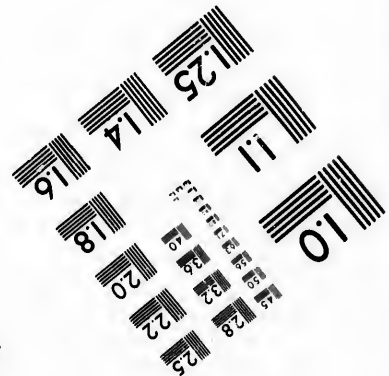
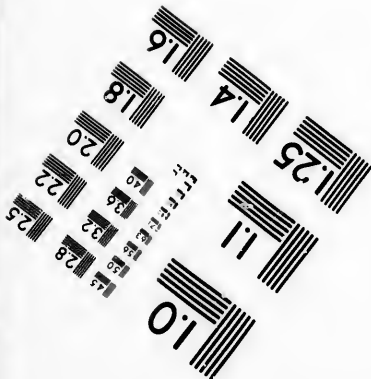
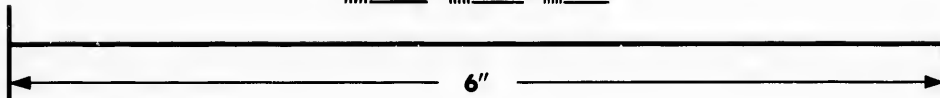
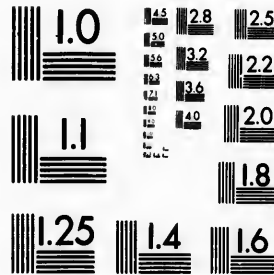


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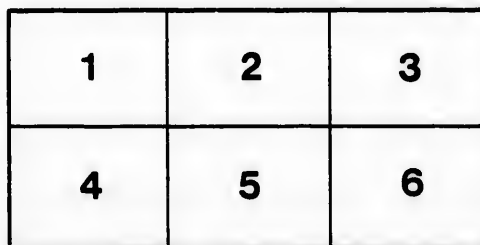
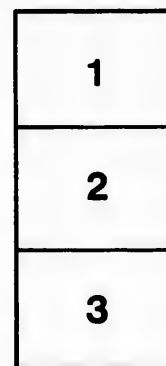
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TO THE MEMBERS
OF THE
ONTARIO GOVERNMENT,
GREETING.

History of the Province

1875 1874

To the Members of the Ontario Government :

GENTLEMEN,—Shortly after entering upon the duties of my office on the 1st day of August, 1875, I noticed that different sums were charged by Lawyers as their fee for issuing Writs of Execution out of the same Court, and nearly for the same amount ; I made inquiry and found that the practice prevailed all over the Province. I inquired of one of the Taxing Masters if there was a fixed tariff of fees for issuing Writs of Execution, or was each Lawyer at liberty to charge what he pleased ; I was told there was a tariff of fees for issuing Writs of Execution as for the issuing of all other papers, but that the Lawyers as a rule disregarded the legal tariff of fees and made their own tariff. I obtained a copy of the legal tariff of fees for issuing Writs of Execution in the Superior and County Court, 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 found that some of the Sheriffs collected these illegal fees in ignorance, believing it to be their duty to collect the amount endorsed on the Writ. Other Sheriffs made the collection of these illegal fees knowingly, but under fear, as they said, truthfully, "If we do not collect these illegal fees the Lawyers will give us no papers to serve, and will ruin us." The truth of this was verified in my own office ; I had a County Court Writ for \$200 against an honest man who was doing his best to pay it. I noticed that \$10 was charged for the Writ instead of \$3 the legal fee. I instructed my bailiff not to press the man as he was paying as fast as he could, and to collect no more than \$3 for the Writ. The money was made and a cheque, including \$3 for the Writ, was sent to the Lawyer. On the following day he came to my office and in an imperious manner demanded an explanation why the \$10 had not been collected ? In other words, why had I not robbed the litigant to the extent of \$7 for his benefit. I told him I had collected the legal fees, and would do no more for him or any other. His reply was that he would give me no more papers to serve, and I must do him justice to say he kept his word.

I received returns from 18 Counties, showing that the overcharge for Writs and Renewals on 3,692 County Court Writs in the hands of 18 Sheriffs was \$20,766.02, being an average overcharge of \$5.60 on each Writ.

The same 18 Sheriffs held 1,219 Superior Court Writs, the overcharge on which for Writs and Renewals was \$8,778.72, being an average overcharge of \$7.20 on each Writ. The illegal charges on Superior and County Court Writs in the 18 Counties was \$29,554.74, and as there are 18 more Counties including Toronto, we may safely double the above sum, making \$59,109.48, being the amount of illegal fees collected annually through the Sheriffs.

Having ascertained the extent of the wrongs to which litigants were subjected, I suggested to the Government the appointment of an Inspector of Sheriffs' offices as the best means of ending the wrong-doing. An Inspector was not appointed till 1884, and then he found matters as bad as I had represented them, as shown by the following instructions to Sheriffs :

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 Sheriffs to endorse upon Writs of Execution against Goods and Lands, as 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.

ARCH. McKELLAR,

Sheriff.

Hamilton, July 4th, 1889.

On a preceding page I showed how the lawyers utilized the Sheriffs to collect for them thousands of dollars of illegal fees on Writs of Execution.

I shall now show how the same lawyers practiced on the Sheriffs, taking nearly half their fees for serving of Process, and at the same time collected much more from the persons served than they took from the Sheriff. Now for the proof. I entered on the duties of my office 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, &c., was \$2118.91. In 1876, the first whole year I was in office, the net receipts were \$3618.19; of this sum \$1682.88 was for serving Writs, &c. The receipts for serving Process in 1876 was \$436.03 less than in 1875. 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 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 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

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Handwritten notes in the right margin, including the name "Mr. Sinclair" and other illegible text.

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 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 Subpœnas."

In the *Globe* of 16th February, 1877, a letter appeared over the signature of Francis Rye, of Barric, 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 Sheriffs' 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 this article,~~ and I regret to have to say that not only were the statements above quoted untrue, but in making them the above-named parties were traducing the character of the Sheriffs. When the defendants demurred to the payment of the Bill of Costs as being too high, the invariable answer was that they had saved him the Sheriff's fee, that had the Sheriff made the service the costs would have been much higher.

A number of other anonymous correspondents wrote in the same strain, all declaring that my sole object in asking for the return was to increase Sheriffs' fees. These false accusations put me on my mettle, and I determined to show the public who did increase the fees and burdens to litigants, and I have succeeded. I desire to draw special attention to the fact that all the parties whose oral and written utterances I have given 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

The existence of such an officer as a Taxing Master appears to have been forgotten by the writer of this article.

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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 was 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.

| | |
|--|---------------------|
| Attorney received for issuing 6,556 Writs in Superior Courts at \$7 00 | \$ 45,892 00 |
| Attorney received for issuing 2,579 Bills in Chancery at \$7.00 | 18,053 00 |
| Attorney received for issuing 11,245 County Court Writs at \$4 75 | 53,413 00 |
| Total for issuing | <u>\$117,358 00</u> |

Had the Sheriff served the 20,380 Bills and Writs their fees would be as follows :

| | |
|--|---------------------|
| Serving 6,556 Writs in Superior Court at \$2.70.. | \$ 17,701 20 |
| “ 2,579 Bills in Chancery at \$2 70 | 6,963 30 |
| “ 11,245 County Court Writs at \$1.55 | 17,429 75 |
| | <u>\$ 42,094 25</u> |
| Add Lawyers' fees for issuing 20,380 Bills and Writs | 117,358 00 |
| Total for issuing and serving 20,380 Writs.. | <u>\$159,452 25</u> |

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

| | |
|--|--------------------|
| Sheriffs served 3,043 Sup'r Court Writs at \$2 70 . \$ | 8,221 50 |
| “ “ 1,288 Bills in Chancery at \$2.70 | 3,477 60 |
| “ “ 6,733 County Court Writs at \$1.55 | 10,436 15 |
| 11,066 | <u>\$22,135 25</u> |

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 County Ct. Writs at \$1.55.. | 6,993 60 |
| 9,314 | <u>\$19,959 00</u> |

The \$19,959.00 was within \$1,088.12 of being half the Sheriffs' fees if they had served the 20,380 Writs.

The amount of such an office as a lawyer

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 \$19,959.00 taken from the Sheriffs was saved to the litigants, and neither the litigants nor the public had any cause of complaint.

Although the foregoing declarations were made by members of Parliament orally, and by members of the legal profession through the public press, I did not believe them, for why should they do the Sheriffs' work for nothing, for by so doing it was as damaging to the Sheriffs as if the money was taken from their tills, and I thought it very unlikely that men who would utilize myself and other Sheriff's to collect a large amount of illegal fees for them, would do our work for nothing, or would fail to collect the illegal fees themselves as the opportunity to do so was given them. 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 :

| <i>Style of Cause or Name of Attorneys.</i> | <i>Amount Collected by Attorney.</i> | <i>Attorneys' Legal Fees.</i> | <i>Sheriff's Legal Fees.</i> | <i>Collected from Litigants.</i> | <i>Name of Court.</i> |
|---|--|-----------------------------------|----------------------------------|--|---------------------------|
| Samuel McNair v. Georing & Whipple } | 1 13 37 | 2 7 00 | 3 2 70 | 4 3 67 | Sup. Ct. |
| 1. Lauder & Proctor | 10 20 | 4 75 | 1 55 | 3 90 | C'y Ct. |
| 2. Thomas Deacon.. | 7 00 | 4 75 | 1 55 | 80 | C'y Ct. |
| 3. Hardy, Wilkes & 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 97 | |

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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 of which the person served was robbed.

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, \$2.66 is taken from the person served. These astounding results are proven by the foregoing table. The six gentlemen referred to there who said they made the services for nothing, &c., made six services in the County Court for which they charged and collected \$9.50 belonging to the Sheriffs, and \$15.97 belonging to the persons served, in all \$25 27 that did not belong to them. The average was \$4.21 wrongfully taken from each; some took more. Hardy, Wilkes & Jones pocketed \$1.55 belonging to the Sheriff, and \$4.10 belonging to the person served, in all \$5.65 that did not belong to them. Had any other class of men taken the same amount of money not belonging to them, even to appease the gnawings of hunger, every one of them would be serving a term in the Central Prison; why should a different law be applied to these transgressors? Had the Hon. A. S. Hardy been a man of high principle when he saw the unlawful charges made by his law partners he would have blushed and repudiated them, and would have used his official position to enact such laws as would protect Sheriffs and litigants from the gross wrongs practiced upon them. This was not done; the determination was to punish me and to do it in such a way that the public could not see it; with this object in view *Sec. 1 of Order VI. of the Judicature Act of 1881* was enacted. The Lawyers however act as if the section applied to all Sheriffs, as proven by the accompanying return, showing how the services and fees were divided between Lawyers and Sheriffs in 1888. Had the Government had the courage to have put the following rider on *Sec. 1 of Order VI.* it would have protected all other Sheriffs without any relief to me, viz: "Provided always that *Sec. 1 of Order VI.* shall only apply to the County of Wentworth during the incumbency of the present Sheriff."

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| Litigants. | Name of Court. |
|------------|----------------|
| 67 | Sup.Ct. |
| 90 | C'y Ct. |
| 80 | C'y Ct. |
| 10 | C'y Ct. |
| 79 | C'y Ct. |
| 20 | C'y Ct. |
| 18 | C'y Ct. |
| 97 | |

The Government did what has no precedent, they made a law by which the whole of the fees for serving of Process may be taken from officers appointed by themselves, and placed in their own pockets and the pockets of other Lawyers ; thus rewarding the transgressors of the law. That the Government as constituted in 1881 (when *Sec. 1 of Order VI.* was passed) is fairly open to the charge of having made a law to benefit themselves, can clearly be established. In 1881 the Government was composed of five members, four lawyers and one layman. I know from experience that Mr. Wood, the layman, took no interest in any law relating to legal matters, and therefore is in no way responsible for the law of which I complain. The other four members were Hon. O. Mowat, Hon. T. B. Pardee, Hon. Mr. Fraser and Hon. A. S. Hardy, all lawyers and senior partners in law firms, from which I assume they draw a share of the profits. It will readily be seen that legalizing the serving of Process by Lawyers would increase the fees and emoluments of the offices, and would consequently increase the dividends of the senior partners—the makers of the law. I wish it distinctly understood that I make no such charge against Hon. Mr. Mowat though theoretically responsible. I am confident that had he been left to his own judgment no such Act as that I complain of would have been put on the Statute book. Few men know Mr. Mowat better than I do, having sat with him in Parliament for years before Confederation, and afterwards as a colleague in the Ontario Government. I have had the fullest opportunity of knowing him in and out of office, and can truthfully assert that a more honest, upright or unselfish man never ruled this or any other country ; his steady aim is to do that which is just and right in all his public and private acts. Now that he has a number of new colleagues who are in no way responsible for the scandalous Legislation we complain of, I confidently expect that on our case being submitted, showing the gross and indefensible wrongs practiced on Sheriffs and litigants, he will be supported by them in passing a law that will be just to all parties.

In March, 1889, I received returns showing the number of Writs of Summons issued out of the H. C. J. and C. C. in 38 Counties in 1888, and also returns of the number of Witnesses examined in said Courts, and showing how the services and the fees were divided between the Lawyers and Sheriffs :

HIGH COURT OF JUSTICE.

In 1888—7,555 Writs of Summons were issued out of this Court

“ —5,541 Witnesses were examined in said Court.

COUNTY COURT.

In 1888—4,204 Writs were issued out of this Court.

“ —2,802 Witnesses were examined in this Court.

WRITS AND SUBPŒNAS SERVED BY SHERIFF IN H. C. J.

Of the 7,555 Writs the 38 Sheriffs served 2,655.

“ 2,655 served by Sheriffs, the Sheriff of Toronto served
546 (nearly one-fifth) at \$2.70.....\$ 1,474 20

“ 5,541 Witnesses examined 38 Sheriffs served 603.

“ 603 Witnesses examined, the Sheriff of Toronto served
177 at \$1.45 256 65

Total received by Sheriff of Toronto for
serving Writs and Subpœnas.\$ 1,730 85

Of the 2,655 Writs served by Sheriffs, 37 Sheriffs served 2,109

at \$2 70 \$ 5,694 30

“ 603 Witnesses examined, 37 Sheriffs served 426 at \$1.45. 617 70

Total received by 37 Sheriffs for serving
Writs and Subpœnas in H. C. J.\$ 6,312 00

The \$6,312.00 would give \$170.00 to each of the 37 Sheriffs.

WRITS AND SUBPŒNAS SERVED BY LAWYERS IN H. C. J.

Of the 7,555 Writs, Lawyers served 4,900 at Sheriffs' fees, \$2.70..\$ 13,230 00

Serving 4,900 Writs at \$3.67, (fee charged person served)..... 17,983 00

Of the 5,541 Witnesses the Lawyers served 4,938 at \$1.45..... 7,160 10

Received by Lawyers for serving Writs
and Subpœnas in the H. C. J.\$ 38,373 10

COUNTY COURT WRITS AND SUBPŒNAS SERVED BY SHERIFFS.

Of the 4,204 Writs issued, 37 Sheriffs served 1,756 at \$1.55...\$ 2,721 80

“ 2,802 Witnesses, 37 Sheriffs served 288 at \$1.45. 417 60

\$ 3,139 40

The \$3,139 40 would give each of the 37 Sheriffs \$84.85.

WRITS AND SUBPŒNAS SERVED BY LAWYERS IN COUNTY COURT.

Of the 4,204 Writs issued, Lawyers served 2,448 at \$1.55
Sheriffs' fee.....\$ 3,794 40

Serving 2,448 Writs at \$2 66 (fee charged person served)..... 6,511 68

Of the 2,802 Witnesses, Lawyers served 2,514 at \$1.45 3,645 30

\$ 13,951 38

RECAPITULATION.

| | |
|--|--------------|
| In 1888 the Sheriff of Toronto received for serving Writs and Subpœnas in H. C. J..... | \$ 1,730 85 |
| In 1888 37 Sheriffs received for serving Writs and Subpœnas in H. C. J..... | \$ 6,312 00 |
| In 1888 37 Sheriffs received for serving Writs and Subpœnas in C. C..... | 3,139 40 |
| <i>66</i> Total rec'd by 37 Sheriffs for serving Writs and Subpœnas in H. C. J. in '88 | \$ 9,451 40 |
| The \$9,451.40 divided equally among the 37 Sheriffs would give each of them the munificent sum of..... | \$ 255 41 |
| The Lawyers received for serving Writs and Subpœnas in H. C. J. and C. C..... | \$ 52,324 48 |
| Of the \$52,324.48, \$27,828.80 belonged to the Sheriffs, and \$24,494.68 belonged to the person served. | |
| The \$27,829.80 taken by the Lawyers would have given to each of the 37 Sheriffs the sum of | \$ 752 15 |
| And with a just law would have saved the litigants | \$24,494 68 |
| Lawyers received \$5,072.48, more than five times as much as was received by 37 Sheriffs. | |

I now beg to lay before you a statement of the fees I received, and the fees that were taken from me since 1st January, 1876, to the 1st January, 1889, (a period of 13 years.) In 1876 and four succeeding years the serving of Writs and Subpœnas issued out of the Superior Court and County Courts should be served by the Sheriff or his officer, as proven by the law, and the decisions of the Courts as found in the Law Reports of Mr. Justice Draper and Hon. J. H. Cameron, showing that the services were set aside because not made by a Sheriff or his officer. In 1876 (the first whole year I held the office) my net income was \$3,618.19. Of this sum \$1,682.88 was for serving of Process, and was \$436.03 less than in 1875. In 1877 I discovered the cause of the falling off in the receipts from the serving of Process. In 1877 I obtained a return showing that of 20,380 Bills and Writs issued in 1876 the Lawyers had served 9,314, which deprived the Sheriffs of \$19,959.19 of their legal fees, and collected a further sum of \$29,813.23 from the person served for serving the same 9,314 Bills and Writs; this is proven by the Lawyers tariff of fees as shown in column 4 of a table on a preceding page. The loss of the \$19,959.19 was an average loss of \$539.43 to each one of the 37 Sheriffs in Ontario. Had I received \$539.43, my share of the \$19,959.19, my net income in 1876 would have been

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\$4,157.62, and of that amount \$2,221.31 (more than half my income) would have been for the serving of Process. The \$19,959.19 and much more has been taken yearly since 1876 down to the present time. \$3,618.19 was, as I have stated, my net income in 1876, and it was the same in 1877 and 1878. In 1879 the Act 42 *Vic., Chap.* 20, which transfers the sale of mortgaged lands from Sheriffs to Lawyers was passed; this Act occasions me a yearly loss of \$150.00. In 1880 the Act 43 *Vic., Chap.* 8, increasing the jurisdiction of the Division Court was passed; this Act occasions me a yearly loss of \$662.22 on the serving of Process, and a yearly loss of \$250.16 on the sittings of the Courts; both sums make \$912.38. In 1880 the Act 43 *Vic., Chap.* 35, which transfers the removal of persons from Gaols to Provincial Institutions from Sheriffs to Provincial Bailiffs, occasions me a yearly loss of \$125.00. The three Acts of 1879 and 1880 occasion me a yearly loss of \$1,187.38, and reduced my income from \$3,618.19 to \$2,430.81. I was hopeful that the reduction had ended, but I was sadly mistaken. It was evidently decreed by a majority of the members of the Government that for my temerity in exposing the plundering (or should I say robbery) practiced by a large number of the members of the legal profession on Sheriffs and litigants, I must be punished, or what would be better still—ruined; it must be done in such a way that the public could not see it, and I must do them the justice to say that they have succeeded to their hearts content. In 1881 the Judicature Act was passed, and the following Jesuitical and—to the uninitiated—misleading section was inserted in it, under which *all* the services may be made by Lawyers. Hou. A. S. Hardy is credited with being the inventor of Sec. 1, and is entitled to the patent for it. Here is the Sec. :

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."

The idea intended to be conveyed to the public by the inventors of Sec. 1, is: 1st, that it saves the Sheriff's fees to the litigant, (which they always say are very heavy); 2nd, to expedite business; and, lastly, to keep down the disbursements of the suit. A reference to the Lawyers' tariff of fees given ~~on a former letter~~ shows how such declarations are kept. It is pitiful to find men resort to such subterfuges to pocket other people's money.

page

I shall now give my own case as a good illustration of the working of Sec. 1: At the close of 1880 my net income was \$2,430.81. At the close of 1881—the first year Sec. 1 was in force—my income was reduced to \$1,430.81. The Lawyers in that year gobbled up \$1,000 of my fees for the serving of Process; that was all they could take, and they have taken such fees ever since. Hon. A. S. Hardy, who is very solicitous about Sheriffs' interests, saw that taking the fees from them—as would be the case under Sec. 1 of Order VI.—would be very damaging to them, manfully took time by the forelock, and in 1882 passed an Act authorizing the Government to use the people's money to recoup the Sheriffs in part for the fees taken from them by himself and other Lawyers. It is the first Act of the kind placed upon a Statute Book. I desire to call special attention to this Act in which the taxpayers are interested. The Act is 45 *Vic., Chap. 11*. Mr. Hardy's Act gave me no assistance. In 1885 Hon. Mr. Mowat passed the Act 48 *Vic., Chap. 13*, in which are several good items of fees for Sheriffs. Under Sec. 28 a fee of \$1 is paid the Sheriff for every non-criminal prisoner discharged from Gaol; this item averages me \$800 a year. Two other items under the same Sec., and an item under Sec. 32 of the same Act averages me \$375 yearly; both sums make \$1,175. My losses by the three Acts passed in 1879 and 1880 was \$1,187. Practically Mr. Mowat's Act recoups my losses on the Acts referred to. The payments made under Mr. Mowat's Act from public funds are defensible, because the Acts which took the money from the Sheriffs are in the public interests, and therefore it is only fair and just that the public should repay the Sheriffs.

I have shown that in 1876 the net receipts were \$3,618.19, and that the \$1,187 taken by the three Acts of 1879 and 1880 has been repaid me by Mr. Mowat's Act of 1885, therefore any losses I have sustained have been on the non-serving of Writs and Subpcenas. The following are my yearly receipts since 1880:

| Year. | Amount Received. |
|--|------------------|
| 1881..... | \$ 1,430 81 |
| 1882..... | 1,503 30 |
| 1883..... | 1,693 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 |

\$17,350 37

The \$17,350.37 gave me an average yearly income since 1881 of \$2,168.79; and the Lawyers received a yearly average of \$1,449.40. Both amounts make \$3,618.19, the net income I received in 1876, 1877 and 1878.

While Mr. Mowat's Act is of great assistance to myself and many other Sheriffs, it is of little value to the smaller and poorer Counties where they have very few prisoners to discharge, and very few sittings of the Judges' Criminal Court. There is but one way to do justice to all Sheriffs and protect litigants, and that is to repeal those unprecedented specimens of Legislation known as *Sec. 1 and 2 of Order VI. of the Judicature Act of 1881*, under which the Government rewarded the transgressors of the law, punished the Detective, and legislated the fees of officers appointed by themselves into their own pockets and into the pockets of other Lawyers. No other country presents such a specimen of Legislation. The only way to protect litigants and Sheriffs is to secure to the Sheriffs the serving of all Writs of Summons and Subpœnas, and then provide that the Sheriffs in the wealthier Counties shall contribute certain percentages of their incomes to increase the incomes in poorer Counties as proposed in my Bill. Even if the Lawyers had the serving of Process prior to 1877 when I obtained their tariff of fees, would it be defensible to let them continue the services after that date, when I discovered that a law firm (of which a member of the Government is a senior partner) charged and collected \$10.40 for issuing and serving a County Court Writ of Summons, on which there was no mileage. Of the \$10.40, \$4.75 was their own proper fee for issuing the Writ, \$1.55 would be the Sheriff's proper fee for serving the Writ, and the balance (~~\$4.10~~) belonged to the person served. Thus the firm, in addition to the \$4.75 belonging to themselves, collected a further sum of \$5.⁶⁵ ~~65~~ belonging to the Sheriff and the person served. Should Sheriffs and litigants be subjected to such treatment? As the law stands the Sheriffs of Ontario are placed in a most humiliating position. Instead of receiving Writs and Subpœnas as a matter of right, and serving them as part of their duty, these papers under *Sec. 1 of Order VI.* are placed in the hands of the Lawyer to give, or withhold and serve them himself if he chooses to do so, and at his own tariff of fees. Such was not the practice until recently in Ontario. In England, Scotland and Ireland all Process are served by the duly appointed officer of the Court. It was so in Ontario

as late as the days of Judge Draper and Hon. John Hillyard Cameron, whose Law Reports show that services were set aside because they were not made by the Sheriff or his officer. The same law is in force in Georgia, Florida, and in many—if not all—the other States. The Division Court Clerks and Bailiffs are fully protected, no services being valid unless made by a Bailiff of the Court. Surely the Sheriffs are not asking too much in asking that they and their officers shall be given the same protection as is given the Clerks and Bailiffs of the Division Court.

I have now fully explained the wrongs practiced on Sheriffs and litigants, and have also submitted my Scheme for their removal, a Scheme which, while protecting Sheriff and litigants from the plundering practiced upon them, would be just to the Lawyers. My aim is to have a law that will secure to the Lawyers and Sheriffs their legal fees and no more, and prevent them doing wrong the one to the other, or to the litigants. If the Government refuse or neglect to grant the Legislation I ask for, I must then submit the facts of my case to my old friends in Ontario, and ask their verdict upon it. I am confident they will not approve of using their money to recoup the Sheriffs in part for the fees taken from them and given to Lawyers as provided under the Act 45 Vic., Chap. 11, as shown to be done by the statement hereunto annexed.

ARCH. MCKELLAR,

Hamilton, July 4th, 1889.

Sheriff.

As many people are under the impression that all the Sheriffs have large incomes, I shall correct that impression by placing facts and figures before them.

There are 41 Sheriffs in Ontario, 20 of them have incomes from the receipts of their offices averaging from \$1,879.00 down to \$644.00, as shown by the Inspector's report.

| NAME OF COUNTY. | NAME OF SHERIFF. | |
|------------------------------|--|--------------------|
| 1 Lincoln..... | Thomas Dawson..... | \$ 1,879 51 |
| 2 Dufferin..... | Thomas Bowles..... | 1,770 27 |
| 3 Peterborough..... | James A. Hall..... | 1,729 30 |
| 4 Wellington..... | Robert McKim..... | 1,652 02 |
| 5 Brant..... | W. J. Scarfe..... | 1,635 76 |
| 6 Welland..... | G. W. Duncan..... | 1,601 56 |
| 7 Norfolk..... | E. Deeds..... | 1,558 05 |
| 8 Haldimand..... | Robert N. Davis..... | 1,516 66 |
| | (\$100 additional paid by the Government.) | |
| 9 Thunder Bay..... | James Meek..... | 1,479 14 |
| | (\$1,000 additional paid by the Government.) | |
| 10 Peel..... | Robert Broddy..... | 1,446 60 |
| 11 Frontenac..... | Wm. Furguson..... | 1,440 23 |
| 12 Renfrew..... | James Morris..... | 1,397 55 |
| 13 Prescott and Russell..... | A. Hagar..... | 1,373 98 |
| | (\$500 additional paid by the Government.) | |
| 14 Oxford..... | Geo. Perry..... | 1,355 14 |
| 15 Ontario..... | S. F. Paxton..... | 1,330 63 |
| 16 Lennox and Addington..... | O. T. Pruyn..... | 1,298 55 |
| 17 Halton..... | M. Clements..... | 1,274 89 |
| 18 Lanark..... | James Thomson..... | 1,242 38 |
| 19 Algoma..... | W. H. Carney..... | 965 89 |
| | (\$1,400 additional paid by the Government) | |
| 20 Prince Edward..... | Wm. H. Gillespie..... | 644 99 |
| | (\$200 additional paid by the Government.) | |
| | | <u>\$28,593 10</u> |

NOTE—I got all these figures and payments from the Inspector's report for 1888, and assume the payments were made by authority of the Act 45 Vic., Chap. II, passed by Hon. A. S. Hardy.

The \$28,593.10 if equally divided would give each of the 20 Sheriffs a yearly income of \$1,429.65. This amount is slightly increased by distributing \$3,200 of the people's money among five of the Sheriffs. With all this assistance how poorly 17 of the Sheriffs are paid; and what defence can be made for taking the people's money to supplement any Sheriff's income when the Sheriff's own fees (if secured to them and distributed as proposed in my Bill) would give every one of the 41 Sheriffs now in Ontario a fair income. In 1888 the Lawyers pocketed \$27,829.80 that belonged to the Sheriffs, and \$24,494.68 belonging to the persons served. The present system is an ingenious device to increase Lawyers' fees at the expense of Sheriffs, litigants and the taxpayers of Ontario, and must be changed.

ARCH. McKELLAR,

Hamilton, July 4th, 1889.

Sheriff.

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

The difficulty which would appear in the way of making all services through the Sheriff is fully provided for in the Act I herewith publish, which authorizes the Attorneys to make services in cases of necessity, and receive so much of the Sheriff's fee as he earned; and under the provisions of my proposed Bill the litigant is fully protected against overcharges by Lawyer or Sheriff—they watch each other and see that no overcharge is made by either.

The Process-serving Attorney's 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 Sheriff's fees from the litigant.* I have provided fully for Process-serving Attorney's 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 Court 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 Court, 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 paper is to be served, commanding each 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 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, 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 of service.*

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 distant 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, Subpœnas 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.

7th. No service shall be valid, no appearance or answer can be enforced, and no payment or proceeding taken upon any Writ of Summons, Subpœna 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 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.

8th. No Taxing-master shall tax any bill of costs for serving any Writ of Summons, Subpœna 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.

9. All Acts or parts of Acts contrary to the provisions of this Act are hereby repealed.

A uniform Tariff of fees will not do justice to all the Sheriffs. The present Tariff is sufficient for a majority of the Sheriffs, but not for the poorer Shrievalties; and if the Tariff is raised to give the poorer Sheriffs a fair income, it will add to the burdens of litigants, and give too high an income to the larger Shrievalties. Let our present fees be secured to us, and distributed in accordance with the following scheme, and all the Sheriffs will be fairly paid without increasing the fees.

THE SCHEME.

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 emoluments were under \$2,000 during the preceding year.

ARCH. MCKELLAR,

Hamilton, July 4th, 1889.

Sheriff.

SUPPLEMENT.

Since printing the preceding pages, I have made a discovery which I desire to make public. Since 1822 till 1874, a period of 52 years, all Writs, Subpoenas, and other Process requiring a personal or substitutional service, was served by a Sheriff or his Officer. In 1874 the Ontario Government which was composed of

HON. O. MOWAT, Attorney General.

“ ADAM CROOKS, Provl.-Treasurer.

“ T. B. PARDEE, Com. Crown Lands.

“ C. F. FRASER, Com. Public Works.

“ ARCHD. MCKELLAR, Provl.-Secretary.

Four Lawyers and one layman passed the Act. 37 Vic., entitled “An Act to make provision for the due administration of Justice. Sections ~~72~~ and ~~73~~ relate to Sheriffs. Section ~~72~~ reads as follows, viz:—

“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.”

Sec. ~~72~~ reads as follows, viz.: “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 praecipe 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 Section 72. 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 Sec. 73 the Sheriff is subjected to a penalty if he refuses

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each Sheriff in each
shall be entitled to

each Sheriff in each
shall be entitled to

each Sheriff in each
to his own use 50 per

each Sheriff shall
duplicate of the return
pay to the Provincial
documents received by
not entitled to retain

to the Provincial
of this Act, shall be
of all Sheriffs whose
preceding year.

MCKELLAR,

Sheriff.

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 expired.

Although the Act 37 Vic., Chap. 7, was passed in 1874, when I was a member of the Government, I confess I was not aware of its provision when it passed; and for the reason that laymen take no part or interest in Legislation relating to the Administration of Justice, as this Bill is entitled. I retired from the Government 1st August, 1875, and in 1877 I received a return showing the working in 1876 of the Act passed in 1874, the third year it was in force. In 1876, 20,380 Bills and Writs were issued, for which the lawyers were paid. The serving should have been done by the Sheriffs, but of the 20,380 Bills and Writs the lawyers served 9,314, being only 776 less than half. 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/> | <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 on page 6:—

| | | |
|---------|---|-------------|
| 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 \$2.66..... | 12,001.92 |
| | <hr/> | <hr/> |
| | 9,314 | 29,625.26 |
| | Add amount taken from Sheriff.... | 19,959.00 |
| | | <hr/> |

Total taken by lawyers from Sheriffs and persons served, for serving 9,314 writs.....\$49,584.26

When I laid such astounding figures before the public, was it not reasonable to look to the Government to make a searching inquiry into the truth or falseness of my statements, and if found false to punish me, or if found correct to repeal the law. They did neither, and now I challenge them to an investigation, for I hold receipted accounts to prove the truth of my statements. The figures in the table on page 6 will prove the correctness of the amounts that I allege were taken from the Sheriffs and the persons served.

In 1881 the Government was composed of the following persons :—

- HON. O. MOWAT, Attorney General.
“ T. B. PARDEE, Com. Crown Lands.
“ C. F. FRASER, Com. Public Works.
“ A. S. HARDY, Prov. Sec’y (he succeeded A. McKellar.)
“ C. S. WOOD, Prov. Treas. “ Hon. A. Crooks.)

This Government had four lawyers and one layman, same as the Government of 1874. This is the Government that passed the Judicature Act in 1881, and under which \$1000 of my fees for the serving of writs and subpoenas was taken from me and pocketed by the lawyers in that year. For the working of this Act see pages 7, 8, 9 and 10 of the Pamphlet. Under the Act of 1874 nearly one-half of the Sheriffs' fees for serving writs was taken by the lawyers; the lawyers also took nearly the whole of the fees for serving Subpoenas, which at a moderate estimate would amount to \$10,000. On pages 9 and 10 I gave a return, showing how the fees and the services were divided between the lawyers and sheriffs; in 1888 exclusive of the sheriff of Toronto, 37 other sheriffs received for serving writs and subpoenas \$27,828.80, the \$27,828.80 is just \$795.40 less than one-third their fees taken from the sheriffs. In 1882 Hon. A. S. Hardy passed the Act, 45th Vic., Chap. 11, under which the Government can use the people's money to recoup the sheriffs in part for the fees taken from them and given to himself and other lawyers; only a few of the payments are given on page 15. I invite the public to examine my proposed Bills for serving writs and subpoenas on pages 16, 17 and 18. I am confident they will acquit me of being prompted by mean or sordid motives. What I am aiming at is first to protect the persons served from the fees wrongfully collected from them; second to secure the fees that legally belong to the sheriffs, and then share these fees with sheriffs in smaller and poorer counties. There are 41 sheriffs in Ontario, three are in Algoma, Thunder Bay, and another further West; these sheriffs have very few papers to serve, and the difficulty is to find a Bailiff to serve them. The return on pages 9 and 10 is from 38 sheriffs in old Ontario. I assume it will be granted that 41 sheriffs are required to discharge the duties pertaining to their duties. Is it so with the lawyers? There are over 1000 lawyers practicing in Ontario, but for my purpose I shall take the City of Hamilton and County of Wentworth as an illustration. From the best information I can obtain there are 80,000 of a population in these municipalities. The average number in a family is five, therefore 16,000 would be adults

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or heads of families. I now assume that 8,000 or one-half of the population are engaged in law. There are 75 lawyers practicing in the County and City, which gives a lawyer to every 107 of the 8,000. Does any sane man really believe that so many lawyers are necessary to transact the business of the country. The high fees is the cause of the rush into the legal profession, and has had the same effect on the profession that the National Policy has had on manufactures—the business is overdone. The first great rise in the fees was given by the Mowat Government in 1874, and a further increase of fees was given by the same government in 1881, and in 1884 the Judges made a further increase, of which the following is a fair sample. The following is the old and new tariffs of fees, made for the lawyers for issuing writs of execution in the H. C. J. and C. C.

| | OLD TARIFF. | NEW TARIFF. |
|---|----------------|----------------|
| In H. C. J., Goods or Lands, original, each | \$5.00 | \$6.00 |
| “ “ “ renewal, “ | 3.75 | 4.00 |
| In C. C., “ “ original, each | 3.00 | 4.00 |
| “ “ “ renewal, “ | 2.25 | 2.50 |

In H. C. J. the new tariff, the fee on the renewal is added to the fee on the original, thus \$6.00 on original and \$4.00 renewal, \$10.00, and if the debt on goods writ, \$4.00, is not paid, it is made on sale of lands, the same is done in the C. C.

The public will readily see why there is such a scramble among young men to become members of the legal profession. 1st they have their own legal fees which are good, 2nd they have the sheriffs fees, and as I have shown it, a larger fee than the sheriffs fee from the person served.

As an instance of the hostility of some members of the legal profession to myself, I give the following: A gentleman from Toronto, who is a lawyer, told one of our county officials that the profession were united in keeping all the business they could away from my courts, and no doubt they succeeded to a certain extent. As an illustration, my last chancery court lasted only *one* day. I care not, for I know I am contending for protection and justice for sheriffs and litigants, and close by leaving myself and my cause in the hands of my old trusty friends the electors of Ontario, who will in this, as in former cases, render a just and righteous verdict.

ARCH. McKELLAR.

Hamilton, Dec. 16th, 1889.

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