

shape of fees and fines pass through a Bailiff's hands, the security required in the Bond need not be as large as in the covenant.

We append the Draft of Bond sanctioned by the Governor in Council, as it may be found convenient to Officers to have the form:—

Know all Men by these Presents, that _____ of the Town _____ of _____ in the County of _____, Bailiff of the _____ Division Court of the said County, _____ of the Town _____ of _____, in the said County, yeoman, and _____ of the Town _____ of _____, in the said County, yeoman, are held and firmly bound unto Her Majesty Queen Victoria, Her Heirs and Successors, in manner and in the penal Sums following; that is to say, the said _____ in the sum of _____ pounds of lawful money of the Province of Canada; the said _____ in the sum of _____ pounds of like lawful money; and the said _____ in the sum of _____ pounds of like lawful money, to be paid to our Sovereign Lady the Queen, Her Heirs and Successors; For which payments to be well and faithfully made, we severally, and not each for the other, bind ourselves, and each of us binds himself, our and each of our several Heirs, Executors and Administrators, firmly by these Presents, sealed with our Seals this _____ day of _____ in the year of our Lord one thousand eight hundred and fifty—

Whereas, the bounden _____, as Bailiff of one of the Division Courts of the said County of _____, has been required, pursuant to the provisions of "The Upper Canada Division Courts Extension Act of 1853," to give security for the due performance of his office by entering into a Bond with two sufficient Sureties in the several sums herein before in that behalf expressed and set forth.

Now, the Condition of this obligation is such, that if the said _____ shall well, truly and faithfully fulfil, perform, and discharge all and every the duties of his said office of Bailiff of a Division Court, and shall duly and regularly keep and render all Accounts which, pursuant to the Upper Canada Division Courts Acts, ought to be kept and rendered by him, and shall duly and punctually from time to time account for and pay over to the Clerk for the time being of the Division Court for which he is a Bailiff, all and every such sum or sums of money as he shall collect or receive, or as shall come into his hands by virtue of any Writ, Process, or Execution, or otherwise as such Bailiff, other than the lawful fees of him the said _____, as such Bailiff, then his obligation to be null and void, otherwise to remain in full force, virtue, and effect.

_____, [L.S.]

_____, [L.S.]

_____, [L.S.]

Sealed and Delivered in the presence of _____)

It only remains to observe that it is not at the Bailiff's own pleasure, but at the pleasure of the

Judge that the office is held, and the Bailiff is under all its incidental responsibilities, and must continue to discharge the duties of the office until removed by order of the Judge. From what has been said, it will be seen, as the appointment as well as the removal may be considered judicial acts, that the Bailiff's hold of office depends entirely upon himself; it is sure, so long as he evinces the necessary skill and ability, and is sober, honest, and faithful in the performance of appointed duties.

U. C. REPORTS.

GENERAL LAW.

WHEELER v. MUNRO.

Sheriff—Duty of under 10 & 11 Vic., c. 15, sec. 6, and 16. Action against for non-committal of defendant when of bail, &c., being filed, not given—Held against act.

175, sec. 7 & 8—
"of recognizance
obtained."
[In Chambers.]

The facts of the case are these:—In a suit of *Wheeler v. Erskine and Bens*, a writ of *Capias ad satisfaciendum* was delivered to the defendant, as Sheriff of the County of Elgin, after last Michaelmas Term, and on the 24th February, 1856, the defendant arrested Bens upon the writ, and he entered into a bond with Sureties under the Provisions of the Statute 16 Vic., ch. 175, sec. 7. The defendant Bens did not procure or deliver any certificate to the Sheriff within one month from the execution of the bond that special bail had been perfected and allowed according to the 5th sec. of 10 & 11 Vic., ch. 15, and on the 8th of March the plaintiff sued out against, and on the 15th March served the defendant with a writ of Summons treating the defendant Bens as having escaped from custody. The defendant, as Sheriff of Elgin, caused Bens on the 17th March to be arrested, and to be placed in close custody in the gaol of the County of Elgin, and now made application to be relieved against this action upon payment of costs.

M. B. Jackson for Sheriff. *F. G. Stanton* for plaintiff.

BURNS, J.—I am of opinion the defendant is entitled to have granted what he has asked. In the case of *Calcutt v. Ruttan*, 13 U.C. 220, the Sheriff treated the fact of his having procured the bond according to the 7th sec. of Vic., ch. 175, as a defence against an action for an escape. The Court decided against that view of the Statute, and held that under the 8th sec. of chap. 175, unless the debtor procured and delivered the certificate of bail having been allowed within one month, the plaintiff had a right to treat it as an escape. On considering this case, I am convinced that such view of the Statute was the correct view, though it does not appear to me the condition of the bond was broken by not procuring the certificate of bail being allowed within a month, and I think the present application is the correct application to make. It is opposed because it is said that an action once complete against the Sheriff for an escape cannot be stayed. This proposition depends upon the effect the Statute 16 Vic., ch. 175, has on the law as it stood previously. Whatever may have been the reason for the Legislature adopting the change from a bond to the Sheriff for the limits to that of a recognizance of bail—in which latter case the plaintiff might object or except to the bail—it is quite certain that the change was made,