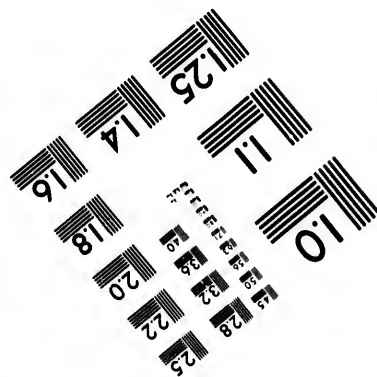
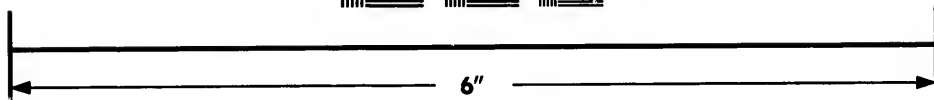
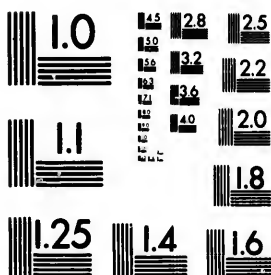


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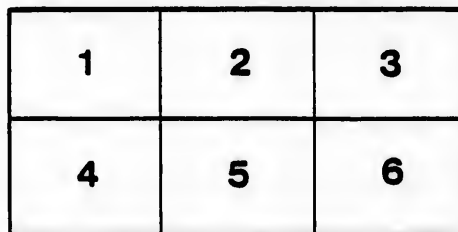
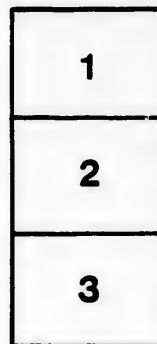
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IN THE SUPREME COURT OF THE STATE OF NEW YORK
IN SENATE
JANUARY 1886



A STATEMENT of facts showing that the
Sheriff and his agents are authorized by the law as
it now stands, authorizing Attorneys to serve
Writs of Habeas Corpus, Subpoenas, &c. by means
of a Sheriff's officer. They deprive the Sheriff
yearly of \$20,000.00 of their legal fees, and
they wrongfully collect yearly from the litigants
\$20,775.14 which belongs to neither Lawyer nor
Sheriff, and should not be taken from the litigant's
pockets.

ARCHD. McKELLAR,

SHERIFF CO. WENTWORTH.

Hamilton, Dec. 20th, 1886.



Process-Serving Attorneys' and Sheriffs' Fees.

*To the Free and Independent Ratepayers
and Electors of the Province of Ontario :*

GENTLEMEN,—

Having failed to obtain redress from the Ontario Legislature, to remove certain grievous wrongs, in the removal of which a large portion of the public are as much interested as the Sheriff, I adopt this method of laying the matter complained of before you, and solicit your honest unbiassed verdict upon the facts I now submit to you.

On the 1st of August, 1875, I entered upon my duties as Sheriff of Wentworth and City of Hamilton. I understood that lawyers and sheriffs were paid by fees; the lawyers were paid for issuing all papers in legal proceedings, and that the Sheriffs served all such papers requiring a personal or substitutional service, thus the lawyers and sheriffs would derive a large portion of their means from issuing and serving papers, without in any way interfering with each others fees or duties. It has never been disputed that such is the law for lawyers and sheriffs. The lawyers get all the issuing; and the following extract from the law and decisions of the Courts clearly show that the serving belongs to the sheriff as much as does the issuing to the Lawyers. I refer the public to Chap. 50, Sec. 23, page 613 Revised Statutes of Ontario. It reads as follows: "Upon the delivery of a Writ of Summons or a Writ of Ejectment at the office of any sheriff to be served by him, he, his deputy or clerk shall endorse thereon the time it was delivered; and in case the Writ is not fully and completely served within ten days after such delivery, the plaintiff, his attorney, or agent, shall be entitled to receive back the same, and the sheriff, deputy-sheriff or clerk shall endorse thereon the time of the delivery; and the costs of the mileage and service of the Writ by any literate person afterwards, shall, in case the person to be

served was at any time during such ten days within such County, be allowed in taxation of costs as if the service had been made by the sheriff or his officer."

The Judges have given the following decisions that the Process of the said Courts can only be served by the sheriff or some one of his lawful officers :—

"Whitehead vs. Fothergill & Brown, 1, Old Series of "Drapers' Reports, page 200." "The Court set aside the "service of the Process in this cause because it had been "served by a person not a sheriff's officer. The Statute 2, "George IV., Chap. 1, directs that the Process shall be served "by the sheriff, his deputy, or his lawful bailiff. In this "case the service had been made by a clerk of the plaintiff."

"Rutton vs. Ashford." "A Writ *Ca Sae*, not bailable, "must be served by the sheriff or his officer though the "deputy-sheriff be a party to the suit; 3, Old Series, page "302. The Writ, bailable, was in this case directed to the "sheriff, but served by the coroner."

I have now given the law as it stood regarding lawyers and sheriffs in respect of issuing and serving papers in 1875, when I entered upon the duties of my office.

In 1875 the net earnings of the office for the whole year	\$3692 11
Of this sum, the earnings in the Superior Court was	\$1063 57
And the earnings for the County Court was	\$1055 34
Total earnings for serving of Process in 1875	\$2118 91

In 1876 the net receipts of the offices was ...	\$3618 19
The receipts from serving papers in the Superior Court, was	\$ 840 85
The receipts from serving papers in the County Court was	842 03
	<hr/>
	\$1682 88

It will be observed that the net earnings in 1876 was \$73.92 less than in 1875, and the falling off in the serving of Writs and Subpcenas was \$436.03, making a total difference or falling off in 1876 of \$509.95. This was a heavy falling off in one year, and the cause must be discovered; and I set about making the discovery. In 1876 I noticed that a number of cases belonging to the County were tried in my Courts, in which neither defendants nor witnesses were served through my office. As the Ontario Legislatre met early in January, 1877, I thought the speediest and best way to ascertain the extent to which the serving of writs and other papers was carried by Process-serving Attorneys would be through a return asked for by the Legislature. With this end in view, I gave my friend, Mr. Sinclair, M. P. P. for North Bruce, a motion asking for a return of the number of Bills in Chancery and Writs of Summons that were issued out of the Superior and County Courts during the year 1876, and also a return of the number of such papers as were served by the Sheriffs. I did not apprehend any opposition to the motion, for the cost of obtaining the information I asked for would be trifling. On the evening of the 10th January '77, Mr. Sinclair brought up his motion, and contrary to my expectation it was met in the most hostile spirit by a number of the members of the Legal Profession, who spoke as follows:—

Mr. Lauder, M. P. P. for East Grey, said: "I object to compelling persons making services through the sheriff when the attorney would make the service for nothing."

Mr. Deacon, M. P. P., said: "If services were made by the Profession, it was at the expense of the Profession itself."

Hon. Mr. Hardy, Prov. Sec., said, "That in Brantford it was an exceptional case that a Writ was served by another than the Sheriff; the law was plain that no gentleman could make a charge for the service of Process."

Mr. Meredith moved, "That the motion be amended by adding the following words, viz. : "and also the cases, if any, in which fees for service of Process have been taxed, where service has not been effected by the Sheriff, and also the fees paid to the sheriff for service in each case." Mr. Sinclair's motion was then dropped.

In the "Globe" of the 16th February, 1877, a letter appeared over the signature, "A Practising Lawyer," (I discovered his name is Charlie Durand); he said: "Now I know as a lawyer, that lawyers are in the habit of serving many papers, including Writs, and they do it for two reasons, first to expedite business (for if papers go into the sheriffs' hands they are likely to remain there a long time), and secondly to *decrease the disbursements of the suit*; lawyers *cannot charge and do not for serving Writs and Subpœnas.*" In the *Globe* of 16th February, 1877, a letter appeared over the signature of Francis Rye of Barrie, who said: "I have never known a case of a solicitor charging his client with a Sheriff's fee, or with a fee equal to what a Sheriff's fee would be, for service of a Bill in Chancery where the Sheriff has not been employed, and as to charging *Sheriff's fees besides his own fees for the service, (which would be a fraudulent overcharge), this, I need hardly say, is a practice entirely unknown to my profession.*" The existence of such an officer as a Taxing Master appears to have been forgotten by the writer of the article.

I desire to draw special attention to the fact that all the parties whose oral and written utterances I have quoted justify themselves for serving Writs, Subpœnas, &c., on the plea that they make the services *for nothing*, "at the expense of the profession itself," that they cannot charge for the service, and do not charge Sheriff's fees, or a sum equal to what a Sheriff's fee would be, (as that would be a fraudulent overcharge.) Even if the services were made as they state, would it be defensible? Certainly not, inasmuch as it would as effectually deprive the Sheriffs of their fees and means of living as if the money were taken from their tills.

Having failed to obtain a return through the Legislature of the number of Bills in Chancery and Writs of Summons issued out of the Superior and County Courts in 1876, I determined not to be beaten, and before the close of 1877 I had as complete a return as if I had got it on Mr. Sinclair's motion. The number issued was 20,380.

The lawyers' and Sheriffs' fees for issuing and serving the 20,380 Bills in Chancery and Writs would be as follows:

Lawyers' fees issuing 6,556 Writs in Superior Court at \$7.....	\$ 45,892 00
Lawyers' fees issuing 2,579 Bills in Chancery at \$7	18,053 00
Lawyers' fees issuing 11,245 Writs in County Court at \$4.75.....	53,413 00
Total of Lawyers' fees issuing _____	
20,380 Bills and Writs.....	\$117,358 00

If the Sheriffs had made all the services, their fees would be as follows:

Sheriffs' fees serving 6,556 Writs in Superior Court at \$2.70.....	\$ 17,701 20
Sheriffs' fees serving 2,579 Bills in Chancery at \$2.25.....	5,802 75
Sheriffs' fees serving 11,245 Writs in County Court at \$1.80.....	20,241 00
Total of Sheriffs' fees for serving _____	
the 20,380 Bills and Writs.....	\$ 43,744 95
Add lawyers' fees for issuing.....	117,358 00
Total for issuing and serving _____	
20,380 Bills and Writs.....	\$161,102 95

A return from the Sheriffs showed that of the 20,380 Bills and Writs they only served 11,066, as follows:

Served 3,045 Superior Court Writs at \$2.70..	\$ 8,221 50
" 1,288 Bills in Chancery at \$2.25...	2,898 00
" 6,733 Writs in County Ct. at \$1.80..	12,119 40
11,066	This is all Sheriffs received..\$23,238 90

The Sheriffs were deprived of the serving and fees on 9,314 of the 20,380 Bills and Writs issued in 1876, viz :

3,511 Writs in Superior Court at \$2.70...	\$ 9,479 70
1,291 Bills in Chancery at \$2.25.....	2,904 75
4,512 Writs in County Court at \$1.80.....	8,121 60
9,314	This was the loss to the 37 Sheriffs.....\$ 20,506 05

The loss of the \$20,506.05 was within \$1,366.42 of being half their fees if they had served the 20,380 Writs.

There are 39 Sheriffs in Ontario, two of them (the Sheriffs of Algoma and Thunder Bay) are not the losers by Process-serving Attorneys; these Sheriffs have comparatively few papers to serve, and are generally to be served at great distances, and the difficulty is to find Bailiffs to serve them. The loss of the \$20,506.05 falls on the 37 Sheriffs in older Ontario. The \$20,506.05 divided equally among the 37 Sheriffs would give each of them \$554.22.

She \$554.22 (my share of the \$20,506.05) added to the \$1,682.88 received, would make my fees for serving papers in 1876 \$2,237.10, being \$118.39 more than in 1875. The loss of the \$554.22 taken by the Process-serving Attorneys was heavy; to myself the loss was a fraction over one-fourth of my income from service of Process in 1876. But then, if Process-serving Attorneys made the services for nothing, or at the expense of the profession itself, as we were told verbally and through the columns of the press, was the case, then the \$20,506.05 taken from the Sheriffs was saved to the litigants, and neither the litigants nor the public had any cause of complaint.

I have now got possession of the tariff of fees of those whose oral utterances on the floor of parliament, and written statements through the columns of the press, declared that the services were made for nothing, at the expense of the profession itself. Four of them were members of parliament, one of the four (a member of the Government) receiving \$4,000 a year and the sessional allowance, while all his predecessors performed the same duties that he does for \$3,000 and the sessional allowance; and this member of the Government, whose firm pocketed the largest amount of illegal fees, does not use his official position to end the evil, but, on the contrary, uses his position to destroy, if possible, the person who exposed the system practised by his own firm, and others, of robbing the Sheriffs and litigants. In 1882 he passed a bill entitled "An Act to make provision in regard to certain legal matters." (See 45 Vic., Chap. 11, Sec. 14.) In that Bill the Provincial Secretary makes some good and necessary items of fees for Sheriffs, but, seeing that my income in 1881 was a few dollars over \$1,500, he provided, in Sec. 14 of the said Act, that any Sheriff whose income in 1881 was over \$1,500 should not share in the fee provided under his Act. \$1,500 was just the proper income for a Sheriff, but \$4,000 and the sessional allowance—\$600, making \$4,600, was the smallest sum that could be accepted by a Provincial Secretary of his standing. Is it not time that his place should be filled by another, say an intelligent honest layman, who would have no law partners to make fees for.

I now give Process-serving Attorneys' tariff of fees for serving of Process in the Superior and County Courts. I had the tariff of fees in the Superior Court sometime before I got the tariff in the County Court :

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<i>Style of Cause or Name of Attorneys.</i>	<i>Amount Collected by Attorney.</i>	<i>Attorneys' Legal Fees.</i>	<i>Sheriffs' Legal Fees.</i>	<i>Collected from Litigants.</i>	<i>Name of Court.</i>
Samuel McNair v. Georing & Whipple	13 37	7 00	2 70	3 67	Sup. Ct.
1. Lauder & Proctor.	10 20	4 75	1 80	3 65	C'y Ct.
2. Thomas Deacon...	7 00	4 75	1 80	0 45	C'y Ct.
3. Hardy, Wilkes & Jones.....	10 40	4 75	1 80	3 85	C'y Ct.
4. Meredith & Meredith.....	10 09	4 75	1 80	3 54	C'y Ct.
5. Charles Durand...	8 50	4 75	1 80	1 95	C'y Ct.
6. Francis Rye.....	7 48	4 75	1 80	0 93	C'y Ct.
7. Bowden & Mocher	7 60	4 75	1 80	1 05	C'y Ct.
	\$61 27	\$33 25	\$12 60	\$15 42	

It will be observed that in the case I have given in the Superior Court the lawyer collects \$2.70 belonging to the Sheriff, and \$3.67 belonging to the litigant—in all \$6.37—being 97 cents more than two Sheriffs' fees; and in the foregoing seven cases in the County Court the lawyers collect \$2.82 more from the litigants than they did from the Sheriffs; the \$2.82 divided among the seven cases adds 40 cents to each of the seven cases, therefore the lawyers pocketed \$1.80 belonging to the Sheriff and \$2.20 belonging to the litigant, both sums make \$4.00. That is Process-serving Attorneys' tariff for services in the County Court.

Now, let us see what the 9,314 Bills and Writs served by Process-serving Attorneys cost at their own tariff of fees:

Service fees on 3,511 Sup. Ct. Writs at \$6.37...	\$ 22,365 07
“ “ 4,512 C'ty Ct. Writs at \$4.00...	18,048 00
“ “ 1,291 Bills in Chanc'y at \$5.32...	6,868 12
	<hr/>
9,314	\$47,281 19

This is Process-serving Attorneys fees for serving 9,314 Bills and Writs.

Process-serving Attorneys pocketed \$3,537.24 more for serving the 9,314 Bills and Writs than the Sheriffs would have got for serving the whole 20,380 Bills and Writs. All the Process-serving Attorneys who made the services themselves, at the exorbitant charges I have given, assured the defendants that by making the services themselves they saved the defendant the Sheriff's fee, which would be much higher than the charges they made.

The \$47,281.19 collected by Process-serving Attorneys in 1876 for serving 9,314 Bills and Writs was made up of \$20,506.05 that belonged to the Sheriffs, and \$26,775.14 that belonged to the litigants, and the practice is now carried on with more vigor than ever, as shown by the following return from 36 Sheriffs in November, 1885:

In the 36 Counties 294 cases belonging to the Counties were set down for trial at the Fall Assizes of 1885. Of the 294 defendants the Sheriffs served 81, just $2\frac{1}{4}$ of a defendant served by each Sheriff. In connection with the 294 cases, 1,532 witnesses were examined; of the 1,532 witnesses the 36 Sheriffs served 34, 2 less than 1 each. At the 23 Courts of Chancery held in the Fall of 1885, 105 cases were set down for trial; of the 105 defendants the 23 Sheriffs served 33, not quite $1\frac{1}{2}$ to each Sheriff. In connection with the 105 cases there were 470 witnesses examined; of the 470 witnesses the 23 Sheriffs served 10 all told. Process-serving Attorneys make as much or more serving witnesses as I have shown as they make serving writs, &c.

I have shown that the net income of the office in 1875 was \$3,692.11, and of that sum \$2,118.91 was made from serving papers in the Superior and County Courts. In 1876 the net receipts of my office were \$3,618.19, being \$72.92 less than in 1875. From serving Writs in the Superior and County Courts I earned in the Superior Court \$840.85, and in the County Court \$842.05, both sums being \$1,682.82,

Name of Court.

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being \$436.09 less than in 1875. I have discovered the cause of the falling off in the receipts of 1876. In that year, as I have shown, the Process-serving Attorneys deprived the 37 Sheriffs in older Ontario of \$20,506.05 of their lawful fees; the \$20,506.05, divided equally among the 37 Sheriffs, would give each of them \$554.22. Had I got this sum with the \$1,682.88 I received, my receipts from the serving of papers in both Courts in 1876 would have been \$2,237.10. The taking of the \$554.22 was a cruel piece of robbery. The \$554.22 was taken from me in 1876-77-78-79, four years. My loss on the four years was \$2,216.88. In 1880 the jurisdiction of the Division Court was raised from \$100 to \$200; this was a fatal blow to Sheriffs' offices as shown by the following facts: In 1877-78-79, three years, before the jurisdiction of the Division Court was increased to \$200, the average yearly number of Writs issued out of the County Court in Wentworth was 666; the yearly fees on which, at \$1.80, would be \$1,298.80; of this sum I received \$1,118.52. In 1880, 1881 and 1882, the average number of Writs issued out of Wentworth County Court was 252, 414 less than in 1877-78-79. The fees on the 252, at \$1.80, would be \$453.60. This change caused me an annual loss on the serving of Process of \$664.95. This (taken from the \$2,237.10 I should have received yearly since the 1st of January, 1876,) left me \$1,572.15.

After such a heavy draft on the Sheriffs' and litigants' resources, I naturally looked for such Legislation at the hands of the Government as would secure to the Sheriffs their lawful fees, and protect the litigants from the robbery practised upon them, (as I have shown, to the extent of \$26,775.14 annually), but in this I was sadly disappointed; Process-serving Attorneys appear to have been in the ascendancy in the Government and in the House. Instead of protecting the Sheriffs and litigants, the following Bill was passed, which enables the lawyers in the House, and out of it, to pocket the *whole* of the Sheriffs' fees for serving Writs and Subpoenas, and as much or more than formerly from the litigants. The Act to which I refer is 44 Vic., Chap. 5, page 57. It reads as follows:

"ORDER VI.

SERVICE OF WRIT OF SUMMONS.

First Mode of Service :

1st.—No service of Writ shall be required where defendant, by his solicitor, accepts service and undertakes to enter an appearance.

2nd.—Where service is required, the Writ shall (whenever it is practicable) be served by the same person and in the same manner as service is now made, and where personal service is required (if it be made to appear to the Court or Judge on affidavit that the plaintiff is, from any cause, unable to affect prompt personal service) the Court or Judge may make such order for substituted or other service, or for the substitution of notice for service as may be just."

At the time the foregoing Act (assented to on the 4th March, 1881) was passed, it was well known to the members of the Government, and lawyers in Parliament, that the persons who served the most of the Writs and Subpœnas were Process-serving Attorneys, their clerks, and upwards of 200 Division Court Bailiffs (whose letters I hold), County Constables, or any other.

The foregoing Act, instead of removing the evil complained of, is practically saying to the Process-serving Attorneys, their clerks, Division Court Bailiffs and others : "Well done, good and faithful servants, you have yearly robbed the Sheriffs of \$20,506.05, and you have yearly taken \$26,775.14 from the litigants, but you have done so without law or authority ; now, we shall legalize your proceedings, that you can take the *whole* of the Sheriffs' fees for serving of Process, and as much more as you can from the litigants."

Had one of the Apostles come and told me that a Government, with Hon. O. Mowat as Premier, had passed a Bill enabling Process-serving Attorneys to take the whole or any part of the Sheriffs' lawful fees, and much more from the litigants, I would not have believed him, for those who know Mr. Mowat as well as I do, know that he is a man always aiming to do that which is just and right, and is incapable of knowingly doing a wrong in his private or official capacity ; and although such a Bill is on the Statute Book, I do not hold the Attorney-General responsible for it. The Country

should hold Hon. A. S. Hardy, Provincial Secretary, and other Process-serving Attorneys in the House and out of it, responsible for forcing such an infamous Bill through Parliament. I failed to notice that Mr. Meredith, the leader of the opposition, entered any protest against the Bill, nor, so far as I know, has he, in public or private, protested against the law firm of Meredith & Meredith, in London, serving a County Court Writ and collecting \$10.09 for the service; \$4.75 belonged to Meredith & Meredith, \$1.80 belonged to the Sheriff, and \$3.54 belonged to the defendant.

My chief object in laying the facts I have enumerated before the country is to bring strength to the Attorney-General to repeal the obnoxious Bill so far as it relates to the serving of Process, and substitute the Bill I herewith annex, which is just to the lawyers and Sheriffs, and fully protects the litigants from the payment of illegal fees in the serving of Process.

I have shown, on page 5, that the \$664.95 lost to me in the serving of Process in the County Court (owing to the increased jurisdiction of the Division Court) taken from the \$2,237.10, the amount which should have been received from serving of Process in both Courts up to 1880, leaves me still \$1,572.15. I now beg to show the public how much of the \$1,572.15 was pocketed by me, and how much was pocketed by Process-serving Attorneys. The result will show the working of so much of the Judicature Act as I have quoted:

<i>Amount Received by Sheriff.</i>	<i>Amount Received by Attorneys.</i>
In 1881.....\$ 534 10	In 1881.....\$1038 05 ✓
" 1882..... 563 00	" 1882..... 1009 15 ✓
" 1883..... 714 14	" 1883..... 858 01 ✓
" 1884..... 686 14	" 1884..... 886 01 ✓
" 1885..... 552 87	" 1885..... 1019 28 ✓
" 1886... .. 374 44	" 1886..... 1197 71 ✓
<hr/> \$3424 72	<hr/> \$6008 21

My yearly loss on the serving of Process for six years is \$1,001.37. Such is the practical working of the Judicature Act of 1881.

I now ask the public, what would be said of any private gentleman who would engage a servant for a term of years at a certain salary, and then, in the declining years of that servant, reduce his salary and put it into his own pocket? That is precisely the position in which the Ontario Government has placed myself and other Sheriffs. In 1883 and 1884 the Government added several items to Sheriffs' tariff of fees, which, to me, is worth \$350 yearly. In 1885 they gave the Sheriffs a fee of \$1 for the discharge of non-criminal persons; this, to me, is worth \$800 a year. The yearly amount of both sums is \$1,150; this brought my income up to \$2,620.75. If the \$554.22, (my share of the \$20,506.05 taken from the Sheriffs in 1876) were added, my net income in that year would have been \$3,737.32, being \$45.21 more than in 1875. Therefore, there is still due me \$1,116.49, from the 1st January, 1876, to 1st January 1887, to cover my yearly losses in serving of Process, say ten years at \$1,116.49, is \$11,116.49. This is a heavy loss from one office in nine years, but there is more, as I shall presently show.

From a letter I received from the Attorney-General on the 18th of September last, I am led to believe that he and, I presume, his colleagues are under the belief that the additions made to the Sheriffs' tariff of fees had recouped us for any losses sustained by changes in the law. On my losses, which I shall show in detail, I have only been recouped to the extent of \$1,150 in 1885, and the same amount in 1886. I shall now assume that the lawyers are permitted to go on as they are now doing, making nearly all services by others than a Sheriff's officer, and that, in justice to the Sheriffs, the Government would draw on the consolidated revenue of the Province to recoup them to the full extent of their losses, would it be defensible? No, certainly not; it would be a round-about way to put fees into lawyers' pockets

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at the public's expense, and lay every member of the Government (belonging to the legal profession) open to the charge of framing laws to put money into their own pockets. And besides, there is another evil that would not be provided against by paying the Sheriffs from the Provincial fund: I have shown that for every \$20,506.05 taken by Process-serving Attorneys from the Sheriffs, they take \$26,775.14 from the litigants, in whose interests I am working as well as in my own. There is but one remedy, and that is to secure to the Sheriffs the work and the fees that legally belong to them; that will do no injustice to the members of the legal profession, will give their dues to the Sheriffs, and protect the litigants from the payment of \$26,775.14 of illegal fees annually.

I have, in the foregoing pages, shown the extent to which the Sheriffs were annually deprived of their lawful fees in the serving of Process. I now show the large amount of illegal fees collected by the Sheriffs for the lawyers on Writs of Execution.

In addition to the means and the extent to which Process-serving Attorneys collected large sums of fees wrongfully that belonged to the Sheriffs and litigants, as explained in the preceding pages, I now beg to explain the means by which the Sheriffs were utilized by Process-serving Attorneys further to collect large sums of illegal fees from the litigants for the Attorneys.

Shortly after my appointment as Sheriff I noticed that Writs of Execution, issued from the same Court, and for the same (or nearly the same) amount, had different amounts charged as the Attorneys' fees, which I was to collect for them. These charges ranged from \$5, \$8, \$10 and some as high as \$12. I enquired of other Sheriffs, and found such charges prevailed all over the Province. Many of the Sheriffs told me they knew the charges were too high, but what are we to do? We are at the mercy of the Attorneys for the serving of Process; if we refuse to collect their charges on the Writs of Execution they will give us no papers to serve; and now, as the service of Writs and

Subpoenas is the best part of our business, I then went to the taxing Master and asked if there was a fixed tariff of fees for the Attorneys for issuing Writs of Execution; or was each Attorney left to the freedom of his own will to charge what he pleased? He told me there was a fixed tariff of fees for issuing Writs of Execution, and showed it to me. I then gave the legal tariff of fees to my Deputy with instructions to collect those fees, and no more, for anyone. I had never robbed for myself, and failed to see why I should rob for others. The first case I had after giving these instructions was that of a young lawyer who placed a Writ of Execution issued out of the County Court against an industrious and respectable tradesman for \$200. The man was doing his best to pay it. I instructed my Bailiff not to distress him. I noticed the charge on the Writ was \$10 instead of \$2.25. I instructed my Bailiff to collect \$2.25, the legal fee, and no more. The money was collected, and a cheque sent him. On the following day he called, and in a most impertinent manner demanded an explanation why I had not collected the \$10. I replied I had collected the legal fee, and I would do no more for him or any other. He replied he would give me no more papers to serve, and he kept his word.

I then obtained returns from 18 Sheriffs, myself included, showing that in the hands of the 18 Sheriffs were 1,219 Writs of Execution issued out of the Superior Court, on which, for Writs and Renewals, there was an overcharge of \$8,778.72, being an average overcharge of \$7.20 on each Writ. The same 18 Sheriffs had in their hands 3,692 Writs of Execution issued out of the County Court, on which, for Writs and Renewals, there was an overcharge of \$20,766.02, being an average overcharge of \$5.62 on each Writ.

The overcharge in both Courts in the 18 Counties was..... \$29,544 74

And as there are 19 more Counties in old Ontario, in which the City of Toronto is included, we therefore add as much more overcharges, say.. 29,544 74

Total overcharges on Writs of Execution.....
in Ontario..... \$59,089 48

Having ascertained the extent of this evil practice I urged the Government to appoint an Inspector of Sheriffs' offices. This was done, and herewith I give his instructions, showing that he found the overcharges fully as bad as I represented them :

INSTRUCTIONS TO SHERIFFS,

From John Winchester, Esq., Inspector of Offices, Toronto.

OSGOODE HALL, Toronto, Oct. 8th, 1884.

Sir,—I have the honor to inform you that whilst inspecting Sheriffs' Offices lately, I have found that it has been almost the invariable practice with some Solicitors to endorse upon Writs of Execution against Goods and Lands, as their fees for such Writs, the sums of \$10, \$12, (and in some cases even more) in the High Courts of Justice, and \$6, \$8 and \$10 in the County Court, and similar sums for Renewals; and that the Sheriffs have been in the habit of collecting such sums, believing it to be their duty to obey the instructions thus given. Sheriffs, in so acting, render themselves liable to be proceeded against, and in the future must refuse to levy for more than the legal charges, which are as follows :—

In High Courts of Justice, Goods or Lands Writs (original or alias) each	\$5.00
“ “ “ Goods or Lands Writs, Renewals, each	3.75
In County Court, Goods or Lands Writs (original or alias) each	3.00
“ “ Goods or Lands Writs, Renewals	2.25

Where money is made under Goods Writs no fees whatever for Lands Writs are to be collected. See *Revised Statutes of Ontario, Cap. 66, Sec. 17, page 803.*

Endorsements on Writs must be made on face of Writ with fees for Writ added. If no costs mentioned in Writ, and debt or damages given, no costs other than fees for Writ are to be levied. If no debt, or damages, or costs mentioned in the Writ, then no costs or fees of any kind are to be levied.

I have the honor to be, sir,

Your Obedient Servant,

JOHN WINCHESTER,

Inspector of Offices.

To

MR. SHERIFF McKELLAR,

HAMILTON.

The following is an abstract of losses on Sitzings of the Courts, the transfer of persons from Gaols to Provincial Institutions, and loss on serving of Process :

1875—In this year the "Dominion Act, 38 Vic., Chap. 47, Re Felonies and Misdemeanours," did not shorten the Sittings of the Courts in 1875-6; in these years the yearly earnings was.. \$ 527 50

1877—In this year the Ontario Legislature passed the "Act, 40 Vic., Chap. 3, Sec. 41," increasing the powers of Police and Stipendiary Magistrates, caused me a yearly loss of \$206 in 1877-78-79, three years..... 618 00

1880—The "Act, 43 Vic., Chap. 35," respecting the removal of persons from Gaols to Provincial Institutions, is to me a yearly loss of \$125; for 7 years the losses are 875 00

1880—The "Act, 43 Vic., Chap. 8," extending the jurisdiction of the Division Court from 100 to 200 dollars, is a loss to me in the Sittings of the Courts of \$251.31 yearly; loss in 7 years is 1,759 17

Total loss on shortening of Courts and removal of persons..... \$ 3,252 17

Loss on serving of Process in 1876-77-78-79, four years, at \$554.22 yearly..... \$ 2,216 88

Loss on the serving of Process by the increased jurisdiction of the Division Court; 7 years at \$664.95 yearly..... 4,654 65

Loss on service of Process under the Judicature Act of 1881; 6 years at \$1,001.37 yearly.. 6,008 21

Loss on service of Process in 10 years..... \$12,879 74

" in 10 years on Sittings of the Courts.. 3,252 17

" in 7 years on conveyance of persons... ~~875 00~~

My total losses in 10 years..... ~~\$17,006 91~~ \$16,131.91

ONTARIO GOVERNMENT, CR.

1885—By items of fees\$ 350 00

" Discharge of ~~persons~~ at \$1... 800 00 *Prisoners*

1886— " items of fees 350 00

" Discharge of ~~persons~~ at \$1... 800 00 *Prisoners*

2,300 00

Balance due 31st Dec., 1886\$14,706 91 \$13,831.91

HAMILTON, December 31st, 1886.

Mr. Winchester gave the legal tariff of fees on Writs of Execution. The lawyers have since had a new tariff made. I give both tariffs. A Writ of Execution is a piece of paper 8x12 inches, printed, and in the Superior Court costs 10 cents, and \$1 for stamp; in the County Court there is no stamp used, and the 8x12 inch Writ costs 50 cents; \$1 for Lands and Goods Writ.

SUPERIOR COURT.—OLD TARIFF.

Lands Writ, original or alias	\$ 5 00
Goods Writ, original	5 00
	\$10 00
Less cost of Writs at \$1.10 each	2 20
This is the Attorneys' profit.....	\$ 7 80

SUPERIOR COURT RENEWAL.—OLD TARIFF.

Lands Writ Renewal	\$ 3 75
Goods Writ Renewal	3 75
	7 50
Less cost of Writ and Stamp, each at \$1.10.....	2 20
This is the Attorneys' profit	\$ 5 30

SUPERIOR COURT.—NEW TARIFF.

Lands Writ, original or alias	\$ 6 00
Goods Writ, original.....	6 00
Add Goods Writ to Lands Writ	6 00
	\$18 00
Less cost of Writs at \$1.10.....	2 20
This is the Attorneys' net profit.....	\$15 80

SUPERIOR COURT RENEWAL.—NEW TARIFF.

Lands Writ Renewal.....	\$ 4 00
Goods Writ Renewal.....	4 00
Add Goods Writ to Lands Writ	4 00
	\$12 00
Less cost of two Writs at \$1.10 each	2 20
This is the Attorneys' net profit	\$ 9 80

COUNTY COURT.—OLD TARIFF.

Lands Writ, original or alias	\$ 3 00
Goods Writ, original.....	3 00
	\$ 6 00
Less paid for Writs at 50 cts. each	1 00
This is the Attorneys' profit.....	\$ 5 00

COUNTY COURT.—NEW TARIFF.

Lands Writ, original or alias	\$ 4 00
Goods Writ, original	4 00
Add Goods Writ to Lands Writ	4 00
	<u>\$12 00</u>
Less cost of two Writs at 50 cts. each.....	1 00
	<u>\$11 00</u>

COUNTY COURT RENEWAL.—OLD TARIFF.

Lands Writ Renewal	\$ 2 25
Goods Writ Renewal.....	2 25
	<u>\$ 4 50</u>
Less paid for two Writs.....	1 00
	<u>\$ 3 50</u>

COUNTY COURT RENEWAL.—NEW TARIFF.

Lands Writ Renewal.....	\$ 2 25
Goods Writ Renewal.....	2 25
Add Goods Writ to Lands Writ	2 25
	<u>\$ 6 75</u>
Less cost of two Writs.....	1 00
	<u>\$ 5 75</u>

The new tariff is nearly double the amount of the old, and this is only a fair specimen of the whole of the new tariff of fees made in 1884.

From a return obtained in December, 1885, it is shown that at the Fall Assizes of that year in 36 Counties in Ontario, 294 cases were tried, and 1,532 witnesses were examined; in 23 Courts of Chancery held in 23 Counties in the same Fall, 105 cases were tried, and 470 witnesses were examined. I submit the report to show the proportions in which Writs of Summons and Subpœnas were served by the lawyers and Sheriffs:

ASSIZES' WRITS OF SUMMONS.

The Attorneys issued 294 Writs of Summons at \$7.00.....	\$ 2,058 00
Of the 294 Writs of Summons the Attorneys served 213 at \$2.70..	575 10

This is what the Attys. rec'd for issuing and serving Writs..\$ 2,633 10

I have made the foregoing calculations based on the legal tariff of fees for issuing and serving; but that is not the fee of Process-serving Att'y, as I have proven by the receipted and taxed bills of costs of gentlemen who told the public verbally, and through the columns of the press, that they "made services for *nothing* at the expense of the profession itself, that they did not, and could not, charge for the service (as such a charge would be a fraudulent overcharge.") The Sheriffs' legal fee for serving a Writ of Summons in the Superior Court is \$2.70. I have shown in a preceding page that Process-serving Attorney charged 97 cents more than two Sheriffs' fees, viz., \$6.37. The 213 of the 249 Writs served by the Attorneys cost \$1,356.81. The 1,498 Subpcenas at double rates \$2.90, cost \$4,504.20. Whatever be the rate of service it is evident that the Attorneys do nearly all the issuing and serving. My own net income in 1885 was \$2,620.20; of this amount \$350 is made up of various items of fees added by the Government in 1883-84, and \$800 is for the discharge of non-criminal persons; both sums make \$1,150, that, taken from the \$2,620, leaves me \$1,470 which I receive from the Sittings of the Courts, serving Jurors, &c. At the Fall Assizes in Hamilton, in 1886, 20 Civil cases were tried; I served three of the Defendants; 102 witnesses were examined, not one was served through my office.

In 1876, the first full year I was in office, the Sheriffs were deprived of \$20,506.05 of their fees on serving Writs and Subpcenas; had I got \$554.22, my 37th part of the \$20,506.05, my income for that year would have been over \$3,737.32. In 1881 the Sheriffs' fees were handed over to lawyers, and now I am expected to accept \$1,150 in lieu of the fees taken from me with the \$1,470.20 for sittings of Courts, serving of Jurors, &c., in full for my \$3,737.32, and let the lawyers do the services at more than double fees. I have shown that for every \$20,506.05 taken from the Sheriffs they take \$26,775.14 from the public. The lawyers who said they would make the services for nothing collected \$47,281.19 for serving 9,314 Writs; they collected \$3,537.24 more for serving the 9,314 Writs than the Sheriffs would have got for serving the 20,380 Writs. Such is a sample of the

advantages of having services done by lawyers. The public are suffering more than the Sheriffs, and to them I now appeal for assistance to remove the evil complained of.

My proposed Bill is herewith published, and I invite a perusal of it by the electors of Ontario.

Your Obedient Servant,

ARCH. MCKELLAR.

Hamilton, Dec. 31st, 1886.

I now beg to submit my proposed Act for regulating the serving of Process in the Superior, Surrogate and County Courts of Ontario :—

The Process-serving Attorneys' plea for making services himself is *urgent necessity when the defendant might be out of reach before a Sheriff's officer could be had*. I have shown that in making the service the Attorney always takes the Sheriff's fee and more than a sum equal to *two Sheriffs' fees from the litigant*. I have provided fully for Process-serving Attorneys' necessities in Sec. 3 of my Bill, and also in Sec. 5.

AN ACT to regulate the serving of all Writs of Summons, Subpœnas, and all other Process and Papers in legal proceedings issued out of the Superior, County and Surrogate Courts of Ontario, requiring a personal or substitutional service.

Her Majesty by and with the advice and consent of the Legislative Assembly of Ontario, enacts as follows :—

1st. In all cases in which the Sheriff is not a party, the Sheriff of each County shall (except as hereinafter provided) be the only recognized officer for the service of all Writs of Summons, Subpœnas and all other process or papers issued out of the Superior, County and Surrogate Courts, requiring a personal or substitutional service within the County of such Sheriff.

2nd. All Writs of Summons, Subpœnas and all other process and papers issued out of the said Courts, requiring a defendant or other person to appear in Court, and also requiring a personal or substitutional service upon such person, shall be directed to the Sheriff of the County in which such Writ of Summons, Subpœnas, process or other papers is to be served, commanding such Sheriff to summons such defendants or other person to appear according to the exigency of such Writ of Summons, Subpœna or other process or paper. And every such Writ of Summons, Subpœna or other process or paper when it has been served shall have the Sheriff's return indorsed thereon, and also shall have the stamp of his official seal stamped upon it before it can be filed of record or used for any purpose whatever.

3rd. In all cases of urgent necessity, where the defendant or other person to be served might be out of reach before the Sheriff or his officer could be had to effect the service, then, or for any other good or valid reason, the Solicitor or Attorney may effect the service himself, or he may have it effected by any literate person, but shall forthwith after such service transmit the Original Process, with Affidavit of Service and Mileage, to the Sheriff of the County in which the service was effected, and the Sheriff shall stamp and make his endorsement thereon as required under Sec. 2, and shall be entitled to the same fees he would have been entitled to had the service been effected by himself, his bailiff or officer, less the fees for affidavit and mileage.

4th. Any service made as provided under the provisions of Sec. 3, and which was not returned to the Sheriff of the County in which the service was effected, shall be void and of no effect, and any compensation made therefor shall be held to be so much money received to the use of the Sheriff of the County in which such service was effected.

5th. That for the convenience of Solicitors and Attorneys and to keep down the disbursements of the suits, and save costs to the litigants, it shall be the duty of every Sheriff to appoint a Bailiff in every town or village in his County distance 15 miles or more from the County-town, and in which are two or more Attorneys practising, whose duty it shall be to receive and serve (at all points nearer to such town or village than to the County-town) all Writs of Summons, Subpoena or other process or paper issued out of the Superior, County or Surrogate Courts, and delivered to him by the Attorneys practising in such town or village for service.

6th. The Bailiff in such town or village who has served the process under the provisions of Sec. 5, shall forthwith transmit the Original Process with Affidavit of Service and Mileage to the Sheriff of the County, and the Sheriff shall make the necessary endorsement thereon, and stamp it with his seal of office, and shall be entitled to charge his usual and legal fees, including Affidavit and Mileage as shown by the affidavit returned with the Original Process.

7. No service shall be valid, no appearance or answer can be enforced, and no payment or proceeding taken upon any Writ of Summons, Subpoena or other process or paper issued out of the Superior, County or Surrogate Courts, requiring a personal or substitutional service, unless and until the original proceedings has the Sheriff's return thereon, nor unless the same has been stamped with the Sheriff's official seal and recorded in the Process Book of the Sheriff of the County in which the service should be effected.

8th. No Taxing-master shall tax any bill of costs for serving any Writ of Summons, Subpoena or any other process or paper issued out of the Superior, County or Surrogate Courts, requiring personal or substitutional service, without the Sheriff's return thereon, and the official seal of the Sheriff of the County in which the service should be effected being affixed to the original proceeding.

9th. In case any Solicitor or Attorney shall in any way charge in his costs against either party in any action or proceeding (whether such costs are made out in detail or otherwise) any sum of money whatever for costs of service of Writs of Summons, Subpoena or other process issued out of the said Courts, requiring a personal or substitutional service, which has been or ought to have been directed or delivered to any Sheriff for service, or which has not been paid as an actual disbursement to such Sheriff, and which service has not been ratified by such Sheriff, the Sheriff shall be entitled to demand and recover the same from such Solicitor or his Agent, by action in any Court of competent jurisdiction as money had and received for his use.

The following is the scheme I referred to in a preceding page for the just and equitable distribution of the Sheriffs' legal fees, in such a way as to secure a fair and reasonable income to each one of them; without injustice to any one, and without drawing upon provincial or other funds beyond what is done now :

9th All acts in parts of Acts contrary to the provisions of this Act are hereby repealed

THE SCHEME.

1. The Sheriff of York and City of Toronto shall be entitled to retain in each year all the fees and emoluments received by him in that year up to \$4,000.
2. That of the further fees and emoluments received by the Sheriff of York and City of Toronto in each year, in excess of \$4,000, and not exceeding \$4,500, he shall be entitled to retain to his own use 90 per cent. and no more.
3. That of the further fees and emoluments received by the Sheriff of York and City of Toronto in each year, in excess of \$4,500, and not exceeding \$5,000, he shall be entitled to retain to his own use 80 per cent. and no more.
4. Of the further fees and emoluments received by the Sheriff of York and City of Toronto in each year, in excess of \$5,000, and not exceeding \$5,500, he shall be entitled to retain to his own use 70 per cent. and no more.
5. Of the further fees and emoluments received by the Sheriff of York and City of Toronto in each year, in excess of \$5,500, and not exceeding \$6,000, he shall be entitled to retain to his own use 60 per cent. and no more.
6. Of the further fees and emoluments received by the Sheriff of York and City of Toronto in excess of \$6,000, he shall be entitled to retain to his own use 50 per cent. and no more.

The following Sections shall apply to all the Sheriffs of Ontario but the Sheriff of York and City of Toronto to whom they do not apply:—

1. Each Sheriff shall be entitled to retain to his own use in each year all the fees and emoluments received by him in that year up to \$2,500.
2. Of the further fees and emoluments received by each Sheriff in each year, in excess of \$2,500, up to \$3,000, he shall be entitled to retain to his own use 90 per cent. and no more.
3. Of the further fees and emoluments received by each Sheriff in each year, in excess of \$3,000, and not exceeding \$3,500, he shall be entitled to retain to his own use 80 per cent and no more.
4. Of the further fees and emoluments received by each Sheriff in each year, in excess of \$3,500, and not exceeding \$4,000, he shall be entitled to retain to his own use 70 per cent. and no more
5. Of the further fees and emoluments received by each Sheriff in each year, in excess of \$4,000, and not exceeding \$4,500, he shall be entitled to retain to his own use 60 per cent. and no more.
6. Of the further fees and emoluments received by each Sheriff in each year, in excess of \$4,500, he shall be entitled to retain to his own use 50 per cent. and no more.
7. On or before the 15th day of January in each year each Sheriff shall transmit to the Provincial Treasurer of Ontario a duplicate of the return required under Chap. 3, 43 Vic., Sec. 2, and shall also pay to the Provincial Treasurer of Ontario such proportion of the fees and emoluments received by him during the preceding year, as under this Act he is not entitled to retain to his own use.
8. The fees and emoluments paid by the Sheriffs to the Provincial Treasurer of Ontario, under the provisions of Sec. 7 of this Act, shall be applied by the Government to supplement the incomes of all Sheriffs whose net fees and emolument. were under \$2,000 during the preceding year.

ARCHD. MCKELLAR,
Sheriff Co. Wentworth.

HAMILTON, 31st December 1886.

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