

upon the return of a summons or of a rule to shew cause, which may be thereupon issued, and upon answers to any interrogatories which the Plaintiff shall be at liberty to file, no good cause shall appear to the contrary, the Court or Judge shall discharge such Defendant from imprisonment upon his filing common appearance, and the Plaintiff may proceed in his action as in non-bailable actions where the Defendant has appeared.

## CHAP. IV.

*AN ACT to provide for the Summary Punishment of Petty Trespasses and other offences.*

[Passed, 6th March, 1834.]

Preamble.

**WHEREAS** it is expedient that a summary power of punishing persons for common Assaults and Batteries, Petty Trespasses, and other offences mentioned in this Act, should be provided under the limitations hereinafter expressed: *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 if any person shall assault or beat any other person, it shall be lawful for any Justice of the Peace, upon complaint of the party aggrieved, to hear and determine such offence, and the offender, upon conviction thereof before him, shall forfeit and pay such sum of money, not exceeding Five Pounds, as to such Justice shall seem meet.

One Justice may hear and determine any case of Assault, and inflict fine not exceeding five pounds.

Certain cases of Assault to be dealt with as before.

*II. Provided always, and be it further enacted by the authority aforesaid,* That in case the Justice shall find the assault or battery complained of to have been accompanied by any attempt to commit Felony, or shall be of opinion that the same is, from any other circumstance, a fit subject for a prosecution by indictment, he shall abstain from adjudicating thereupon, and shall deal with the case in all respects in the same manner as such Justice would have done if this Act had not been passed.

Persons wilfully injuring property shall forfeit not exceeding five pounds;

*III. And be it further enacted by the authority aforesaid,* That if any person shall wilfully or maliciously commit any damage, injury or spoil, to or upon any real or personal property whatsoever, either of a public or

private nature, the committing of which damage, injury or spoil, is not made Felony by any Law in force in this Province, nor made punishable either as a Felony or otherwise by the provisions of any Act of the Parliament of this Province in relation to such particular offence, every such person, being convicted thereof before a Justice of the Peace, shall forfeit and pay such sum of money as shall appear to the Justice to be a reasonable compensation for the damage, injury or spoil so committed, not exceeding the sum of Five Pounds ; which sum of money shall in case of private property be paid to the party aggrieved, except when such party shall have been examined in proof of the offence, and in such case, and in all other cases of convictions under the provisions of this Act, the penalties imposed shall be applied in the manner hereinafter specified : *Provided always*, that nothing herein contained shall extend to any case where the party trespassing acted under a fair and reasonable supposition that he had a right to do the act complained of.

Except where there is a fair claim of Right.

IV. *And be it further enacted by the authority aforesaid*, That every punishment and forfeiture by this Act imposed on any person maliciously committing any trespass, shall equally apply and be enforced whether the trespass shall be committed from malice conceived against the owner of the property in respect of which it shall be committed, or otherwise.

Actual malice need not be shewn.

V. *And be it further enacted by the authority aforesaid*, That for the more effectual apprehension of all offenders against this Act, any person found committing any such trespass as aforesaid may be apprehended without a Warrant, by any Peace Officer, or the owner of the property injured, or the servant or any person authorised by him, and forthwith taken to the nearest Justice of the Peace to be dealt with according to Law.

Offenders may be apprehended without warrant.

VI. *And be it further enacted by the authority aforesaid*, That if any person shall wilfully disturb, interrupt, or disquiet any assemblage of people met for religious worship, by profane discourse, by rude and indecent behaviour, or by making a noise, either within the place of worship or so near it as to disturb the order and solemnity of the meeting, such person shall, upon conviction thereof before any Justice of the Peace, on the oath of one or more credible witness or witnesses, forfeit and pay such a sum of money, not exceeding the sum of Five Pounds, as the said Justice shall think fit.

Penalty for disturbing Religious Worship, not exceeding £5.

VII. *And be it further enacted by the authority aforesaid*, That in default of payment of any fine imposed under the authority of this Act, together with the costs attending the same, within the period specified for

Penalty and costs may be levied by distress.

the payment thereof at the time of conviction by the Justice of the Peace before whom such conviction may have taken place, it shall and may be lawful for such Justice of the Peace to issue his Warrant directed to any Constable to levy the amount of such fine and costs within a certain time to be in the said Warrant expressed; and in case no distress sufficient to satisfy the amount shall be found, it shall and may be lawful for him to commit the offender to the common Gaol of the District wherein the offence was committed for any term not exceeding one month, unless the fine and costs shall be sooner paid.

If no distress found, offender may be committed for one month.

VIII. *And be it further enacted by the authority aforesaid,* That the prosecution for every offence punishable under this Act shall be commenced within three calendar months after the commission of the offence and not otherwise; and the evidence of the party aggrieved shall be admitted in proof of the offence, and also the evidence of any inhabitant of the County, District, Riding or Division, in which the offence shall have been committed, notwithstanding any forfeiture or penalty incurred by the offence may be payable to the general rate of such County, District, Riding or Division.

Prosecutions under this Act to be within three months.

IX. *And for the more effectual prosecution of all offences punishable under this Act, be it further enacted by the authority aforesaid,* That when any person shall be charged on the oath of one or more credible witness or witnesses before any Justice of the Peace with any offence against this Act, the Justice may summon the person charged to appear at a time and place to be named in such summons, and if he shall not appear accordingly then (upon proof of the due service of the summons upon such person by delivering the same to him personally) the Justice may either proceed to hear and determine the case *ex parte*, or issue his Warrant for apprehending such person and bringing him before himself or some other Justice of the Peace; or the Justice before whom the charge shall be made may, if he shall so think fit, without any previous summons, issue such Warrant, and the Justice before whom the person charged shall appear or be brought, shall proceed to hear and determine the case.

Party accused to be summoned.

In case of non-appearance, Justice may proceed *ex parte*.

X. *And be it further enacted by the authority aforesaid,* That if any Justice, upon hearing any complaint for offences against this Act, shall deem such alleged offence not to be proved, or shall find the Act complained of to have been justified, or to be of so trifling a nature as not to deserve punishment, and shall accordingly dismiss the complaint, such Justice shall, at the request of the party against whom the same shall be preferred, make out and deliver to him a Certificate under his hand, stating

Person preferring frivolous charge to pay the costs, the Justice certifying.

the fact of such dismissal; and in such case, the Justice shall order the party preferring such complaint to pay the costs of the party against whom the same shall have been preferred: and if such costs shall not be paid immediately upon dismissal, or within such period as such Justice shall at the time of such dismissal appoint, it shall be lawful for him to issue his Warrant to levy the amount of such costs within a certain time to be in the said Warrant expressed; and in case no distress sufficient to satisfy the amount of such Warrant shall be found, to commit the party by whom such costs shall be so ordered to be paid as aforesaid, to the common Gaol of the County, District, Riding or Division, where such offence shall be alleged to have been committed, there to be imprisoned for any term not exceeding ten days, unless such costs shall be sooner paid.

To be levied by distress.

If no distress, subject to ten days commitment.

XI. *And be it further enacted by the authority aforesaid,* That the Justice by whom such Certificate as aforesaid shall be given, shall draw up the same in the following form, or in words to the like effect, videlicet:—

“BE IT REMEMBERED, That on the — day of —, in the year of our Lord — at —, in the County of —, [or District, Riding or Division, as the case may be,] A. B. of —, was brought before me C. D., one of His Majesty’s Justices of the Peace for the said County, [or District, Riding or Division, as the case may be,] upon a charge preferred against him by E. F., of —, [specify the offence, and the time and place when and where the same is alleged to have been committed,] and upon investigating such charge I have dismissed the same, and I order and adjudge the said E. F. to pay the sum of — for costs, and in default of payment thereof immediately, that there be levied of the goods and chattles of the said E. F., the said sum of —, within — days from the date hereof; and in case there shall be no goods or chattels found of the said E. F., whereof the amount can be made at the time aforesaid, then that the said E. F. be, [or on or before the — day of — next,] imprisoned in the common Gaol of the said County of —, [or District, Riding or Division, as the case may be,] for the space of — days, unless the same shall be sooner paid.

Justice’s certificate.

“Given under my hand the day and year first above mentioned.”

XII. *And be it further enacted by the authority aforesaid,* That if any person against whom any complaint shall have been preferred for any offence against this Act, shall have obtained such Certificate as aforesaid, or having been convicted, shall have paid the whole amount adjudged to

Persons convicted under this Act released from further prosecution for same offence.

be paid under such conviction, or shall have suffered the imprisonment awarded for the non-payment thereof, in every such case, such person shall be released from all further or other proceedings, civil or criminal, for the same offence: *Provided always nevertheless*, that nothing herein contained shall be construed to prevent any action for damages, wherein the party shall not have proceeded under the provisions of this Act.

Aiders and abettors punishable as principals.

XIII. *And be it further enacted by the authority aforesaid*, That if any person shall aid, abet, counsel, or procure the commission of any offence punishable under this Act, such person shall, on being convicted before a Justice of the Peace, on the oath of one or more credible witness or witnesses, of having so aided, abetted, counselled, or procured the commission of any such offence as aforesaid, be liable to the same forfeiture and punishment to which the principal offender is by this Act liable.

Discharge, in case of making satisfaction to party aggrieved.

XIV. *And be it further enacted by the authority aforesaid*, That when any person shall be summarily convicted before a Justice of the Peace of any offence against this Act, it shall be lawful for the Justice, if he shall so think fit, to discharge the offender from his conviction, upon his making such satisfaction to the party aggrieved, for damages and costs, or either of them, as shall be ascertained by the Justice.

XV. *And be it further enacted by the authority aforesaid*, That the Justice before whom any person shall be convicted of any offence against this Act, may cause the conviction to be drawn up in the following form of words, or in any other form of words to the same effect as the case shall require, videlicet :

Form of conviction.

“BE IT REMEMBERED, That on the — day of —, in the year of  
 “our Lord — at —, in the County of —, [or District, Riding or  
 “Division, as the case may be,] A. B. of —, is convicted before me C.  
 “D., one of His Majesty’s Justices of the Peace for the said County, [or  
 “District, Riding or Division, as the case may be,] for that he the said  
 “A. B. did, [specify the offence, and the time and place when and where  
 “the same was committed, as the case may be,] and I the said C. D.  
 “adjudged the said A. B. for his offence, to forfeit and pay immediately,  
 “or on or before the — day of —, [here state the penalty actually  
 “imposed, or the amount of the injury done, as the case may be,] and  
 “also pay the sum of — for costs, and in default of payment of the said  
 “sums, to be imprisoned in the County Gaol of the said County, [or  
 “District, Riding or Division, as the case may be,] for the space of —  
 “unless the said sums shall be sooner paid, or, [I order that the said

“sums shall be paid by the said A. B. on or before the——day of——,]  
 “and I direct that the said sum of——, [the penalty,] shall be paid to  
 “——of——[Treasurer of the County, District, Riding or Division, as  
 “the case may be] aforesaid, in which the said offence was committed,  
 “to be by him applied according to the provisions of this Act, or, I order  
 “that the sum of——[the sum for the amount of any injury done] shall  
 “be paid to E. F., the party aggrieved, unless he is unknown or has been  
 “examined in proof of the offence, [in which case state the fact, and dis-  
 “pose of the whole like the penalty as before,] and I order that the said  
 “sum of——for costs, shall be paid to——the Complainant.

“ Given under my Hand and Seal, the day and year first above  
 “ mentioned.”

XVI. *And be it further enacted by the authority aforesaid,* That nothing in this Act contained shall authorise, or be construed to authorise any Justice of the Peace to hear and determine any case of trespass under this Act, in which the title to any Lands, Tenements or Hereditaments, or any interest therein or accruing thereupon, shall be called in question or affected in any manner howsoever; but every such case of trespass shall be dealt with according to Law, in the same manner in all respects as if this Act had not been passed.

No jurisdiction under this Act when title in question.

XVII. *And be it further enacted by the authority aforesaid,* That any person who shall think himself aggrieved by any conviction or decision under this Act, may appeal to the next Court of General Quarter Sessions, which shall be holden not less than twelve days after the day of such conviction or decision for the District wherein the cause of complaint shall have arisen: *Provided,* that such person shall give to the other party a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction or decision, and seven days at the least before such Sessions, and shall also either remain in custody until the Sessions, or enter into a recognizance with two sufficient sureties before a Justice of the Peace, conditioned personally to appear at the said Sessions and to try such appeal, and to abide the judgment of the Court thereupon, and to pay such costs as shall be by the Court awarded; and upon such notice being given, and such recognizance being entered into, the Justice before whom the same shall be entered into, shall liberate such person, if in custody, and the Court at such Sessions shall hear and determine the matter of the appeal, and shall make such order therein, with or without cost to either party, as to the Court shall seem meet; and in case of the dismissal of the appeal, or the affirmance of the conviction, shall order and adjudge the offender to be punished according to

Appeal to Quarter Sessions.

Notice of Appeal.

Recognizance to abide judgment of Court.

Sessions to hear and determine with or without costs.

the conviction, and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing such judgment.

Appeals to be tried  
by Jury.

XVIII. *And be it further enacted by the authority aforesaid,* That whenever an appeal shall be made from the decision of any Justice of the Peace under this Act, the Court of Quarter Sessions shall have power to empanel a Jury to try the matter on which such decision may have been made, and to administer to such Jury the following oath:—

Jurors' Oath.

“You—do solemnly swear, that you will well and truly try the  
“ matter of the complaint of C. D. against E. F., and a true verdict give,  
“ according to the evidence.—So help you God.”

Court to give judgment.

and the Court on the finding of such Jury, shall thereupon give such judgment as the circumstances of the case may require: *Provided always,* that such Court shall not in any case adjudge the payment of a fine exceeding Five Pounds, in addition to the costs, or to order the imprisonment of the person so convicted for any period exceeding one month; and all fines imposed and recovered by the judgment of such Court shall be applied and disposed of in the same manner as other fines recovered under the provisions of this Act.

Not exceeding £5  
and costs, or one  
month's imprisonment.

Application of fines.

Justices to transmit  
convictions to next  
Quarter Sessions.

XIX. *And be it further enacted by the authority aforesaid,* That every Justice of the Peace before whom any person shall be convicted of any offence against this Act, shall transmit the conviction to the next Court of General Quarter Sessions which shall be holden for the District wherein the offence shall have been committed, there to be kept by the proper officer among the records of the Court; and upon any indictment or information against any person for a subsequent offence, a copy of such conviction, certified by the proper officer of the Court, or proved to be a true copy, shall be sufficient evidence to prove a conviction for the former offence, and the conviction shall be presumed to have been unappealed against until the contrary be shewn.

Convictions not to be  
quashed for want of  
form.

XX. *And be it further enacted by the authority aforesaid,* That no conviction under this Act shall be quashed for want of form, and no Warrant of Commitment shall be held void by reason of any defect therein, provided it be alleged that the party has been convicted, and there be a good and valid conviction to sustain the same.

Limitation of actions.

XXI. *And for the protection of persons acting in the execution of this Act—Be it further enacted by the authority aforesaid,* That all actions and prosecutions to be commenced against any person for any thing done in pursuance of this Act, shall be laid and tried in the District where

the fact was committed, and shall be commenced within six calendar months after the fact committed, and not otherwise; and notice in writing of such Action, and of the cause thereof, shall be given to the Defendant one calendar month at least before the commencement of the Action; and in any such Action the Defendant may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon; and no Plaintiff shall recover in such Action, if tender of sufficient amends shall have been made before such Action brought, or if a sufficient sum of money shall have been paid into Court after such Action brought by or on behalf of the Defendant; and if a verdict shall pass for the Defendant, or the Plaintiff shall become non-suit, or discontinue any such Action after issue joined, or if upon demurrer or otherwise judgment shall be given against the Plaintiff, the Defendant shall recover his full costs as between Attorney and Client, and have the like remedy for the same as any Defendant hath by law in other cases; and though a verdict shall be given for the Plaintiff in any such Action, such Plaintiff shall not have costs against the Defendant unless the Judge before whom the trial shall be had shall certify his approbation of the Action and of the verdict obtained thereupon.

XXII. *And be it further enacted by the authority aforesaid,* That it shall be lawful for the King's Majesty to extend His Royal mercy to any person imprisoned by virtue of this Act although he shall be imprisoned for non-payment of money to some party other than the Crown. Royal Pardon

XXIII. *And be it further enacted by the authority aforesaid,* That all sums of money, fines, forfeitures and penalties, to be awarded and imposed by virtue of this Act, shall be paid to the Path-master or Street Surveyor of the Division within which the offence shall have been committed or the fine levied, in aid of any commutation money to be expended for Roads, or in aid of any Statute labour to be performed within such Division, except when such sums of money, fines, forfeitures and penalties, are by this Act directed to be otherwise applied. Penalties to be paid to Path-Master or Street Surveyor.

XXIV. *And be it further enacted by the authority aforesaid,* That this Act shall continue and be in force for four years, and from thence to the end of the then next ensuing Parliament, and no longer. Act to continue in force four years.

CHAP.