., Constable. }
E. M., Witness. }

P. R. [Signature.]