

Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1836. Fredericton, NB: John Simpson, Printer to the King's Most Excellent Majesty, 1836.

6 William IV – Chapter 1

An Act for the better regulating of the Office of Sheriff in this Province. Passed 8th March 1836.

Whereas it is expedient to regulate the office of Sheriff in this Province;

- I. Be it enacted by the Lieutenant Governor, Legislative Council and Assembly, That from and after the passing of this Act, the Sheriffs of the several Counties in this Province, as well as the Sheriff of the City and County of Saint John, shall be appointed annually by the Lieutenant Governor or Commander in Chief, by and with the advice of the Executive Council, on the first Tuesday in April in each and every year.
- II. And be it enacted, That every Sheriff already appointed, or hereafter to be appointed, shall remain in office until another shall be appointed and sworn in his stead.
- III. And be it enacted, That every Sheriff hereafter to be appointed, in addition to the bond required to be given to His Majesty, shall give bond with two good and sufficient sureties in the sum of five hundred pounds to the Lieutenant Governor or Commander in Chief for the time being, to answer for any monies or damages that may be recovered against the said Sheriff for or by reason of any act, misdoing or neglect of such Sheriff, or any of his deputies, in the discharge of the duties of his office for the year for which he may be so appointed; which bond shall be of the tenor and effect of the form contained in the Schedule to this Act annexed: and a new bond shall be annually given by every Sheriff, although such Sheriff shall be reappointed and continued in office.
- IV. And be it enacted, That every such Sheriff shall, forthwith after his appointment, lodge such bond herein before required, in the office of the Secretary of the Province, to be by him said before the Lieutenant Governor or Commander in Chief for the time being, for his approval of the sureties therein named, and the bond shall not be deemed to be perfected until such approval shall be given and endorsed on the bond; and in case of the failure of any Sheriff to give such bond with sureties that shall be so approved of, for the space of one month after his being appointed, another person shall be appointed in his stead for the then current year, to end on and with the first Tuesday in April then next ensuing.
- V. And be it enacted, That every such bond when perfected in manner before mentioned, shall be transmitted by the Secretary of the Province to the office of the Clerk of the Pleas of the Supreme Court, and shall be filed by him, and remain on file with the papers and records of the said Court.
- VI. And be it enacted, That if any person or persons shall recover a judgment against any Sheriff in any Court of Record in this Province, for any monies due to or damages sustained by him or

them for or by reason of any act, doing, misdoing or neglect of such Sheriff, or any of his deputies, in the discharge of the duties of his office during the year for which any such bond may be given, and shall issue any writ of *feri facias* upon such judgment into the County where such Sheriff may reside, and a return of *nulla bona* as to the whole or any part of the amount of such judgment shall be made upon such writ of *feri facias*, such person or persons may forthwith, upon such return being made, apply to the said Supreme Court or any Judge thereof, and such Court or Judge shall thereupon grant an order for such bond to be put in suit by such person or persons; and such person or persons may thereupon bring an action of debt upon such bond in the Supreme Court in his or their own name: Provided always, that no action shall be brought upon any such bond, unless the suit in which such judgment shall have been obtained against such Sheriff for a cause of action accruing during the year for which such bond was given, shall have been commenced before the expiration of one year alter the end of the year for which such bond was given; nor shall any such action on such bond be brought after the expiration of one year from the day of the signing of such judgment recovered against such Sheriff: Provided also, that no order for the putting such bond in suit shall be made, unless the requisite facts shall be made to appear by affidavit to the satisfaction of the Court or Judge.

VII. And be it enacted, That a copy of any such bond, certified under the seal of the Supreme Court, shall in all cases be good evidence thereof without the production of the original.

VIII. And be it enacted, That the person or persons by whom such action of debt upon such bond shall be brought, may recover in such action the amount of the judgment recovered against the Sheriff with costs of suit, provided that the amount of such judgment docs not exceed the penalty of the bond, and the amount of debt recovered in any action on such bond shall be deemed a satisfaction of the bond *pro tanto*; and in case of a subsequent order being obtained for putting the bond in suit at the instance of any other party, there shall be recovered in such subsequent action no more than the residue of the penalty which may remain after such part satisfaction of the bond in such former action, together with costs of suit, and so on *toties quoties*; and the aggregate of the debts recovered in all actions upon any such bond shall never exceed the penalty of the bond; and in case any action shall be brought upon any such bond wherein there shall be nothing recovered, the defendant or defendants shall have judgment with costs of suit.

IX. And be it enacted, That if any Sheriff or his deputy shall levy or receive any sum or sums of money, by virtue of any execution, writ or process, and shall retain the same in his hands for the space of one month after the same shall have been demanded by the person or persons authorised and empowered to receive the same, that then such Sheriff shall forfeit to the party entitled to receive such sum or sums of money, for any time that he or his deputy may retain the same, at the rate of one shilling per pound for every month that the same shall be so detained after the expiration of one month after demand made as aforesaid, to be recovered by action of debt, at the suit of the party entitled to receive the same, in the Supreme Court of this Province, or in the Inferior Court of Common Pleas for the County where such offence shall have been committed: provided such action shall be brought within three months after such demand made, and not otherwise.

X. And be it enacted, That any Sheriff may appoint one or more fit and proper person or persons to act as deputy Sheriff or Sheriffs under him; and any person so appointed deputy Sheriff, shall give the said Sheriff security for the faithful performance of his duty; and the said Sheriff shall immediately after such appointment publish the name of any person whom he may so appoint as a deputy Sheriff in one of the public newspapers of the County, and if none be published therein, then in the Royal Gazette of this Province; which publication may be proved by the production of the said Gazette or newspaper in which the said notice shall have been published, and the same shall be sufficient evidence of such person or persons being such deputy Sheriff; and no person shall be authorised to act as deputy Sheriff until he shall have given security, and his name shall have been published in manner aforesaid: Provided always, that nothing in this section contained shall apply to any person deputed by any Sheriff to do particular acts only.

XI. And It enacted, That from and after the passing of this Act, no person or persons (save and except the High Sheriffs respectively, and their respective deputies,) shall charge or be allowed to receive any fee or reward whatsoever, for the service of any writ or process issued from the Supreme Court or any of the Inferior Courts of Common Pleas in this Province, nor shall any fee for the service of any writ or process issued from any of the said Courts be allowed or taxed in any case, unless such service has been made or performed by the Sheriff, or some or one of his deputies of the County, or City and County, in which the writ or process shall have been served, or by some person specially authorised by the said Sheriff to make the particular service, any law, usage or custom to the contrary in any wise notwithstanding; and it shall be the duty of every Attorney issuing any process from any of the said Courts to put the same into the hands of the Sheriff or one of his deputies to be served, unless in cases where the service is intended to be entirely gratuitous.

XII. And be it enacted, That the Attorney or Attornies issuing any writ or process whose name or names is or are endorsed on such writ or process shall in all cases be considered as the employer of the Sheriff serving any such writ or process, and as such liable to the Sheriff for his legal fees for serving or executing the same: Provided always, that nothing in this Act contained shall extend or be construed to extend to defeat the plaintiff's liabilities to such Sheriff for the service of any writ or process.

XIII. 'And whereas it is proper and right that the several Sheriffs of this Province should be remunerated for the services by them performed in the summoning of Grand and Petit Jurors, and attending the Courts in their respective Counties;' Be it therefore enacted, That from and after the passing of this Act, it shall and may be lawful for His Majesty's Justices of the Peace of the several Counties in this Province, and they are hereby required at their respective General Sessions to allow the said Sheriffs respectively such reasonable Compensation for their services respectively in summoning the Grand and Petit Jurors of their respective Counties and for attending the Courts therein as to the said Sessions respectively shall appear just and right, not exceeding in any one year the sum of twenty pounds; which allowance or compensation when so awarded by the Sessions as aforesaid, shall be paid by the County Treasurer out of any funds in his hands belonging to the said Counties respectively, by order of the said Sessions: Provided always, that the limit of twenty pounds herein before mentioned shall apply only to the services hereinbefore

specifically described, and shall not extend or be construed to extend to any remuneration to be made by the said Justices to the said Sheriff out of the County funds for any other services by him performed.

XIV. And be it enacted, That this Act shall continue and be in force till the tenth day of April which will be in the year of our Lord one thousand eight hundred and forty.

SCHEDULE.
FORM OF SHERIFFS BOND.

Know all men by these presents, that We _____ are held and firmly bound unto the Lieutenant Governor or Commander in Chief of the Province of New Brunswick for the time being, in the sum of five hundred pounds of lawful money of the said Province, to be paid to the Lieutenant Governor or Commander in Chief of the said Province for the time being; for which payment to be well and truly made, We bind ourselves and each of us, by himself, for and in the whole, our and each of our heirs, executors and administrators firmly by these presents.

Sealed with our seals. Dated the _____ day of _____ in the year of our Lord one thousand eight hundred and _____.

Whereas the above bounded _____ has been duly appointed Sheriff of the County of _____ (or the City and County of _____ as the case maybe) for the year _____ ending on and with the first Tuesday in April next ensuing the date of this obligation: Now the condition of this obligation is such, that if the said _____ Sheriff as aforesaid, his executors or administrators, shall well and truly pay and satisfy, or cause to be paid and satisfied, all monies and damages that may be recovered against him the said _____ Sheriff as aforesaid, by any person or persons, for or by reason of any act, doing, misdoing or neglect of such Sheriff or any of his deputies in the discharge of the duties of his office during the said year ending on and with the first Tuesday in April next ensuing the date of this obligation, then this obligation to be void, otherwise to remain in full force and virtue.