

Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1862. Fredericton, NB: John Simpson, Printer to the Queen's Most Excellent Majesty, 1862.

25 Victoria – Chapter 30

An Act to amend the Revised Statutes, Chapter 53, 'Of Rates and Taxes.' Passed 23rd April 1862.

Section.

1. Duties of Collector.
2. Execution, when to be issued against resident;
3. When against non-resident.
4. Clerk of Peace, &c. when to grant certificate.
5. Proceedings upon Execution;
6. Against persons out of the Province.
7. Successor of Collector to continue proceedings.
8. Date of receipt endorsed on Warrant, &c.
9. Appointment of Jury; their duty.
10. Postponement of sale.
11. Deed by Sheriff.

Section.

12. Sheriff's Deed deemed prima facie evidence.
13. Sheriff's successor to continue proceedings.
14. Warrant for sale, &c. filed with Registrar of Deeds.
15. Sheriff to pay over proceeds of sale to County Treasurer.
16. Proceedings may be taken in the name of Collector for time being.
17. Refusal of Justice to pay over moneys; penalty.
18. Parts of Chapter 53 repealed.
19. Table of Fees.
Schedule.

Be it enacted by the Lieutenant Governor, Legislative Council, and Assembly, as follows:—

1. Every Collector shall, immediately after receiving the Assessment List, publish in the Royal Gazette for three months a list of all persons assessed in the Parish as non-residents, upon whom demand of payment has not been made as provided in the twenty fourth section of Chapter fifty three of the Revised Statutes, with the amounts of their respective rates, and a notice that unless such rates, with the costs of advertising, are paid within that time, the real estate of such persons will be sold, or other proceedings taken for the recovery of the amount.
2. If any person so assessed, residing in the County for which the assessment is made, shall neglect to pay such rate, and the costs of advertising, within the three months, the Collector shall apply to a Justice, who, upon oath made that the notice required by the first section of this Act has been duly published, and that the rate and expenses have not been paid, shall issue an execution against such person as provided in the twenty fifth section of Chapter fifty three of the Revised Statutes.
3. If any person assessed as a non-resident, and having a known place of abode within the Province, shall neglect to pay his assessment within the time limited by the first section of this Act, the Collector shall apply to a Justice of the Peace of the County where such person shall reside, who, upon the production of a certificate from the Clerk of the Peace or Secretary Treasurer of the

County, as the case may be, where the assessment was made, of the amount of such assessment, and the costs of advertising, and that due notice has been given as required by the first section of this Act, shall issue an execution against such person as directed in the thirty fifth section of the fifty third Chapter of the Revised Statutes; and no proceedings shall be taken against the real estate of such non-resident until after the return of such execution.

4. Before granting the certificate, the Clerk of the Peace or Secretary Treasurer shall take from the Collector an affidavit, that the notice has been duly published, and that the assessment is unpaid; which affidavit shall be filed in the office of the Clerk of the Peace or Secretary Treasurer, as the case may be.
5. The proceedings upon any execution issued under the provisions of this Act shall be According to the directions of the twenty fifth section of Chapter fifty three of the Revised Statutes.
6. If any person so assessed, add not residing within the Province, shall neglect to pay such rates, and the costs of advertising, within the three months, the Collector Shall make and subscribe an affidavit (A) according to the Schedule in this Act; and any Justice of the County shall thereupon, on application of the Collector, issue a Warrant (R); the affidavit shall be annexed to the warrant, and the Sheriff, to whom the warrant is directed, shall not execute it unless the affidavit is annexed.
7. If the Collector goes out of office or dies after the advertising, the proceedings may be completed by his successor, who shall make affidavit of the regularity of the proceedings taken by himself, and that by diligent search and enquiry he verily believes that the proceedings taken by his predecessor have been regular.
8. The Sheriff upon receiving a warrant for the sale of real estate, shall endorse thereon the day of receiving the same, and shall forthwith file in the office of the Register of Deeds for the County a Memorandum (C), which shall operate as a lien of charge upon all the lands of the person named in the warrant within the County until the sale and conveyance thereof by the Sheriff, add shall have priority over any conveyance, mortgage, or charge made by or any judgment recovered against such person after the delivery of the warrant to the Sheriff.
9. At the expiration of one year from the day of receiving the warrant, if the sum mentioned in the warrant and the costs and expenses remain unpaid, the Sheriff shall summon a Jury of three disinterested freeholders not residing in the Parish where the lands lie, who, after being sworn by the Sheriff to the impartial discharge of their duty, shall view the land in the presence of the Sheriff, and shall set off and define, in writing under their hands, so much of the said land as in their judgment shall be sufficient to pay the amount mentioned in the said warrant, with costs and expenses; and the Sheriff shall advertise and sell the land so set off, and no more.
10. The Sheriff shall have power to postpone the sale, if he considers it necessary, for a period of not less than thirty days, nor more than three months.

11. The Deed to be executed by the Sheriff on any sale under this Act shall be according to the form (D) as near as may be, which shall convey all the interest of the person assessed at the date of the delivery of the Warrant to the Sheriff, free from all liens, charges or incumbrances upon the said land since the registry of the Memorandum (C).

12. The Deed of the Sheriff duly executed, acknowledged, and registered, with an affidavit of such officer or his deputy endorsed thereon in the form (E), made at any time before the registration of such Deed, and sworn before any person authorized to take acknowledgments or proof of Deeds, that the property so conveyed was regularly seized, advertised, and sold, with proof of the Justice's Warrant, and Collector's affidavit thereto annexed, and upon which such seizure, sale and conveyance are founded, shall in all Courts be deemed and taken to be prima facie evidence of all things therein set forth.

13. If the Sheriff goes out of office or dies after the delivery of the Warrant and before the completion of the sale, the proceedings may be completed by his successor, who shall make affidavit of the regularity of the proceedings taken by him, and that by diligent search or enquiry he verily believes that the proceedings taken by his predecessor have been regular.

14. The Warrant for sale, with the affidavit of the Collector thereto annexed, and the Sheriff's return of his proceedings thereon, shall immediately after the sale be filed by him in the office of the Registrar of Deeds for the County.

15. The Sheriff shall pay over the proceeds of the sale (after deducting the expenses) to the County Treasurer, who shall apply the same in the first place to the payment of the amount mentioned in the Warrant, and the balance (if any) to be paid to the person who may be entitled to receive the same.

16. Proceedings for the recovery of rates may be taken and prosecuted to execution in the name of the Collector for the time being, although the Collector to whom the assessment list was delivered may have gone out of office since the delivery thereof.

17. If any money shall be paid to a Justice of the Peace upon execution or otherwise, in payment or satisfaction of any rate or assessment made by virtue of the authority and provisions of the Act to which this is an amendment, and such Justice shall have neglected or refused, after demand, to pay over the same to the Collector for the time being of the County or Parish to which such money was due, such neglect or refusal shall be deemed a misdemeanor and punished as such; and the Collector for the time being of such County or Parish, shall and may in his own name maintain an action of assumpsit against such Justice in the Supreme Court, as for money had and received, in which action he shall be entitled to recover interest on the money so paid to such Justice from the time of demand, besides costs of suit; and such action shall be a bar to any criminal prosecution for the said offence.

18. Any part of the said Chapter which is inconsistent with the provisions of this Act is hereby repealed.

19. The following Fees may be taken under this Act:—

To the Sheriff.

Filing Warrant, One shilling.

Memorandum to register, Five shillings.

Summoning and swearing Jury to appraise, Two shillings and six pence.

Attending to view land, Five shillings.

Preparing and executing Conveyance, Twenty shillings.

Mileage actually travelled, the same as allowed on serving Writs.

To the Clerk of the Peace.

Taking and filing affidavit from Collector, and granting Certificate, Five shillings.

To the Justice.

Taking affidavit of Collector, and issuing Warrant, Two shillings and six pence.

To the Registrar.

Filing Memorandum and Warrant, each, One shilling.

To the Jury.

For viewing the land and defining the portion to be sold, Two shillings and six pence each.

The same mileage as Jurors attending the Supreme Court.

Schedule referred to in this Act.

A

Form of the Affidavit to be made by the Collector of Rates.

A. B. of _____, in the County of _____, and Province of New Brunswick,
Collector of Rates and Taxes for the Parish (or District) of _____, (as the case may be,)
for the year 18____, maketh oath and saith, that by an Assessment made by _____,

Assessors for the Parish of _____, in the County aforesaid, and dated the ____ day of _____, A. D. 18____, the sum of _____ was directed to be collected from C. D., as a non-resident owner of real estate in the said Parish; that the portion of the said assessment applicable to the said C. D. has been duly published according to law, and that no part of the said sum of money has been paid.

A. B.

Sworn to before me, at _____, in the County aforesaid, this ____ day of _____, A. D. 18 ____.



C.D., J.P.

B

Warrant to sell Land.

to wit: To the Sheriff of the County of _____.

A. B. having been assessed in the Parish of _____, in the County of _____, in the sum of _____, for the year 18____, and due notice according to law having been given, and the same not having been paid, and C. D., Collector of Taxes for the said Parish having applied to the undersigned, one of the Justices of the Peace for the said County, I do order and command you to seize all the real estate of the said A.B. within your County; and if the said sum, and _____ for costs, together with your charges and expenses, be not paid within one year from the delivery of this Warrant to you, that you sell at public auction to the highest bidder, first giving thirty days notice of such sale, so much of the real estate of the said A. B., situate within the said Parish, as shall be sufficient to pay the said assessment and the costs, together with your costs and charges, and make return hereof according to law.—Dated the ____ day of _____, A. D. 18____.

J. Peace.

C

Memorandum of Warrant.

County of _____.

Received in my office this day, a Warrant issued by _____ Esquire, a Justice of the Peace for the said County, dated the ____ day of _____, 18____, directing me to sell so much of the real estate of C. D., situated in the Parish of _____, in the said County, as shall be sufficient to pay _____, assessed against the said C. D., in the said Parish, besides costs.— Dated the ____ day of _____, 18____.

E. F., Sheriff of _____.

D

Sheriff's Deed to purchaser.

To all to whom these presents shall come: I, A. B., Sheriff of the County of _____, send greeting.

Whereas by a Warrant of _____, a Justice of the Peace in and for the County aforesaid, bearing date the ____ day of _____, A. D. 18____, with the affidavit of _____, the Collector of Rates for the Parish (or District) of _____, (as the case may be) thereto annexed, I was ordered to sell at public auction to the highest bidder, first giving thirty day's notice of such sale, so much of the real estate of C. D. situate in the Parish of _____, in the said County, as should be sufficient to pay the assessment of the said C. D., he being therein rated as a non-resident owner of real estate, for the sum of _____, together with the costs and charges; and whereas in obedience to the said Warrant I have levied upon a certain piece or parcel of land of the said C. D., situated in the Parish of _____ aforesaid, and described as follows, that is to say:—[here set forth a description of the lands]—and after having duly advertised and sold the same according to law, E. F. of _____, in the County of _____, became the purchaser of the same for the sum of _____: Now know ye, that I, the said Sheriff, in pursuance of the power in me vested, and in consideration of the said sum of _____, do grant, bargain and sell unto the said _____, all the said lands and tenements hereinbefore described, together with all buildings and the appurtenances thereon being, and all the estate, right, title, interest, property, claim and demand of the said C. D. in and to the same: To have and to hold the same unto the said E. F. his heirs and assigns, for ever. In witness whereof, I have hereunto set my hand and seal the ____ day of _____, in the year 18____.

A. B., [L.S.]

Signed, sealed and delivered
in the presence of _____ }
_____ }

On this ____ day of _____ 18____, before me _____, Esquire, one of the Justices of the Peace for the County of _____, personally appeared A.B., the above named Sheriff, and acknowledged the within conveyance to be his act and deed, executed by him for the purposes therein mentioned.

Justice of the Peace.

E

Affidavit of the Sheriff.

On this ____ day of _____, A. D. 18____, personally appeared before me
_____, Esquire, one of the Justices of the Peace for the County of _____,
A. B. the within named Sheriff, (or Deputy Sheriff,) and made oath that the lands and tenements
mentioned in the within Deed, were duly seized, advertised, and sold, as by law required.
Justice of the Peace.