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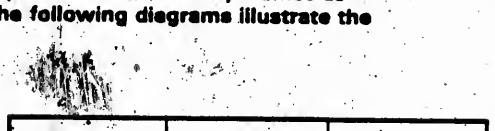

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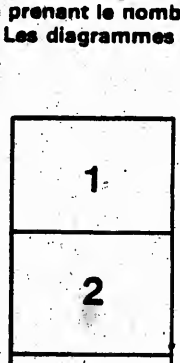

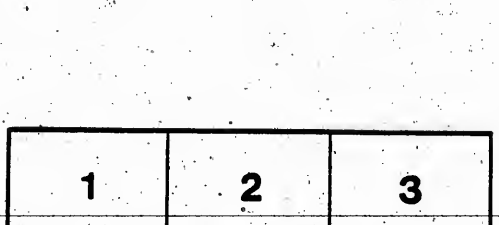

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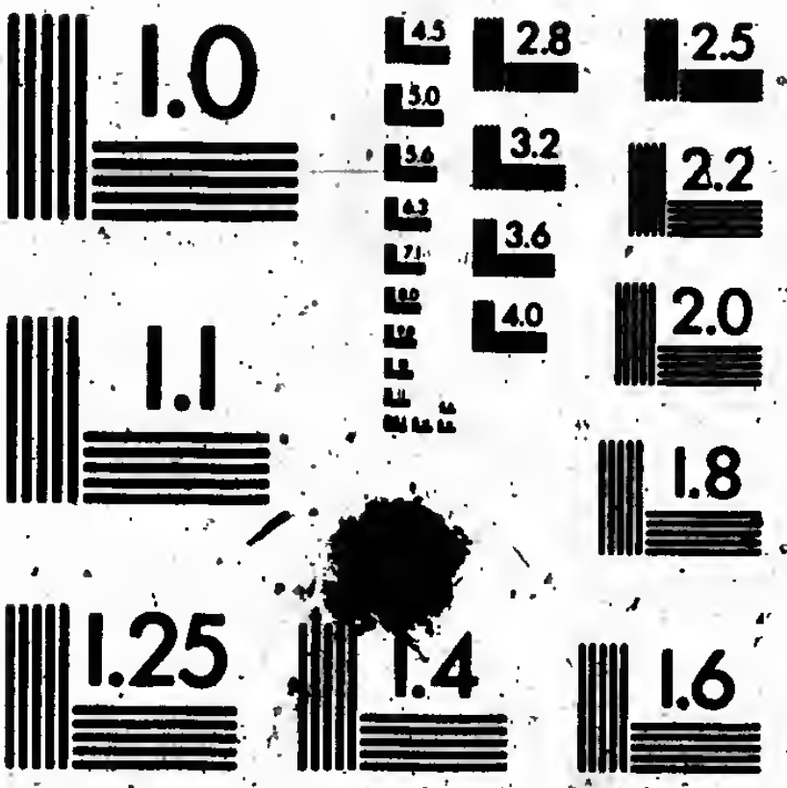

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An Appeal to the Electors of Ontario.

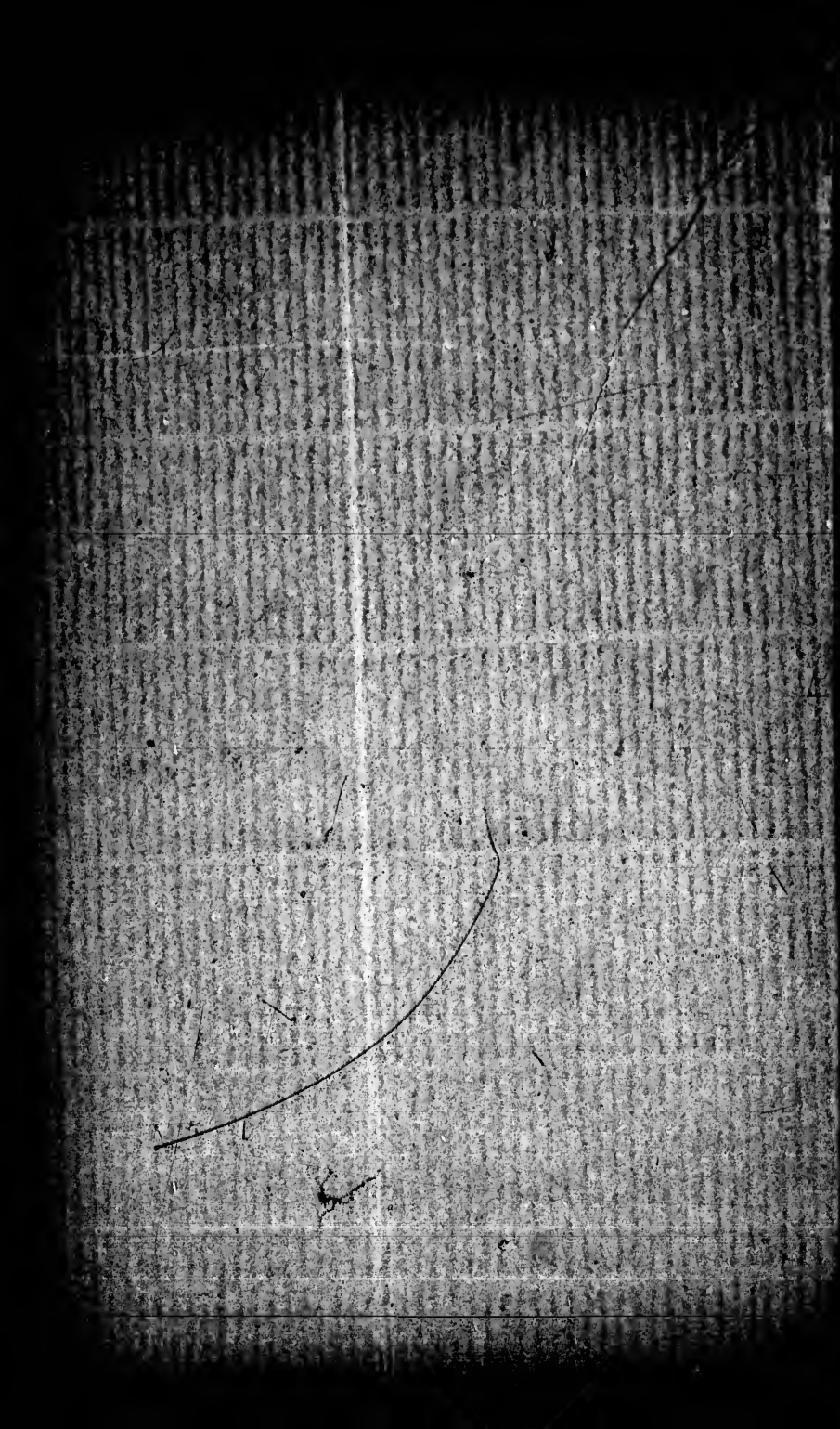
showing how the Ontario Government as constituted in '81

REWARDED

The Transgressors of the Law

and PUNISHED A DETECTIVE by

Legislating $12,533.94 of his fees into their own pockets and into the pockets of other Lawyers, during the last 9 years.



SUPPLEMENT.

Since writing my book in the following pages, I made the following discovery re the serving of process:

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

John Graves, Simcoe, 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 on the 21st day of November, 1821, and porogued on the 17th January, 1822. Sir Perigrine Maitland, K. C. B., Lieutenant-Governor:

In this session an act entitled "An act to repeal part of, and amend the law now in force respecting the practice 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.

In addition to the foregoing acts establishing the Sheriff's right to the serving of process, I refer the reader to the decisions of the courts on pages 3 and 4 of this book. The Sheriffs did the serving of Process from 1792 to 1853, a period of 61 years. In 1853 the act 16 Victoria, Chapter 175, was enacted. Section 14 practically gives the serving of Process to Lawyers. Mr. Winchester says in his report in April last, this act (or Section 14,) had been in force since 1853. He then corrects himself and says the section was carried into consolidated statutes of Upper Canada, 1859, where it lay in a state of composure until 1874, a period of 15 years, when Hon. O. Mowat, Hon. Adam Crooks, Hon. T. B. Pardee and Hon. C. F. Fraser became its pall bearers, and silently and reverently transferred it from its resting place and inserted it in 37th Victoria Chapter 7, Sections 83 and 84, to be seen on pages 4 and 5 of this book. A perusal of the book shows how the law works. Although I was a member of the Government in 1874, I was not one of the pall bearers.

ARCH. McKELLAR.

Hamilton, Feb. 2nd, 1891.

TO THE ELECTORS AND TAXPAYERS OF THE PROVINCE OF ONTARIO:

GENTLEMEN,—

I beg to lay before you a statement of facts, showing how the Ontario Government, as constituted in 1881, treated myself and other sheriffs; and ask you who are interested as well as sheriffs to render a verdict on the evidence I shall now lay before you:

I was appointed Sheriff on the 1st of August, 1875. Shortly after entering on the duties of my office I noticed that it was almost the invariable practice of Solicitors to utilize the Sheriffs to collect for them a large amount of illegal fees on Writs of Execution. (A Writ of Execution, when placed in a Sheriff's hands, is his authority for enforcing the payment of a debt; the solicitor who issues the Writ of Execution is entitled to a certain fee over and in addition to all other fees for issuing the Writ.) It was on these Writs of Execution that the Sheriffs were made use of to collect illegal fees. I obtained returns from all the Sheriffs in Ontario and found that $59,10[illegible] was the annual amount of illegal fees collected by the Sheriffs. 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 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. What stronger proof than this could be given that, for the protection of litigants and Sheriffs, the Sheriffs should not be placed at the mercy of Solicitors or others for their incomes.

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 Solicitors to endorse upon Writs of Execution against Goods and Lands, as their fees for such Writs, the sums of $10, $12, (and in some cases even more) in the High Courts of Justice, and $6, $8 and $10 in the County Court, and similar sums for renewals; and that the Sheriffs have been in the habit of collecting such sums, believing it to be their duty to obey the instructions thus given. Sheriffs, in so acting, render themselves liable to be proceeded against, and in the future must refuse to levy for more than the legal charges, which are as follows:—

In High Courts of Justice,	Goods or Lands Writ (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.

Lawyers and Sheriffs are paid by fees, in accordance with a tariff made for them by the Judges of the High Court of Justice.

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:

ATTORNEY'S FEES FOR ISSUING.	SUP'R COURT.	COUNTY COURT.	SHERIFFS' FEES FOR SERVING.	SUP'R COURT.	COUNTY COURT.
	$ cts.	$ cts.		$ cts.	$ cts.
Instructoons	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 Affidavidt....	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

I give 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.

"*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 Sue*, not bailable, must be served by the "Sheriff or his officer though the Deputy-Sheriff be a party "to the suit; 3, Old Series, Drapers' Reports, page 302. The "Writ, bailable, 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.

In 1874 the Ontario Government was composed of

Hon. O. Mowat, Attorney General.
" Adam Crooks, Prov. Treasurer.
" T. B. Pardee, Com. Crown Lands.
" C. F. Fraser, Com. Public Works.
" Arch. McKellar, Prov. Secretary.

Four lawyers and one layman passed the Act 37 Vic., Chap. 9, entitled "An Act to make provision for the due administration of Justice. Sections 83 and 84 relate to Sheriffs. Section 83 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. 84 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 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 Section 83. 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. 84 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 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 entered on the duties of my office on the date above given (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. 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. 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 throughmy 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 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 signatnre of Francis Rye, of Barrie, who said, "I have never known a case of a Solicitor charging his client with a Sheriffs' 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 frandulent 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. 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 have 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. That incited me to procure a return of the number of Summons issued in 1876, and show who did increase the burdens of litigants or increased Sheriff's fees, and I succeeded.

The number of Writs issued was 20,380.

Sheriff's fees for serving 20,380 Writs.....	$ 42,094 25
Lawyers' 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 Bills and 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 $4.55...	6,993 60
	9,314		$19,959 00

The $19,959 was within $1,088.12 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.

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, because I thought it very unlikely that men who would utilize myself and other Sheriffs to collect illegal fees for them, would not do the same thing themselves when an opportunity 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: this is what the lawyers *did*.

Style of Cause or Name of Attorneys.	*Amount Collected by Attorney.*	*Attorneys' Legal Fees.*	*Sheriffs' Legal Fees.*	*Collected from Litigants.*	*Name of Court.*
	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	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	

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; substract $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; substract $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 $15.97, wrongfully taken from the persons 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 $15.97 belonging to the persons served, in all $25.27. All the Solicitors said they made the services for *nothing*, or at their own expense.

Had Hon. A. S. Hardy, who receives $4,600 yearly himself, been a man of high principle, (when he saw that his own law partners had in addition to their own proper charge of $4.75 for issuing the writ, taken $1.55 belonging to the Sheriff and $4.10 belonging to the person served, in all $5.65) 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 wrongs practised upon them.

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. 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
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 $2.66	12,001 92
	9,314		$29,625 26
		Add amount taken from Sheriff...	19,959 00
		Total taken by Lawyers from Sheriffs and persons served, for serving 9,314 Writs.....	49,583 26

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 $7,490.01 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. 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 will prove the correctness of the amounts that I allege were taken from the Sheriffs and the persons served.

The law I have quoted enables the Lawyers to take nearly the half of the Sheriffs' fees for serving Writs. I shall now show that the law as amended enables the Lawyers to take the *whole* of the fees for serving Writs, and as much more as they can get from the persons served.

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.

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 $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) practised 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. I am aware that the Hon. A. S. Hardy, who in common with his colleagues, receives $4,600 yearly, including the sessional allowance, who said, "that the law was plain that no gentleman could make a charge for the service of Process," and who is senior partner in a law firm that charged and collected $5.65 over and above their own legal fee for *issuing* and *serving* a County Court Writ, was the most active member of the Government in making the law, which enables the Solicitors to take the *whole* of the Sheriffs' fees for the serving of Process.

Here is the law referred to—Judicature Act of 1881, page 57.

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."

By this law the Lawyer is substituted for the Sheriff to make the serving of Process and ostensibly to save costs to the litigants, in all cases the costs are to be kept down at the expense of the Sheriffs. The Solicitor who accepts service is entitled to a fee of *one* dollar; is their anything in the way to prevent a charge of *two, three* or *four* dollars being made. I am told that the cost of such services never come under the eye of the taxing master, and are made at the same rate as the cases I have given in the foregoing table, all of which were to be made for *nothing*, or at the *expense* of the *Profession itself*.

As Sec. 1 was intended to apply to myself only, I regret the Government had not enacted the following proviso, viz:

"Provided always that Sec. 1 of Order VI. of the Judicature Act of 1881, shall only apply to the County of Wentworth, during the incumbency of the present Sheriff, this would have protected other Sheriffs who are now suffering in common with myself, and without giving me any relief.

Hon. A. S. Hardy was very solicitous about Sheriffs' interests, and 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.

In 1885, Hon. Mr. Mowat passed the Act, 48 Vic., Chap. 13, which recoups me the $1,187 taken from me by the three Acts passed in 1879 and 1880.

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 of my office was $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 since, have been on the non-serving of Writs and Subpœnas. 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 incease)	2,493 93
1886	2,783 13
1887	2,700 26
1888	2,827 67
1889	2,770 03
	$20,029 74

The $20,029.74 gave me an average yearly income of $2,225.53 during the last 9 years, being $1,392.66 less yearly than it was in 1876, my loss in the 9 years has been $12,533.94, this is the working of Sec. 1 of Order VI., and my reward for exposing transactions that would have sent any other class of men to the Central Prison. Under the authority of Hon. A. S. Hardy's Act of 1882, about $3,200 of the people's money is annually doled out among some of the Sheriffs to recoup them in part for the fees taken from them under Sec. 1 of Order VI. and given to Lawyers. I believe no other conntry can show so ingenious a contrivance to increase Lawyers' fees at the public expense. In the last 8 years $25,600 of the people's money has been distributed in this way. With all the payments made by the Government, the average yearly income of 20 of the Sheriffs is $1,554.15, the highest income of the 20 Sheriffs is $1,879.51. I leave it to the taxpayers themselves, to say whether or not they are willing to be taxed to support the Lawyers or Sheriffs.

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 six members, five 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 five members were Hon. O. Mowat, Hon. Adam Crooks, 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 submit the following draft of a Bill which would do no injustice to the members of the legal profession, would secure to the Sheriffs the work and the fees that belong to them, and would relieve the public from the payments I have referred to :

An Act to regulate the Serving of Writs of Summons and Subpœnas in the Superior and County Courts.

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 and Subpœnas and other papers or proceedings issued out of the Superior and County Court, requiring a personal or substitutional service within the County of such Sheriff.

2nd. All Writs of Summons 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 is to be served.

3rd. All Subpœnas issued out of the said Courts requiring a witness to appear in Court, and also requiring a personal or substitutional service upon such witness, shall be directed to the Sheriff of the County in which the witness is to be served.

4th. That 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 or Subpœnas issued out of the Superior or County Courts, and delivered to him by the Attorneys practicing in such town or village for service.

5th. The Bailiff in such town or village who has served the Process under the provisions of Sec. 4, 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 endorsation 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.

6th. 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.

7th. No service shall be valid, no appearance or answer can be enforced, and no payment or proceeding taken upon any Writ of Summons or Subpœna 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 [illegible] County in which the service should be effected.

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

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

The following Bill shows that I am not actuated by low or sordid motives in asking that all the fees for serving Writs of Summons and Subpœas in the Superior and County Courts should be secured to the Sheriffs. My Bill proposes that the Sheriffs with the larger incomes shall contribute certain percentages of their incomes to increase the livings of Sheriffs whose present incomes are small. My scheme would give substantial aid to many Sheriffs, and would relieve the public from the payments now made by the public for the support of Sheriffs, as provided under Hon. A. S. Hardy's Act, 45 Vic., Chap. 11, Sec. 15 of the Statutes of Ontario for 1882, page 27.

Here is my proposed Act:

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.

For issuing Subpœnas in the Superior and County Court the Lawyer is paid $1.00.

The Sheriff is paid $1.45 for serving the first Subpœna and 50 cts. for every additional service. These are the fees that have been taken from Sheriffs since 1874.

Another scheme for the payment of Sheriffs is that they should serve all 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 ser-

vice, and that all the fees received for these and other duties pertaining to the office shall be funded, and that from this fund Sheriffs shall be paid by salary. I do not object to this scheme. Being unable to get all the information I wanted from Inspector Winchester's reports, I obtained the following report from the proper Officers.

In 1889 I obtained the following return showing the number of Writs of Summons that were issued out of the High Court of Justice and County Court in 1888, also the number of witnesses examined in the said Courts, and how the serving of Writs and Subpœnas was 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.

In 1888 the Sheriff of Toronto received for serving Writs and Subpœnas in H. C. J.	$ 1,363 05
In 1888 37 Sheriffs received for serving Writs and Subpœnas in H. C. J.	5,694 30
In 1888 37 Sheriffs received for serving Writs and Subpœnas in C. C.	2,866 75
Total received by 37 Sheriffs for serving Writs and Subpœnas in H. C. J. and C. C in '88.	$ 8,561 05

The $8,561 05 received by 37 Sheriffs for serving Writs and Subpœnas in the H. C. J. and C. C. in 1888, would give each of them the munificent sum of $230.00.

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 for the first, and at 50 cts. for the remaining 4,937	12,469 90
Received by Lawyers for serving Writs and Subpœnas in the H. C. J.	$ 33,682 90

WRITS AND SUBPŒNAS SERVED BY LAWYERS IN COUNTY COURTS.

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 for the first, and at 58 cts. for the remaining 2,513		1,257 90
	$	11,563 95
Add received for serviees in H. C. J.		33,682 90
Total received by Lawyers for serving Writs and Subpœnas in H. C. J. and C. C.	$	45,246 85

The Lawyers deprived the Sheriffs of $20,752.00 for serving Writs and Subpœnas in the H.C.J. and C.C. The loss to each of the Sheriffs is $560.00, a most liberal donation to the members of the Legal Profession. For the information of the public I shall show the Solicitors' profits on the Writs and Subpœnas issued out of the H. C. J. and C. C. in 1888.

HIGH COURT JUSTICE.

1888. 7,555 Writs issued out of the H. C. J., at $7.00		$52,885 00
" 5,541 Subpœnas " " " $1.00		5,541 00
		$58,426 00
CR.		
" Paid for 7,555 stamps, at $1.00	$7,555 00	
" " 7,555 blank forms, at $10.00 per 1000	75 55	
" " 5,541 blank subpœnas, " " "	55 41	
		7,685 96
This is the profit on an expenditure of $7,685.96, being over 625 per cent		$50,740 04

COUNTY COURT.

1888, 4,204 Writs issued at $4.75		$19,969 00
" 2,802 Subpœnas, at $1.00		2,802 00
		$22,771 00
CR.		
1888, By paid for 4,204 Writs at 60 cts	$2,522 40	
" " " 4,204 blank forms at $10.00 per 1000	42 04	
" " " 2,802 blank Subpœnas, " "	28 02	
		2,592 46
This is the profit on an expenditure of $2,592.46, being over 750 per cent		$20,178 54

The Lawyers' profits for *issuing* Writs and Subpœnas in '88 was	$70,918 58
" " *serving* " " " " "	20,752 00
Total of Lawyers' profits for issuing and serving Writs and Subpœnas in 1888	$90,670 58

It would be thought by the public that with the large profits made by solicitors on the work that properly belongs to themselves, that it would not be necessary to supplement their incomes by fees belonging to the Sheriffs or the public, but it is done. In 1888 the Sherriffs received $8,561.05 for serving Writs and Subpœnas, and in the same year the Solicitors received $20,752 belonging to the Sheriffs for serving Writs and Subpœnas. The members of the legal profession are not to blame for taking the fees for serving Writs and Subpœnas, for the law as made by the Ontario Government in 1881 gives them the services. The Ontario Government are the responsible party, from which the Sheriffs and the public must obtain redress.

A few words about Mr. Winchester, Inspector of Legal Offices, and his report of 15th April, 1890.

Shortly before the Ontario Elections, 1886, I sent a short statement to each member of the Government showing how the Act of 1881 effected myself. A few days afterwards the Inspector called and asked me to keep quiet. I did as he requested. No doubt he came at the request of the Government, who knew that in transferring Sheriff's fees to Lawyers under the Act of 1881 they did a mean and indefensible act, which they did not wish to have discussed before the electors. Again I received a letter from Mr. Winchester on the 13th Jan., 1890, asking for the bills of costs I have published on a preceding page. He said he wanted them because some Solicitors declared they were forgeries. I did not send him the originals, but on the 14th January sent him a pamphlet with correct copies of the bills of costs printed in it. On the 10th Feb., 1890, Mr. Winchester sent me a 14-page letter, which I looked upon as a bluff game sheet to try and keep me quiet at the approaching Ontario Elections. I replied that it would be much more satisfactory to me if he would go with me to the country and defend the law which occasioned me such heavy losses. On the 15th April, 1890, Mr. Winchester made a report to the Government, showing his avowed intention of placing me in a false position before the Government and the public. Being unable to obtain all the information I wanted from Mr. Winchester's reports I got a

return in 1889, published on a preceding page. Mr. Winchester says that this report is not only incorrect but misleading to the public. The only mistake in it was charging $1.45 for serving all subpœnas, instead of $1.45 for the first service and 50 cents each for all the rest. The following are Mr. Winchester's reasons for saying that the report is incorrect and misleading, viz.:

"In the first place it is a well-known fact that all the Writs of Summons issued in a year are not served either in that or any subsequent year, and many of the Writs are served by the litigants themselves, or, at their request, by some local constable, officer, or other person employed by the party, whilst not a few are accepted by the defendants' solicitors in order to save not only the expense of service and the irritation of being served by a public officer, but sometimes to avoid the great expense of serving parties out of the jurisdiction. My experience is that a considerable number of Writs are not served by Sheriffs for these reasons.' With reference to Subpœnas, the greater number of these are not served by solicitors or their clerks, but by the litigants themselves in order to save expense."

I ask for no better proof, in support of the contention I have advanced, than this testimony offered by Mr. Winchester, Inspector of Legal Offices, and which appears in print as his mature opinion. Inspector Winchester, whilst hurrying to the defence of an unjust law, in his zeal overreaches himself, and in the defence of an untenable position blunders into the admission that Sheriffs' fees are pocketed by litigants themselves making the services, or, at their request, by some local constable, officer or other person employed by the party. An honest Solicitor who is not engaged in the serving of Process told me that the services are made as stated by the Inspector, but that the plaintiff's solicitor enters the fees as if the service had been made by the Sheriff. I most respectfully suggest that Sheriffs may be permitted to aid in the work of benevolence and mercy in keeping down the disbursements of the suit and saving costs to the litigants, that being the primary object as shown by Mr. Winchester. What I suggest could be done in the following manner: A

Writ for which a Solicitor gets $7 could be issued by a Sheriff for $3.50, and a Writ for which the Solicitor gets $4.75 could be issued by a Sheriff for $2.37; and for a Subpœna for which a Solicitor gets $1 could be issued by a Sheriff for 25 cents. By a united effort on the part of Solicitors and Sheriffs, dealing out each other's fees, substantial reductions in law costs would be made to litigants, and that is much needed.

On page 2 of his report Mr. Winchester wrestles with the improper taxation of the Bills of Costs I hold in my hands. He does so with the avowed intention of placing me in a false position before the public. After stating a great deal of irrelevant matter he ventures to make the following statement, which is incorrect and misleading, as I shall prove: "In the taxations Mr. McKellar refers to, even if they were assumed to be correct as a matter of argument (I am told they are not so admitted), there is only one in which the Solicitors have charged more for service than the Sheriff would have been paid. Had the services charged for in the other bills been made by the Sheriff, instead of by the Solicitors, the charges to their clients would have been not less than what was charged but greater; for not only would the Sheriff's fees have taken the place of the Solicitors' charges for service and affidavit, but there would have been additional fees allowed to the Solicitor for attendance on the Sheriff with and for Writ, and to pay the Sheriff's fees." I shudder at the recklessness of the man making such an untruthful statement, when he knows I have the evidence in my hands to disprove it. For the information of the public I shall tax the Bills of Costs referred to by Mr. Winchester himself:

One Solicitor charged $13.37 for issuing and serving a Writ of Summons out of the High Court of Justice; six Solicitors charged $53.67 for issuing and serving six County Court Writs of Summons. Mr. Winchester gave me a tariff of fees, showing that the Solicitor's proper fee for *issuing* a Writ in the High Court of Justice is $7, and that the Sheriff's proper fee for serving it is $2.70—the fee for *issuing* and *serving* is $9.70. This taken from the $13.37 charged by the Solicitor shows a balance of $3.67 wrongfully taken from the

person served. Mr. Winchester's tariff of fees shows that the Solicitor's proper fee for issuing a Writ in the County Court is $4.75, and that the Sheriff's proper fee for serving it is $1.55—both sums make $6.28, the proper fee for issuing and serving a County Court Writ:

Lawyer's fee for *issuing* 6 County Court Writs at $4.75	$28 50
Sheriff's fee for *serving* " " " $1.55	9 30
By Mr. Winchester's tariff this is the proper fee for issuing and serving 6 County Court Writs	$37 80

The Solicitors charged and collected $53.67 for issuing and serving the same six County Court Writs, being $15.97 wrongfully taken from the persons served. The six Solicitors pocketed $9.30 belonging to the Sheriff, and $15.97 belonging to the persons served—in all, $25.27. I hold receipted accounts for all the cases, and the taxation must be correct, for it is strictly in accordance with the tariff of fees given to me and other sheriffs by John Winchester, Esq., Inspector of Legal Offices. The reader will see all the calculations given above in a concise form in a table on a preceding page. I may say in regard to Mr. Winchester's long paragraphs about the taxation of lawyer's costs, and informing the public that officers are appointed to tax their bills; but can these officers tax the bills unless they are brought to them? Certainly not. In the six County Court cases I have given, the Solicitors issued the Writs and served them, in or near their offices. The defendants having settled with the plaintiffs, went to the Solicitors' office to pay the costs, which were presented and paid, as shown in the table on a preceding page. When they demurred to the amount charged, the invariable answer was, that by making the services themselves they had saved them the whole of the Sheriff's fees, which would be very heavy. In the face of these untruthful utterances, it is shown that they not only charged and collected $9.50 belonging to six Sheriffs, but collected a further sum of $15.97 belonging to the six defendants. Four of the Solicitors who made these charges were members of the Ontario Legislature. I now ask Mr. Winchester, who was to have the foregoing Bills of Costs taxed? Certainly not the Solicitors, for they were content, and the presumption is

the defendants never heard of such an officer as a Taxing-master, and thankful to get out of the clutches of the law at any cost, paid all that was demanded. I submit the foregoing cases to the prayerful consideration of Mr. Winchester, the Government and the public, as a good illustration of the evil of having services made by Solicitors and settlements made in their offices.

Mr. Winchester says that the Act I object to, viz., 37 Vic., Chap. 7, Secs. 83 and 84, had been in full force since 1853; and then he tells us it was carried into the Consolidated Statutes of Upper Canada in 1859 (where it lay in a state of comatose until 1874, a period of 15 years), when it was resurrected by the members of the legal profession in the Ontario Government in 1874. Instead of the Act being in full force since 1853, as stated by Mr. Winchester, it had been in force only *six* years, when it was given the go-by by all succeeding Governments until 1874. No doubt it was passed over because it is an unjust law, as has been fully demonstrated since its re-enactment in 1874.

I deny that Secs. 1 and 2 of Order VI., of the Judicature Act, had been in force 40 years. My first reason for saying so is that no Sheriff felt its effects until 1881. 2nd. The passing of the Act 45 Vic., Chap. 11, by Mr. Hardy in 1882, under which payments are made to some Sheriffs out of public funds is the strongest evidence that Secs. 1 and 2 of Order VI. were not in force till 1881; and, therefore, the Ontario Government, as constituted in 1881, are entitled to the credit of being the framers of Sec. 1 and 2 of Order VI. It matters not whether the Acts referred to were made in 1874, 1881, or in any preceding year as far back as the days of Moses. The Government of Ontario, as constituted in 1881, must be held responsible for the working of them. They are injurious to Sheriffs and litigants, and unjust to the public, as can easily be shown. I refer the reader to page 14 to See how Sec. 1 of Order VI. affected myself, and my own case is a fair illustration of how other Sheriffs are affected.

One more reference to Mr. Winchester's report: Mr. Winchester having told me that Order VI., Sections 1 and 2 of the Judicature Act of 1881, were enacted long before that

date. On the 31st Dec., 1888, I wrote asking him to let me know the date on which the Order and Secs. 1 and 2 were enacted, and received the following reply:

OSGOODE HALL, Toronto, 2nd January, 1889

Dear Sir,—Your favor of the 31st received. The Orders referred to were in force in this country in 1853. I would refer you to the case of Shaw vs. Liddell, 4 Chancery Reports 353, and Chancery Orders 86, 87 and 99.

Writs of Summons in Common Law were always allowed to be served upon Solicitors who gave an undertaking to appear; see Archibald's Practice, Order VI., Sections 1 and 2, Judicature Act, are merely a consolidation of the practice of the Courts, which was in existence as far back as 1853.

Yours truly,

(Signed) JOHN WINCHESTER.

THE HON. A. McKELLAR,

SHERIFF, HAMILTON.

I have on a former page shown that the Order referred to, viz., Order VI., Secs. 1 and 2, of the Judicature Act of 1881, was not in force until 1881, and have given my reasons for saying so. It may—like the 37 Vic., Chap. 7, Secs. 83 and 84, which was enacted in 1853—have been in force six years and then transferred to the Consolidated Statutes of Upper Canada in 1859, where it lay in a state of repose until 1881, a period of twenty-two years, when it was resurrected by the enterprising members of the legal profession who were members of the Ontario Government in 1881.

Writs of Summons in Common Law were not always allowed to be served by Solicitors, as shown by the following decisions of the Courts:

Whitehead vs. Fotheringham & Brown.

The Statute 2, George IV., Chap. 1, which is still in force, directs that the Process shall be served by the Sheriff, his Deputy or lawful Bailiff. (See page 3 of this book.)

Ruttan vs. Ashford.

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. (See page 4 of this book.)

I could give more decisions similar to these. Until the law is made as it was at the time these decisions were given, both Sheriffs and litigants are at the mercy of the Lawyers, as demonstrated by the facts I have laid before the public.

Mr. Winchester says: "On the 10th February last, I wrote Mr. McKellar calling his attention to the facts above set out, and stating that should he refuse to retract his misstatements now that they were pointed out to him, I would certainly take upon myself to report the matter to the Government for action."

This paragraph relates to Mr. Winchester's 14 page letter which was a bluff intended to keep me quiet until after the Ontario Elections were over. I did not then, nor do I now, see anything to retract. I answered, suggesting that he would go with me to the country and defend a Government which made laws that deprived myself and other Sheriffs of the greater part of their means of living. This he respectfully declined to do, and he acted wisely. Mr. Winchester being anxious to place me in the false position of being the only Sheriff complaing of the acts referred to, said "I am pleased to state that Mr. Sheriff McKellar has not the support of any other Sheriff in the Province in making these statements. Like many more of the Inspector's statements, this is untrue; I have the evidence at hand to disprove them. I submit the following Petition, signed by 35 of the 37 Sheriffs then in Ontario.

To the Honorable, the Legislative Assembly of the Province of Ontario:

The Petition of the undersigned Sheriffs of the said Province, Humbly Sheweth:

1st.—That owing to various changes made in the Law within the last few years—more particularly the sale of Lands for taxes, and enactment of the Bankrupt Law—many of the duties formerly discharged by Sheriffs have been transferred to others, thereby greatly reducing the emoluments of the Sheriffs' offices.

2nd.—That in view of these facts, the Judges of the Superior Courts generously increased the Tariff of Fees, in order, in some measure, to make good the heavy, (in some cases almost ruinous) reductions made in your petitioners' incomes.

3rd.—That one of the principal items on which the tariff was increased, and from which your petitioners expected considerable emolument, was the serving of all papers in legal proceedings in the Superior or County Courts, which the law never intended should be served by others, unless the Sheriff failed to do so within the time prescribed by law; *Vide* Revised Statutes of Ontario, Chap. 50, Secs. 23 and 24.

4th.—That the leading professional men, at the Bar, in all parts of the Province, interpret the law in accordance with the views expressed by your petitioners, and scrupulously abstain from serving any papers which the law provides should be served by the Sheriff, and in public and private, express their disapproval of Process-serving by members of the Bar, as being unjust to the Sheriffs, and beneath the dignity which should characterize members of the legal profession.

5th.—That another class of the members of the Bar of which your petitioners have great reason to complain, and whose practices they desire to bring under the notice of your Honorable House, constantly violate both the spirit and letter of the law, seldom or never giving papers for service to the Sheriff, employing their own clerks or others to perform the duty, and allege that such services are only made in cases of great urgency, when the Sheriff's officer could not be had in time; that no charge can be made or fees collected, and is done therefore in the interest of the unfortunate litigant.

6th.—In answer to the plea of "urgent necessity" would call the attention of your Honorable House to the fact that, by a return obtained in 1877, the number of writs and Bills of Complaint issued in Ontario, in the preceeding year, was Twenty thousand, three hundred and eighty; of this number Nine thousand, three hundred were served by others than the Sheriffs, or within Eight hundred and seventy-four of being one-half of the total number issued: a number too large to be defended on the plea of "urgent necessity.

7th.—That in answer to the plea that when services are made by other than the Sheriff or Sheriff's officer, no charge is made or fee collected, would state that they are in a position to prove that charges are made and fees collected for such services, and frequently, if not always, much more than would have been paid the Sheriff.

8th.—Your Petitioners beg to state further in reply to the assertion, "that for services made by others than a Sheriff or Sheriff's officer, no fees can be collected," in as much as the Taxing-master will not allow fees for such services; that much more than half the suits are, where legal proceedings are commenced, and in which writs and other papers are served never go to judgment, but are settled in the Attorney's office, where a Bill of Costs is prepared and presented to the Defendant, who, as a rule, acts without an Attorney; is himself ignorant of the legal tariff of fees, and thankful to get out of the clutches of the law on any terms, and at any cost, pays the Bill of Costs as presented; which the eye of the taxing-officer never sees, and which as a rule, includes a sum in addition to the Attorney's own legal expenses, amounting to more than *double* the fees to which the Sheriff would have been entitled had he made the service.

9th.—That the services made by attorneys, their clerks and others than the Sheriff or his officer, are chiefly made in Towns and Cities where little time is lost or labor bestowed, while writs and other papers to be served on parties at a distance, and whose residences are frequently unknown are given to the Sheriff, whose bailiff, not unfrequently, after long journeyings and unremitting efforts, fails to find the Defendant; thus putting the Sheriff to great expense, for which he receives no remuneration.

10th.—That it is no common thing to be told verbally and in writing, by many of such members of the legal profession as are engaged in the Serving of Process, and who it may be, are pressed for the payment of a long overdue account, or some other trifling or imaginary grievance, that in future they will have all papers served by others than the Sheriff; thus

reminding your petitioners of their dependence upon them, as they can at their pleasure increase or diminish your Petitioners' incomes.

11th.—That they should not be placed in this humiliating position; that the law should clearly define, and secure to them their duties on the one hand, and rigidly provide for their enforcement, as well as for the prompt and faithful performance of them.

12th.—That the Clerks and Bailiffs of the Division Court who are paid by fees are protected by law, no service being recognized as legal, unless made by its own officers; while the Sheriffs, also paid by fees and compelled to keep and pay Bailiffs, are not so protected; writs and other papers which should be served by a Sheriff's officer, being commonly served by Division or Court Bailiffs or others employed by the Solicitor for that purpose, is fully proven by documentary evidence in the possession of your petitioners.

13th.—In view of all these facts, your petitioners respectfully submit that the practice of Process serving by Attorneys, or others employed by them, is an act of great injustice to the honest practitioner who pays for his services through a Sheriff's officer, as well as to your petitioners, whose fees are wrongfully pocketed by others without benefit to the public.

14th.—In conclusion, your petitioners humbly pray, that your Honorable House may be pleased to appoint a committee, before whom they may be heard more fully touching the matters they complain of, with a view of enabling your Honorable House to do what may appear just and proper in the premises.

And your petitioners as in duty bound will ever pray.

John McEwin, Sheriff, County of Essex.
James Flintoft, Sheriff, County of Lambton.
William Glass, Sheriff, County of Middlesex.
Colin Munro, Sheriff, County of Elgin.
George Perry, Sheriff, County of Oxford.
Thomas McConkey, Sheriff, County of Simcoe.

George Davidson, Sheriff, County of Waterloo.
Robert Brody, Sheriff, County of Peel.
John Hossie, Sheriff, County of Perth.
Joseph Maughan, Sheriff, County of Grey.
Robert Gibbons, Sheriff, County of Huron.
William Sutton, Sheriff, County of Bruce.
Peter Gow, Sheriff, County of Wellington.
Edmund Deeds, Sheriff, County of Norfolk.
Archibald McKellar, Sheriff, County of Wentworth.
John Smith, Sheriff, County of Brant.
Robert Hobson, Sheriff, County of Welland.
George Kempt, Sheriff, County of Victoria.
James P. Wells, Sheriff, Counties of Prescott and Russell.
Nelson G. Renolds, Sheriff, County of Ontario.
William Powell, Sheriff, County of Carleton.
John Mercer, Sheriff, County of Kent.
Robert H. Davis, Sheriff, County of Haldimand.
G. C. McKindsy, Sheriff, County of Halton.
R. Wadell, Sheriff, Counties of Northumberland and Durham.
James Hall, Sheriff, County of Peterboro'.
G. Tuplor, Sheriff, County of Hastings.
O. T. Pruyn, Sheriff, Counties of Lennox and Addington.
James Gillespie, Sheriff, County of Prince Edward.
William Ferguson, Sheriff, County of Frontenac.
James Morris, Sheriff, County of Renfrew.
James Thompson, Sheriff, County of Lanark.
William Patrick, Sheriff, Counties of Leeds and Grenville.
D. G. McIntyre, Sheriff, Counties of Stormont, Dundas and Glengarry.
R. Carney, Sheriff, Algoma.

11*th October*, 1879.

The foregoing petition shows that the Sheriffs were unanimous in laying their grievances before the Government, and that was nearly two years before Sec. 1 of Order VI. of the Judicature Act (which enables the Solicitors to take the *whole* of our fee for the serving of Process) was enacted.

The Sheriffs then held a meeting, contributed $200 and retained a Solicitor in the hope of having the law so amended as to secure for them their fees and means of living; but nothing has been done, the Government turning a deaf ear to all their complaints. Had an individual or a company done what the Ontario Government did, viz., take the fees or wages they agreed upon from those employed by them, the strong arm of the law would soon see that justice was done. The Sheriffs must now appeal to the free and independent electors of Ontario to secure them justice, and they will not appeal in vain. I ask my many old friends to look at the treatment I have received myself at the hands of a so-called Reform Government and say if it was just or called for, and many other Sheriffs have received similar treatment. There are now only three members in the Government who are responsible for the acts we complain of, viz.—Hon. O. Mowat, Hon. C. F. Fraser and Hon. A. S. Hardy. The cause I am fighting is a just one, which I shall never abandon until we triumph, and, with the electors at our back, there is no fear of failure. The motto is "A Just Law or a New Government."

I now close, wishing a Happy New Year and good-bye to all my own friends in Ontario.

ARCH. McKELLAR,
SHERIFF.

Hamilton, Jan. 10th, 1891.