



ANNO NONO

VICTORIÆ REGINÆ.

CAP. LVI.

An Act to regulate the Poundage to be received by Sheriffs on Executions, and for other purposes therein mentioned.

[9th June, 1840.]

WHEREAS doubts have been raised as to the true intent and meaning of the thirty-second Section of the Act of the Legislature of the Province of Upper Canada, passed in the seventh year of the Reign of King William the fourth, and intituled, *An Act for the further amendment of the Law, and the better advancement of Justice*, and it is expedient to remove such doubts: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That the said thirty-second Section of the said Act be and the same is hereby repealed.

Preamble.

Act of U.C. 7 Will. 4. c. 3, cited.

Sect. 32 of the said Act repealed.

II. And whereas in cases where Writs of Execution have been issued into several Districts, upon which Writs, property, real or personal may have been seized or advertized, which property has afterwards not been sold on account of satisfaction having been otherwise obtained, or from some other cause, it has been doubted whether a claim to poundage may not be advanced by the Sheriff of each of such Districts respectively, although no money has been actually levied by them under such Writ: Be it therefore enacted, That where upon any such Writ of Execution sued out against the estate, real or personal of the Defendant or Defendants, no money shall be actually levied, no poundage shall be allowed to the Sheriff, but he shall be allowed his fees for the services which may be actually rendered by him; and it shall be in the power of the Court from whence such Execution shall have issued, or for any Judge thereof in vacation, to allow a reasonable charge to the Sheriff, for any service rendered in respect to such execution, for which no specific fee or allowance may be assigned in the table of costs.

In what cases and to what amount poundage shall be allowed to Sheriffs.

III. And be it enacted, That the Sheriff shall not be entitled to poundage on any execution against goods and chattels, (except in cases where the full amount shall be collected by him,) on a greater sum than the value of the property actually seized by him under any Writ of Execution, whatever be the sum mentioned or endorsed upon such Writ.

Further limitation as to amount of poundage.

IV.

A single Judge may make the necessary order in cases under 7 Vict. c. 31, arising out of adverse claims of third parties.

IV. And whereas by an Act passed in the seventh year of the Reign of Her present Majesty, intituled, *An Act to enable Courts of Law, in that part of this Province called Upper Canada, to give relief against adverse claims made upon persons having no interest in the subject of such claims*, provision is made for the relief of Sheriffs and other Officers concerned in the execution of Process issued out of Her Majesty's Court of Queen's Bench for Upper Canada, or out of any of Her Majesty's District Courts in that part of this Province, against goods and chattels, in cases of difficulty arising by reason of claims made to such goods and chattels by third parties, but such relief can only be given by Rule of Court: And whereas it is expedient that a single Judge should possess the power of giving relief in that respect: Be it therefore enacted, That it shall be lawful for any Judge of the said Court of Queen's Bench with respect to any such Process issued out of such Court, or for the Judge of any District Court with respect to Process issued out of such District Court, to exercise such powers and authorities for the relief and protection of the Sheriff or other Officer, as may, by virtue of the said last mentioned Act, be exercised by the said several Courts, respectively, and to make such Order therein as shall appear to be just; and the costs of such proceeding shall be in the discretion of such Judge.

Sheriff's costs how paid in cases of adverse claims by third parties.

V. And be it enacted, That when and so often as it shall happen that, in consequence of any adverse claim being made to any property seized or taken in execution by any Sheriff or other Officer, any Rule, Order or Summons shall or may be obtained by such Sheriff or other Officer under the provisions of the Act last above cited, and the Court or Judge by whom such Rule, Order or Summons may have been issued, or before whom the same may be returnable, shall direct an issue to be tried for the determination of such adverse claim, it shall and may be lawful for such Sheriff or other Officer, to tax the costs which he shall or may have incurred in consequence of such adverse claim, and to serve a copy of the *allocatur* of the same when taxed, upon each of the parties to the said issue, and the successful party upon the said issue shall tax such costs among his costs of the cause, and upon receipt of the same, shall pay them over to such Sheriff or other Officer: Provided always, that if after the service of such *allocatur* of the costs, the party succeeding upon such issue, shall neglect or refuse to tax such costs among the costs of the cause, such Sheriff or other Officer may nevertheless obtain a Rule upon such successful party for the payment of the same; And provided also, that if any such proceeding shall be compromised between the parties thereto, such costs of the Sheriff or other Officer shall be paid by the party, plaintiff or defendant, by whom the execution was issued.

Proviso in case of refusal to pay.

Proviso in case of compromise between the parties.

Allowance may be made to Sheriff having property in custody pending the trial of such claims.

VI. And be it enacted, That when after the seizure of any property in execution, an issue shall be directed under the provisions of the Act last above cited, and the property so seized shall remain in the custody of the Sheriff or other Officer seizing the same, pending the trial of such issue, the Court from which such execution shall have issued, or any Judge thereof, in vacation, may make an Order for the payment to such Sheriff or other Officer, of such sum for his trouble in and about the custody of such property, as such Court or Judge shall deem reasonable, and such Sheriff or other Officer shall have a lien upon the property for the payment of the same.