

NEW

SERIES.

THE ROYAL GAZETTE.

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Volume 5.

FREDERICTON, NEW BRUNSWICK, MARCH 6, 1839.

Number 37.



By Authority.

ANNO SECUNDO VICTORIÆ REGINÆ.

AN ACT

To amend the Laws now in force relating to the Militia in this Province.

Passed 21st February, 1839.

1. WHEREAS it is expedient and necessary for the Militia service of this Province, that the Commander in Chief for the time being should have the power of forming the several Companies of Artillery and Sea Fencibles into separate and distinct Battalions; Be it therefore enacted by the Lieutenant Governor, Legislative Council and Assembly, That from and immediately after the passing of this Act, the Lieutenant Governor and Commander in Chief for the time being in this Province, be and he is hereby authorized to form the said Companies of Artillery and Sea Fencibles into separate and distinct Battalions.

11. And be it further enacted, That the Non-Commissioned Officers and Privates of the said Corps respectively, and also the Non-Commissioned Officers and Privates of any uniformed Company of Dragoons or Riflemen, who shall submit their names through their respective Commanding Officers to the Commander in Chief for the time being, as Volunteers for actual service, shall be exempted from Draft by Ballot, and having so volunteered shall be liable to perform all duties required by the Commander in Chief, and shall be liable to all the pains and penalties imposed by Law on persons so drafted by Ballot; and when called out into such actual service, the said Corps, or such portions thereof as may be required, shall be under the command of Officers belonging to their respective Corps, and shall be formed into Companies separate and distinct from persons drafted by Ballot as aforesaid.

111. And be it further enacted, That in case any person belonging to either of the said Corps, whose name shall have been so submitted as aforesaid, shall refuse when called upon to perform any of the duties required of him, he shall be subject to a fine of ten pounds, and in case he neglect or refuse to pay the same, he shall be committed to the nearest County Gaol where he can be safely kept, by warrant under the hand of the Commanding Officer of the Battalion, Troop or Company to which he may belong, where he shall remain three Calendar months, or until he pay the said fine; and that after such refusal and payment of the said fine or suffering the said imprisonment, such person, in case of a Draft by Ballot, shall be liable and subject thereto, any thing in this Act to the contrary notwithstanding: Provided always, that nothing in this Act shall extend or be construed to extend to exempt any of the said Artillery, Sea Fencibles, Dragoons or Riflemen from the control and command of the Commanding Officer of the Regiment or Draft to which they may be attached.

IV. And be it enacted, That this Act may be altered, amended, or repealed, by any Act to be passed during the present Session of the General Assembly.

CIVIL APPOINTMENTS.

John Robertson, Thomas Wyer, Harris Hatch and William Boyd Kinnear, Esquires, to be members of the Legislative Council, provisionally, until Her Majesty's pleasure shall be known.

The undermentioned tracts of vacant Crown Land will be offered at Public Auction, at this Office, on Monday, the 1st day of April next, sale to commence at 12 o'clock, noon.

Terms, ten per cent of the purchase money to be paid at the time of sale, and the remainder within 14 days after.

110 acres, Northumberland, second tier, north of Miramichi River, and in rear of Wm. Ritchie, Parish of Newcastle. Upset price, 3s. per acre.

20 acres, Kent, lots 2, 3, 4, and 5, first division St. Nicholas Point, southside Richibucto River. Upset price, 10s. per acre.

60 acres, Kent, adjoining the grant to John McMillan at Big Creek, north side of Buctouche River. Upset price, 3s. per acre.

13 acres, Westmorland, being the eastern part of the lot lately surveyed for Thomas Blacklock, Jr. near Little Shemogue Harbor. Upset price, 3s. per acre.

100 acres, Westmorland, as surveyed for Adam McKee, west side road from Shemogue to Cape Bear. Upset price, 3s. per acre.

300 acres, Westmorland, lot No. 2 second tier, east of the Butternut Ridge. Upset price, 3s. per acre, and the value of the improvements which may be thereon.

Lots 1, 2 and 3, first tier, — of Deputy Allan's, survey north of Smith's Base line,

County of Charlotte. Upset price, 3s. per acre.

100 acres, King's, south east part of lot No. 5, next to the grant to Gilbert Stockton head of Smith's Creek. Upset price, 3s. per acre.

100 acres, Carleton, east half of No. 21, 5th tier, Williamston settlement. Upset price, 3s. per acre.

60 acres, Carleton, being lot A. in the fourth tier, Parish of Woodstock. Upset price, 3s. per acre.

THOMAS BAILLIE,
Commissioner of Crown Lands.
Crown Land Office, February 4, 1839.

HEAD QUARTERS, FREDERICTON.

25th February, 1839.

MILITIA GENERAL ORDERS.

Officers commanding the embodied Militia, are authorised and directed to accept of the services of able bodied Volunteers, who may be disposed to serve in the embodied Militia, in lieu of those already drafted.

By Command,
GEO. SHORE, A. G. M.

SUPREME COURT.

HILARY TERM, 2D VICTORIA, A. D. 1839.

GENERAL RULES, AS TO PROCEEDINGS AGAINST PRISONERS.

1. It is ordered, That from and after the last day of this Term, in all cases where a Prisoner is or shall be taken, detained or charged in custody by mesne process thereafter returnable, issuing out of this Court, and the Plaintiff shall not cause a Declaration against such Prisoner to be delivered to such Prisoner, or to the Sheriff in whose custody such Prisoner is or shall be detained or charged, within three Calendar months after the return of the Process, by virtue whereof such Prisoner is or shall be taken, detained or charged in custody; and cause an affidavit to be made and filed with the Clerk of this Court, of the delivery of such Declaration, and of the time when, and the person to whom the same was delivered, before the last day of the next term after the delivery of such Declaration, the Prisoner shall be discharged out of custody by writ of *superseas* to be granted by this Court, or one of the Judges thereof, upon filing common bail; unless upon notice given to the Plaintiff's Attorney, good cause shall be shewn to the contrary; and in case of a Commitment or Render in discharge of bail, after the return of process, and before a Declaration delivered, unless the Plaintiff shall cause a Declaration to be delivered, and an affidavit thereof made and filed; before the end of the term next after such commitment or render shall be made, and due notice of such render given, the Prisoner shall be discharged out of custody by writ of *superseas* to be granted as aforesaid, upon filing common bail; unless upon notice given to the Plaintiff's Attorney good cause shall be shewn to the contrary.

II. It is further ordered, That on every Declaration so to be delivered against a Prisoner as aforesaid, a Rule to appear and plead shall be indorsed according to the form following that is to say: "The Defendant C. D. is to appear and plead hereto at the suit of the Plaintiff A. B. within twenty days after service of this Declaration; otherwise judgment will be entered against him by Default."

G. H. Plaintiff's Attorney.

and that Judgment shall not be entered against such Defendant by default until the expiration of the said Rule.

III. It is further ordered, That the Sheriff who shall have received a copy of a Declaration against any Prisoner in his custody, shall indorse thereon, the time of his so receiving the same, and shall forthwith deliver the same to the said Prisoner, and shall also enter in a Book to be by him kept for that purpose, the time of receiving such declaration, and of delivering the same to the Prisoner.

IV. It is further ordered, That where the Plaintiff declares against the Prisoner, it shall not be necessary to make more than two copies of the Declaration, of which one shall be served, and the other filed with an affidavit of service, and a copy of the Rule to appear and plead indorsed thereon.

V. It is further ordered, That upon application made by the Plaintiff before the time at which the Defendant may be *superseas*able, and good and sufficient cause shewn by affidavit; further time to declare may be given by Rule of Court or order of a Judge.

VI. It is further ordered, That upon every application for a *superseas* for want of declaring in due time, in addition to the certificate of the Sheriff that no Declaration has been delivered to him for the Prisoner, there shall be an affidavit of the Defendant, that he has not been served with such declaration.

VII. It is further ordered, That unless the Plaintiff shall proceed to trial or final judgment within three terms next after the delivery or filing of Declaration, if by the course of this Court the Plaintiff can so proceed; of which three terms, the term wherein such Declaration shall be delivered shall be taken to be one; or if by the course of the Court the Plaintiff cannot so proceed to trial or final judgment within

the time above limited; then unless the plaintiff shall proceed to trial or final judgment as soon after as by the course of this Court he may so proceed; the Prisoner shall be discharged out of Custody by writ of *superseas* to be granted as aforesaid, upon filing common bail, unless upon notice given to the Plaintiff's Attorney good cause shall be shewn to the contrary.

VIII. It is further ordered, That in all cases after final judgment obtained against a Prisoner unless the Plaintiff shall cause such Prisoner to be charged in execution within three calendar months next after the day on which such final judgment shall be signed, in case no writ of error shall be depending nor injunction be obtained for stay of proceedings; and if any writ of error shall be depending or injunction be obtained, then within three calendar months next after judgment shall be affirmed, the writ of error be nonprossed or discontinued, or the injunction dissolved, the Prisoner shall be discharged out of custody by *superseas* to be granted as aforesaid; unless upon notice given to the Plaintiff's Attorney good cause shall be shewn to the contrary.

IX. It is further ordered, That after trial had unless the Plaintiff do proceed to have his judgment entered up and signed as soon as by the course and practice of the Court he may so do, or within one calendar month thereafter; in case no injunction shall be obtained or order made for stay of proceedings; and if any such injunction shall be obtained or order made, then within one calendar month after such injunction shall be dissolved or order discharged; the Prisoner shall be discharged out of custody, in like manner as in the last preceding Rule is provided.

X. It is further ordered, That in case of a render in discharge of bail after final judgment obtained, unless the Plaintiff shall cause the Defendant to be charged in execution within three calendar months next, after such render and due notice thereof given, and in case of render after trial and before judgment, unless the Plaintiff do proceed to have his judgment entered up and signed within the time limited by the last preceding Rule, or within one calendar month after such render and due notice thereof, the Prisoner shall be entitled to his discharge in manner aforesaid, unless good cause be shewn to the contrary.

XI. It is further ordered, That no treaty or agreement shall be sufficient cause to prevent any Prisoners having the benefit of a *superseas*, unless the same be in writing signed by the Prisoner or his Attorney, or some person duly authorised by such Prisoner.

WARD CHIPMAN,
W. BOTSFORD,
R. PARKER.

GENERAL RULE.

It is ordered, That the writ of *Scire Facias* to be issued under the Act of Assembly, 26, George 3d. C. 24, shall be in the form following, or to that effect; adding in the body of the same any special matter which in particular cases may be deemed requisite.

FORM OF WRIT.

Victoria, &c. To the Sheriff of , Greeting. Whereas A. B. lately in our Court before us at Fredericton, impleaded C. D. and E. F. in a plea of , (the said C. D. having been duly taken and brought into Court by virtue of process issued in the said suit against the said C. D. and E. F., and the said E. F. not having been taken and brought into Court by virtue of such process,) and did afterwards by the judgment of the same Court recover as well against the said E. F. as the said C. D. [state the recovery,] in the same manner as if they had both been taken and brought into Court, pursuant to the Act of Assembly in such case made and provided, whereof the said C. D. and E. F. are convicted as by the record and proceedings thereof still remaining in our same Court manifestly appear:

And now on behalf of the said A. B. in our same Court, we are informed that although judgment be thereupon given, yet satisfaction of the [debt and] damages aforesaid still remains to be made to him; and he is desirous of executing an Execution for such [debt and] damages against the body, or the lands or goods the sole property of the said E. F. wherefore the said A. B. hath humbly besought us to provide him a proper remedy in this behalf: And we being willing that what is just in this behalf should be done, command you that by honest and lawful men of your Bailiwick, you make known to the said E. F. that he be before us at Fredericton, on to show if he has or knows of any thing to say for himself, why the said A. B. ought not to have execution for the [debt and] damages aforesaid, to be executed against the body or the lands or goods the sole property of him the said E. F. according to the force, form and effect of the said recovery, and pursuant to the said Act of Assembly in such case made and provided, if it shall seem expedient for him so to do; and further to do and receive what our said Court before us shall then and there consider of him in this behalf: and have you there the names

of those by whom you shall so make known to him, and this writ.

Witness, &c.
WARD CHIPMAN.
W. BOTSFORD.
R. PARKER.

HILARY TERM, 2D VICTORIA, A. D. 1839.

I. It is ordered, That in future where the Defendant in any action shall plead one or more special pleas, and serve copies on the Plaintiff's Attorney, with rule to reply in twenty days, the Plaintiff shall file and deliver his replication in twenty days from the time of such service of plea and rule, and in default thereof the Defendant shall be entitled to judgment of *non pros*, a replication being first demanded after the said twenty days; and in like manner twenty days shall be allowed for every subsequent pleading, and the opposite party shall be entitled to judgment by default or *non pros*, as the case may be, for not replying, surrejoinder, &c. a rule to rejoin, surrejoinder, &c. being served and demand made as aforesaid, unless the Court or a Judge shall think proper to allow further time. Provided that no such judgment of *non pros* or default shall be signed until ten days after demand of replication, rejoiner, &c.

II. It is further ordered, That all such rules to reply, rejoin, surrejoinder, &c. may be taken out in vacation and entered as of the preceding Term, the Attorney delivering to the Clerk a precept for such rule.

WARD CHIPMAN.
W. BOTSFORD.
R. PARKER.

HILARY TERM, 2D VICTORIA, 1839.

It is ordered, That Mr. Solicitor General, Mr. W. B. Kinnear, Mr. D. L. Robinson and Mr. Wright, be appointed in pursuance of the General Rule of Michaelmas Term, 1st Victoria, the Barristers for conducting the examination of persons who may make application for admission as Attorneys of this Court, during the year ending with the next Hilary Term.

WARD CHIPMAN.
W. BOTSFORD.
R. PARKER.

SUPREME COURT.

HILARY TERM, 2D VICTORIA.

It is ordered, That the examination of Students applying for admission as Attorneys at the next Trinity Term, shall take place at the residence of Mr. Justice PARKER in St. John, on Monday the 3d day of June next, and at Fredericton on Monday the 10th day of June next, at the Province Hall.

By the Court,
GEO. SHORE, CLERK.

York General Sessions.

JANUARY TERM, 1839.

ORDERED, That the Gaol Limits of the County of York be enlarged according to the provisions of the Act of Assembly, 1st Victoria, Cap. 21.

Extract from the Minutes.

GEO. J. DIBBLEE,
Clerk of the Peace.

By Thomas Wyer, Esquire, one of Her Majesty's Justices of the Inferior Court of Common Pleas, in and for the County of Charlotte, in the Province of New Brunswick.

To all whom it may concern, Greeting:

NOTICE is hereby given, that upon the application of Andrew Burgess, of the City of Saint John, Merchant, to me duly made, according to the form of the Act of Assembly, in such case made and provided, I have directed all the Estate, as well real as personal, within the County of Charlotte, in this Province of New Brunswick, of Hugh Quinn, late of the town of Saint Andrews, in the said County, Trader, (which said Hugh Quinn is departed from and without the limits of this Province, with intent to defraud the said Andrew Burgess and the other Creditors of the said Hugh Quinn, if any there be, of their just dues, or else to avoid being arrested by the ordinary process of the law, as it is alleged against him,) to be seized, and attached, and that unless the said Hugh Quinn do return and discharge his debt or debts within three months from the publication hereof, all the Estate as well real as personal of the said Hugh Quinn within this County of Charlotte will be sold for the payment and satisfaction of the Creditors of the said Hugh Quinn.

Dated at Saint Andrews aforesaid the seventeenth day of December, A. D. 1838.

THOMAS WYER, J. C. P.
GEO. D. STREET Attorney for Petitioning Creditor.
[First published in Gazette December 26, 1838.]

NOTICE is hereby given, That we the Subscribers being duly appointed Trustees for all the Creditors of Dennis Tierney, late of the Parish of Portland, in the County of Saint John, and Province of New Brunswick, Grocer, an absconding debtor, and having duly sworn to the faithful execution of the said trust, pursuant to the directions of the Acts of Assembly, in such case made and provided: And we do hereby require all persons indebted to the said Dennis Tierney, on or before the fourteenth day of April next, to pay to us, or to the date hereof, to pay to us, or some one of us as aforesaid, their respective accounts and demands against the said Dennis Tierney, in or other debt, duty or thing, which they owe to the said Dennis Tierney, and to deliver all other effects of the said Dennis Tierney, which they, or any, or either of them have in their hands, power, or custody, to us, or some one of us as aforesaid; and we do also desire all the Creditors of the said Dennis Tierney on or before the same day of April next, to deliver to us, or some one of us as aforesaid, their respective accounts and demands against the said Dennis Tierney, in or other debt and justice may be done, agreeably to

the form of the said Acts of Assembly in such case made and provided.

Given under our hands this fourteenth day of January, A. D. 1839.

JAMES BOWES,
WILLIAM HUGHSON,
JOSEPH McPHERSON,
[First published in Gazette, January 23, 1839.]

In the matter of William Robinson, an Absconding Debtor.

NOTICE is hereby given, that a general meeting of all the Creditors of the above named William Robinson, is requested on Monday, the Eighth day of May next, at Hamilton's Hotel, Newcastle, in the County of Northumberland, to examine and ascertain the debts due to each person: at which all Creditors are expected to come forward prepared to substantiate their demands against the said William Robinson by proof, attestation, or otherwise, to the satisfaction of the Trustees.

Dated the 22d January, 1839.
RICHARD HUTCHISON,
ALEXANDER FOSTER, } Trustees.
F. HUNTER,

SHERIFF'S SALES.

County of York.

To be sold by Public Auction at the County Court House in Fredericton, on the third Tuesday in June next, the undermentioned property, between the hours of twelve and five o'clock in the afternoon:—

ALL the right, title, and interest of Thomas Moses, in and to the following lands and tenements: All that lot or tract of land situate in the Parish of Douglas, described in the Grant thereof, to Charles P. Wetmore, Esquire, as lot No. sixteen, on the south west side of the River Nashwaak, containing Five Hundred Acres, more or less, with an allowance of ten per cent. for Roads and Waste. Also a certain other lot or tract of land situate in the said Parish of Douglas, adjoining the above mentioned tract containing Seventeen Hundred Acres, more or less, including an Island in the River Nashwaak, marked No. 1, lying in front of the same, originally granted by the Crown to the said Thomas Moses by Letters Patent, dated 10th April 1833, together with all improvements, buildings, privileges, and appurtenances thereunto belonging.

The above Property having been taken by virtue of an Execution issued out of the Supreme Court.

Also,—At the same time and place, all the right, title, interest, claim and demand of John S. Cox, of in and to the House and Premises where he now resides, situate in King Street, in the Town of Fredericton.

The above Property having been seized and taken under and by virtue of an Execution issued out of the Supreme Court.

E. W. MILLER, SHERIFF.
Fredericton, December 11, 1838.

To be sold by Public Auction on the 1st Saturday in May next, at the Market House, in Fredericton, between the hours of twelve and five o'clock in the afternoon:—

ALL the right, title, interest, property, claim and demand of James Whited, of, in and to that Farm on which he now resides, situate in the Parish of Douglas: The same having been taken by virtue of an Execution issued out of the Supreme Court at the suit of Robert Rankin & Co.

E. W. MILLER, Sheriff.
Fredericton, 23d October, 1838.

County of Westmorland.

To be sold by Public Auction on the ninth day of July next, between the hours of twelve and five o'clock in the afternoon at the Court House in Dorchester.

SO much of the Real Estate of Catherine Bennett, situate in the Parish of Moncton, as will satisfy an Execution against her at the suit of William Wiley, Esquire.

Also,—At the same time and place will be sold, the Real Estate of William Tingley, situate in the Township of Hopewell, or so much thereof as will satisfy an Execution against the said William Tingley, at the suit of Isaac Turner.

W. P. SAYRE,
Sheriff of Westmorland.
Dorchester, 27th December, 1838.

To be sold by Public Auction on the eighteenth day of June next, at the Court House in Dorchester, between the hours of twelve and five o'clock in the afternoon:—

ALL the real estate of Patrick Ritchey, situated in the Parish of Moncton: The same having been seized by virtue of several Executions against the said Patrick Ritchey.

W. P. SAYRE, SHERIFF.
Dorchester, 6th December, 1838.

King's County.

On the fourth Tuesday in May next, will be sold a Public Auction at the Inn kept by John E. Stewart, in the Parish of Hampton.

ALL the lands and tenements belonging to Robert Wetmore, in King's County, consisting of two several pieces or parcels of land situate in the Parish of Hampton, aforesaid, (to wit,) one piece containing 40 acres on the south side of the Post road leading to Sussex Vale, being the east end of lot No. 1, in Deputy Fairweather's Division.

Also,—that other piece or parcel of land lying on the north line of the said road, containing 20 acres, more or less: The same having been taken by virtue of an execution issued out of the Supreme Court against the said Robert Wetmore at the suit of Samuel Keirsteed, sale to commence at 2 o'clock, p.m.

A. DAVIDSON, Sheriff of King's.
Sheriff's Office, Kingston, 9th Oct. 1838.

NOTICE.

ALL Persons who have any demands against the Estate of the late HENRY GEORGE CLOPPER, Esquire, deceased, will render accounts thereof, within six months from this date, at the Office of JOSEPH BEEK, Esquire, in Fredericton; and those who are indebted to the said Estate, will make immediate payment to the said JOSEPH BEEK who is authorised to settle and give discharge, therefor.

Dated at Fredericton, the 19th day of December, 1838.

MARY ANN CLOPPER, } Ex'trix
RICHARD KETCHUM, } Ex'ctr.