

The Provincial Statutes of Lower-Canada, Being the second session of the fifteenth Provincial Parliament of Lower-Canada. Quebec: John Carleton Fisher & William Kemble, Law Printer to the King's Most Excellent Majesty, 1836.

6 William IV – Chapter 15

An Act for making certain Regulations, respecting the Office of Sheriff. (21st March, 1836.)

Whereas the duties and liabilities of Sheriffs and of Coroners, in civil matters, are not sufficiently defined, and it would be conducive to greater confidence in the administration of Justice, if the duties and responsibilities of those important offices were defined and regulated by Law:—Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Lower Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, intituled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, intituled, 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America;' And to make further provision for the Government of the said Province;" and it is hereby enacted by the authority of the same, that from and after the first day of September next, no person shall do or execute any of the duties of the office of Sheriff or Coroner in civil matters, until he shall have first entered into a Bond to His Majesty, His Heirs and Successors for the due execution thereof, to the amount and in the manner hereinafter enacted and required.

II. And be it further enacted by the authority aforesaid, that the security required by this Act, shall be given in the following sums, that is to say: by the Sheriff of the District of Quebec, in a sum of four thousand pounds currency; by the Sheriff of the District of Montreal, in a sum of six thousand pounds, currency; by the Sheriff of the District of Three Rivers, in a sum of two thousand pounds currency; by the Sheriff of the Inferior District of Gaspé, in a sum of one thousand five hundred pounds currency; and by the Sheriff of the District of Saint Francis, in a sum of one thousand pounds currency; by the Coroner of the District of Quebec, in the sum of three hundred and fifty pounds currency; by the Coroner of the District of Montreal, in a sum of three hundred and fifty pounds currency; by the Coroner of the District of Three Rivers, in a sum of one hundred pounds currency; by the Coroner of the Inferior District of Gaspé, in a sum of fifty pounds currency; and by the Coroner of the District of Saint Francis, in a sum of fifty pounds currency; and every such Bond or Security shall be to Our Lord the King, His Heirs and Successors, and the condition shall be, that the Sheriff or Coroner giving such security, shall well and truly demean himself in the execution of all and every the duties of his office in civil matters, and shall duly pay over all monies to be levied or received by him as Sheriff or Coroner, as the case may be, to all and every the persons lawfully entitled to receive the same; and such Bond or Security shall avail to the King, and all persons whomsoever, who shall or maybe aggrieved by any breach of the condition aforesaid or any part thereof.

III. And be it further enacted by the authority aforesaid, that every Bond, Act of Cautionnement or Suretyship, which shall be made or executed by virtue of this Act shall be made double, and shall be taken and received by one of the Judges of the District respectively, or by the Secretary of this Province, and one duplicate thereof shall be transmitted to and recorded in the Office of the Prothonotary, or Clerk of the Court of King's Bench or Provincial Court of the District for which such Sheriff or Coroner shall have been appointed, and the other duplicate shall be transmitted and remain in the Civil Secretary's Office of this Province, among the Public Records thereof, and every person shall be entitled to have communication and copy of any such Act, either at such Prothonotary's Office, or at the Office of the Secretary of this Province, upon payment of one shilling currency, for every communication, and five shillings currency, for every copy.

IV. And be it further enacted by the authority aforesaid, that before the taking or receiving of the Bond, Suretyship or Cautionnement required by this Act, notice in writing shall be duly given to His Majesty's Attorney General, or in his absence to the Solicitor General, three days at least before the time of giving such Bond or Suretyship, and one additional day for each and every ten leagues distance between the place of residence of the Attorney or Solicitor General, as the case may be, and the place where such Bond or Suretyship shall be intended to be given, specifying the day, hour and particular place of giving such Bond or Suretyship, and the names, additions, and abode of the persons intending to become Sureties; and no such Bond or Suretyship shall be taken or received until after due proof upon oath shall have been made of the giving of such notice in writing; which proof of notice shall remain of record in the Office of the Secretary of this Province, and communication thereof shall at all times be given gratis to any person applying for the same. Provided always that such security shall not be held valid until the sureties shall have justified their sufficiency to the amount in which they shall be respectively liable.

V. And be it further enacted by the authority aforesaid, that in case any person or persons who shall have become Surety or Sureties for any Sheriff or Coroner under the requirements of this Act, shall afterwards die or become insolvent, en deconfiture, or depart from this Province with the intent of establishing his domicile elsewhere, the Sheriff or Coroner for whom any such person or persons had become Surety or Sureties, shall, within one calendar month, give fresh security in the manner, and to the amount herein before required, and duplicates of the act of every such new Suretyship shall be transmitted and deposited as hereinbefore enacted and required.

VI. And be it further enacted by the authority aforesaid, that every person who shall presume to do or perform any duty belonging to the Office of Sheriff or Coroner in civil matters, without having first given security as required by this Act, or who, having given such security, shall refuse or neglect to renew the same in any of the cases requiring such renewal, under the requirements of this Act, and shall continue to act as Sheriff or Coroner in civil matters, after such refusal or neglect, shall be dismissed from the said office of Sheriff or Coroner, and shall forfeit and pay for the said offence, a sum of five hundred pounds currency, to be recovered with costs of suit, in any Court of King's Bench, by action of debt,

bill, plaint, or information, one moiety of which penalty shall go to His Majesty, and the other moiety to any person or persons who shall sue for the same, within six months after the offence shall have been committed.

VII. Provided always, and be it further enacted by the authority aforesaid, that when any Sheriff or Coroner, as aforesaid, shall die, be removed from, or resign his Office, and that within the space of eighteen months from and after such death, removal, or resignation, no misbehaviour shall appear to have been committed by such Sheriff or Coroner, in the execution of his said Office, then and in such case, at the end of the said eighteen months, the Bond, or Suretyship so entered into by his said sureties, shall become void and of no effect as to such sureties, to all intents and purposes whatsoever; but such Sheriff or Coroner, his and their heirs, executors, administrators, or curators respectively, shall not be exonerated if misbehaviour shall afterwards be discovered and established provided nevertheless, that the Sureties of every such former Sheriff or Coroner shall be and remain bound and liable by virtue of, and to the amount mentioned in the Act of Suretyship, for all monies levied by such former Sheriff or Coroner, until the expiration of one entire year, after the date of the judgment by which such former Sheriff or Coroner, his heirs or legal representatives shall have been ordered to pay over the said monies to the person or persons who may have a right to receive the same.

VIII. And be it further enacted by the authority aforesaid, that every Sheriff or Coroner shall be, and he is hereby declared to be responsible to all persons for the acts of his deputies, bailiffs or other his servants, acting under him, where such deputies, bailiffs, or other servants, are of the appointment of the Sheriff as aforesaid; and to this end be it further enacted by the authority aforesaid, that every Sheriff shall have the appointment of all Bailiffs, (Huissiers) to be employed by him in the several districts of this Province; and further, that the several Sheriffs shall be and they are hereby empowered to appoint respectively a Deputy Sheriff, with all the powers and authorities which by his commission are vested in such Sheriff, to act as such Deputy Sheriff, in case of the temporary absence or indisposition of the Sheriff, and whose acts and returns as such Deputy Sheriff, shall be taken and received in all His Majesty's Courts of Law in this Province, and be as legal and valid to all intents and effects, as the acts and returns of the Sheriff himself; and for all the acts of such Deputy Sheriff, such Sheriff so appointing him, shall be and he is hereby declared to be in like manner responsible.

IX. And whereas by the Laws now in force, the Sheriffs in the several districts of this Province, and the Coroners in certain cases, are charged with the service and execution of Writs of Summons and Executions, and other Civil Process, which heretofore and of common right appertained to the Office of Huissier, as also with the custody and keeping of goods and chattels under seizure, which was heretofore entrusted to Gardiens,. and with the receipt, safe keeping, and payment of monies proceeding from the sales of goods and chattels, lands and tenements under Writs of Execution, which was heretofore the Province of the Receveur de consigns lions: Be it therefore enacted by the authority aforesaid, that in the service and execution of Writs of Summons, of Execution and other Civil process, the

custody and safe keeping of goods and chattels under seizure, and the receipt, safe keeping, and payment of all monies by them levied under any Writ or Writs of Execution, the several Sheriffs and Coroners in this Province, shall be liable to the same extent, and in the same cases as any Huissier, Gardien, or Receveur de consignations would have been liable under the Laws of Canada, previous to the year of our Lord one thousand seven hundred and fifty-nine: Provided always, that when any Defendant or Defendants shall offer a good and sufficient Guardian or Guardians to the Sheriff or Coroner seizing the goods and chattels of such Defendant or Defendants, under any Writ of Fieri Facias, Arret Simple, or Revendication, such Sheriff or Coroner shall be bound to accept of such Guardian or Guardians, and shall not be deemed answerable for the acts of such Guardian or Guardians, provided he can establish that such Guardian or Guardians, when accepted of by him, were solvent, or reputed so to be, to the amount of the value of the articles over which he or they were appointed Guardian or Guardians as aforesaid.

X. And be it further enacted by the authority aforesaid, that the Sheriff and the Coroner of each and every District in this Province, shall at all times hereafter have and keep duplicate books or registers for the enrolling and recording of all deeds or acts of sale, which shall be made by them, of any lands and tenements by virtue of their Offices, which books or registers shall be authenticated on the first page thereof, by an attestation of the Prothonotary or Clerk of the Court of King's Bench or Provincial Court of the District, specifying the number of the pages of such books or registers, the purposes for which they are intended, and the day and year of making such attestation, which shall be signed at full length by the Prothonotary or Clerk making the same, also on every subsequent page by the number thereof, written in words at full length, and subscribed with the initial letters of the usual signature of the Prothonotary or Clerk: and the Sheriff and Coroner of each and every District shall respectively, from day to day, enroll and enter in each of the said books or registers, without any blank or interval, all and every the deeds or acts of sale, which shall be made by them of any lands and tenements by virtue of their Offices, together with an alphabetical Index to the same, until the said books or registers shall be filled, and shall immediately afterwards deposit one duplicate thereof in the Office of the Prothonotary or Clerk of the Court of King's Bench, or Clerk of the Provincial Court of the District, for which he shall be Sheriff or Coroner, there to remain of record in the Archives of the District, and shall keep the other duplicate and all copies from such books or registers, certified by the Sheriff or Coroner, Prothonotary or Clerk having the custody thereof, shall be considered as authentic in all and every the Courts of Justice in this Province, and every Prothonotary, Clerk, Sheriff or Coroner, having the custody of any such books, register or registers, shall be entitled to have and receive for each and every copy thereof, not exceeding two hundred words, a sum of five shillings currency; and if such copy shall exceed two hundred words, then at the rate of six pence currency for every additional hundred words whereof the same shall consist, and no more.

XI. And whereas the keeping of double registers of deeds of sale, statements of account at each and every Term of Civil Jurisdiction, and other additional duties required by this Act, will materially encrease the official labor of the Sheriffs of Quebec and Montreal

respectively; Be it therefore enacted by the authority aforesaid, that there shall be allowed to each of the said Sheriffs respectively, from and after the passing of this Act, a sum of five pounds currency per annum, as compensation for such additional duties.

XII. And be it further enacted by the authority aforesaid, that to every return of a seizure of any goods and chattels or lands and tenements, the Proces Verbal of seizure shall be annexed, and shall contain an accurate and detailed inventory of the goods and chattels, and a legal description of the lands and tenements which shall have been seized.

XIII. And be it further enacted by the authority aforesaid, that every person who shall have been, or shall have acted as Sheriff or Coroner for any District, and the heirs, executors, curators, and other legal representatives of any such person, shall be, and they are hereby enjoined and commanded forthwith to deliver and surrender unto the Sheriff of the same District, all deeds, or acts of sale of lands and tenements, which shall have been made by such person as Sheriff or Coroner, or transmitted to him by his predecessor in office, and all writs, public books, registers and papers appertaining to the office of Sheriff or of Coroner, as the case may be, in matters of a civil nature, which are or shall be in his or their possession, custody, or power, judgments of distribution, receipts, and vouchers, for the payment of money and other legal acquittances and discharges, and rules for the discharge of prisoners always excepted, together with a list or inventory of such deeds or acts, writs, books, registers, and other papers, duly attested upon oath, by the person or persons delivering the same, and every person having been, or having acted as Sheriff or Coroner, and every heir, executor, curator, or other legal representative of such late Sheriff or Coroner, who shall refuse or wilfully neglect to deliver and surrender all such deeds or acts of sale, writs, books, registers, and other papers, with such list or inventory thereof, according to the true intent and meaning of this Act, and shall be thereof lawfully convicted, shall forfeit and pay the sum of five hundred pounds currency, one moiety of which shall go to His Majesty, His Heirs and Successors, and the other moiety to the person or persons that shall sue for the same, by civil action in any Court of Record, having jurisdiction in such matters.

XIV. And be it further enacted by the authority aforesaid, that no Sheriff, Deputy Sheriff, Coroner, Bailiff, or other Officer employed by any Sheriff or Coroner at the sale or adjudication of any moveables or effects, lands or other real property, shall directly or indirectly become the purchaser (adjudicataire) of any moveables, effects, lands, or other real property, by him sold, under pain of nullity of such adjudication, and of all costs, damages and interests towards the parties.

XV. And be it further enacted by the authority aforesaid, that all Sheriffs shall have the custody and keeping of all gaols within their respective Districts, and shall appoint the Gaolers or Keepers of such Gaols, for whose acts, and the conduct of such Gaolers, the said Sheriff shall be liable.

XVI. And be it further enacted by the authority aforesaid, that the several Sheriffs having the custody of Gaols in this Province, shall, from time to time, make general rules and regulations, and shall submit the same for revision and approval, to the Courts of King's Bench, for the Districts of Quebec, Montreal, and Three Rivers respectively, if in term, or to any two or more of the Judges of the said Courts respectively, in vacation, and to the Judges of the Provincial Courts in the Inferior District of Gaspé and District of Saint Francis respectively, whether in Term or Vacation, as the case may be, for the interior order and police of the Gaols, situate within their respective Districts or Inferior Districts, and for regulating the conduct of Gaolers and other Officers and Ministers of Justice, in the keeping and governing of Gaols, and also for the safe custody, due care, and sufficient protection of all prisoners for debt therein being; and all Gaolers and other Officers and Ministers of Justice, concerned in the keeping and government of Gaols within the said Districts or Inferior District, severally and respectively, shall observe the said rules and regulations.

XVII. And be it further enacted by the authority aforesaid, that the several Sheriffs and Coroners in this Province, shall be liable only in damages and interests, for escapes of prisoners for debt, happening through connivance or neglect, either from the custody of themselves or their Deputies or Bailiffs, or from any Goal or Gaols of which any Sheriff shall have the custody and keeping, according to the directions of this Act.

XVIII. And be it further enacted by the authority aforesaid, that every Sheriff in this Province, shall, on the first juridical day in every term of the Courts of King's Bench, holding civil pleas in the Districts of Quebec, Montreal, and Three Rivers [Trois-Rivières] respectively, and of the Provincial Courts of the Inferior Districts, for which he shall be Sheriff, exhibit an accurate and detailed statement and account, upon oath, of all monies in his hands by him received as Sheriff, when and from whom received, and of all orders and judgments directing any monies to be paid by such Sheriff since his last account rendered, specifying to whom the said monies are or were payable; of all monies paid by him as Sheriff, within the said period, and to whom; and of all monies remaining unpaid, though ordered and adjudged to be paid, and of the reasons why the same have not been paid, and the said statements and accounts shall be deposited and remain among the public records of the said Court, and shall be entered in a book or register, which shall be kept for that purpose, by the Prothonotary or Clerk of such Court, as the case may be.

XIX. Provided always and be it further enacted by the authority aforesaid, that to enable the said Sheriffs to make up and render the statements and accounts required of them by this Act, a period of three weeks shall be allowed them from and after the passing of this Act, notwithstanding that a term of any of the said Courts should intervene previous to the expiration of that time, and that every such future statement and account shall, by the said Sheriffs, be made up and limited to the period of three weeks, prior to the first juridical day of each Term as aforesaid, and so on from Term to Term respectively, and not otherwise.

XX. And be it further enacted by the authority aforesaid, that every Sheriff exhibiting the statements and accounts required of him by this Act, who shall knowingly and wilfully swear

falsely in any matter where an oath is by this Act authorized and required to be administered, shall be liable to suffer, upon conviction thereof, the pains and penalties by Law imposed for wilful and corrupt perjury.

XXI. And be it further enacted by the authority aforesaid, that the fines and penalties levied by virtue of this Act, shall be reserved for the public uses of the Province, and shall remain at the future disposal of the Provincial Parliament, and shall be accounted for to His Majesty, His Heirs and Successors, through the Lords Commissioners of His Majesty's Treasury for the time, in such manner and form as His Majesty, His Heirs and Successors shall direct.

XXII. And whereas great injury and heavy losses have been frequently sustained by persons engaged in trade and commerce, from the seizure of rafts and timber, at the suit of paupers, raftsmen, and others pretending claims thereon, which seizures have been after a long and expensive litigation set aside and annulled; and whereas from the want of distinguishing marks upon, and from the number of rafts and timber lying and being at all seasons in the several coves and harbours within the different Districts and Inferior Districts of this Province, no sufficient means exist for ascertaining the legal property and ownership in such rafts and timber for the due and proper execution of process against such rafts and timber: for remedy thereof, be it therefore further enacted by the authority aforesaid, that no Sheriff of any of the Districts or Inferior Districts of this Province shall be bound to proceed to the execution of any writ of Attachment, (Arret Simple) or writ of Revendication, or of any writ of Execution against any raft or timber, until such Sheriff shall have been furnished by the party or parties suing out such Process with a Bond of Indemnity, with two good and sufficient securities, to the satisfaction of one of the Justices of His Majesty's Court of King's Bench or Provincial Judge for the District or Inferior District, conditioned to secure and hold him harmless against all damages and costs to result from such seizure.

XXIII. And whereas the seizure and custody of rafts and timber, more particularly when afloat, is attended with considerable risk and expense, inasmuch as a number of guardians are requisite to ensure the safe keeping of such rafts and timber: Be it therefore enacted by the authority aforesaid, that from and after the passing of this Act, it shall and may be lawful for the Sheriff before executing such seizure, under any process to him directed, to demand and receive in advance from the plaintiff or plaintiffs, his or their Attorney or Attornies ad litem, such sum as shall by any one of the Justices of His Majesty's Court of King's Bench for the District, or Provincial Judge of the Inferior District where such process shall issue, be deemed sufficient for the safe-keeping of such raft or timber; Provided always, that when and as often as the sum so advanced shall have been expended, it shall be lawful for such Sheriff, upon presenting a summary petition to any one of the Justices aforesaid, to obtain an order upon such party for the payment in advance of such further sum as by the said Justice for the purpose aforesaid shall be deemed sufficient, service of which said petition and order shall in each and every instance be made upon the Attorney, ad litem, appearing for such party, in default of which payment, within twenty-four hours from and after the service of such petition and order, the said seizure shall be discharged, and such Sheriff exonerated from all liability to any person or persons whomsoever.

XXIV. And whereas the forms of Advertisement for Sheriff's Sales now in use, are unnecessarily long and highly expensive to defendants; for remedy thereof, be it further enacted by the authority aforesaid, that from and after the passing of this Act, the Sheriffs and Coroners of the several districts of this Province shall advertise the sales of immoveable property, by them to be made, according to the form in the annexed Schedule A, which Advertisements shall be printed consecutively under one heading, in the form prescribed in and by the said Schedule A.

XXV. And be it further enacted by the authority aforesaid, that it shall and may be lawful for the said Sheriffs, on receipt, of any writ of Fieri facias de Teris, writ of Venditioni exponas or alias writ of Fieri facias, to demand and have from the person or persons presenting the same, the sum of twenty shillings current money of this Province, and no more, in advance, to enable him or them to defray the expenses of publication or otherwise, any Law, Usage, or Custom to the contrary notwithstanding;—Provided nevertheless, that when it shall be desired by the party at whose instance the seizure shall have been made, a concise statement of the charges subject to which the said land or immoveable property is to be sold, shall be inserted in such Advertisement immediately after the description of the said land or immoveable property.

XXVI. And be it further enacted by the authority aforesaid, that in the service or execution of any writ of Arret simple, or writ of Saisie en revendication, or writ of Saisie gagerie, or writ of Capias ad respondendum, or other writ of Capias, or writ of Summons, with the declaration, or of a rule of Court, or of any other process or document whatsoever, which may hereafter be issued out of the Court of King's Bench for the District of Quebec, against a defendant or defendants, or other party or parties residing in the Inferior District of Gaspé; the Sheriff of the District of Quebec, his Deputy or Bailiff, or any other Officer or Individual whomsoever, appointed to serve or execute such writ, process, or document, shall not be entitled to any higher sum, for travelling expenses, than might be lawfully charged and recovered by the Sheriff of the Inferior District of Gaspé, or his Deputy, or any Bailiff or other Officer of the said Sheriff of the Inferior District of Gaspé, for his travelling expenses on the service or execution of a like writ issuing from the Provincial Court of the Inferior District of Gaspé, and returnable into the Court of King's Bench for the District of Quebec, or of a like rule of Court, process, or document of any kind whatever issuing out of the Provincial Court aforesaid.

XXVII. Provided always, and be it further enacted by the authority aforesaid, that the travelling expenses on the execution of a writ of Fieri facias or of any other writ of execution whatsoever, issuing out of the Court of King's Bench for the District of Quebec, against the body, the goods and chattels, or the immoveable property of any person residing in the said Inferior District of Gaspé, shall not, in any case, exceed the necessary travelling expenses, on the execution of a like writ of Fieri facias, or other like writ of execution issuing out of the said Provincial Court of the Inferior District of Gaspé.

