
Sheriff.

No. XIII.

SHERIFF.

An Act for regulating the Appointment and Duties of Sheriff in New South Wales. [8th December, 1843.]

Preamble.

WHEREAS by the Charter of Justice for the Colony of New South Wales it is ordained that the Governor for the time being shall yearly on the first Monday of the month of January by warrant under his hand and seal nominate and appoint some fit and proper person to act as and be the Sheriff of the Colony of New South Wales and its Dependencies for the year ensuing and that such Sheriff shall continue in such office during the space of one whole year and until another shall be appointed and sworn into the said office and whereas by the said Charter it is further ordained that the Supreme Court shall fix certain limits beyond which the said Sheriff shall not be compellable to go in person or by his officers for the execution of any process of the said Court and certain provisions are made with respect to the direction and execution of process out of the Supreme Court in cases where the Sheriff is interested or where the same is sought to be executed beyond such limits and it is expedient that such portion of the said Charter as relates to the annual appointment of the Sheriff and such other provisions of the same as are hereinbefore recited should be altered and modified and such further provisions made for regulating the said office as are hereinafter contained Be it therefore enacted by His Excellency the Governor of New South Wales with the advice and consent of the Legislative Council thereof That from and after the passing of this Act the office of Sheriff for the Colony of New South Wales shall be holden during pleasure and the person appointed to such office for the time being shall from time to time be so appointed by the Governor of the said Colony.

The office of Sheriff to be holden during pleasure—the Governor shall appoint.

Power to any Judge to nominate whom process shall be directed to.

2. And be it enacted That after the passing of this Act in all cases in which at present according to the terms of the aforesaid Charter the Supreme Court is authorized to name and appoint some person other than the Sheriff to whom the process of the Court shall be directed such nomination and appointment may be made by any Judge of the said Court and that in like manner in cases where notwithstanding the direction of any such process to the Sheriff the Court is now by the same Charter required to direct by what persons and in what manner such process shall be executed such direction may be given and all orders in respect thereof be made by any Judge of the said Court and the process may in any such last-mentioned cases if the Judge sees fit be directed to such person instead of the Sheriff and in every such case as aforesaid the Sheriff (although the same may be in fact directed to him) shall not be responsible for any act done under or in respect of such process or by color thereof but the person or persons aggrieved by any such act shall have the same remedy and right of action against the person to whom the process was directed or the person appointed to execute the same (as the case may have been) or against the party suing out the process or both (separately or jointly) as the person aggrieved would have had against the Sheriff in case such process had been directed to that officer and the act or acts complained of had been done by him Provided always that in any such case the fees paid by the defendant in ordinary cases to the Sheriff shall be due and payable to the plaintiff except the fees for registering the warrant and returning the same.

Sheriff.

3. And be it enacted That if any debtor in execution shall escape out of legal custody after the passing of this Act the Sheriff Bailiff or other person having the custody of such debtor shall be liable only to an action upon the case for damages sustained by the person or persons at whose suit such debtor was taken or imprisoned and shall not be liable to any action of debt in consequence of such escape.

Liability if debtor escape.

4. And be it enacted That the Sheriff and his deputy specially appointed by him for that purpose shall have power to grant replevin in all cases where a Sheriff in England has power to grant the same in the same manner and on the same terms and the Sheriff or deputy granting the same shall have power to take a bond conditioned for prosecuting in the Supreme Court which bond may be assigned and sued on in like manner as in the like cases in England.

Sheriff and special deputy empowered to grant replevin as the Sheriff in England.

5. And be it enacted That the Sheriff for the time being shall from time to time procure and give such security by bond or recognizance to Her Majesty and Her Successors by himself and such sureties and in such reasonable sum or sums respectively as Her said Majesty or Her Successors may think fit to require conditioned for the collection and for the payment over by him to the Colonial Treasurer of the said Colony of all monies which shall come to his hands by virtue of his office of Sheriff and which should be paid over to the said Treasurer and in case of any such non-payment it shall be lawful for Her Majesty and Her Successors to put the same bond or recognizance in suit and to enforce the same by extent as in any ordinary case of debt by recognizance due to the Crown Provided always that no surety for the Sheriff shall be liable beyond the separate amount in which he may have become bound for himself and also that every such surety may withdraw from any further liability for the future under any such bond or recognizance by giving to Her Majesty's Attorney General for New South Wales three months' notice in writing of his intended withdrawal without prejudice nevertheless to any previous breach of the condition of such bond or recognizance.

Bond by the Sheriff for the due execution of his office.

Sheriff's surety liable to the amount of bond.

6. And be it enacted That on the first Monday in every month a return shall be made by the Sheriff to the Governor of the Colony of all fines which during the preceding month the said Sheriff may have been ordered by the Judges of the Supreme Court to collect or which it may otherwise be his duty to collect and that such return shall shew whether such fines have been collected or not and shall also shew the whole amount which may at the time of making the return remain due to the Sheriff on account of fines with the name of the party or parties from whom such amount is owing.

Sheriff to make monthly return of fines collected.

7. And be it enacted That after the passing of this Act all such proceedings may at the instance of the Sheriff be had before and such orders and decisions be made by any Judge of the Supreme Court as by the Act in force for giving relief against adverse claims can be now had before or made by the Court only.

General power to any single Judge.

8. And whereas it is expedient that the Deputy Sheriff of Port Phillip should be included in this Act Be it enacted That the same shall apply to the Deputy Sheriff of Port Phillip in regard to his appointment power duties privileges and liabilities as if that officer were specially mentioned throughout the several clauses of this Act.

Extended to Deputy Sheriff Port Phillip.