CHAPTER 43.

An Act to amend the Law with respect to the Appointment, Payment, and Fees of Clerks of Justices of the Peace and Clerks of Special and Petty Sessions. [10th August 1877.]

WHEREAS by section nine of the Act of the session of the fourteenth and fifteenth years of the reign of Her present Majesty, chapter fifty-five, intituled "An Act to amend the law relating to the expenses of prosecutions, and to make further provision for the apprehension and trial of offenders in certain cases," (in this Act referred to as "the principal Act,") it is provided that one of Her Majesty's Principal Secretaries of State, (in this Act referred to as a Secretary of State,) upon the recommendation of the justices, council, or other governing body as therein mentioned, (in this Act referred to as "the local authority,") may, by order, direct that the clerks of special and petty sessions and the clerks of justices of the peace within the jurisdiction of such local authority, or any of such clerks, are to be paid by salaries in lieu of fees and other payments, and fix the amount of salary so to be paid: 14 & 15 Vict. c. 55.

And whereas by the same Act the Secretary of State is authorised, on the recommendation of the local authority as therein mentioned, to order that certain business specified in the recommendation should not be included in fixing the salary of any clerk, and that such clerk should be paid for that business (in this Act referred to as excepted business), by fees and not by salary:

And whereas it is expedient to provide that all the said clerks should be paid by salary in lieu of fees, and to provide for the qualification, appointment, and fees of the said clerks:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Justices Clerks Act, 1877. **Short title.**

2. Where at the passing of this Act an order under the principal Act is not in force for the payment by salary in lieu of fees of any clerk of special or petty sessions or clerk of justices of the peace within the jurisdiction of any local authority, that local authority shall, as soon as may be after the passing of this Act, and in any case before the first day of February one thousand eight hundred and seventy-eight, make a recommendation to a Secretary of State in pursuance of the principal Act with respect to the payment of such clerk by salary in lieu of fees, and the Secretary of State shall make an order directing such payment; and if, in the case of any of the said clerks, such recommendation as enables a Secretary of State to make an order under the principal Act is not received by the Secretary of State before the said first day of February, the Secretary of State shall, in like manner (so nearly as circumstances admit) as if such recommendation had been duly made, make an order under the principal Act, directing the payment of such clerk by salary in lieu of fees for all business (other than the business of giving copies of depositions if that business is excepted by the order) and fixing the amount of the salary. **Payment of clerks of petty sessions, &c. by salary under 14 & 15 Vict. c. 55. s. 9. made compulsory.**

Every such salary may, if it is thought fit, be made to vary according to the number of cases or amount of business.

Subject as aforesaid, every such salary shall be deemed to accrue from day to day and shall be paid quarterly or at such less intervals as may be from time to time fixed by the local authority.

3. Where at the passing of this Act an order is in force under the principal Act for the payment of any clerk of special or petty sessions or clerk of justices of the peace by salary in lieu of fees, but an order has been made that such clerk should be paid for certain excepted business (other than that of giving copies of depositions) by fees and not by salary, this Act shall, so far as is consistent with the tenour thereof, apply, as regards the fees for the excepted business, in like manner as it applies where an order is not in force for the payment of a clerk by salary in lieu of fees. **Provision as to clerks of petty sessions partly paid by salary under 14 & 15 Vict. c. 55. ss 9, 10, or paid under a special Act.**

Where any such clerk as aforesaid is, in pursuance of any Act of Parliament (other than the principal Act), paid by salary in lieu of fees, either for all business, or for all business other than that of giving copies of depositions, that clerk shall continue to be paid by salary in lieu of fees for all such business, and a recommendation need not be made with respect to such clerk in pursuance of this Act.

Provision as to clerk of petty sessions, &c. paid by salary by arrangement.

4. Where at the passing of this Act any clerk of special or petty sessions or clerk of justices of the peace is by arrangement paid by salary in lieu of fees, either for all business, or for all business other than that of giving copies of depositions, that clerk shall continue to be paid by salary in lieu of fees for all such business, and unless a Secretary of State requires a recommendation to be made with respect to such clerk in pursuance of this Act, such arrangement shall have effect as if it were an order of the Secretary of State under the principal Act, and this Act shall apply accordingly.

Appointment of one salaried clerk only in a petty sessional division.

5. In each petty sessional division there shall after the first day of February one thousand eight hundred and seventy-eight, or any later date at which an order for the payment of a clerk by salary in lieu of fees comes into operation in the division, be only one salaried clerk in the division to perform the duties of clerk of petty sessions, clerk of special sessions, or clerk of any justice or justices of the peace:

Provided that—

(1.) Where special or petty sessions are usually held at more than one place appointed for the purpose in a petty sessional division, there may, if it seem fit, be a separate salaried clerk appointed in respect of each such place; and

(2.) Where a Secretary of State has fixed the amount of the salary for one salaried clerk in a division, and there are, at the passing of this Act, two clerks, each of whom performs the duties of clerk of petty sessions and clerk of special sessions in that division, the local authority may, if they think fit, continue such existing clerks in office, and apportion the salary between those clerks in such manner as they think just; and

(3.) Where any partners have before the passing of this Act jointly performed the duties of clerk of petty sessions or clerk of special sessions, the local authority may, if they think fit, continue such existing clerks in office and pay the salary to such clerks jointly.

(4.) A Secretary of State, on the application of the local authority, may, if he thinks fit, authorise in any case the appointment of more than one salaried clerk.

The salaried clerk (in this Act referred to as a clerk of a petty sessional division) shall be appointed from time to time by the justices acting in and for the petty sessional division in which he is clerk assembled in special sessions, and shall hold his office during the pleasure of those justices.

Where there is a salaried clerk of a petty sessional division, any fees which may be received by a clerk of special sessions, clerk of petty sessions, or clerk of a justice of the peace in that division, shall not be received by such clerk for his own use, but shall be received, paid, and accounted for as directed by section eleven of the principal Act, or by any Act specially relating to such clerk.

Nothing in this section shall apply to, or to the fees of, either a clerk of a metropolitan police court, or a clerk to the justices of a borough, or a clerk to a stipendiary or other magistrate whose salary is regulated under any Act of Parliament other than the principal Act.

In the case of the town and county of Haverfordwest, the justices of the peace for the said town and county in quarter sessions assembled, and not the town council thereof, shall be the local authority to carry out the provisions of the principal Act and this Act, and the salary for the time being payable to the clerk of the justices of the said town and county under their order shall be paid out of the county rate thereof, and all fees received by such clerk after the making of such order shall be paid to the treasurer of the said town and county in aid of the county rate thereof, and shall be accounted for by such treasurer from time to time as the justices so assembled as aforesaid may direct.

Payment to treasurer of county or borough of unclaimed penalties and other sums.

6. All penalties, costs, and sums which, in pursuance of a conviction or order by a justice or justices of the peace, are paid to a clerk of a petty sessional division, or a clerk of special sessions, or a clerk of petty sessions, or a clerk of any justice or justices of the peace, and are not actually paid by him to the party or parties by law entitled thereto, other than the treasurer herein-after mentioned, shall be paid to the treasurer of the county, riding, division, liberty, city, borough, or place for which such justice or justices acted, subject nevertheless to be paid by such treasurer, to any party showing himself to be by law entitled thereto.

Every such clerk shall account for and pay over all penalties, costs, and sums payable to any such treasurer, under this or any other Act, at such times and in such manner as may be from time to time directed by the justices or council who appointed that treasurer, and if he wilfully omits to account for or pay over any such penalty, costs, or sum, he shall forfeit for every such omission twenty pounds, to be recovered by action of debt by any person who may sue for the same.

Qualification of salaried clerk of petty sessional division and justices of a borough.

7. Every clerk appointed after the passing of this Act to be a salaried clerk of a petty sessional division, or to be clerk to the justices of a borough, shall either—

(1.) Be a barrister of not less than fourteen years standing; or,

(2.) Be a solicitor to the Supreme Court of Judicature; or,

(3.) Have served for not less than seven years as a clerk to a police or stipendiary magistrate, or to a metropolitan police court, or to one of the police courts of the City of London.

Provided that a person who for not less than fourteen years has served as or as assistant to either a clerk of petty sessional division, or a clerk to the justices of a borough, or (in the case of service before the passing of this Act) a clerk of special or petty sessions, or a clerk of a justice or justices of the peace, may be appointed salaried clerk of a petty sessional division, or clerk to the justices of a borough, in any case in which in the opinion of the justices empowered to make the appointment there are special circumstances rendering such appointment desirable; provided also, that no person being clerk of the peace or deputy clerk of the peace for a county or borough, or a partner of such clerk or deputy clerk, shall be salaried clerk of a petty sessional division or clerk to the justices of a borough within such county; but this proviso shall not apply to any clerk of the peace or deputy clerk of the peace or partner of such clerk or deputy clerk holding and executing in person at the time of the passing of this Act the office of clerk to the justices of any petty sessional division of a county, or clerk to the justices of a borough.

Power of local authority and Secretary of State as to table of fees and adjustment of fees in proportion to salary of clerks. 11 & 12 Vict. c. 43.

8. Whereas by section thirty of the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to "facilitate the performance of the duties of justices of the peace out of sessions within "England and Wales with respect to summary convictions and orders," provision is made for the making of tables of the fees to be paid to the clerks of special and petty sessions, and to the clerks of justices of the peace, and it is expedient to make such further provision as is herein-after mentioned concerning the same; be it therefore enacted as follows:

The said section thirty is hereby repealed so far as relates to clerks of special and petty sessions and clerks of justices of the peace without prejudice to anything done in pursuance of that section.

Where it appears to a local authority that the aggregate amount received by the treasurer of that authority in respect of court fees unduly exceeds or unduly falls below the aggregate amount paid by that authority by way of salary to the clerks of petty sessional divisions, or in the case of a borough to the clerk to the justices of the borough, or that otherwise it is expedient so to do, the local authority may make a table of the court fees which in their opinion should be taken, and shall cause such table, signed by the chairman, mayor, or other presiding officer of the local authority, to be laid before a Secretary of State, and a Secretary of State may, if he think fit, alter such table of fees and settle the same (having due regard to the relation of the aggregate amounts so received and paid as aforesaid), and certify that the fees in the table as settled by him are proper to be taken within the jurisdiction of the said local authority.

Where complaint is made to a Secretary of State that the aggregate amount received by the treasurer of a local authority in respect of court fees unduly exceeds or unduly falls below the aggregate amount paid by that authority by way of salary as aforesaid, or that for other reasons it is expedient that the table of court fees should be revised, he may, if he think fit, by order, require the local authority to make a return to him within the time specified in the order of the aggregate amount so received and paid during three years previous to the order, or of the table of court fees in force for the time being, as the case may be, and if, on receiving such return, or on the failure of the local authority to make the return, he is, after making such inquiry as he thinks proper, satisfied of the truth of the complaint, he may, by order, require the local authority to make and lay before him, within the time (not being less than four months from the date of the order) specified in the order, a table of court fees in pursuance of this section, and if the local authority fail to comply with the order, he may, in like manner (so nearly as circumstances admit) as if the local authority had laid before him a table of fees in pursuance of this section, settle a table of fees and certify that the fees in that table are proper to be taken within the jurisdiction of the said local authority.

A Secretary of State, upon certifying a table of fees in pursuance of this section, shall cause copies thereof to be sent to the clerk of the local authority to be by him distributed to the clerks of petty sessional divisions and clerks to justices within the jurisdiction of that authority, and if at any time thereafter any of those clerks or any other person wilfully demands or receives any other or greater court fee than such as is set down in the said table, he shall forfeit for every such demand or receipt twenty pounds, to be recovered by action of debt by any person who may sue for the same.

Until a table is made in pursuance of this section, any of the said clerks may demand and receive such fees as he is at the passing of this Act lawfully authorised to demand and receive.

The expression "court fee" in this section means any fee, gratuity, or sum which may by law be demanded or received in respect of any business or act transacted or done by a clerk of special or petty sessions or a clerk of justices of the peace as such clerk, notwithstanding that by reason of such clerk being paid by salary, or of the provisions of this Act, he cannot receive the same for his own use, and includes fees for the giving of copies of depositions by any clerk mentioned in this section, whether received for his own use or not.

Account of fees by clerk.

9. The account of fees required by section eleven of the principal Act, as amended by this Act, to be rendered by any clerk shall be rendered quarterly, or at any less interval directed by the local authority, and if any clerk wilfully omits from any such account any fee received by him he shall forfeit for every such omission twenty pounds, to be recovered by action of debt by any person who may sue for the same.

Construction of Act, and repeal of part of 14 & 15 Vict. c. 55.

10. This Act shall, so far as is consistent with the tenour thereof, be construed as one with the principal Act; and so much of sections nine and ten of the principal Act as empowers a Secretary of State to direct that a clerk be paid by fees in lieu of salary (either generally or in respect of excepted business) is hereby repealed.

CHAPTER 44.

An Act to make provision respecting the Superannuation Allowance of Officers whose Salaries were formerly payable out of the Mercantile Marine Fund.

[10th August 1877.]

39 & 40 Vict. c. 80. 17 & 18 Vict. c. 104. 18 & 19 Vict. c. 119.

WHEREAS by section thirty-nine of the Merchant Shipping Act, 1876, the salaries of surveyors appointed under the Merchant Shipping Acts, 1854 to 1876, and of persons employed under the Passengers Act, 1855, which were formerly payable out of the Mercantile Marine Fund, were directed to be paid, after the first day of January one thousand eight hundred and seventy-seven, out of moneys provided by Parliament,