

S T A T U T E S

OF

Upper Canada,

PASSED IN THE THIRD SESSION OF THE THIRTEENTH PROVINCIAL PARLIAMENT :
MET AT TORONTO ON THE TWENTY-EIGHTH DAY OF DECEMBER, 1837, AND PROROGUED
ON THE SIXTH DAY OF MARCH, 1838, IN THE FIRST YEAR OF THE
REIGN OF VICTORIA.

SIR FRANCIS BOND HEAD, BART. K.C.H.
LIEUTENANT GOVERNOR.

ANNO DOMINO 1838.



CHAP. I.

AN ACT to authorise the apprehending and detention of Persons suspected of High Treason, Misprision of Treason, and Treasonable Practices.

[Passed, 12th January, 1838.]

WHEREAS a traitorous conspiracy hath been formed for the purpose of overthrowing, by means of Insurrection, the Government, Laws and Constitution of this Province, and the happy connection thereof with the Mother Country: *And whereas*, designs and practices of a treasonable and highly dangerous nature are now carrying on in some parts of this Province: Therefore for the better preservation of the Peace, Laws and Liberties, of this Province, *Be it enacted* by the Queen'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 assem-

Preamble.

bled 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 all or any person or persons that are or shall be in prison in this Province, at or upon the day on which this Act shall receive the Royal Assent, or after, by Warrant of the Lieutenant Governor of this Province, in Council, for High Treason, suspicion of High Treason, or Treasonable Practices, may be detained in safe custody, without bail or mainprize, during the continuance of this Act; and that no Judge or Justice of the Peace shall, during such continuance, bail or try any such person or persons so committed, without an order from the Lieutenant Governor of this Province, in Council, any Law or Statute to the contrary notwithstanding: *Provided always*, that nothing in this Act contained shall extend, or be construed to extend, to any Seditious Language or other act of Sedition, only uttered, spoken, committed or done, before the first day of December last passed.

Persons in prison at or after passing this Act, under warrant of Governor in Council, upon charge of High Treason, suspicion of High Treason, or Treasonable Practices, may be detained without bail, and not to be tried without an order from Governor in Council.

II. *Provided always, and be it further enacted by the authority aforesaid*, That from and after the expiration of this Act, the said persons so committed shall have the benefit and advantage of all Laws and Statutes in any way relating to or providing for the liberty of the Subjects of this Province.

After Act expires, persons committed to have advantage of Laws relating to liberty of Subject.

III. *Provided always, and be it further enacted by the authority aforesaid*, That nothing in this Act contained shall be construed to extend to invalidate the rights and privileges of this Provincial Parliament, or to the imprisonment or detaining of any Member of either House of the Legislature thereof, during the sitting of the same, until the matter of which he stands suspected be communicated to the House of which he is a Member, and the consent of the said House be obtained for his commitment or detaining.

Not to interfere with rights and privileges of Members of Assembly, & during sitting of Legislature charges against Members to be communicated to the House of which accused belongs, & assent to his commitment to be obtained.

IV. *And be it further enacted by the authority aforesaid*, That it shall and may be lawful for the Lieutenant Governor of this Province, as he shall see occasion, by and with the advice of the Executive Council, to order any person committed to any Gaol, on any charge of High Treason, suspicion of High Treason, or Treasonable Practices, either before or after Indictment found, to be conveyed or detained in any other Gaol, or other Prison, or safe place of confinement, until discharged by due course

Accused persons to be confined by order of Governor in Council, to any Gaol of the Province.

of Law, and to issue all Warrants necessary for such purposes: *Provided always, nevertheless*, that no person who shall be removed by any such Warrant as aforesaid, shall, by means of such removal, be deprived of such right to be tried or discharged, as such person would by Law have been entitled to if not so removed; and in every case in which any such person would have been entitled to have been tried or discharged, if such person had continued in the Gaol or Prison to which such person was before committed, it shall and may be lawful for such person to apply to be bailed or discharged, in the same manner as such person might have done if he had remained in the Gaol or Prison to which such person was before committed, as aforesaid.

Right to be tried in place where offence committed, and to be bailed, not taken away.

V. *And be it further enacted by the authority aforesaid*, That for and during the continuance of this Act, in all and every case in which application shall be made for Her Majesty's Writ of Habeas Corpus to any Court or Courts, Judge or Judges, within this Province, by any person or persons who are or shall be in Prison within this Province, at or upon the day on which this Act shall receive the Royal Assent, or afterwards, charged by any public authority, with High Treason, misprision of High Treason, or Treasonable Practices, such Writ of Habeas Corpus, if allowed, shall not be made returnable in less than thirty days from the time of its being allowed; and in all and every such case and cases, it shall be the duty of such Court, or Judge or Judges, and of each and every of them, and they are hereby required, when and so soon as such application for such Writ of Habeas Corpus shall to them be respectively made, to give notice and information thereof in writing together with copies of such application, and of the Affidavit or Affidavits, or other paper-writings, on which such application shall be founded, to the Governor, Lieutenant Governor, or Person Administering the Government, for the time being.

Restrictions relative to the granting the Writ of Habeas Corpus.

VI. *And be it further enacted by the authority aforesaid*, That this Act shall be and continue in force to the end of the next Session of Parliament, and no longer.

Limitation of Act.