

The Provincial Statutes of Lower-Canada, Being the third session of the Special Council, begun and holden at the City of Montreal, in the said Province of Lower Canada, the fifth day of November, 1838. Quebec: John Carleton Fisher & William Kemble, Law Printer to the Queen's Most Excellent Majesty, 1838.

2 Victoria – Chapter 14 (Session 3)

An Ordinance for indemnifying persons who, since the first day of November, one thousand eight hundred and thirty-eight, have acted in apprehending, imprisoning, or detaining in custody, persons suspected of High Treason or Treasonable Practices, and in the suppression of unlawful assemblies, and for other purposes therein-mentioned.

Whereas a late armed insurrection of certain subjects of Her Majesty, in the District of Montreal, in this Province, with intent to subvert the Government, and to plunder and destroy the property of the loyal Inhabitants lately broke out in this Province, during which the Insurgents committed acts of murder, robbery, and arson, and other offences, and occasioned much alarm for the peace and security of the Province; And whereas, immediately before and during the said insurrection and in consequence thereof, it became necessary for Justices of the Peace, Officers of Militia, and other persons in authority in this Province, and for divers loyal subjects of Her Majesty, to take all possible measures for apprehending, securing, detaining and bringing to justice persons charged or suspected of joining in the said insurrection, or aiding or abetting the same, or of other Treasonable Practices, dangerous to the peace of this Province, and the security of its Government, and also for the purpose of defeating and putting down the said insurrection, and for maintaining the peace of this Province, and securing the lives and properties of the Inhabitants thereof; and whereas some of such acts may not have been strictly legal and formal, but it is nevertheless just and necessary that the persons doing or advising the same, should be kept harmless, and indemnified against actions at law, or other proceedings with which they might otherwise be harrassed:—Be it therefore Ordained and Enacted by His Excellency the Administrator of the Government of this Province, authorized to execute the Commission of the Governor thereof, by and with the advice and consent of the Special Council for the affairs of the said Province, constituted and assembled by virtue of and under the authority of an Act of the Parliament of the United Kingdom of Great-Britain and Ireland, passed in the first year of the Reign of Her present Majesty, intituled, “An Act to make temporary provision for the Government of Lower Canada,” and it is hereby Ordained and Enacted by the authority aforesaid, that all personal actions, suits, indictments and prosecutions, heretofore brought, commenced, preferred or exhibited, or now depending, or to be hereafter brought, commenced, preferred or exhibited, and all judgments thereupon obtained, if any such there be or shall be, and all proceedings whatsoever against any person or persons, for or on account of any act, matter, or thing, by him or them done or commanded, ordered or directed, or advised to be done since the first day of November, in the year of Our Lord, one thousand eight hundred and thirty-eight, for apprehending, committing, imprisoning, or detaining in custody, or discharging any person or persons, who hath or have been imprisoned or detained in custody, for High Treason, Suspicion of High

Treason, or Treasonable Practices, or for apprehending, committing, imprisoning, or detaining in custody, any person or persons who hath or have been imprisoned, or detained in custody, for having been so tumultuously, unlawfully and traitorously assembled in arms, as aforesaid, or for dispersing by force of arms any persons assembled as aforesaid, or for suppressing the said traitorous insurrection, and discovering and guarding against any other of the treasonable proceedings aforesaid, or for discovering and bringing to justice the persons concerned therein, or for maintaining the public peace, and the security of Her Majesty's subjects in their persons and property, or for supporting the Government and Constitution of this Province against the treasonable practices and proceedings aforesaid, shall be discharged and made void, and that every person by whom any such act, matter or thing shall have been done, or committed, ordered, directed, or advised to be done, shall be freed, acquitted, discharged, and indemnified, as well against the Queen's Majesty, her heirs and successors, as against all and every other person or persons.

II. And be it further Ordained and Enacted by the authority aforesaid, that if any action and suit shall be, or have been brought, commenced or had in any Court of this Province against any person or persons, for or on account of any such act, matter or thing as aforesaid, he and they may plead the general issue, and give this Act and the special matter in evidence, and if the Plaintiff or Plaintiffs shall become nonsuit, or forbear further prosecution, or suffer discontinuance in any such action or suit, or if a verdict shall pass or judgement be pronounced-or rendered against the Plaintiff or Plaintiffs therein, the Defendant or Defendants therein shall be entitled to double costs, for which he or they shall have the like remedy as in other cases in which costs by Law are given to Defendants.

III. And be it further Ordained and Enacted by the authority aforesaid, that if any action, suit, indictment, information, prosecution, or proceeding shall be brought, commenced, preferred, exhibited, or had in any Court in this Province against any person or persons, for or on account of any such act, matter or thing as aforesaid, it shall be lawful for the Defendant or Defendants in any such action, suit, indictment, information, prosecution, or proceeding, or for any of them, to apply by motion, petition, or otherwise, to the Court in which the same hath been or shall be brought, commenced, preferred, exhibited, or had, or shall be depending, if such Court shall be sitting, and if not sitting, then to any one of the Judges or Justices of such Court, to stay all further proceedings in such action, suit, indictment, information, prosecution, or proceeding: and such Court, and any Judge or Justice thereof, when the Court shall not be sitting, is hereby authorized and required to examine the matter of such application, and upon proof by the oath or affidavit of the person or persons making such application, or any of them, or other proof to the satisfaction of such Court, Judge or Justice, that such action, suit, indictment, information, prosecution, or proceeding is brought, commenced, preferred, exhibited, or had, for or on account of any such act, matter, or thing, as aforesaid, to make an order for staying execution, and all other proceedings in such action, suit, indictment, information, prosecution or proceeding, in whatever state the same shall or may then be, and the Court or the Judge or Justice making any such order for stay of proceedings, in any action or suit as aforesaid, shall also order unto the Defendant or Defendants, and he or they shall have or be entitled to double costs for all such proceedings,

as shall be had or carried on in any such action or suit after the passing of this Ordinance, and for which costs he and they shall have the like remedy as in cases where costs are by Law given to Defendants.

IV. Provided always, that it shall be lawful for any person or persons, being a party or parties to any such action, suit, indictment, information, prosecution or other proceedings, to apply by motion, petitioner otherwise, in a summary way, to the Court in which the same shall have been brought, commenced, preferred exhibited, or had, or shall be depending, to vacate, discharge, or set aside, any order made by any Judge or Justice of that Court, for slaying proceedings, or for payment of costs as aforesaid, so as such application be made within the first two days of the Term or Session of such Court next ensuing the making of any such order by any Judge or Justice as aforesaid, and such Court is required to examine the matter of such application, and to make such order therein, as if he application had been originally made to the said Court; but nevertheless in the mean time, and until such application shall be made to the said Court, and unless the said Court shall think fit to vacate, discharge, set aside or reverse the order made by any such Judge or Justice as aforesaid, the same shall continue in full force to all intents and purposes whatsoever.

V. And he it further Ordained and Enacted by the authority aforesaid, that all and every person or persons discharged out of custody as aforesaid, although he or they shall not have been discharged according to Law, shall be deemed and taken to have been legally discharged out of custody.

VI. And be it further Ordained and Enacted by the authority aforesaid, that an Ordinance of this Province, made and passed in the first year of the Reign of Her Majesty, intituled, "An Ordinance to declare and ascertain the period when the Laws and Ordinances made and passed by the Governor or person authorized to execute the Commission of Governor, and Special Council of the Province, shall take effect," be, and the same is hereby repealed as to this Ordinance only, and that the present Ordinance shall commence and have effect within the said Province, so soon as the Governor or person authorized to execute the Commission of Governor of the said Province shall have assented to and signed this present Ordinance.

J. COLBORNE.

Ordained and Enacted by the authority aforesaid, and duly passed in Special Council, at the Government House, in the City of Montreal, the twenty-first day of December, in the second year of the Reign of our Sovereign Lady Victoria, by the Grace of God, of Great Britain and Ireland, Queen, Defender of the Faith, and so forth, and in the year of Our Lord, one thousand eight hundred and thirty-eight.

By His Excellency's Command,
WM. B. LINDSAY,
Clerk Special Council.