

the strength of the Companies of Militia,"—shall from and after the passing of this Act be and the same are hereby repealed.

CHAP. IX.

AN ACT to provide for the more speedy attainder of persons indicted for High Treason, who have fled from this Province, or remain concealed therein, to escape from Justice.

[Passed 6th March, 1838.]

WHEREAS a wicked and unnatural Rebellion against Her Majesty hath been raised and carried on within this Province: *And whereas* divers persons who were concerned in such Rebellion have fled from this Province, or remain concealed therein, in order to escape from Justice: *And whereas* it is expedient and necessary to provide for the speedy Attainder of such persons, in order to deter others from the like high crimes and offences: *Be it therefore 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 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 from and after the passing of this Act, in case any Indictment shall be found by a Grand Jury, at and before any Court of competent jurisdiction in this Province, against any person or persons for High Treason, Misprision of Treason, or Treasonable Practices, and when the Sheriff shall make return to any Warrant or Capias that may issue thereupon, that such persons, or any of them, is, or are not to be found in his District, it shall and may be lawful for the Governor of this Province, by and with the advice of the Executive Council, immediately upon the making of such return, to issue a Proclamation, to be published not less than six weeks in the Upper Canada Gazette, calling upon and requiring the person or persons against whom any such Indictment or Indictments shall have been found, to surrender himself, or themselves to the custody of the Sheriff of the District within which the Court before whom such Indictment or Indictments were found was held, by a day to be within the said Proclamation named, such day not to be less than three calendar

Preamble.

Proceedings to be had against persons indicted for High Treason, &c. against whom process shall have issued, and who may not be apprehended, and upon which the attainder of such persons shall be founded:

Proclamation to issue, calling on person indicted to surrender himself, and in default, to be adjudged attainted of the crime charged in indictment.

months, from the first publication of such Proclamation in the Gazette; and if such person or persons shall not, by the day in such Proclamation named, surrender themselves to the custody aforesaid, and submit to justice, then and in such case they, and every of them, after the day in such Proclamation named, shall stand and be adjudged attainted of the crime expressed and set forth in such Indictment or Indictments, and shall suffer and forfeit as a person attainted of such crime by the Laws of the land ought to suffer and forfeit.

Justices of Oyer and Terminer to certify indictment and return of Sheriff, that party has not been arrested, into the Court of King's Bench.

II. *And be it further enacted by the authority aforesaid,* That the Justices of all and every Court of Oyer and Terminer and General Gaol Delivery, at which any such Indictment shall be found as aforesaid, shall, upon the return of the Sheriff that the person or persons named in such Indictment is not to be found within the District of such Sheriff, certify the said Indictment, and the proceedings thereon, into the Court of King's Bench in this Province; and it shall be the duty of every such Sheriff, at the expiration of the term limited in such Proclamation, to make a return to the said Court of King's Bench, of the names of all and every such person or persons, who being named in any such Proclamation as aforesaid, shall not have surrendered themselves to the custody of the said Sheriff, pursuant to the exigency of such Proclamation, and the said Court of King's Bench shall, during the Term in or before which such last-mentioned return shall be made, direct Judgment of Attainder against all and every such person or persons to be entered on record.

Persons against whom judgment of attainder shall have been entered, may surrender himself within three months, and upon proof that such person was prevented from surrendering himself, the Court of King's Bench may reverse the attainder, and admit party to be tried, &c.

III. *Provided always, and be it further enacted by the authority aforesaid,* That if any person against whom any such Judgment of Attainder shall have been entered, shall within three calendar months next after the day of entry of such Judgment, surrender himself to the custody of the Sheriff of the Home District, and by the oath of two credible witnesses shall establish, to the satisfaction of the Court of King's Bench, that such person was actually and bonâ fide prevented from surrendering himself, pursuant to the exigency of such Proclamation, by reason of absence beyond seas, sickness, or other inevitable necessity, then and in such case, it shall and may be lawful for the said Court of King's Bench to reverse the said Judgment of Attainder, and to transmit the indictment or indictments to any Court of Oyer and Terminer, to be held in and for the District wherein such indictment or indictments was or were found; and such person, so surrendering, shall be tried for the offence charged in such indictment in like manner as if no such Judgment of Attainder had been entered.