



ANNO SEXTO GULIELMI IV. REGIS.

CAP. I.

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 laid 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 the 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 *fiat 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 *fiat 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 after 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 does 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 authorized 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 authorized 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 be 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 authorized 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 Attorneys issuing any Writ or Process whose name or names is or are indorsed 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 hereinbefore mentioned shall apply only to the services herein before 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 SHERIFF'S 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 bounden has been duly appointed Sheriff of the County of (or the City and County of as the case may be) 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 or satisfied, all monies and damages that may be recovered against him the said Sheriff as aforesaid, by any person or persons for or 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 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.

CAP. II.

An Act in amendment of the Act relating to Highways.

Passed 8th March 1836.

I. Be it enacted by the Lieutenant Governor, Legislative Council and Assembly, That all that part of the seventeenth Section of an Act made and passed in the Fifth year of His Majesty's Reign, intituled "An Act to repeal all the laws now in force for regulating, laying out, and repairing Highways and roads, and for appointing Commissioners and Surveyors of Highways in the several Towns and Parishes in this Province and to make more effectual provision for the same," which authorises the Commissioners of Highways, or any of them, to excuse or lessen the number of days' work to be performed by any infirm or indigent person within their respective Parishes or districts, be and the same is hereby repealed, and that it shall be lawful for any two of His Majesty's Justices of the Peace, upon application of any infirm and indigent person, to remit the whole, or such part of the labour as is required to be performed by such infirm and indigent person, as they in their discretion may think just and proper.

II. And be it enacted, That the notices to be given by the Surveyors in their respective Districts, as required by the twentieth Section of the above recited Act, shall be given at least six days previous to the commencement of the work, either by personally notifying the Inhabitants respectively liable to work or by leaving a written or printed notice at the last place of residence of the person or persons intended to be notified, or by publishing in one of the most public places in each District, the names of the persons in the District liable to work, in manner pointed out in the said twentieth Section of the herein before recited Act.

III. And be it enacted, That it shall be the duty of the respective Surveyors on or before the tenth day of September in each and every year, to make and deliver to the Commissioner or Commissioners respectively correct returns of the Statute Labour performed in their respective Districts, which returns shall contain the names of all persons liable to perform Statute Labour within their respective Districts, with the number of days' work performed by each person, and also, the number of days for which any person may be delinquent.

IV. And whereas doubts have arisen, whether in all cases where Jurors are required to serve under the provisions of the above recited Act, there be sufficient authority therein to authorise the administration of the usual oaths: Be it therefore enacted, that in all cases where the services of Jurors are required, by authority of the Act aforesaid, such Jurors shall be duly sworn in the usual manner, which oaths any one of His Majesty's Justices issuing the Warrant for the summoning of the said Jurors, is hereby authorised and required to administer; and the said Justices or either of them are also hereby empowered and required, at the instance of either party, to call before the said Jurors, at the time and

place appointed, such Witnesses as may be required to give evidence in and respecting all cases of damage, or other matters that are by the above recited Act required to be decided and determined by the verdict of such Jurors; which Witnesses shall be subpoenaed under the hand of any one of the said Justices, and sworn before either of the said Justices in the usual manner, and or refusal or neglect to attend and give evidence when so required, shall be subject to such Damages as persons neglecting or refusing to attend and give evidence, when duly summoned, are made subject and liable to by an Act made and passed in the fourth year of His present Majesty's Reign, intituled "An Act to regulate proceedings before Justices of the Peace in Civil Suits," and all expenses attending the summoning, swearing, and attendance of such Witnesses, shall be estimated by the said Jurors, and paid by such party, and in such manner, as the said Jurors may determine and assess.

V. And be it enacted, That in all cases where a Jury is summoned for any of the purposes provided by this Act, or of the Act of which this Act is in amendment, the Justices issuing the Warrant for the summoning of such Jury, or one of them, are hereby required to attend and preside at such inquest or examination.

VI. And be it enacted, That in all prosecutions instituted against delinquents for the recovery of fines, under any of the provisions of the said recited Act, it shall and may be lawful for the Magistrate before whom any prosecution shall be instituted, on application by the Commissioner or Commissioners suing for such fine, and upon oath made by such Commissioner or Commissioners, or the Surveyor or other person, of the offence or delinquency committed, to issue a Capias against such delinquent, and to hold him to bail for the amount of the fine sought to be recovered, in which case the Capias, Bail Bond, Return, and proceedings generally, shall be, as near as may be, in manner and form pointed out, made, and provided in the said Act passed in the fourth year of the Reign of His present Majesty, intituled "An Act to regulate proceedings before Justices of the Peace in Civil Suits."

VII. And whereas in and by the second Section of the above recited Act relating to Highways, it is provided, that the fines of delinquent Commissioners and Surveyors shall be recovered before any one of His Majesty's Justices of the Peace, at the suit of one of the acting Commissioners or Surveyors of the Parish, in which the delinquent resides: And whereas it is deemed necessary to extend the right of prosecution to any freeholder or householder resident within the said Parish, and to make such fines recoverable before any two Justices of the Peace instead of one: Be it therefore enacted, That if any Commissioner or Surveyor shall be guilty of refusal or neglect of any of the duties required by the provisions of the said recited Act relating to Highways, such Commissioner or Surveyor shall forfeit for every refusal or neglect, a sum not exceeding five pounds, to be recovered with Costs of suit, before any two of His Majesty's Justices of the Peace, at the suit of any one of the acting Commissioners or Surveyors, or at the suit of any Freeholder or Householder within the Parish where the delinquent resides, who may choose to prosecute for the same; and in all cases where Commissioners and Surveyors, or either of them are made liable to prosecution by the provisions of the above recited Act relating to Highways, the right of prosecution, in all such cases, is hereby extended to any Freeholder or Householder within the Parish where any such delinquent Surveyor or Commissioner resides; which said fines and forfeitures are hereby severally made recoverable with costs of suit, before any two of His Majesty's Justices of the Peace, in the same manner as fines are made recoverable by the second Section of the above recited Act relating to Highways, and all such fines and forfeitures when recovered, shall in all cases be applied by the acting Commissioner or Commissioners, to the repairing of the Highways in the several Parishes where the same may have been forfeited respectively.

VIII. And whereas great inconvenience is felt from persons cutting holes through the ice, in the different navigable Rivers in this Province: Be it therefore enacted, That from and after the passing of this Act, it shall and may be lawful for the Justices of the Peace of the respective Counties, at any of their respective Courts of General Sessions, to make such rules, orders, and regulations, relative to the cutting of holes through the ice in any of the said Rivers, as the said Justices at any of the said Courts of General Sessions, may think necessary and proper for the public safety.

IX. And be it enacted, That all and every person or persons, who shall be guilty of any breach or breaches of any such rules, orders, and regulations, as the said Justices at any of their Courts of General Sessions shall respectively make, shall be subject to a penalty of not less than twenty shillings nor more than five pounds for each and every offence, to be recovered with costs of suit before any one of His Majesty's Justices of the Peace for the County in which the offence shall be committed, at the suit of any person or persons who may prosecute for the same, which penalty when recovered shall be paid into the hands of the Commissioners of Roads for the Parish in which the offence shall be committed, to be by them applied towards the improvement of the Roads of the Parish to which such Commissioners belong; and be accounted for by them at the general sessions of the County in their annual return of the Statute Labour.

X. And whereas doubts have arisen with respect to the authority of Commissioners and Surveyors to open Roads under the provisions of the above recited Act relating to Highways: Be it enacted, That in all cases, when roads are laid out, altered or extended, by virtue and authority of the above recited Act relating to Highways, the Commissioner or Commissioners, Surveyor or Surveyors, as the case may be, shall have full power and authority, and they are hereby authorised to enter upon, and open all such roads, so laid out, altered or extended, and from the same to remove any fences, buildings and obstructions, any law, custom, or usage to the contrary notwithstanding.

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

CAP. III.

An Act to regulate the election of Church Wardens and Vestrymen, in the Parish of Portland in the County of Saint John; and to extend such regulations to other Parishes where the sittings in the Church may be free and open.

Passed 8th March 1836.

WHEREAS a Church has lately been erected in the Parish of Portland, in the County of Saint John, and duly consecrated to the service of Almighty God, according to the rites and Ceremonies of the Church of England, by the name of Grace Church, in which said Church no Pews have been disposed of or appropriated, but all the sittings for the Congregation have been declared free and open to all persons, without any price or rent being paid therefor, and are so intended to continue; by reason whereof it has become necessary to declare by Law what persons shall be eligible to elect and be chosen Wardens and Vestrymen of the said Church, in order that a Church Corporation may be duly constituted in the said Parish:

I. Be it therefore enacted by the Lieutenant Governor, Legislative Council and Assembly, That the Church Wardens and Vestry of the said Church so soon as they may be duly elected and chosen pursuant to the provisions of this Act, together with the Rector of the said Church for the time being, and their respective Successors forever, shall be a