

Laws of His Majesty's Province of Upper-Canada in North America. York: John Bennett, Printer to the King's Most Excellent Majesty, 1804.

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An Act for the exemplary Punishment of all and every person and persons who shall seduce, or attempt to seduce, or aid or assist, or attempt to aid or assist any Soldier to desert his Majesty's service, or who shall harbour, conceal, receive or assist any Deserter from such service. Passed 9th March, 1804.

Whereas pernicious practices have for some time past prevailed in this Province, by evil disposed persons disaffected to his Majesty's Government, and particularly to the Military service thereof, in seducing and deluding his Subjects who had engaged themselves as Soldiers in such service, and prevailing on them to desert, and also in harbouring, assisting and concealing such Deserters; for remedy whereof for the future, and for the exemplary punishment of such persons in such cases offending, Be it 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 intituled, "An Act to repeal certain parts of an Act passed in the fourteenth year of his Majesty's reign, intituled, "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, if any person or persons whomsoever (other than such as are, or shall be enlisted as Soldiers) shall, by words or with money, or by any other ways or means whatsoever, directly or indirectly, prevail upon, procure, persuade, or encourage, or endeavour or attempt to, prevail upon, procure, persuade or encourage any such Soldier or Soldiers to desert or leave his Majesty's service, and shall be thereof lawfully convicted, the Court or Judge before whom such offender shall be so convicted, shall immediately on such conviction, award and adjudge such person and persons so convicted as aforesaid, to be committed to the common Gaol of the District where such offender shall be so tried, there to remain without Bail or Mainprize for the space of six Calendar months; and if from the circumstances and heinousness of the crime, it shall be thought proper and expedient to increase the punishment, such Court or Judge shall also further award and adjudge, that such offender so convicted as aforesaid, shall forfeit and pay a sum not exceeding forty pounds, and if such offender shall not on or before the third day previous to the expiration of such imprisonment as aforesaid pay such fine, then and in such case the said offender shall be publicly whipped.

II. And be it further Enacted by the Authority aforesaid, That if any person from and after the passing of this Act, shall harbour, conceal, receive or assist any Deserter from his Majesty's service, knowing him to be such, such person so offending shall forfeit the sum of twenty pounds, and if such sum of twenty pounds shall not immediately on such conviction being pronounced be paid into Court, the Court or Judge before whom such conviction shall be had, shall forthwith award, order and adjudge such offender to be committed to the common Gaol of the District in which such offender shall be so convicted, there to remain without Bail or Mainprize for the space of

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three Calendar months, or until such time, not exceeding three Calendar months, as the said sum of twenty pounds shall be paid.

III. Provided nevertheless, That no conviction shall be pronounced under the authority of this Act, in any Court or Jurisdiction whatsoever in this Province, save and except by indictment preferred or presented before a Court, or Judge or Judges sitting in the execution of a Commission of Oyer and Terminer and General Gaol Delivery; nor shall any prosecution be carried on by virtue of this Act, if the same shall not be commenced, within six Calendar months next after the offence shall be charged to have been committed, unless the offender shall within the said six months have departed and left the Province, in which case it shall and may be lawful to commence such prosecution at any time within six Calendar months next after such offender's return into the Province, and to carry on the same to conviction: But it is hereby declared, that the issuing any warrant for the apprehending of any person charged with any offence against this Act, by any one of his Majesty's Justices of the Peace for this Province, shall be held and deemed to be a commencement of a prosecution, within the true meaning of the provisions herein in that respect contained.

IV. And be it Enacted by the Authority aforesaid, That in order the more effectually to prevent the escape of any such offender or offenders as aforesaid, it shall and may be lawful at any time from and after the passing of this Act, to and for any one or more of his Majesty's Justices of the Peace, on due proof upon oath being made before him or them, that any person has committed any one of the offences herein before described, to issue his or their warrant or warrants for the apprehension of such offender or offenders, or person or persons charged with such offence, and to cause such offender or offenders, or such person or persons so charged as aforesaid, to be brought before him or them, and upon the examination of such offender or offenders, and hearing the evidence, such Justice or Justices of the Peace shall discharge or commit to Prison, or shall Bail such offender or offenders, in like manner as by law any other person or persons charged criminally is or are dealt with; save and except, that if such Justice or Justices shall be satisfied with the evidence against such offender or offenders, such Justice or Justices shall commit such offender or offenders to the common Gaol of the District, or in case there shall be no Gaol in that District, to the common Gaol of any adjoining District, and such offender and offenders shall remain so committed until his, of her or their trial shall be brought on, unless such offender or offenders shall, with two good and sufficient sureties, to the satisfaction of the said Justice or Justices, become bound by recognizance to our Sovereign Lord the King, in manner hereinafter specified (that is to say) if the said offender shall be charged with having committed an offence against the provisions in the first Section of this Act contained, then such offender or person so charged, shall become bound in the sum of two hundred pounds, and each of such sureties in the sum of one hundred pounds, and if such offender shall be charged with having committed any offence against the provisions in the second Section of this Act contained, then such offender or person so charged, shall become bound in the sum of forty pounds, and each of such sureties in the sum of twenty pounds, conditioned in each of such recognizances, for the appearance of such person so charged with any offence against this Act, at the then next Assizes, or Session of Oyer and Terminer and General Gaol Delivery, to be holden for the District where such offence shall be

charged to be committed, or at such other or future Assizes or Session of Oyer and Terminer and General Gaol Delivery, to which the trial of such offender shall for just cause be adjourned.

V. Provided likewise, and be it further Enacted, That if it shall happen that any conviction under this Act shall take place in any District where there shall be no common Gaol at the time of such conviction, it shall and may be lawful to and for the Court or Judge before whom such conviction shall be had, to award, order and adjudge, that any such offender or offenders so to be convicted, shall be Committed to the common Gaol of any adjoining District, in which there shall at that time be a Gaol, and also to order and adjudge, that any further punishment to be inflicted under the authority of this Act, shall be inflicted either in the District where such conviction shall take place, or in the District to the Gaol of which such offender shall be committed, as to such Judge or Court shall seem meet: And in case of any commitment by any Justice or Justices of the Peace before trial, or of any commitment by any such Court, or Judge or Judges as aforesaid after conviction, under the authority by this Act given, the Treasurer and Gaoler of the District to the Goal of which such offender, or person charged with or convicted of any offence against this Act shall be committed, are, and each of them is hereby respectively required, to allow to each person during his or her commitment or confinement there; such and the like maintenance and subsistence as is by law allowed to persons in custody under any criminal charge; and the Treasurer of the District from which such offender or person so charged or convicted shall be so sent, shall, and he is hereby required, to reimburse and pay to the Treasurer of the District in which such person shall have been confined, out of the first monies which shall come to his hands, such sum and sums of money as shall have been so lawfully expended, according to the provisions in that respect herein before contained, for the maintenance and subsistence of any such person or persons as aforesaid.

VI. And be it further Enacted, That in case any such person or persons as aforesaid shall, by virtue of this Act, be committed before trial to any Gaol other than the Gaol of the District in which the offence shall be charged to have been committed, the Sheriff of the District in which such offence shall be charged to have been committed, shall, and he is hereby required and commanded, immediately before the Assize, or Session at which any trial for any offence against this Act shall be had, to convey such person so charged from the Gaol in which he or she shall be so confined, to the District where such offence was charged to be committed, and there to keep him or her in close custody and confinement, and have such person ready to take his or her trial at the Assizes or Session of Oyer and Terminer then next ensuing, And all and every Sheriff and Sheriffs, Constable and Peace Officers of this Province, is and are hereby required and commanded to execute and obey all and every warrant and warrants, order and orders, sentence and sentences, which shall be pronounced or issued by any such Court or Judge, Justice or Justices, as are herein before mentioned, for the purpose of carrying the provisions of this Act into execution.

VII. And be it further Enacted by the Authority aforesaid, That all the fines, forfeitures and penalties that shall be incurred under and by virtue of this Act, shall be accounted for to his Majesty, his Heirs and Successors, to and for the public uses of this Province, through the Lords Commissioners of his Majesty's Treasury for the time being, in such manner and form as it shall please his Majesty to direct.