

The Provincial Statutes of Lower-Canada, Being the sixth session of the of the Special Council, begun and holden at the City of Montreal, in the said Province of Lower Canada, fifth day of November, 1840, and ending the ninth day of February, 1841. Quebec: John Carleton Fisher & William Kemble, Law Printer to the Queen's Most Excellent Majesty, 1841.

4 Victoria – Chapter 15 (Session 6)

An Ordinance for the better regulation of the office of Sheriff, in this Province.

Whereas it is necessary to provide for the due execution of the office of Sheriff in this Province, by other and further regulations than those now in force, in this behalf—Be it therefore Ordained and Enacted by His Excellency the Governor of this Province of Lower-Canada, by and with the advice and consent of the Special Council for the affairs of the said Province, constituted and assembled by virtue and under the authority of an Act of the Parliament of the United Kingdom of Great--Britain and Ireland, passed in the first year of the Reign of Her present Majesty, intituled, "An Act to make temporary provision for the Government of Lower-Canada," and also by virtue and under the authority of a certain other Act of the same Parliament, passed in the Session held in the second and third years of the Reign of Her present Majesty, intituled, "An Act to amend an Act of the last Session of Parliament for making temporary provision for the Government of Lower-Canada," and also by virtue and under the authority of a certain other Act of the same Parliament, passed in the Session held in the third and fourth years of the Reign of Her present Majesty, intituled, "Act to Re-unite the Provinces of Upper and Lower-Canada, and for the Government of Canada;" And it is hereby Ordained and Enacted by the authority of the same, and by virtue of the powers in them vested by the said Acts of Parliament, that every person who shall hereafter be appointed a Sheriff for any District, or for any two or more United Districts, hereafter to be erected and constituted within this Province shall, before he executes any of the duties of the said office, enter into a recognizance to Her Majesty, her heirs and successors, with good and sufficient sureties, not exceeding four in number, to be approved by the Justice before whom such recognizance shall be taken, in the penal sum hereinafter mentioned, that is to say, the persons to be appointed Sheriffs for the Districts in which the Cities of Quebec and Montreal, respectively shall be situated, in the penal sum of five thousand pounds, current money of this Province, and the persons to be appointed Sheriffs for the several other Districts and United Districts of this Province, respectively, in the penal sum of two thousand five hundred pounds, current money aforesaid, upon the condition contained in the Schedule No. 1, to this Ordinance subjoined; which recognizance, fairly written on parchment, shall be so entered into before one of the Justices of the Court of Common Pleas for this Province, after the sureties therein named shall have made oath before the said Justice, that they are respectively worth so much of the penal sum in the said recognizance specified as they respectively shall thereby become liable to pay, in the said recognizance specified, over and above all debts due and owing by them respectively; which oath shall be endorsed on the said recognizance, and subscribed by the said sureties respectively, in the presence of the said Justice; and the said recognizance shall be fyled and remain of record in the said Court of Common Pleas, in the division thereof established for

that part of the Province in which the Sheriffwick in question shall be situate, and shall constitute and carry with it, for the fulfilment of the conditions aforesaid, an hypothec on all such real or immoveable estates of the cognizors therein named, as may be specially described in such recognizance, and be therein and thereby hypothecated, from the day on which it shall bear date, and shall stand and be as and for a security as well to Her Majesty, her heirs and successors, as to all other persons who may be aggrieved by the breach of the said condition, and who shall recover judgments against any such Sheriff, or his legal representatives, for any sum or sums of money for or by reason of any misfeasance, non-feasance, misconduct, or default, of such Sheriff, in the discharge of his official duties.

II. And be it further Ordained and Enacted, that if any person or persons who shall have become surety or sureties for any Sheriff, by a recognizance as aforesaid, shall afterwards, while such Sheriff shall continue in office, die, or become insolvent, or depart from this Province, with the intent of residing permanently elsewhere, every such Sheriff shall, within one calendar month after any such occurrence, enter into a new recognizance, with sureties, not exceeding four in number, for the penal sum, and in the manner herein before prescribed; and like new recognizances shall be entered into, from time to time, when the sureties named in the recognizance last previously taken, shall die, become insolvent, or change their residence as aforesaid; and such renewed recognizances shall have the same effect, and operate the same security, as the recognizance hereinbefore first mentioned.

III. And be it further Ordained and Enacted, that any person appointed or to be appointed Sheriff as aforesaid, who shall execute any of the duties of that office, without having first entered into a recognizance as aforesaid, or who having entered into such recognizance, shall afterwards refuse or neglect to enter into a new recognizance, within one calendar month after any or either of the occurrences in the next preceding section of this Ordinance mentioned as aforesaid, shall forfeit his office of Sheriff, which shall forthwith become and be vacant, and such vacancy shall forthwith be filled up by the appointment of another person in his place, and shall also forfeit and pay for the said offence the sum of two hundred pounds current money aforesaid, to be recovered with costs of suit, in any Court of Record in this Province, one moiety whereof shall belong and go to Her Majesty, her heirs and successors, and the other moiety to the person or persons who shall sue for the same within six months after the said offence shall have been committed.

IV. and be it further Ordained and Enacted, that it shall be lawful for each of the Sheriffs of the aforesaid several Districts and United Districts in this Province, respectively, by an instrument or instruments in writing under his hand, to appoint an under Sheriff, and such and so many deputies as he may deem necessary, in like manner as Sheriffs of Counties in that part of Great Britain called England may lawfully appoint an Under Sheriff and Deputies there: Provided always, and be it further Ordained and Enacted, that no Under Sheriff, Deputy Sheriff, or Sheriff's Officer, shall practise as an Attorney, during the time he shall continue in any such office or employment: And provided also, and be it further Ordained and Enacted, that the said Sheriffs of the said several Districts and United Districts in this Province, respectively, shall be responsible to the persons injured or aggrieved, for the acts

and omissions, and all misconduct and neglects of duty, of the Under Sheriffs, Deputies, Bailiffs and Officers by them respectively appointed.

V. And be it further Ordained and Enacted, that each and every person to be appointed Sheriff and Under Sheriff as aforesaid shall, before he enters on the execution of his office, take the Oath of Allegiance to Her Majesty, her heirs and successors, and also the Oath of Office contained in the Schedule No. 2, to this Ordinance subjoined, which oaths shall be fairly written on parchment and signed by him, and shall and may be sworn before the Justices of the Court of Common Pleas for this Province, in any of the Divisions thereof, or before any one of the said Justices; and the said oaths so written, signed and sworn, shall be transmitted to the Clerk of the Peace for the District for which such person shall be appointed Sheriff, or Under Sheriff, who is hereby required to file the same among the Records of his Office, and for which he shall be entitled to demand and have from such Sheriff or Under Sheriff the sum of five shillings currency and no more.

VI. And be it further Ordained and Enacted, that it shall not be lawful for any person or persons whomsoever, to buy, sell, let, or take to farm, the office of Under Sheriff, Deputy Sheriff, Gaoler, Bailiff, or any other office or place pertaining to the office of Sheriff of any District in this Province, or to contract for, promise, or grant for money, or other reward or benefit, the said offices or places, or any of them, directly or indirectly; and whosoever shall offend in the premises, in violation of this enactment, shall forfeit for every such offence the sum of five hundred pounds to be recovered with costs in any Court of Record in this Province, one moiety whereof shall belong and go to Her Majesty, her heirs and successors, and the other moiety to the person or persons who shall sue for the same, within two years after the said offence shall have been committed. Provided that nothing in this Ordinance contained shall prevent any Sheriff from constituting and appointing an Under Sheriff or Deputy Sheriff to act in his stead, or prevent any Under Sheriff, in case of the Sheriff's death, from appointing a Deputy, nor to prevent any such Sheriff or Under Sheriff from demanding and taking the just and lawful fees of the office of Sheriff, or any place or employment pertaining thereto, or from taking security for the due answering the same, nor to discharge or prevent such Under Sheriff, Deputy Sheriff, Gaoler, Bailiff, or other person executing any office under such Sheriff, from accounting to the Sheriff for all such just and lawful fees as shall by them, or any of them, be taken and received in their respective offices, places or employments, nor from giving security so to do; nor to prevent the Sheriff from allowing or securing such salary or recompense to his Under Sheriff, Deputy Sheriff, Gaoler, Bailiff or other officer, for the execution of the said offices, places or employments, or any of them, as to him shall seem meet, nor to prevent the Under Sheriff, Deputy Sheriff or other officer or person aforesaid, from taking and receiving such salary and recompense for his or their pains and services therein.

VII. And be it further Ordained and Enacted, that the Under Sheriffs, or Deputy Sheriffs respectively, who may be appointed by the Sheriffs of the said several Districts and United Districts in this Province, in case of the death of the Sheriff's by whom they have been appointed shall, notwithstanding such death, continue in their offices, and shall execute the

same, and all things thereto belonging, in the names of the deceased Sheriffs, until other Sheriffs shall have been appointed, and shall have taken on themselves the said offices, and the said Under Sheriffs or Deputy Sheriffs shall be answerable for the execution of the offices of Sheriffs in respect of which they shall have been appointed, in all ways and to all intents and purposes, during the said interval, in like manner as the deceased Sheriffs would by law have been if living; and the security given to the deceased Sheriffs, by the said Under Sheriffs and their sureties, shall stand, remain and be a security to the Queen, her heirs and successors, and to all persons whomsoever, for such Under Sheriff's due execution and fulfilment of their offices during such interval. And in case there shall be no under Sheriff of any district, at the time of the death of any such Sheriff, or if such under Sheriff shall die or remove out of the district, or become incapable of executing the office before another Sheriff of the same district shall be appointed, and shall have taken on himself the said office, then and in every such case the Coroner, (or Coroners if there shall be more than one) in such district, shall in all things execute the office of Sheriff of the same district, except in what appertains to the judicial powers and duties of that office, until a Sheriff thereof shall be appointed, and shall take upon himself the said office.

VIII. And be it further Ordained and Enacted, that if any Sheriff of any district or of two or more united districts of this Province shall be a party or interested in any suit instituted or about to be instituted, the Writ or Writs to be issued in such cases shall be directed to and executed by the Coroner of the same district, or the Coroners, if there shall be more than one in such district.

IX. And be it further Ordained and Enacted, that every Sheriff of any and every of the aforesaid districts and united districts in this Province, when he shall cease to hold his said office, by reason of resignation, removal from office or other cause whatsoever, shall make out and deliver to the new or incoming Sheriff, a true and correct list and account, under his hand, of all prisoners in his custody, and of all writs and other process in his hands, not wholly executed by him, with all such particulars as may be necessary to explain to the said incoming Sheriff, the several matters intended to be transferred to him, and shall thereupon turn over and transfer to the care and custody of the said incoming Sheriff, all such prisoners, writs and process and all records, books, documents and papers appertaining to the said office of Sheriff; and the said incoming Sheriff shall thereupon sign and give a duplicate of such list and account to the Sheriff going out of office, to whom the same shall be a good and sufficient discharge of and from all the prisoners therein mentioned, and transferred to the said incoming Sheriff and from the further or other execution of the writs, process and other matters therein contained, without any writ of discharge, or other writ whatsoever; and the said incoming Sheriff shall thereupon stand and be charged with the said prisoners, and also with the execution and care of the said writs, process and other matters contained in the said list and account, as fully and effectually as if the same writs and process had been turned over by Indenture and Schedule; and in case any Sheriff shall refuse or neglect, when he shall cease to hold the said office as aforesaid, to make out, sign and deliver such list and account as aforesaid, and to turn over the writs and process aforesaid, in manner aforesaid, every such Sheriff so refusing or neglecting shall be held to

be guilty of a misdemeanor in having disobeyed this enactment, and shall besides be liable to make satisfaction to the parties aggrieved or injured, for all such damages and costs as he, she, or they shall sustain by reason of such refusal or neglect.

X. And be it further Ordained and Enacted, that whenever any Sheriff shall die, it shall be the duty of his heirs, executors, curators, or other legal representatives, to deliver to the new or incoming Sheriff on his demand, all such writs and process as remained and were unexecuted in the hands of the deceased Sheriff and all records, registers, books, documents and papers appertaining to the office of such deceased Sheriff which may have come into their hands, possession or power; and in case the heirs, executors, curators, or other legal representatives of any such deceased Sheriff shall refuse or neglect to deliver to the said new or incoming Sheriff all such writs and process, records, registers, books and documents, or any of them as aforesaid, they, each and every of them so refusing or neglecting shall be held to be guilty of misdemeanor, in having disobeyed this enactment, and shall besides be liable to make satisfaction to the parties aggrieved or injured, for all such damages and costs as he, she or they shall sustain by reason of such refusal or neglect.

XI. And be it further Ordained and Enacted, that no Sheriff, or person, after he ceases to hold the office of Sheriff, shall be liable to be called on to make a return of any Writ or Process, unless he be required so to do, within six calendar months, after the period at which he shall cease to hold such office as aforesaid.

XII. And be it further Ordained and Enacted, that each of the Sheriffs of the aforesaid several Districts and United Districts in this Province, shall have in the Court of Queen's Bench, and in the Division of the Court of Common Pleas, established for that part of the Province in which his Sherifffwick shall be situated, one sufficient Deputy to receive all Writs directed to any such Sheriff; and shall be held and taken to be an officer of the said Courts respectively, and shall give his personal and ready attendance therein, in execution of the duties of his office when thereto required or commanded by the said Courts respectively.

XIII. And be it further Ordained and Enacted, that the Sheriffs of the several Districts in this Province, when and as often as Courts of Oyer and Terminer, or General Gaol Delivery, and Nisi Prius or any or either of the said Courts, shall be held in such districts, shall, upon pain of being fined in the discretion of the said Courts respectively, give their attendance on the said Courts, during the sittings thereof, in such manner as the said Courts respectively shall direct.

XIV. And be it further Ordained and Enacted, that it shall be lawful for the Sheriffs of the aforesaid several Districts, and United Districts in this Province, in the advertizements of lands and tenements, real or immoveable estates for sale, under legal process, to advertize the same in abbreviated form, in the manner now in use, in which advertizements, to be signed by such Sheriffs respectively, shall be mentioned the nature of the process under which such sale is to be had, the cause in which the said process has been issued, a description of the property to be sold, and the time and place of sale.

XV. And be it further Ordained and Enacted, that no Sheriff, of any District or of two or more United Districts in this Province, nor any under Sheriff, Deputy Sheriff Bailiff or other officer employed by any Sheriff shall at any Public Sale made, or proposed to be made, by or under the authority of any such Sheriff, become the purchaser, directly or indirectly, of Goods or Chattels, Lands or Tenements offered or set up for sale by any such Sheriff, or by or under his authority; and if any such sale be made, in violation of this enactment, the same shall be null and void, and the Sheriff, Under Sheriff Deputy Sheriff, Bailiff or other such officer so offending, in the premises, shall be deemed and held to be guilty of a misdemeanor, and punished accordingly; and every Sheriff so offending shall also be liable to the parties concerned, for all costs and damages occasioned by such sale.

XVI. And be it further Ordained and Enacted, that in all cases of Sales of Lands and Tenements, real or immoveable Estates, by any Sheriff of any District in this Province, in virtue of his Office, the Deeds or Instruments of Sale to be made and executed by every such Sheriff in execution of such sales, shall be fairly engrossed or printed on parchment without any obliteration, erasure, interlineation, or marginal addition or correction; and every Sheriff who shall make, execute and deliver a Deed or Instrument of Sale contrary to, and in violation of this enactment shall forfeit and pay for every such offence a sum not exceeding twenty five pounds to be recovered with Costs of Suit, in any Court of Record in this Province, one moiety whereof shall belong and go Her Majesty, Her Heirs and successors, and the other moiety to the person or persons who shall sue for the same, within six calendar months after the said offence shall have been committed.

XVII. And be it further Ordained and Enacted, that each and every of the Sheriffs of the several Districts of this Province, shall respectively have and keep a Register for the enregistering therein of all Deeds or Instruments of Sale of lands and tenements, real or immoveable Estates, by him made and executed, in virtue of his office, which Register before the making of any entries therein, shall be authenticated by a memorandum, to be written on the first page thereof, and signed by the Prothonotary of the Division of the Court of Common Pleas established for that part of the Province within which such Sheriff shall exercise his functions, in and by which memorandum shall be certified the purpose for which the said Register is intended, the number of pages contained therein, and the day, month and year on which such memorandum shall be made; and shall also be authenticated by the numbering of each of the said pages, in words at full length, with the initial letters of the name of the said Prothonotary subscribed thereto: And every such Sheriff shall from time to time, as deeds of sale are by him made and executed, enregister in the said register, successively, and without any blank or interval between them, all, each, and every of the deeds or instruments of sale of lands and tenements, real or immoveable estates, by him made and executed in virtue of his office, until the said register shall be filled, or until such Sheriff shall cease to hold his office, to which said register an alphabetical Index shall be made by such Sheriff; and every such Sheriff shall forth with after the said register shall be filled as aforesaid, or after his resignation or removal from office, if he shall resign or be removed before it be filled, or if any such Sheriff shall die while in office and before the said register is filled, then his legal representatives shall forthwith after his death, deposit the

said register in the office of the said Prothonotary, there to remain among the records of the said Court, and to be used as evidence by all persons interested therein, as to law and justice may appertain.

XVIII. And be it further Ordained and Enacted, that if any Sheriff of any district, or of two or more united districts of this Province, shall neglect to have and keep a register for the purpose aforesaid, or to enregister therein the deeds or instruments of sale by him made and executed as aforesaid, or any of them, in the manner herein before prescribed, or if any such Sheriff while living, or his legal representatives, or any of them, after his death, shall refuse or neglect to deposit any such register in the office of the said Prothonotary as aforesaid, every such Sheriff, and the legal representatives of every Sheriff so offending, shall forfeit and pay for every such offence, the sum of three hundred pounds to be recovered with costs of suit, in any Court of Record in this Province, one moiety whereof shall belong and go to tier Majesty, her heirs and successors, and the other moiety to the person or persons who shall sue for the same.

XIX. And be it further Ordained and Enacted, that each and every of the Sheriffs of the aforesaid several districts and united districts in this Province shall, within the first fifteen juridical days of each and every term of the several divisions of the Court of Common Pleas for this Province, exhibit to the division of the said Court sitting in the Territorial Division within which such Sheriff shall exercise his functions, an accurate statement and account in detail, upon oath to be administered by such division of the said Court, of what has been done in execution of the final writs and process directed to him by such division of the said Court and of all monies in his hands which have been received by him as such Sheriff, and when and from whom received, and of all orders and judgments in his hands directing any monies to be paid by him as such Sheriff, from the period of his appointment as Sheriff, or since the date of his last statement and account, specifying to whom the said monies were or are payable, and of all monies by him paid as such Sheriff within the said period, .and to whom, and of all monies remaining unpaid in his hands, though ordered and adjudged to be paid, and of the reasons why the same have not been paid. And the said statement and account shall be deposited and remain among the records of the said division of the said Court, and shall be entered in a register or book to be kept for that purpose by the Prothonotary of the said division.

XX. And be it further Ordained and Enacted, that any Sheriff, by whom such statement and account as hereinbefore required shall be made and exhibited as aforesaid, who shall knowingly and wilfully swear falsely in respect of any of the matters contained, and which are required to be contained in any such statement and account, shall be deemed and held to be guilty of wilful and corrupt perjury and shall suffer the pains and penalties by law provided for that offence.

XXI. And be it further Ordained and Enacted, that the Sheriffs of the aforesaid several districts and united districts in this Province shall, respectively, have the custody and keeping of the Gaols now erected and being or hereafter to be erected in their respective districts,

and shall respectively appoint the Gaolers or Keepers of such Gaols, and shall be responsible for the acts and conduct of such Gaolers, in their capacity of Gaolers, and for the due discharge of their duty.

XXII. And be it further Ordained and Enacted, that the Sheriffs of the aforesaid several districts and united districts of this Province, and their Under Sheriffs, respectively shall, within their respective districts, have the same and like authority to raise the power (posse) of the district, in execution of the Queen's writs, as the Sheriffs and under Sheriffs of Counties in that part of Great Britain called England, have and may lawfully exercise in raising the power of the County, (posse comitatus) in execution of the Queen's writs there; and every person required by any such Sheriff or under Sheriff to assist him in the execution of any such writ or writs, who shall, without lawful cause, refuse or neglect so to do, shall be held to be guilty of a misdemeanor, and be punished by fine and imprisonment.

XXIII. And be it further Ordained and Enacted, that when the Sheriff of any district, or of two or more united districts or any of his deputies, shall find that resistance will be made against any process of execution directed to and in the hands of such Sheriff, the said Sheriff, laying aside all other things and taking with him the power of the district, shall forthwith go in his proper person and do execution, and if he find resistance, he shall certify to the court from which such process of execution shall have issued, the names of the resisters, their aiders and abettors, and they shall be attached to appear in the same court, and if they be convicted of such resistance, they shall be punished by fine and imprisonment.

XXIV. And be it further Ordained and Enacted, that every person who shall be arrested by virtue of any writ of execution to be issued from any competent court, against his or her body, for any debt or damages, by any Sheriff or other officer to whom such writ shall be directed, and every person who shall be committed to the custody of any Sheriff or other officer in execution for any such debt or damages, shall be safely kept in prison, in close and secure custody, without bail, living at his or her own costs unless legally entitled to be otherwise maintained, until such person shall satisfy such debt and damages; and if any such Sheriff or other officer shall permit any such person so arrested or committed to go out of prison, or be at large, by bail or otherwise, without the assent and agreement of the plaintiff or party in whose favour such execution may be, such Sheriff or other officer shall thereby become answerable to such plaintiff or party for the debt and damages for which such person was arrested or committed, and the plaintiff or party may recover the same with costs, by action of debt against such Sheriff or other officer.

XXV. And be it further Ordained and Enacted, that all prisoners, either upon contempt or mesne process or in execution, who shall be committed to any prison in this Province, shall be actually detained within such prison, until they shall be thence discharged by due course of law; and if at any time the keeper of any prison shall permit or suffer any prisoner committed to his custody, either upon contempt or mesne process or in execution, to go, or to beat large out of his prison, except by virtue of some writ of Habeas Corpus or rule of court, which rule of court shall not be granted, but on motion made or petition read in open

Court, every such going or being out of the said prison shall be adjudged, and is hereby declared to be an escape.

XXVI. Provided always, and be it further Ordained and Enacted, that nothing herein contained shall have the effect of repealing, altering, or in any manner affecting a certain Act of the Legislature of this Province, made and passed in the sixth year of the Reign of His late Majesty King William the Fourth, intituled, "An Act to afford relief during a limited time to insolvent debtors," or any other Act or Law exempting certain persons from imprisonment, or entitling them, in certain cases, to be released or discharged from imprisonment, or any of the provisions contained in any such Act or Law, which shall continue to have the same force and effect as if this Ordinance had not been passed.

XXVII. And be it further Ordained and Enacted, that if any Sheriff or keeper of any prison shall take any sum of money, reward, or gratuity whatsoever, or any security for the same, to procure, assist, connive at, or permit any escape of any prisoners in his custody, and shall be thereof lawfully convicted, every such Sheriff or keeper shall for every such offence forfeit the sum of five hundred pounds, and his said office, and be for ever after incapable of executing the said office.

XXVIII. And be it further Ordained and Enacted, that no retaking on fresh pursuit shall be given in evidence on the trial of any issue in any action of escape against any Sheriff or keeper of any prison, unless the same be specially pleaded, nor shall any special plea be taken, received or allowed, unless oath be first made in writing by such Sheriff or keeper of any prison, against whom such action shall be brought, and fyled with such plea, that the prisoner for whose escape such action is brought, did, without his consent, privity or knowledge, make such escape; and if such affidavit shall, at any time afterwards appear to be false, and such Sheriff or keeper of any prison shall be convicted thereof, by due course of law, he shall forfeit the sum of five hundred pounds.

XXIX. And be it further Ordained and Enacted, that if any prisoner, who is or shall be committed, in execution, to any prison, shall escape from thence, by any ways or means howsoever, the creditor or creditors, at whose suit such prisoner was charged in execution at the time of his escape may retake such prisoner by any new Capias, or capias ad satisfaciendum, or sue forth any other kind of execution on the judgment, as if the body of such prisoner had never been taken in execution.

XXX. And be it further Ordained and Enacted, that if any Sheriff or keeper of any prison shall, after one day's notice in writing given for that purpose refuse to shew any prisoner committed in execution, to the creditor at whose suit such prisoner was committed or charged, or to his attorney, every such refusal shall be adjudged to be an escape in law.

XXXI. And be it further Ordained and Enacted, that every Sheriff, or keeper of, any gaol, upon whom a declaration, notice, or any other proceeding directed, to or intended for any prisoner in his custody, shall be served, shall, within three days after such service, deliver the

same to such prisoner, with a note thereon of the time of the service thereof, and if he shall neglect so to do, shall be liable to such prisoner for all damages thereby occasioned.

XXXII. And whereas it is expedient to make provision for cases, in which defendants against whom judgments have been recovered in the District Courts in this Province may not have goods and chattels within such districts for the satisfaction thereof, but may have goods and chattels in other parts of the Province; Be it therefore Ordained and Enacted, that in all cases where a final judgment for any sum or sums of money exceeding three pounds shall have been recovered as aforesaid, in any district court, it shall and may be lawful for the Court of Common Pleas for this Province, in any of its divisions, upon affidavit made and fyled in any such division, that a judgment as aforesaid has been recovered, and that upon a precept of execution issued out of such district court for the satisfaction thereof, no sufficient goods and chattels of the defendants for that purpose have been found within the district in which the judgment has been recovered, to cause the record of every such judgment to be removed into the said Court of Common Pleas, in any of the divisions thereof as aforesaid, and to issue a writ of execution thereupon to the Sheriff of any of the districts within the territorial division in which, the said court so resorted to shall sit, against the goods and chattels of the defendant, in the same manner as upon judgments recovered in any such divisions of the said court; and the Sheriff to whom such writ of execution shall be directed, shall and he is hereby authorized to levy the sum of twenty shillings, for the ordinary costs of the plaintiff subsequent to the said judgment, and of the execution in the said Court of Common Pleas, over and above the money for which such writ of execution shall be issued.

XXXIII. And be it further Ordained and Enacted, that in all cases where a final judgment for any sum or sums of money exceeding ten pounds sterling, shall have; been rendered in any district court in this Province; it shall and may be lawful for the said Court of Common Pleas, in any of its divisions, upon affidavit made and fyled as in the next preceding section of this Ordinance is mentioned, to cause the Record of every such judgment to be removed into the said Court of Common Pleas, in any of its divisions as aforesaid, and to issue a writ of execution thereupon, to the Sheriff or Sheriffs of any of the said districts within the Territorial Division in which the division of the said Court so resorted to shall sit, against the goods and chattels, lands and tenements of the defendant or defendants, in the same manner as upon judgments recovered in any such division of the said Court; and the Sheriff to whom such writ of execution shall be directed shall, and he is hereby authorized to levy the sum of twenty shillings, for the ordinary costs of the plaintiff, subsequent to the said judgment, and of the execution in the said Court of Common Pleas, over and above the money for which such writ of execution shall be issued.

XXXIV. And be it further Ordained and Enacted, that in cases where the Sheriff or Deputy Sheriff of any District, or of two or more United Districts, by whom a District Court may be held, shall be a party or interested in any suit to be brought, and which would otherwise be brought and be cognizable in such District Court, or would by law be disqualified from taking cognizance of any such suit when brought, it shall be lawful for the District Court, nearest to the District Court disqualified as aforesaid, to have and take cognizance of such suit, in like

manner as of ordinary suits and causes properly cognizable therein, and the service of process in such cases on such Sheriff or Deputy Sheriff, within his district, shall have the same effect as if made within the district in which such District Court shall be held.

XXXV. And be it further Ordained and Enacted, that whenever any Sheriff or Deputy Sheriff of any district in this Province shall, by reason of sickness, absence, or other cause, be rendered incapable or incompetent to sit and exercise judicial functions in the District Court to be held by him in pursuance of the Ordinance or Law in such case made and provided, it shall be lawful for the Governor of this Province, by warrant or instrument under his hand and seal to nominate and appoint a fit and proper person to be and act as the substitute and in the place and stead of such Sheriff or Deputy Sheriff so disqualified or rendered incompetent as aforesaid, and such substitute so appointed shall have the same powers and authority, during the continuance and in execution of such appointment, as the said Sheriff or Deputy Sheriff so disqualified or rendered incompetent would otherwise have had.

XXXVI. And be it further Ordained and Enacted, that the penalties to be recovered and levied, in pursuance of this Ordinance, shall be paid into the hands of the Receiver General, to be appropriated by the Legislature to the public uses of this Province, and shall be accounted for to Her Majesty, her heirs and successors, through the Lords Commissioners of Her Majesty's Treasury for the time being, in such manner as Her Majesty, her heirs and successors shall direct.

XXXVII. And whereas by an Ordinance of the Legislative Council of the late Province of Quebec, made and passed in the twenty-fifth year of the Reign of His late Majesty, King George the Third, intituled, "An Ordinance to regulate the proceedings in the Courts of Civil Judicature, and to establish trials by Juries in actions of a commercial nature and personal wrongs to be compensated in damages," Sheriffs on every execution are allowed all their disbursements, and are authorized to charge over and above at the rate of two and a half per cent, to be deducted out of the money they levy; and whereas the said poundage authorized by the said Ordinance as aforesaid, is unreasonably large in cases of sales of property of considerable value; be it therefore further Ordained and Enacted, that so much of the said Ordinance as authorizes a poundage of two and a half per cent as aforesaid, shall be and the same is hereby repealed; and that from and after the commencement of this Ordinance the Sheriffs of the aforesaid several Districts or United Districts hereafter to be created and constituted within this Province, shall on all writs of execution, and on all writs of Venditioni Exponas, issued at any time before or after the commencement of this Ordinance, and which may come to their hands or to be carried into effect by them, by whatever Court the same may have been issued, be entitled to poundage as follows, that is to say: on sales of property, real or personal, not exceeding in price the sum of five hundred pounds, a poundage of two and a half per cent; and on sales exceeding that amount, a poundage at the rate of two and a half per cent on the first five hundred pounds, and of one per cent on every hundred pounds beyond that amount, and not exceeding one thousand pounds; and on sales exceeding the last mentioned sum one quarter per cent for every hundred pounds beyond that sum.

XXXVIII. And be it further Ordained and Enacted, that a certain Act of the Legislature of this Province, made and passed in the sixth year of the Reign of His late Majesty King William the Fourth, intituled, "An Act for making certain regulations respecting the office of Sheriff," shall be and the same is hereby repealed.

XXXIX. And be it further Ordained and Enacted, that the words "Governor of this Province," wherever they occur in the foregoing enactments, are to be understood as meaning and comprehending the Governor or the person authorized to execute the Commission of Governor within this Province, for the time being.

XL. And be it further Ordained and Enacted, that it shall and may be lawful for the Governor of this Province, with the advice of Her Majesty's Executive Council, to fix and declare the day of the commencement of this Ordinance, provided that such day shall not be later than the fifteenth day of May, now next ensuing.

XLI. And be it further Ordained and Enacted, that this Ordinance, and the provisions herein contained, shall not cease or expire on the first day of November, which shall be in the year of our Lord one thousand eight hundred and forty-two, but shall be and remain a permanent law and in full force in this Province, until the same shall be repealed or altered by competent Legislative authority.

SCHEDULE No. 1,

Referred to in the foregoing Ordinance.

Condition of Recognizance to be entered into by Sheriffs of Districts.

Whereas the above bound A. B., hath been appointed Sheriff of the District of _____ in this Province: Now the condition of this Recognizance is such, that if the said A. B. while living, and his heirs, executors, curators and administrators, after his death, when, where, and as often, as he or they shall or may be required, shall make and yield a true and lawful account to the Queen's Majesty, her heirs and successors, before such person or persons as by Her said Majesty, her heirs or successors, may in this behalf be appointed or authorized, of the issues and profits of the said office, and of all things belonging to the Queen's Majesty, her heirs and successors, which shall come to the hands of the said A. B. as Sheriff as aforesaid, or to the hands of his under Sheriff or any of his Deputies Bailiffs or Servants or which he may or ought lawfully to levy or receive, or with which he may be reasonably charged, to the Queen's use, by reason of his said office, or of any process to him directed, without any manner of concealment or delay, and do pay, or cause to be paid, into the hands of the Queen's Majesty's Receiver General of the Revenue of and in this Province, or his Deputy for the time being, to the use of Her Majesty her heirs and successors, all and every such sum and sums of money as shall by him or them be due to Her Majesty her heirs

or successors; and if the said A. B. while living and his heirs, executors, curators and administrators, after his death, do and shall well and truly account for, pay, satisfy, and deliver to all and every person and persons who are, or shall or may be entitled to the same, all such monies, goods, and chattels, as have, or shall or may come into the hands, custody, or charge of the said A. B. under, in pursuance or by virtue of any writ or writs or legal process, or order, judgment, or judgments of any Court or Courts of Judicature in this Province, or by virtue or in right of his said office, in any manner or way whatsoever, and do not nor shall wrongfully withhold or delay the payment or delivery of any such sum or sums of money, goods or chattels, beyond the time or times at which the same of right ought to be paid or delivered; and also if the said A,B. do and shall assign and appoint, by his sufficient Warrant, his able or sufficient Attorney or Deputy, in Her Majesty's Court of Queen's Bench and Common Pleas of this Province, respectively, wherever the said Court shall happen to be kept, who shall attend the said Courts so long as they shall be open and sitting, and receive, open and return all writs, process, and commandments, which shall be directed to the Sheriff of the said district of _____ or his Deputy, by the said Courts respectively; and further, if the said A. B. so long as he shall be Sheriff of the said District of _____ do and shall by himself or his sufficient Deputies, not only well and sufficiently serve and execute all processes or mandates, and commandments, which to him shall be directed or awarded by the said courts respectively, and make full and perfect returns of the same, according to the tenor and true purport of the same, but do and shall give his personal and ready attendance, at and before the said Courts of Queen's Bench and Common Pleas, respectively, for the better service of Her Majesty, her heirs and successors, by the said A. B. Sheriff as aforesaid, or his Deputy to be had and done, as often and when he the said A. B. Sheriff as aforesaid shall be required or commanded thereunto by the said Courts respectively; and likewise if the said A. B. do and shall from time to time and at all times hereafter, by himself or by his sufficient Deputies, well, truly, faithfully and assiduously observe, perform, and execute, all and singular such attendances, offices, services, acts and things as shall or may be legally required of him, and do and shall well and truly demean himself in the execution of all and every the duties of his said office; then this present Recognizance to be void and of no effect; otherwise to remain in full force and virtue.

SCHEDULE No. 2.

Referred to in the foregoing Ordinance.

Oaths to be taken by Sheriffs and Under Sheriffs of Districts.

OATH OF ALLEGIANCE.

I, A. B. do sincerely promise and swear, that I will be faithful, and bear true allegiance, to Her Majesty Queen Victoria.—So help me God.

OATH OF OFFICE.

I, A. B. do swear, that I will well and truly serve the Queen's Majesty in the office of Sheriff (or Under Sheriff as the case may be) of the District of and promote Her Majesty's profit, in all things that belong to my office, as far as I legally can or may: I will truly preserve the Queen's rights, and all that belongeth to the Crown:—I will not assent, to decrease, lessen or conceal the Queen's rights, or the rights of her Franchises; and whensoever I shall have knowledge, that the rights of the Crown are concealed or withdrawn, be it in lands, rents, franchises, suits, or services, or in other matter or thing, I will do my utmost to cause them to be restored to the Crown again I will not respite, or delay to levy the Queen's debts, for any gift, promise, reward, or favour, where I may raise the same; without great grievance to the debtors:—I will do right as well to poor as to rich, in all things belonging to my office:—I will do no wrong to any man, for any gift, reward, or promise, nor for favour or interest:—I will disturb no man's right, and will truly and faithfully acquit, and cause to be acquitted, all those of whom I shall receive any debts or dues belonging to the Crown:—I will truly, serve, execute and return all the Queen's Writs, according to the best of my skill and knowledge; and will duly account for, and pay over, without delay, on my part, all monies that shall come into my hands as Sheriff, (or Under Sheriff as the case may be) to the parties or persons legally entitled to the same, I will take no Bailiffs into my service, but such as I will answer for, and will cause each of them to take such oaths as I do, in what belongeth to their business and occupation, I will truly set and return reasonable and due issues of them that are within my Sheriffwick, according to their estate and circumstances, and make due pannels of persons able and sufficient, and not suspected or procured, as is and shall be appointed by the laws of this Province.—I have not sold or let to farm, nor will I sell or let to farm, nor have I entered into, or will I enter into any contract for the sale or disposal, or the letting to farm, directly or indirectly, of my Sheriffwick, or any office belonging thereunto, or the profits of the same, to any person or persons whomsoever.—(Instead of the last sentence, beginning with the words "I have not sold," and ending with the word "whomsoever" the Under Sheriffs oath will here include the following sentence, to wit:—"I have not bought or taken to farm, nor will I buy or take to farm, nor have I entered or will I enter into any contract for the purchasing, acquiring, or taking to farm, directly or indirectly, of the office of Under Sheriff of the said District of which I am now about to enter upon and enjoy, nor the profits of the same, or any office or place belonging to the said office of Under Sheriff, nor have I sold or let to farm, nor will I sell or let to farm, directly or indirectly, any place belonging to the said office of Under Sheriff:") I will truly and diligently execute the Laws of this Province, and in all things well and truly behave myself in my said office, for Her Majesty's advantage and the good of her subjects, and discharge my whole duty, according to the best or my skill and power.—So help me God.

SYDENHAM.

Ordained and Enacted by the authority aforesaid, and passed in Special Council, under the Great Seal of the Province, at the Government House, in the City of Montreal, the Twenty-sixth day of January, in the Fourth year of the Reign of Our Sovereign Lady Victoria, by the

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Grace of God, of Great Britain and Ireland, Queen, Defender of the Faith, and so forth, and in the year of Our Lord one thousand eight hundred and forty-one.

By His Excellency's Command,
W. B. LINDSAY,
Clerk Special Council.