

CHAP. III.

AN ACT relating to the Bailing and Commitment, Removal and Trial of Prisoners in certain cases.

[Passed 13th February, 1833.]

WHEREAS it is expedient to define under what circumstances persons may be admitted to Bail in cases of Felony or Misdemeanor, and to make better provision for taking Examinations, Informations, Bailments, and Recognizances, and returning the same to the proper Tribunals; and also, for obtaining the evidence of Prisoners confined in any Prison upon the Limits thereof, without the necessity of suing out a Writ of Habeas Corpus.—*Be it therefore enacted*, by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, entitled 'An Act for making more effectual provision for the Government of the Province of Quebec in North America, and to make further provision for the Government of the said Province,'" and by the authority of the same, That when any person shall be taken on a charge of Felony, or suspicion of Felony, before one or more Justice or Justices of the Peace, and the charge shall be supported by positive and credible evidence of the fact, or by such evidence as if not explained or contradicted shall in the opinion of the Justice or Justices raise a strong presumption of the guilt of the person charged, such person shall be committed to Prison by such Justice or Justices, in manner hereinafter mentioned; but if there shall be only one Justice present, and the whole evidence given before him shall be such as neither to raise a strong presumption of guilt, nor to warrant the dismissal of the charge, such Justice shall order the person charged to be detained in custody until he or they shall be taken before two Justices at the least; and where any person so taken, or any person in the first instance, taken before two Justices of the Peace, shall be charged with Felony, or on suspicion of Felony, and the evidence given in support of the charge shall, in their opinion, not be such as to raise a strong presumption of the guilt of the person charged, and to require his or her committal, or such evidence shall be adduced on behalf of the person charged as shall, in their opinion, weaken the presumption of guilt, but there shall notwithstanding appear to them, in either of such cases, to be sufficient ground for Judicial inquiry into his or her guilt, the person

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Duty of Justices before whom persons may be brought on charges of Felony.

charged should be admitted to Bail by such two Justices in the manner hereinafter mentioned: *Provided always*, that nothing herein contained shall be construed to require any Justice or Justices to hear evidence on behalf of any person or persons so charged as aforesaid, unless it shall appear to him or them to be meet, and conducive to the ends of Justice, to hear the same.

Justices to take the Examination of Witnesses, and reduce same to writing in presence of the accused.

II. *And be it further enacted by the authority aforesaid*, That the two Justices of the Peace, before they shall admit the Bail, and the Justice or Justices, before he or they shall commit to prison any person arrested for Felony, or on suspicion of Felony, shall take the examination of such person, and the information upon oath of those who shall know the facts and circumstances of the case, and the particular grounds of suspicion, in cases where direct proof is not adduced, and shall put the same into writing in the presence of the party accused, if he be in custody, who shall have full opportunity afforded him of cross-examining such witnesses, if he shall think proper so to do; and the two Justices shall thereupon certify such Bailment in writing, and every such Justice shall have authority to bind by Recognizance, all such persons as know, or declare any thing material touching any such Felony, or suspicion of Felony, to appear at the next Court of Oyer and Terminer and General Gaol Delivery, or Sessions of the Peace at which the trial thereof is intended to be had, then and there to prosecute or give evidence against the party accused; and such Justice or Justices respectively, shall subscribe all such Examinations, Informations, Bailments and Recognizances, and deliver, or cause the same to be delivered, to the public Prosecutor, before or at the opening of the said Court.

Witnesses to be bound in recognizance to give Evidence.

Duty of Justices when persons brought before them on charges of Misdemeanor.

III. *And be it further enacted by the authority aforesaid*, That every Justice of the Peace before whom any person shall be taken on a charge of Misdemeanor, or suspicion thereof, shall take the examination of the party charged, and the information, upon oath, of those who shall know the facts and circumstances of the case, and shall put the same, or so much thereof as shall be material, into writing, before he shall commit to prison, or require Bail from the person so charged; and in every case of Bailment, shall certify the Bailment in writing, and shall have authority to bind all persons by Recognizance to appear to prosecute or give evidence, as in cases of Felony, and shall subscribe all Examinations, Informations, Bailments and Recognizances, and deliver, or cause the same to be delivered, to the public Prosecutor, or Clerk of the Court in which the trial is to be, before or at the opening of the Court, as in cases of Felony; and that no traverse, or other postponement of any trial to be thereupon had, shall be allowed, except upon special cause shewn to

No traverse to be allowed in cases of Misdemeanor as of right.

the satisfaction of the said Court, or by consent of His Majesty's Attorney or Solicitor General conducting the Prosecution thereof.

IV. *And be it further enacted by the authority aforesaid,* That every Coroner, upon any Inquisition before him taken, whereby any person shall be indicted for Manslaughter or Murder, or as an accessory to Murder before the fact, shall, in presence of the party accused, if he can be apprehended, put in writing the evidence given to the Jury before him, or so much thereof as shall be material, giving the party accused full opportunity of cross-examination; and shall have authority to bind by Recognizance, all such persons as prove or declare any thing material touching the said Manslaughter or Murder, or the offence of being accessory to Murder, to appear at the next Court of Oyer and Terminer or General Gaol Delivery at which the trial is to be, then and there to give evidence against the party charged; and every such Coroner shall certify and subscribe the same evidence, and all such Recognizances, and also the Inquisition before him taken, and shall deliver the same to the Court at which the trial is to be, before or at the opening of the Court next ensuing the taking the same.

Duty of Coroners in taking Inquests.

V. *And be it further enacted by the authority aforesaid,* That if any Justice or Coroner shall offend in any thing, contrary to the true intent and meaning of these provisions, the Court of Oyer and Terminer or General Gaol Delivery, or Sessions of the Peace respectively, holden within the District where any party accused shall be liable to be tried, shall, upon examination, and proof of the offence, in a summary way, set such fine upon every such Justice or Coroner, as the Court shall think meet.

Justices and Coroners neglecting their duty, may be fined by the Court Oyer and Terminer, Gaol Delivery, or Sessions of the Peace.

VI. *And be it further enacted by the authority aforesaid,* That when, and so often as any person shall be committed for trial by any Justice or Justices, or Coroner, as aforesaid, it shall and may be lawful for such Prisoner, his Counsel, Attorney or Agent, to notify the said committing Justice or Justices, or Coroner, that he will so soon as Counsel can be heard, move His Majesty's Court of King's Bench, or one of the Judges thereof, for an order to the Justices of the Peace, or Coroner, for the District where such Prisoner shall be confined, to admit such Prisoner to bail, whereupon it shall be the duty of such committing Justice or Justices, or Coroner, to transmit to the Office of the Clerk of the Crown, close under the Hand and Seal of one of them, a certified copy of all the informations, examinations, and other evidences touching the offence wherewith such prisoner shall be charged, together with a copy of the Warrant of Commitment and Inquest, if any such there be, and that the packet containing the same shall be handed to the person applying there-

Manner of procuring Prisoners to be bailed by Justices, under the direction of the Court of King's Bench, or the Judges thereof.

for, in order to such transmission, and shall be certified on the outside thereof to contain the information, touching the case in question.

Upon applications to King's Bench for the Bailment of any Prisoner under this Act, same order to be made as if Prisoner were brought up on a Writ of Habeas Corpus.

VII. *And be it further enacted by the authority aforesaid*, That upon any application to His Majesty's Court of King's Bench, or to any Judge thereof, the same order, touching the prisoner being bailed or continued in custody, shall be made as if the party were brought up upon a Habeas Corpus.

Prisoners confined in Gaol or on the Limits, may be brought up to give Evidence by order of the Court requiring such attendance.

VIII. *And be it further enacted by the authority aforesaid*, That when, and so often as the attendance of any person confined in any Gaol or Prison in this Province, or upon the limits thereof, shall be required in any Court of Assize and Nisi Prius, or Oyer and Terminer, or General Gaol Delivery, it shall and may be lawful for the Court before whom such Prisoners shall be required to attend, in its discretion, to make an order upon the Sheriff, Gaoler, or other person having the custody of such Prisoner, to deliver such Prisoner to the person named in such order to receive him, which person shall thereupon instantly convey such prisoner to the place where the Court issuing such order shall be sitting, there to receive and obey such further order as to the said Court shall seem meet: *Provided always*, that no prisoner confined for any debt or damages in any Civil Suit, shall be thereby removed out of the District where he shall be confined.

CHAP. IV.

AN ACT to reduce the number of cases in which Capital Punishment may be inflicted; to provide other punishment for offences which shall no longer be Capital after the passing of this Act; to abolish the privilege called benefit of Clergy; and to make other alterations in certain Criminal Proceedings, before and after conviction.

[Passed 13th February, 1833.]

Preamble.

WHEREAS it is fit that it should be plainly declared in the Statutes of this Province, for what crimes offenders shall be liable to be punished with death: *And whereas* it does not seem to be indispensable, for the security and well being of society, that the punishment of death should be inflicted in any other cases than those hereinafter mentioned.—*Be it therefore enacted* by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the