

Laws of His Majesty's Province of Upper Canada, passed in the year 1833. York: Robert Stanton, 1833.

3 William IV – Chapter 9

An Act to make certain regulations relating to the Office of Sheriff in this Province, and to require the several Sheriffs of this Province to give Security for the due fulfilment of the duties of their Office. Passed 13th February, 1833.

Whereas from the tenure of the Office of Sheriff in this Province, and the nature of the Security exacted for the due performance of its duties, sufficient indemnity is not afforded against damages that may arise from the misprisions or defaults of Sheriffs:—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 Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled "*An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, entitled '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 by the authority of the same, That the Sheriff of each and every District of this Province shall, on or before the first day of August next after the passing of this Act, enter into a Bond to His Majesty, His Heirs and Successors, in the penal sum of One Thousand Pounds, together with two Sureties, to be approved of by the Inspector General of Public Accounts, in the sum of Five Hundred Pounds each, with a condition that he shall well and faithfully account for and pay over all such monies as he shall receive for His Majesty, His Heirs and Successors, which Bond and Condition shall be in the form given in the Schedule to this Act annexed marked A, or in words to the like effect.

II. And be it further enacted by the authority aforesaid, That the Sheriff of each and every District of this Province, shall also, on or before the same first day of August, provide either two or four sufficient persons who, together with himself, shall enter into a Covenant under their Seals, joint and several, according to the form given in the Schedule to this Act annexed, marked B, or in words to the same effect, which Covenant shall be available to, and may be sued upon by any person suffering damages by the default or wilful misconduct of any such Sheriffs respectively.

III. And be it further enacted by the authority aforesaid, That such Sureties shall not be accepted as sufficient, unless a majority of the Justices of the Peace at a Court of General Quarter Sessions of the Peace for the District in which any such Sheriff is serving, shall ascertain and determine that they are good and sufficient, and unless a Certificate shall be given in pursuance of such determination, under the Hand and Seal of the Chairman of such Quarter Sessions, declaring that the Court are satisfied that the persons named in the Certificate are responsible persons to the full amount to which they are required to become Surety, which Certificate shall be produced and filed at the time of the delivering and filing of the said Covenant as hereinafter provided.

IV. And be it further enacted by the authority aforesaid, That the Bond to His Majesty, required by this Act, shall be deposited with the Inspector General of Public Accounts in this Province, and

that the Covenant required by this Act shall be made in duplicate, each part of which shall be marked duplicate, but shall be considered and received as original, one of which parts shall be filed in the Office of the Secretary of the Province, and the other part thereof shall be filed in the Office of the Clerk of the Peace of the District for which such Sheriff shall be appointed, for which filing the said Clerk of the Peace shall be entitled to demand and receive from the Sheriff, the sum of Two Shillings and Six Pence, and no more.

V. And be it further enacted by the authority aforesaid, That all and every person or persons shall be authorized to search and examine any such Covenant, and shall and may demand and have from any Clerk of the Peace of any District of this Province, a copy of such Covenant as may be filed as aforesaid in pursuance of this Act, and it shall and may be lawful for such Clerk of the Peace to demand and receive for every such search and examination, One Shilling and Three Pence, and for every such copy, Five Shillings, and no more.

VI. And be it further enacted by the authority aforesaid, That the Sheriff of every District of this Province, now appointed or hereafter to be appointed, shall at or before the expiration of every period of four years from the date of the Bond and Covenant given by him and his Sureties according to this Act, renew his Bond and Covenant in the same sums respectively, either with the same or with other Sureties, whose sufficiency shall be certified in the manner hereinbefore provided; and all the provisions of this Act, in respect to the Bond and the Covenant first required to be given, shall apply to such renewed Bond and Covenant.

VII. And be it further enacted by the authority aforesaid, That at any time, and at all times hereafter, when the Office of Sheriff of any District of this Province shall become vacant, it shall not be lawful for the Governor, Lieutenant Governor, or Person Administering the Government of this Province, to appoint any person to the said Office of Sheriff until such person shall have given and filed a Covenant with Sureties, and shall also have given a Bond with Sureties, in the same manner and to the same tenor and effect as are by this Act required from the several persons now holding Commissions, and executing the said Office of Sheriff.

VIII. And be it further enacted by the authority aforesaid, That no person shall hereafter be appointed to the office of Sheriff in any District who shall not be possessed of Real Estate in this Province of the actual value of Seven Hundred and Fifty Pounds, above incumbrances, and who shall not before he receives his Commission file an affidavit to that effect in the Office of the Secretary of this Province, which affidavit shall be sworn before the Chairman of the Quarter Sessions of the District, in open Sessions, who is hereby authorized and required to take the same.

IX. And be it further enacted by the authority aforesaid, That if any person who shall have become an Obligor in any such Bond, or Surety in any such Covenant, shall die, or shall become resident out of this Province, or shall become insolvent, the person holding such Office of Sheriff, for whom the person so dying, leaving this Province, or becoming insolvent, shall have become such Obligor or Surety, shall, within four months after such death or departure, or after such insolvency shall be certified in the manner herein provided, give anew the like Bond and Security, and in the same manner as hereinbefore required.—Provided always, that nothing herein contained shall extend

or be construed to extend, to discharge all or any of the parties to such former Bond or Covenant from their liability, on account of any matter or thing which shall have been done or omitted before the renewal of the Security as herein directed.

X. And be it further enacted by the authority aforesaid, That if during the period for which any such Covenant as aforesaid shall be given, the Sureties executing the same, or any of them, shall apprehend that the Sheriff for whom such Surety was given is insolvent, or has not property to the amount of seven hundred and fifty pounds, over and above all incumbrances and debts, and shall transmit to the Governor, Lieutenant Governor, or Person Administering the Government of this Province, an Affidavit made by him or them to that effect, and sworn to before a Commissioner for taking Affidavits in the Court of King's Bench, the Sheriff for whom the Security was given, shall be thereupon officially notified by the Secretary to His Excellency the Lieutenant Governor, or Person Administering the Government of this Province, that he must forthwith furnish new Security in the manner pointed out by this Act, or must on affidavit deny that he is insolvent, or that he is worth less than the sum of seven hundred and fifty pounds, over and above all incumbrances and debts, and that if such requisition is not complied with within one month after the sitting of the then ensuing Quarter Sessions of the District, he shall for that cause be removed from Office.

XI. And be it further enacted by the authority aforesaid, That when any new Surety or Sureties shall be given, either at the expiration of any stated period, or by way of substitution for any other Surety within the period, the former Surety shall only be discharged as to defaults or misfeasances suffered or committed after the perfecting of such new Security, and not as to any previous defaults or misfeasances,

XII. And be it further enacted by the authority aforesaid, That after the Covenant required to be entered into by this Act shall have been sued upon by any person having or alleging a claim upon the parties to the same, by reason of the default or misfeasance of the Sheriff, it shall notwithstanding be in the power of any person, or of the same person, to bring an Action upon the same Covenant for any other default or misfeasance, and such subsequent Action shall not be barred by reason of any prior recovery, or of any Judgment for the Defendant rendered in a former action, or of any other action being depending upon the same Covenant for any distinct cause of action.

XIII. And be it further enacted by the authority aforesaid, That if any person or persons who shall or may have become such Surety, shall have paid, or shall be liable to pay any sum or sums equal to the sum for which he or they shall have become Security, the said Bond or Covenant shall as to such person or persons be taken and deemed to be discharged and satisfied as to any claim or demand thereon beyond the amount of such payment or liability; and such Sheriff shall, within four months after such person or persons shall have become so discharged, give anew such Securities as are required by the provisions of this Act.

XIV. And be it further enacted by the authority aforesaid, That if the amount of any damages so recovered, which such Security has been obliged to pay, is not equal to the amount for which he

shall have become Security as aforesaid, then the Court shall, after deducting such sums therefrom, render Judgment against such Security for any amount not exceeding the residue of the sum for which such Security shall have become responsible as aforesaid.

XV. And be it further enacted by the authority aforesaid, That if it shall be made appear by Affidavit, or other sufficient proof, to the General Quarter Sessions of the Peace of any District, that any such Covenant has been or may be discharged as aforesaid, or that the Securities therein mentioned, or any or either of them, have become insolvent, it shall and may be lawful for the said Quarter Sessions to give notice thereof to the Sheriff of such District, and such Sheriff shall, and he is hereby required, to give anew the like Covenant as hereinbefore required by the provisions of this Act, within four months after such notice.

XVI. And be it further enacted by the authority aforesaid, That upon the issuing of any Writ of Execution upon any Judgment recovered on such Covenant, the Plaintiff in such suit, or his Attorney, shall, by an indorsement on such Writ, direct the Coroner to levy the amount thereof upon the Goods and Chattels of the Sheriff in the first place, and in default of Goods and Chattels of such Sheriff to satisfy the amount, then that the same, or the residue thereof, shall be made of the Goods and Chattels of the other Defendants in such suit, and so in like manner with any Writ which shall issue against the Lands and Tenements, in any Judgment upon such Covenant as is required by this Act.

XVII. And be it further enacted by the authority aforesaid, That upon application for, or granting of, by any of the Courts of this Province, any rule or rules upon any Sheriff for the return of any Writ or Writs, or for the performance of any other duty or matter relating to the said office of Sheriff, such Sheriff shall be liable to, and pay to the party making such application or obtaining such rule or rules, all taxable costs thereon, unless the Court shall otherwise order: Provided always, that if such application shall be made, or any such rule granted, previous to the day next after which such return should have been made, or such duty or matter performed, the Sheriff against whom such application shall be made or such rule granted, shall not be liable for any costs or charges which may arise or occur upon the same: And provided also, that if upon such application for a rule or rules it shall appear to the said Judge or Judges of the said Courts respectively, that the same is frivolous or vexatious, the said Judge or Judges of the said Courts respectively, may, upon discharging such application, order that all taxable costs and expenses for opposing the same be paid to the said Sheriff.

XVIII. And be it further enacted by the authority aforesaid, That no Sheriff shall be entitled to any fees on any Writ placed in his hands fifteen days before the return day mentioned therein, if he does not return the same to the Attorney from whom he received it, within four days after the return thereof, or enclose the same by Post within that time to the Attorney, unless delayed by an order in writing from the Party, his Attorney or Agent, placing the same in his hands.

XIX. And be it further enacted by the authority aforesaid, That if any Sheriff now appointed, or hereafter to be appointed, shall neglect or omit to give and perfect such Security as this Act requires, within the period limited by this Act, in any case, then upon such neglect or omission

being officially notified in writing to the Governor, Lieutenant Governor, or Person Administering the Government of this Province, either by the Inspector General, the Secretary of the Province, or the Chairman of the Quarter Sessions of the Peace in the District in which such Sheriff shall be serving: and they are hereby severally required officially to notify the same: such Sheriff shall for that cause be removed from his office, and a new Commission shall issue, with as little delay as possible, for supplying the vacancy: Provided always, that nothing herein contained shall extend, or be construed to extend, to prevent the Governor, Lieutenant Governor, or Person Administering the Government of this Province, from re-appointing any person to the said office, upon his duly fulfilling the provisions of this Act.

XX. And be it further enacted by the authority aforesaid, That the Covenant to be entered into with the Sheriffs of the several Districts respectively, shall specify the following sums as the extent to which the several parties thereto shall be considered as Covenanting to afford indemnity, that is to say:—The Sheriff of the Home District, One Thousand Pounds; two Sureties, Five Hundred Pounds each, or four Sureties, Two Hundred and Fifty Pounds each. The Sheriff of the District of Niagara, One Thousand Pounds; two Sureties, Five Hundred Pounds each, or four Sureties, Two Hundred and Fifty Pounds each. The Sheriff of the District of Gore, One Thousand Pounds; two Sureties, Five Hundred Pounds each, or four Sureties, Two Hundred and Fifty Pounds each. The Sheriff of the District of London, One Thousand Pounds; two Sureties, Five Hundred Pounds each, or four Sureties, Two Hundred and Fifty Pounds each. The Sheriff of the Western District, Five Hundred Pounds; Two Sureties, Two Hundred and Fifty Pounds each, or four Sureties, One Hundred and Twenty-five Pounds each. The Sheriff of the District of Newcastle, One Thousand Pounds; two Sureties, Five Hundred Pounds each, or four Sureties, Two Hundred and Fifty Pounds each. The Sheriff of the Midland District, One Thousand Pounds; two Sureties, Five Hundred Pounds each, or four Sureties, Two Hundred and Fifty Pounds each. The Sheriff of the District of Johnstown, One Thousand Pounds; two Sureties, Five Hundred Pounds each, or four Sureties, Two Hundred and Fifty Pounds each. The Sheriff of the District of Bathurst, Five Hundred Pounds; two Sureties, Two Hundred and Fifty Pounds each, or four Sureties, One Hundred and Twenty-five Pounds each. The Sheriff of the District of Ottawa, Five Hundred Pounds; two Sureties, Two Hundred and Fifty Pounds each; or four Sureties, One Hundred and Twenty-five Pounds each. The Sheriff of the Eastern District, One Thousand Pounds; two Sureties, Five Hundred Pounds each, or four Sureties, Two Hundred and Fifty Pounds each. And that the Sheriff of any new District hereafter to be formed shall give such Security, himself in One Thousand Pounds, two Sureties Five Hundred Pounds each, or four Sureties, Two Hundred and Fifty Pounds each.

XXI. And be it further enacted by the authority aforesaid, That the persons entering into any such Covenant as Sureties, shall be held liable to indemnify against any omission or default of the Sheriff in not paying over monies received by him, and against damages sustained by the parties to any legal proceeding, in consequence of his wilful or negligent misconduct in his office; and that the Sheriff shall be joined in any Action to be brought on the Covenant against all or any of the Sureties.

XXII. And be it further enacted by the authority aforesaid, That notwithstanding the Sheriff of any District may forfeit his office and become liable to be removed therefrom by reason of his failing to

comply with the provisions of this Act, he shall nevertheless be continued in his office to all intents and purposes, and the liability of himself and of his Securities shall remain until a new Sheriff shall be appointed and sworn in his stead.

XXIII. And be it further enacted by the authority aforesaid, That when any Sheriff in this Province shall die, the Under Sheriff or Deputy Sheriff by him appointed, shall nevertheless continue in his office, and shall execute the same, and all things belonging thereunto, in the name of such deceased Sheriff, until another Sheriff be appointed for the same District, and sworn into office; and the said Under Sheriff or Deputy Sheriff shall be answerable for the execution of the said office, in all things, and to all respects, intents and purposes whatsoever, during such interval, as the Sheriff so deceased would by Law have been if he had been living; and the Security given to the Sheriff so deceased by the said Under Sheriff, and his pledges, shall stand, remain, and be a Security to the King, His Heirs and Successors, and to all persons whatsoever, for such Under Sheriff's due performance of his office during such interval.

Schedule A.

Know all Men by these Presents, that we, A. B., Sheriff of the District of ____, C. D. of ____, in the District of ____, Esquire, and E. F. of ____, in the District of ____, are held and firmly bound to our Sovereign Lord the King, His Heirs and Successors, in the several sums following, that is to say:— The said A. B. in the sum of One Thousand Pounds; the said C. D. in the sum of Five Hundred Pounds; and the said E. F. in the sum of Five Hundred Pounds: to be paid to our Sovereign Lord the King, His Heirs and Successors, for which payments to be well and truly made, we bind ourselves severally and respectively, and each of us, His Heirs, Executors and Administrators, firmly by these Presents, Sealed with our Seals, and dated this ____ day of ____, in the Year of our Lord ____.

The condition of this Obligation is such, that if the above bounden A. B., his Executors or Administrators, shall well and faithfully account for, and pay over to His Majesty's Receiver General of this Province, or to such person as may be authorized to receive the same, all such sum and sums of money as he shall receive as such Sheriff as aforesaid, for our said Lord the King, His Heirs or Successors, from the date of this Obligation until the ____ day of ____, in the Year of our Lord ____ (four years), then this Obligation to be void, otherwise to remain in full force and virtue.

[L. S.]
[L. S.]
[L. S.]

Signed and Delivered }
in presence of _____ }

Schedule B.

Know all Men by these Presents, that we, A. B., Sheriff of the District of ____, C. D. of ____, in the District of ____, and E. F. of ____, in the District of ____, (when four Sureties are given, the names of

the other two to be inserted in like manner) do hereby jointly and severally, for ourselves, and for each of our Heirs, Executors and Administrators, covenant and promise, that A. B., as Sheriff of the said District, shall well and duly pay over to the person or persons entitled to the same, all such monies as he shall receive by virtue of his said office of Sheriff, from the date of this Covenant to the expiration of four years thence next ensuing, and that neither he nor his Deputy shall, within that period, wilfully misconduct himself in his said office, to the damage of any person being a party in any legal proceeding: nevertheless, it is hereby declared, that no greater sum shall be recovered under this Covenant, against the several parties thereto, than as follows, that is to say:—

Against the said A. B., in the whole ____.

Against the said C. D. ____

Against the said E. F. ____.

(If other Sureties, add them in like manner.)

In witness whereof, we have to these Presents set our Hands and Seals, this ____ day of ____, in the Year of our Lord ____.

[L. S.]

[L. S.]

[L. S.]

[L. S.]

Signed, Sealed and Delivered, }
in presence of _____ }