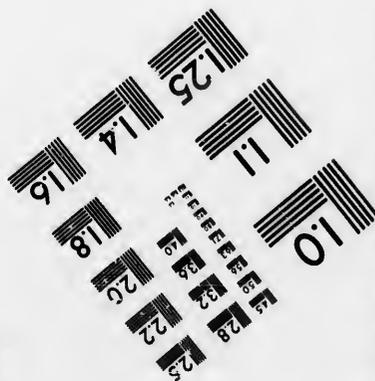
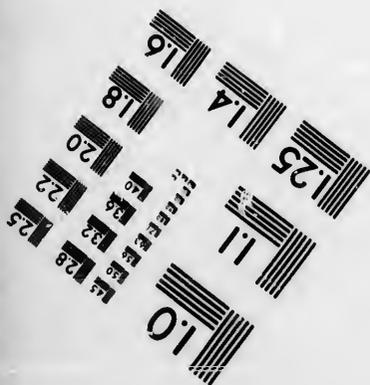
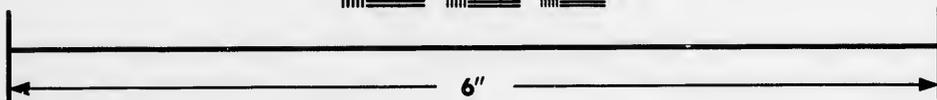
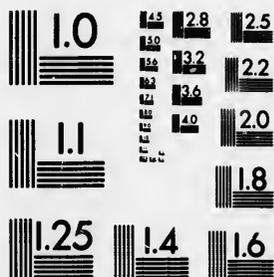


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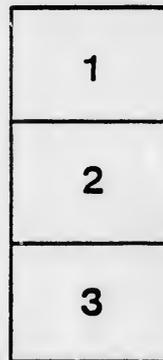
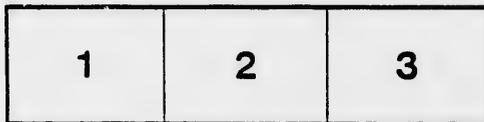
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18

A BOOK SHOWING HOW

HON. ATTORNEY-GENERAL MOWAT

Rewarded the Transgressors of the Law

—AND—

Punished a Detective,

—BY—

Causing him a loss of \$15,947.19 in fifteen years for his tamerity in exposing acts, so unlawful, committed by some members of the Legal Profession, that if similar acts were committed by any other class of the community, they would be severely punished by the strong arm of the law.

Hon. Attorney-General Mowat, occasioned all the losses sustained by Sheriffs, on the non-serving of Writs of Summons and other Process since 1874, as shown by the following facts:—

1st. The first session of the first Parliament of Upper Canada, met at Niagara on the 17th of September, 1792, and prorogued on the 15th of October following.

John Graves, Simcoe, was Lieutenant-Governor:

From 1792 to 1822 Sheriffs served all Process, and were paid by salary.

The second session of the eighth Parliament of Upper Canada, met at York, now Toronto, on the 21st day of November, 1821, and prorogued on the 17th January, 1822. Sir Perigrine Maitland, K. C. B., was Lieutenant-Governor:

In this session an act entitled "An act to repeal part of, and amend the law now in force respecting the practise of Her Majesty's Court of King's Bench in this Province was passed. In Section 45 of the Act, authority is given the Judges to establish fees to be taken by all officers of the Court."

In the same session an act entitled "An act to reduce into one act, the several laws now in force establishing district courts, and regulating the practice thereof; and also to extend the powers of said District Courts, was passed. Section 27 reads as follows: "And be it further enacted by the authority aforesaid." That it shall and may be lawful for the persons hereinafter named to demand and receive the following fees. Then follows a table of fees for Judge, Commissioner, Attorney, Sheriff, Clerk and Crier.

Both acts passed January 17th, 1822.

Since 17th January, 1822, Lawyers have been paid by fees for *issuing* all writs and other Process out of the High Court of Justice and County Court. Sheriffs have been paid by fees for *servng* all Writs and other Process issued out of the said Courts requiring a personal or substitutional service.

The following is the tariff of fees for issuing and serving Writs of Summons in the High Court of Justice and County Court, as given to me by Inspector Winchester in 1885.

What mockery it was to give the Sheriffs the tariff, while the Lawyers pocketed the fees. "

ATTORNEY'S FEES FOR ISSUING.	SUF'R COURT.	COUNTY COURT.	SHERIFFS' FEES FOR SERVING.	SUF'R COURT.	COUNTY COURT.
	\$ cts.	\$ cts.		\$ cts.	\$ cts.
Instructions	3 00	2 00	Receiving and Filing..	0 25	0 10
Summons.....	2 00	1 00	Serving each Defendant	1 50	1 00
Special Endorsement ..	1 00	0 75	Drawing Affidavit. ...	0 25	—
Copy of Writ, including all notice	1 00	0 50	Commissioner.....	0 20	0 20
Two Notices allowed in County Court...	0 00	0 50	Return	0 50	0 25
	\$7 00	\$4 75		\$2 70	\$1 55

There is another tariff for *issuing* and *serving* Subpcenas.

I gave the following decisions of the Courts in proof that the serving of Writs of Summons and all other papers issued out of the High Court of Justice, or County Court, requiring a personal or substitutional service, should be served by a Sheriff or his officers :

1st—*Landrigan vs. Cullahin.*

"Service "not having been made by a Sheriff or his officer the Court set "the service aside for irregularity, with costs," vide Hon. J. H. Cameron, digest.

2nd—*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*, notailable, must be served by the "Sheriff or his officers though the Deputy-Sheriff be a party "to the suit ; 3, Old Series, Drapers' Reports, page 302. The "Writailable, was in this cause directed to the Sheriff, but "served by the Coroner without any authority from the "Sheriff, probably conceiving this the more proper way of "making the service. Motion made to set the service aside ; "Boswell for Plaintiff, Whitehead for Defendant. Per Cur. "—The Provincial Statute positively directs that the Writ "shall be served by the Sheriff or his lawful Deputy or

“Bailiff, and we have frequently held that service of Process “made in any other manner” is irregular. The Court, “therefore, made the Rule absolute, or, in other words “granted the motion and set the service aside.”

These decisions of the Court show clearly that the serving of Process should be done by Sheriffs or their officers and not by Solicitors or others.

The foregoing decisions of the Courts were given from 1822 to 1853. The Sheriff did the serving from 1792 to 1853, a period of 61 years.

In 1853, 16th Vic., Cap. 175, was enacted by Solicitor-General Richards, who was reputed to be a Reformer, Sec. 14. of this Act practically gave the service to Lawyers. It reads as follows :—

Sec. 14—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 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. If the Sheriff, being applied to, neglects or refuses to return the writ, after the expiration of ten days, the Plaintiff may issue a duplicate or concurrent writ on the præcipe already filed, or may procure another copy of the bill of information, and the costs of the first writ or other writ or copy not returned, may be charged against and recovered from the Sheriff, by the Plaintiff or his Attorney.

I wish to draw special attention to the wording of the first part of this Section. There is nothing in it requiring the delivery of a Writ or any other paper at the Sheriff's office, and the working of the Act proves that was the intention. In the second part of this Section the Sheriff is subjected to a penalty if he refuses or neglects to return the Writ

when asked to do so, after he has had it ten days. I am not aware that any Sheriff has been subjected to this penalty, and for the very good reason that he received very few Writs to serve, and the few that he did receive were served and returned long before the ten days had expired.

In 1854 the Sheriff's held a meeting in Toronto and presented their case to the Government in a strong memorial, showing how unjust the Legislation (Sec. 14) was to them who had the serving of Writs and other Process as clearly secured to them by the Provincial Statute, and the decisions of the Courts, as was the issuing of Writs and other Process secured to Lawyers. Sec. 14 was in force only 6 years, when it was carried into the Consolidated Statutes, Upper Canada, 1859, where it remained a dead letter until 1874, a period of 15 years. Sec. 14 must have been an unjust law, when at the expiration of 6 years it was laid aside. While Sec. 14 remained a dead letter, three Parliaments were elected and expired, and all gave it the go-bye, believing, no doubt, it should for ever remain where it was.

A lady in Hamilton tells me that, in 1854 she occupied a seat from Toronto to Hamilton in the same carriage with Sheriff Grange, of Guelph, Sheriff Thomas, of Hamilton, and Sheriff Kingsmill, of Simcoe, on their return from Sheriffs' meeting, and that on the way the chief topic of conversation related to some new law which they declared would ruin them if continued in force. No doubt Sec. 14 was the law referred to. From 1859, when Sec. 14 was carried into the Consolidated Statutes, till 1874, a period of 15 years, the Sheriffs did the serving again, therefore from 1792 to 1874, the Sheriffs did the serving during 76 years. In 1874 Hon. O. Mowat, another Reformer, enacted 37th Vic., Chap. 7, and for reasons which I call upon him to explain to the public, he transferred Sec. 14 from its place of repose and inserted it in 37th Vic., Chap. 7, as Secs. 83 and 84. I need not reproduce the section as you have it on a preceding page, but will show the working of it:—

I entered on the duties of my office on the (1st August, 1875.) The net receipts of the office for the whole year was \$3,692.11. Of this amount the receipts for serving Writs, etc., was \$2,118.91, being \$272.86 more than half the

net income. In 1876, the first whole year I was in office, the net receipts were \$3,618.19; of this sum \$1,682.88 was for serving Writs, etc. The receipts for serving Writs in 1876 was \$436.03 less than in 1875, clear proof that others than Sheriffs were making services.

As the Ontario Legislature 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 of January, 1877, Mr. Sinclair brought up his motion 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 affected by the Sheriff, and also the fees paid to the Sheriff for service in each case.'" Mr. Sinclair's motion was not granted.

In the *Globe* of the 6th February, 1877, a letter appeared over the signature, "A Practicing 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 the papers go into the Sheriff's 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 Subpcenas."

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 of 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 Taxing Master *appears to have been forgotten by the writer of this article.*

This is what the Lawyers said: "Even if the services are made for nothing the Sheriff loses his fee as effectually as if the money were taken from his pocket, and if the services are made as an act of charity to save costs to the litigant, that could much better be done by the Solicitor himself, as shown by the following figures. The fee for issuing a Writ in the High Court of Justice is \$7.00 less \$1.00 for stamp, and one cent for blank form; thus on an outlay of \$1.01 the Solicitor has a clear profit of \$5.99. The fee on a County Court Writ is \$4.75 less 60 cents paid clerk, and one cent for blank form; thus on an outlay of 61 cents the Solicitor has a clear profit of \$4.14. The fee for a Subpcena is \$1.00 less one cent for blank form; thus on an outlay of *one cent* the Solicitor has a clear profit of 99 cents. These are larger profits than are made by merchants, farmers, manufacturers, tradesmen or mechanics; even under the fostering care of the National Policy.

A number of anonymous correspondents wrote in the newspapers, all declaring that my sole object in asking for the return was to increase Sheriffs' fees, and add to the burdens of litigants. These untruthful statements, coupled with the refusal of the Government to grant me a return, convinced me that in the public interest the returns should be had. I

therefor resolved to get it. The return could have been got, as I obtained one in 1889 by applying to the officials who issue the Writs; but to save time, I asked Mr. Eckhart, Assistant Provincial Secretary, if he would allow me to use his name to the form of return I wanted; he consented. I had the forms printed and paid for in Hamilton; I sent them to Mr. Eckhart who in due time returned them filled up. Here they are, and they show whose fees are increased, and who adds to the burdens of the litigants.

The number of Writs issued in 1876 was 20,380.

Sheriff's fees for serving 20,380 Writs..... ..\$ 42,094 25
 Lawyer's fees for issuing 20,380 Bills and Writs 117,358 00

Total for issuing and serving 20,380 Writs...\$159,452 25

A return from the Sheriffs showed that of the 20,380 Writs, they only served 11,066, which gave them \$22,135.25

Of the 20,380 Bills and Writs the Sheriffs were deprived of the serving and fees of 9,314, viz:—

Lawyers served	3,511 Sup'r Court Writs at \$2.70,	\$ 9,479 70
"	" 1,291 Bills in Chancery at 2.70,	3,485 70
"	" 4,512 Co. Court Writs at 1.55,	6,993 60
	9,314	\$19,959 00

The \$19,959 was within \$1,083.12 of being half the Sheriff's fees if they had served the 20,380 Writs.

But 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 \$19,959 taken from the Sheriffs was saved to the litigants, and neither the litigants nor the public had any cause of complaint.

So strong was my conviction that there was wrong doing in the practice of serving Process by Attorneys that I determined to use all lawful and proper means to ascertain the facts of the case, and I succeeded. I had the tariff of Process-serving Attorneys in the Superior Court long before I got them in the County Court. Here they are: this is what the lawyers *did*.

<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>
	1	2	3	4	
Samuel McNair } v. } Georing & Whipple }	13 37	7 00	2 70	3 67	Sup. Ct.
1. Lauder & Proctor	10 20	4 75	1 55	3 90	C'y Ct.
2. Thos. Deacon.....	7 00	4 75	1 55	70	C'y Ct.
3. Hardy, Wilks. } & Jones..... }	10 40	4 75	1 55	4 10	C'y Ct.
4. Meredith & } Meredith..... }	10 09	4 75	1 55	3 79	C'y Ct.
5. Charles Durand...	8 50	4 75	1 55	2 20	C'y Ct.
6. Francis Rye	7 48	4 75	1 55	1 18	C'y Ct.
	53 67	28 50	9 30	15 87	

Column No. 1 in the foregoing table shows the amount charged by Lawyers for issuing and serving Writs of Summons in the H. C. J. and C. C.

Column No. 2 shows the Lawyers' legal fee for issuing a Writ of Summons.

Column No. 3 shows the Sheriffs' legal fee for serving a Writ.

Column No. 4 shows the amount wrongfully taken from the person served.

Add \$7 in column 2, the Lawyers' fee for issuing a Writ of Summons in the High Court of Justice, and \$2.70 in column 3, the Sheriffs' fee for serving it, making \$9.70 for issuing and serving; subtract \$9.70, the Lawyers' and Sheriffs' legal fee, from \$13.37, the amount charged by the Solicitor for issuing and serving, (as shown in column 1), and you have a balance of \$3.67 wrongfully taken from the person served. Again add \$28.50 and \$9.30 at the foot of columns 2 and 3, making \$37.80, being the Lawyers' and Sheriffs' legal fees for issuing and serving 6 County Court Writs of Summons; subtract \$37.80 from \$53.67, the amount

charged by the Solicitors for issuing and serving 6 County Court Writs, (as shown in column 1), and in column 4 you will find \$15.87, wrongfully taken from the person served; the Solicitor who issued the Writ in the High Court of Justice, pocketed \$2.70 belonging to the Sheriff, and \$3.67 belonging to the person served, in all \$6.07. The 6 Solicitors, who issued and served the 6 County Court Writs, pocketed \$9.30 belonging to the Sheriffs, and \$15.87 belonging to the persons served, in all \$25.17. All the Solicitors said they made the services for *nothing*, or at their own expense.

It will be observed that 6 Lawyers, who said they made the services for nothing, issued and served 6 County Court Writs, and in addition to their own fee of \$28.50 for issuing the 6 Writs, they collected \$9.30 belonging to 6 Sheriffs, and they collected \$15.17 wrongfully from the persons served, in all \$25.17.

If 6 burglars had at the peril of their lives broken into one of our Banks or elsewhere, and taken \$25.17 or less, and were caught, they would be sent to the Penitentiary; why should men who take the money without imperiling their lives not be treated in the same way?

Hon. A. S. Hardy who is a pompous and revengeful man, said, "the law was plain that no gentleman could make a charge for the service of Process", but if a man who is not a gentleman makes the service the Sheriff loses his fees. The law firm of Hardy, Wilks & Jones, of which Hon. Mr. Hardy is senior partner, charged and collected \$10.40 for issuing and serving a County Court Writ, in addition to their own fee of \$4.75 for issuing the Writ, they collected \$1.55 the Sheriffs fee for serving it, and wrongfully collected \$4.10 from the person served. Both sums make \$5.65 collected that did not belong to them. Instead of using his official position to stop such wrong doing; he was furious; and ~~commanded all the taxing-masters who taxed the bills of costs to appear before him, they obeyed,~~ and he threatened them with immediate dismissal for daring to tax the bills of costs; of course he did not wish the public to see the tariff of fees at which his law-firm made services. I ask the public, should this man be continued in the public service at an annual cost of \$4,600.00?

It will be observed that for every \$2.70 taken from the Sheriff for services in the H. C. J., \$3.67 is taken from the person served; and for every \$1.55 taken from the Sheriff for services in the County Court, \$2.64 is taken from the person served. The loss to the Sheriffs from the serving of 9,314 Bills and Writs by Lawyers was as follows:—

Lawyers served	3,511 S. C. Writs at \$2.70.....	\$9,479 70
“	“ 1,291 Bills in Chancery at \$2.70..	3,485 70
“	“ 4,512 County Court Writs at \$1.55	6,993 60
		<hr/>
	9,314 Amt. taken from Sheriffs,	\$19,959 00

The Lawyers charge the persons served the following rates for serving the same 9,314 Bills and Writs, viz., rates shown in column 4 of the table:—

Serving	3,511 Superior Court Writs at \$3.67.....	\$12,885 37
“	“ 1,291 Bills in Chancery at \$3.67.....	4,737 97
“	“ 4,512 County Court Writs at \$2.64.....	11,911 60
		<hr/>
	9,314	\$29,535 02
	Add amount taken from Sheriff...	19,959 00

Total taken by Lawyers from Sheriffs and persons served, for serving 9,314 Writs.....	<hr/> <hr/>	\$49,494 02
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I have shown that the cost of serving 20,380 Writs by Sheriffs would be \$42,094.25, therefore the Lawyers, at their tariff of fees, received \$7,399.77 more for serving 9,314 Writs than the Sheriffs would have received for serving the whole 20,380 Writs.

When I laid such astounding figures before the public, was it not reasonable to look to the Government to make a searching enquiry into the truth or falseness of my statements, and if found false to punish me, or if found correct to repeal the law.

The loss of the \$19,959 was an average loss of \$539.43 to each one of the 37 Sheriffs then in Ontario. In 1876, the first whole year I was Sheriff, my office was worth \$4,157.62, but the loss of \$539.43—my share of the \$19,959 lost to the Sheriffs in that year—reduced my income to \$3,618.19. It was the same in '77, '78, '79 and '80—five years. The yearly

loss of \$539.43 during the same five years is \$2,697.15, occasioned by Mr. Mowat's Sec. 83, 37th Vic., Chap. 7.

In 1879, 35 of the 37 Sheriffs then in Ontario signed a petition to the Ontario Legislature entering a protest against 37th Vic., Chap. 7, Sec. 83, but nothing was done for us.

In 1881 the members of the Ontario Government were :

- HON. O. MOWAT, Attorney-General.
- " ADAM CROOKS, Minister Education.
- " T. B. PARDEE, Com. Crown Lands.
- " C. F. FRASER, Com. Public Works.
- " S. C. WOODS, Prov. Treasurer.
- " A. S. HARDY, Prov. Secretary.

Five lawyers and one layman.

Judging from the legislation that follows, it was evidently decreed by a majority of the members of the Government that for my temerity in exposing the plundering (or I should say robbery) practised by a large number of the members of the legal profession on Sheriffs and litigants and the overcharges on Writs of Execution, I must be punished, or what would be better still—ruined.

The intention of the Government was carried out by others, they would not venture to do it themselves. It was done in the following fashion: On 19th January, 1881, Mr. Mowat introduced an act entitled "An Act to consolidate the Superior Courts; establish a uniform system of pleadings and practice; and make further provision for the due administration of justice. Who would believe that Sheriffs had anything to do with the pleadings and practice, but they had. The act is also called "The Ontario Judicature Act" and in it all the Sheriffs are dumped into the hands of the Judges of the High Court of Justice,

Here is the order or law regulating the serving of Writs of Summons :

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."

Under section 1 all Lawyers are made Sheriffs.

"2nd. Where Service is required, the Writ of Summons may be served in any County in Ontario, and service thereof, whenever practicable, shall be personal; but if it be made to appear to the Court or Judge on affidavit that

the plaintiff is from any cause unable to effect prompt personal service, the Court or Judge may make such order for substitutional or other service, or for the substitution for service of notice by advertisement or otherwise as may seem just."

I shall now show how this new and novel law has effected myself during the last ten years. The following are my yearly receipts since 1880:—

Year.	Amount Received.
1881	\$ 1,410 15
1882	1,503 30
1883	1,595 90
1884	1,915 37
1885 (Mr. Mowat's Bill made this increase)	2,493 93
1886	2,783 13
1887	2,700 26
1888	2,827 67
1889	2,770 03
1890	2,402 50
Arrearages collected in 1890.....	499 32
	\$22,931 56

The \$22,931.56 has given me an average yearly income of \$2,293.18 during the last ten years, being \$1,325.04 less yearly than it was prior to 1881. My loss since 1880, ten years has been \$13,250.04; add \$2,697.15, my loss in five years prior to 1881, and it makes my loss in 15 years \$15,947.19, and without fear of successful contradiction I assert that Hon. Oliver Mowat has occasioned me these heavy losses, as my reward for exposing practices that would send any other class than such lawyers as are engaged in such unlawful practices to the Central Prison or Penitentiary. In further proof of the united onslaught made upon me I submit the following facts: In 1875, the year I was appointed Sheriff, and before Mr. Mowat's Sec. 83 took effect, the receipts for serving Writs and other process was \$2,118.91. Sheriff Thomas, my predecessor, paid his Bailiff \$1,000 a year, which taken from \$2,118.91 left the Sheriff a profit of \$1,118.91. Since the enactment of the Judicature Act in 1881, I have paid my Bailiff only \$600 a year, a very moderate salary to support a family and keep a horse in a large city. Moderate as the income is, it is more than I make from serving Writs and other process. In 1890 the gross receipts from Writs and other papers was \$521.87, being \$78.13 less than paid my Bailiff, and \$1,597.04 less than the receipts for serving process in 1875. I shall now show that other Sheriffs are

suffering as well as myself. There are 43 Sheriffs in Ontario. 5 of them are in Muskoka, Parrey Sound, Algoma, Thunder Bay District and Rainey River; these being new districts, the Sheriffs are partly paid by the Government. The remaining 38 in old Ontario should be self-sustaining but they are not: 19, being one-half, have incomes ranging from \$1,955.10 down to \$583.09. Their incomes aggregate \$28,261.68, which gives the 19 Sheriffs an average yearly income of \$1,482.19, of the other 19 Sheriffs—Sheriff Mowat receives \$8,840.46, Sheriff Widdifield receives \$5,436.16, and the other 17 Sheriffs have incomes ranging from \$3,500 down to \$2,000. Shortly after the Sheriffs were handed over to the Judges, they held a meeting in Toronto and appointed Sheriff Davis Secretary-Treasurer; they contributed \$200 to retain a Solicitor to appear before the Judges in their behalf. A Solicitor was retained but he never did anything. Was it reasonable to expect that the Solicitor would work to deprive himself and other solicitors of the fees Mr. Mowat had placed within reach. Mr. Mowat appointed me, and if he is unwilling or unable to protect me, then I shall appeal to the electors of Ontario who have removed many an abuse in the last fifty years, and they will remove the wrongs to which Sheriffs and litigants are now subjected to also. That the public may fully understand why the Government dealt so unjustly to myself and other Sheriffs, I submit the following facts: On entering on the duties of my office in 1875, I noticed it was almost the invariable practice of solicitors to endorse upon Writs of Execution, as their fee for such Writs, the sums of \$8, \$10 and \$12 in the High Court of Justice, and \$6, \$8 and \$10 in the County Court. I soon discovered these charges were too high. I obtained returns from the Sheriffs, and found that \$59,108.48 of illegal fees were collected annually by the Sheriffs for the Solicitors. I determined not to be used for such evil and illegal practices. I obtained a copy of the legal tariff of fees for issuing Writs of Execution in the Superior and County Courts, and collected the fees under that tariff and no more. I never robbed for myself, and I failed to see why I should rob to enrich others. I told the Government of this evil practice, and suggested the appointment of an Inspector as the best means of ending the wrong-doing. An Inspector was appointed, and found that what I had stated was true. Here is what he says:—

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 instruction 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

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,

To

MR. SHERIFF McKELLAR,
HAMILTON.

JOHN WINCHESTER,
Inspector of Offices.

I shall now give the tariff of fees charged by the good men who said they made the services for nothing. In the High Court of Justice, the Solicitor in addition to his own fee of \$7.00 for issuing the Writ takes \$2.70 belonging to the Sheriff, and \$3.67 belonging to the person served; both sums make \$6.37 wrongfully taken, in the County Court. The Solicitor in addition to his own fee of \$4.75 for issuing the Writ, takes \$1.55 belonging to the Sheriff, and \$2.64 from the person served; both sums make \$4.19 wrongfully taken by the Solicitor. I am prepared with documentary evidence to prove the correctness of the foregoing figures before a committee of the Legislature or elsewhere; and to the men who made these charges Mr. Mowat gave the services; and it was for my temerity in exposing the overcharges on Writs of Execution and on services made by Solicitors that Mr. Mowat fined me \$15,947.19. But I tell Mr. Mowat that rather than be a party to the collection of illegal fees, or conceal from the public the robbery to which they are subjected by men who say they make the services for nothing, I would go to my grave penniless. The enactment of 16 Vic., chap. 175, sec. 7, by a Reformer, and the bringing in force of that Section after it had been a dead letter 15 years, by another Reformer as Sec. 83 and 84,

is a sad commentary on Reformers, who say they do unto others as they would wish to be done by. An examination of the facts I have laid before the public prove the hollowness of such declarations. Whatever Sir John Macdonald did, he never legislated away the fees or emoluments of officials appointed by himself, Can that be truthfully said of Mr. Mowat and some of his colleagues? I now submit my proposed Act to regulate the serving of Writs.

An Act to regulate the serving of Writs of Summons, Subpœnas and all other papers or proceedings issued out of the High Court of Justice or County Court, 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 be the only recognized officer for the service of all Writs of Summons, Subpœnas and all other papers or proceedings issued out of the Superior and County Courts, requiring a personal or substitutional service within the County of such Sheriff.

2nd. All Writs of Summons and Subpœnas or other Process issued out of the said Courts, requiring a Defendant to appear in Court, and also requiring a personal or substitutional service upon such defendant, shall be directed to the Sheriff of the County in which the Writ of Summons, Subpœna or other Process is to be served.

3rd. It shall be the duty of every Sheriff to appoint a Bailiff in every town or village in his County, distant 15 miles or more from the county-town, and in which are two or more Attorneys practicing, 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, Subpœnas or other papers or proceedings issued out of the Superior or County Courts, and delivered to him by the Attorney practicing in such town or village for service.

4th. The Bailiff in such town or village who has served the Process under the provisions of Sec. 3, 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.

5th. In case the Writ or Subpœna is not fully and completely served within ten days after its receipt at the Sheriff's office, 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 or Subpœna, by any literate person afterwards, shall, in case the person to be served was at any time during such ten days within the County, be allowed in the taxation of costs, as if the service had been by the Sheriff or his officer.

6th. No service shall be valid, no appearance or answer can be enforced and no payment or proceeding taken upon any Writ of Summons issued out of the Superior or County Courts, requiring a personal or substitutional service, unless and until the original proceeding 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.

7th. No Taxing-master shall tax any Bill of Costs for serving any Writ of Summons or Subpoena issued out of the Superior or County Courts, requiring a 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.

8th. All Acts or parts of Acts or rule or order contrary to the provisions of this Act are hereby repealed.

Be it further enacted that each Sheriff shall in each year retain from the net receipts of his office, for his own use, the amount set down opposite his County in the following list, and that all fees collected in excess of that given in this list, shall on or before the 15th January in each year be paid to the Provincial Treasurer of Ontario, to be used by the Government to supplement the incomes of Sheriffs whose incomes are under \$2,000.

NAME OF COUNTY.	Amt. to be retained by Sheriff.
Toronto	\$6000 00
York	4000 00
Carlton	3400 00
Wentworth	3400 00

(This is \$754.62 less than it was in 1876 before my loss of \$535.43 caused by Mr. Mowat's Sec. 83)

In all other Counties the Sheriffs shall retain the fees up to..... 3000 00

In conclusion I appeal to the Government itself, the members of the Legislature and the Electors, to see that justice is done us. First, I claim that services should be done by Sheriffs because we require the fees as part of our means of living; we have our Bailiffs to do the work. We did the serving 76 years without complaint being made against us. Lastly, I maintain, that for the protection of litigants the services should be made by Sheriffs, who are supported in that view by the decisions of the Courts. I disclaim the charge that I am fighting and traducing Lawyers; I am fighting the Government, and exposing the misdeeds of some Lawyers. No man has greater respect and admiration for a talented, educated and honest member of the legal profession than I have; no country could be governed without such men, and Canada has its full proportion of them.

ARCHD. McKELLAR.

Hamilton, October 26th, 1891.





