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No. 34.

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

B I L L .

An Act for the Appointment of County Attorneys, and for other purposes, in relation to the Local Administration of Justice in Upper Canada.

Received and read first time, Tuesday, 3rd
March, 1857.

Second reading, Friday, 6th March, 1857.

Hon. Atty. Genl. MACDONALD.

S. Derbishire & G. Desbarats, Queen's Printer.

An Act for the Appointment of County Attorneys,
and for other purposes, in relation to the Local
Administration of Justice in Upper Canada.

WHEREAS it is expedient that Local Crown Attorneys Preamble.
should be appointed in Upper Canada, and that other
provisions should be made as hereinafter contained : Therefore,
Her Majesty, by and with the advice and consent of the Legis-
lative Council and Assembly of Canada, enacts as follows :

- I. In every County in Upper Canada, there shall be a County County At-
torney for
every County.
Attorney for such County, to aid in the Local Administration
of Justice, and to perform the several duties by this Act assigned
to County Attorneys.
- 10 II. No person shall be appointed as a County Attorney, or Who only may
be appointed.
shall act in that capacity, who shall not be a Barrister at Law of
not less than three years' standing at the Upper Canada Bar,
and be a resident in the County for which he shall be appointed ;
provided that any person now holding the Office of Clerk of the Clerks of the
Peace other-
wise qualified
may be.
15 Peace, who is a Barrister at Law may be appointed to the
Office of County Attorney, for the County of which he shall be
Clerk of the Peace.
- III. It shall be lawful for the Governor to appoint a County Governor to
appoint, re-
move, &c.
20 Attorney for each and every County in Upper Canada, who
shall hold office during pleasure, and upon the death, resignation
or removal of any County Attorney, to supply the vacancy.
- IV. No County Attorney shall, by himself or partner in Neither Coun-
ty Attorney
nor his part-
ner to be con-
cerned in de-
fending per-
sons charged
with criminal
offences.
25 business, act or be directly or indirectly concerned as Counsel
or Attorney for any prisoner or party in respect to any charge
against such prisoner or party of treason, felony or other offence
punishable under the criminal Law of this Province, nor
shall such Attorney be capable of being elected or sitting
as a Member of the Legislative Council or Assembly of this
Province during the continuance of his appointment.
- 30 V. It shall be the duty of every such County Attorney : Duties of
County At-
torney.

To receiving
and examine
informations,
&c.
First—To receive all informations, examinations, depositions,
recognizances, inquisitions and papers connected with criminal
charges which shall be transmitted to him by Magistrates
and Coroners of the County,—to examine the same and to cause
35 such charges to be further investigated where necessary, and
additional evidence collected if required,—and also to sue out
process when necessary to compel the attendance of witnesses To secure
attendance of
witness.

and the production of papers, so that prosecutions at the Assizes and Quarter Sessions may not be unnecessarily delayed or fail through want of existing proof that might be secured ;

To institute and conduct prosecutions at Quarter Sessions.

Secondly—To institute and conduct on the part of the Crown, prosecutions for felonies and misdemeanors at the Court of Quarter Sessions for the County he is appointed to, in the same manner as the Law Officers of Crown institute and conduct similar prosecutions at the Courts of Assize, and with like rights and privileges, and generally to attend to all criminal business at such Court of Quarter Sessions,—to perform also the like duties in the Recorder's Court in those Counties wherein such Courts are or shall be erected ;

And Recorder's Courts.

To watch over certain cases brought by private prosecutors.

Thirdly—To watch over the conduct of cases at the Court of Quarter Sessions, wherein it is questionable if the conduct complained of be punishable by law, or where the particular act or omission presents more of the features of a private injury than a public offence ; and without unnecessarily interfering with private individuals, who wish in such cases to prosecute, to assume wholly the conduct of the case where justice towards the accused seems to demand his interposition ;

To deliver papers connected with criminal business at Assizes to Crown Officer.

Fourthly—To deliver to the Crown Officer all papers connected with the criminal business at the Court of Assize, on or before the opening of the Court ; to be present at such Court, and if required, to assist the Crown Officer in attendance with the Criminal business of the Court, and in the absence of the Law Officers of the Crown and of Counsel appointed by the Attorney General, the County Attorney to represent the Crown himself, and take the charge and conduct of the criminal business to be done at such Court of Assize for his County ;

To institute and conduct summary proceedings before Magistrates where the Public Revenue, &c., is concerned.

Fifthly—To institute and conduct proceedings before Justices of the Peace (under the Statutes conferring summary powers to convict) for offences in relation to the Public Revenue, the Public Property, the Public Domain, the Public Peace, and the Public Health, and in relation to any other matter or thing made punishable on summary conviction before Justices of the Peace, provided he shall be required so to do by the general regulations touching his office to be made in pursuance of the provisions hereinafter contained ; and the County Attorney is hereby empowered to institute such proceedings, on a complaint in writing, or as Public Prosecutor in cases wherein the public interest require the exercise of such office ;

To advise Magistrates at their request.

Sixthly—To advise and instruct Magistrates in respect to criminal offences brought before them for preliminary investigation or for adjudication, upon being requested by any such Magistrates so to do, such request to be in writing and to contain a statement of the particular case ;

Seventhly—To perform all such duties and services as the Governor shall by regulations in Council from time to time prescribe and direct for carrying out the provisions of this Act or any Act to be hereafter passed imposing duties upon County Attorneys, and also touching the office of County Attorney and the prosecution of offenders against the criminal laws of this Province ;

To perform duties to be assigned by Regulations in Council.

Eighthly—To perform all the duties which are now performed by the County Treasurer in each County as “ Receiver of Fees,” and in relation to the collections, receipts and disbursements for and in respect to the County Court, Court of Insolvent Debtors and Division Courts, in his County ;

To act as Receiver of Fees for County.

Ninthly—To perform such duties as Auditor of Accounts the payment whereof is charged upon the Consolidated Revenue Fund of this Province, as may from time to time be prescribed by the Governor in Council ;

To audit accounts under Orders in Council in that behalf.

Tenthly—To perform all such other duties and services as may be required of or imposed upon County Attorneys by any Act to be passed in this Session of Parliament or hereafter to be passed.

To perform duties to be assigned to him by any Act.

VI. Every County Attorney, before he shall be qualified to act as such, shall take before some County Judge the following oath, that is to say :

County Attorney to take oath of office.

“ I do swear that I will truly and faithfully according to the best of my skill and ability execute the several duties, powers and trusts of County Attorney for the County of _____ without favor or affection to any party. So help me God.”

The Oath.

VII. In every case of misdemeanor tried at the Court of Quarter Sessions in which costs are or may be ordered to be paid by a Defendant, the County Attorney shall be entitled to fees as Attorney and Counsel for services rendered in such case, to be taxed by the Court according to the scale of allowance in the County Courts as nearly as the nature of such services will allow, such fees in case of conviction to form part of the costs payable by a Defendant. And in all cases of felony tried as aforesaid and in all cases of misdemeanor in which no costs have been ordered to be paid, or, if ordered to be paid, cannot be made of the Defendant, the County Attorney shall be entitled to receive for the services rendered by him in each case the sum of *Twenty-five* shillings, to be paid upon certificate of the Chairman of the Court of Quarter Sessions, and to form a portion of the expenses of the administration of Criminal Justice in Upper Canada.

Fees in cases conducted by him at trial, where costs are paid by Defendant.

And in cases of felony or misdemeanor when costs are not paid by Defendant.

VIII. It shall and may be lawful for the Governor in Council to make such general regulations as to him shall seem expedient

Governor in Council to make regula-

tions as to duties of County Attorneys, &c.

dient, for carrying out the provisions of this Act or any Act to be hereafter passed imposing duties upon County Attorneys, and also touching the office of County Attorney, and for the prosecution of offenders against the criminal laws of this Province, and from time to time to alter such regulations.

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Clerks of the Peace hereafter appointed must be Barristers.

IX. From and after the passing of this Act, no person shall be appointed a Clerk of the Peace, for any County in Upper Canada, who is not a Barrister at law of not less than three years' standing at the Upper Canada Bar.

Case of unavoidable absence or illness of County Attorney provided for.

X. In case of the illness or unavoidable absence of the County Attorney, it shall be lawful for the Senior County Judge of the County Court of the County, to appoint some Barrister at law to act for such County Attorney during such illness or absence, and notice of such appointment and the cause thereof shall be sent by such County Attorney to the Governor who may at any time annul such appointment.

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Justices committing or bailing on criminal charges to deliver informations, depositions, &c., to County Attorney, who shall be the proper officer under 16 V. c. 179, s. 12.

XI. In every case where parties are committed for trial, or bailed to answer to any criminal charge, it shall be the duty of Justices of the Peace so committing or bailing, to deliver or cause to be delivered without delay to the County Attorney for the County, the informations, depositions, examinations, recognizances and papers connected with such charges; and the County Attorney shall be deemed the "proper officer" of the Courts within the meaning of the twelfth Section of the Act passed in the sixteenth year of Her Majesty's Reign, and intitled, *An Act to facilitate the performance of the duties of Justices of the Peace, out of sessions in Upper Canada, with respect to persons charged with indictable offences*; and in every case of inquisition found before Coroners, such inquisition and every recognizance taken before them, with the written information (if any), and the depositions and statements (if any) of the accused, shall be forthwith delivered to the County Attorney of the County in which such inquisition shall be found; and in every case whatsoever in which any information may be laid or complaint made before any Justice of the Peace, whether proceedings have been taken therein or not, such Justice shall hand over to the County Attorney all papers connected therewith, on being required so to do by such County Attorney.

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Like provision in case of inquisition before Coroners.

And in other cases on requisition of County Attorney.

County Attorneys substituted for County Treasurers as to the Collector of certain fees, fines, &c.

XII. The duties and powers of the several County Treasurers in each and every County in Upper Canada, with respect to the collection of fees, fines, penalties and moneys, under the several Acts now in force in relation to the County Courts, the Insolvent Debtors' Courts, and under the Upper Canada Division Courts Acts, shall henceforth cease, and the County Attorneys for the several Counties in Upper Canada shall respectively perform and have and exercise all the duties and powers and shall be subject to all the responsibilities, that the several County Treasurers can now perform and have and exercise and are now

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subject to as Receivers of Fees and Fee Fund Moneys in their respective Counties, and all the provisions of Law applicable to County Treasurers in respect to the matters aforesaid, shall extend and apply to County Attorneys.

- 5 XIII. The several County Court Clerks and Division Courts Clerks in Upper Canada, shall respectively deliver to the County Attorney for their respective Counties, such accounts and returns, and at such time and times as they are now bound by law to do to the Treasurer of their respective Counties, and shall, in like manner account for and pay over to such
10 County Attorney, all fees, fines and moneys receivable by them as such Clerks as aforesaid, under any Statute or Law of this Province.

Certain Officers to account to County Attorney, instead of accounting to County Treasurer.

- 15 XIV. It shall be the duty of the several Deputy Clerks of the Crown, in the several Counties in Upper Canada, to submit their accounts and books for examination to the County Attorney of their respective Counties, and it shall be the duty of every such County Attorney to inspect and examine such accounts and compare them with the Books required to be kept
20 by the Deputy Clerk of the Crown, and such County Attorney shall certify on each such account, that he believes it to be correct, or if he does not believe it to be correct, he shall state his objections thereto, and shall forthwith forward every such account to the Inspector General of this Province.

Accounts of Deputy Clerks of the Crown, to submit their accounts to County Attorneys: duty of the latter as to such accounts.

- 25 XV. The County Attorney of every County in Upper Canada, shall be the Receiver of Fees and Fee Fund Moneys from the several County Court and Division Courts Clerks in his County, and every such Attorney shall be paid a percentage of *four pounds* on every hundred pounds of the gross produce of the
30 Court Fees paid over to him by such Clerks, and a like percentage on all public moneys coming into his hands. And every County Attorney shall give such security, and for such sums, and with so many sureties, and in such manner and form, as the Governor of this Province may see reason to direct, for
35 the due performance of his office and the due payment of all moneys received by him under the provisions of this Act or any other Act of the Parliament of this Province.

County Attorneys to be Receivers of Fee Fund Moneys from County and Division Court Clerks: Percentage allowed. They shall give security.

- XVI. The Warrants which are now required by law to be issued in favor of County Treasurers to meet the disbursements
40 required on account of the County and Division Courts, shall be issued henceforth in favor of the County Attorneys at the times and in the manner now required by law.

Certain warrants to issue to County Attorney, instead of County Treasurers.

- XVII. Nothing in this Act shall affect or be construed to affect the validity of any Bond, Covenant or Security given by
45 Clerks, Bailiffs, Officers of Courts or County Treasurers, or the remedy given thereunder, but the same may be enforced in case of breach thereof in the same manner as if this Act had not

Existing Bonds of certain Officers not affected.

But to be enforced by County Attorneys.

been passed, provided that Bonds or Securities which at the time of this Act coming into force are enforceable in the name of the County Treasurer, may be enforced, sued on and prosecuted by and in the name of the County Attorney for the particular County.

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Short Title of Act.

XVIII. In citing, pleading, or otherwise referring to this Act, it shall, in all cases whatsoever, be sufficient to use the expression "The Upper Canada County Attorneys' Act," or words of similar import.

Interpretation clause.

XIX. In construing this Act, the following words shall have the several meanings hereby assigned to them, over and above their several ordinary meanings, unless there be something in the context repugnant to such construction : the word "County," shall include any two or more Counties united for judicial purposes ; the words "Courts of Assize," shall include Courts of Oyer and Terminer and General Gaol Delivery ; the word "Assizes," shall be understood to mean the Courts of Assize, Nisi Prius, Oyer and Terminer and General Gaol Delivery, and the Sittings of these Courts ; and the rules of construction laid down by the Interpretation Act shall be applicable to this Act.

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Commencement of Act.

XX. This Act shall commence and take effect on the first day of January, 1858.