

*Laws of Her Majesty's Province of Upper Canada*, passed in the year 1838. York: Robert Stanton, 1838.

1 Victoria – Chapter 12

**An Act for indemnifying persons who since the Second of December, one thousand eight hundred and thirty-seven, have acted in Apprehending, Imprisoning, or Detaining in Custody, persons suspected of High Treason, or Treasonable Practices, and in the Suppression of Unlawful Assemblies, and for other purposes therein mentioned. Passed 6th March, 1838.**

Whereas a late armed insurrection of certain Subjects of Her Majesty, in this Province, with intent to subvert the Government, and to plunder and destroy the property of the loyal Inhabitants, has been happily subdued, but not until the insurgents had committed acts of murder, robbery and arson, and had occasioned much alarm for the peace and security of the Province: And whereas immediately before and during the said insurrection, and in consequence thereof, it became necessary for Justices of the Peace, Officers of the Militia, and others persons in authority in this Province, and for divers loyal Subjects of Her Majesty, to take all possible measures for apprehending, securing, detaining, and bringing to justice, persons charged or suspected of joining in the said insurrection, or of aiding and abetting the same, or of other Treasonable Practices dangerous to the peace of this Province, and the security of its Government, and also for the purpose of defeating and putting down the said insurrection, and for maintaining the peace of this Province, and securing the lives and properties of the inhabitants thereof: And whereas some of such acts, may not have been strictly legal and formal, but it is nevertheless just and necessary that the persons doing or advising the same should be kept harmless, and indemnified against actions at law, or other proceedings with which they might otherwise be harrassed: 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 all personal actions, suits, indictments and prosecutions, heretofore brought, commenced, preferred or exhibited, or now depending, or to be hereafter brought, commenced, preferred or exhibited, and all judgments thereupon obtained, if any such there be or shall be, and all proceedings whatsoever against any person or persons, for or on account of any act, matter or thing, by him or them done or commanded, ordered or directed, or advised to be done, since the second day of December, in the year of our Lord one thousand eight hundred and thirty-seven, for apprehending, committing, imprisoning, detaining in custody, or discharging any person or persons who hath or have been imprisoned or detained in custody for High Treason, or suspicion of High Treason, or Treasonable Practices, or for apprehending, committing, imprisoning, or detaining in custody, any person or persons who hath or have been imprisoned or detained in custody, for having been so tumultuously, unlawfully and traitorously, assembled in Arms as aforesaid, or for dispersing by force of Arms any persons so assembled as aforesaid, or for suppressing the said traitorous Insurrection, and discovering and guarding against

any other the treasonable proceedings aforesaid, or for the discovering and bringing to Justice the persons concerned therein, or for maintaining the public peace and the security of Her Majesty's Subjects in their persons and property, or for supporting the Government and Constitution of this Province against the treasonable practices and proceedings aforesaid, shall be discharged and made void, and that every person by whom any such act, matter or thing, shall have been done, or commanded, ordered, directed or advised to be done, shall be freed, acquitted, discharged and indemnified, as well against the Queen's Majesty, Her Heirs and Successors, as against all and every other person and persons.

II. And be it further enacted by the authority aforesaid, That if any action or suit shall be brought, commenced or had, in any superior Court in this Province, against any person or persons for and on account of any such act, matter or thing as aforesaid, he and they may plead the general issue, and give this Act and the special matter in evidence; and if the Plaintiff or Plaintiffs, shall become non-suit, or forbear further prosecution, or suffer discontinuance in any such action or suit, or if a verdict shall pass against the Plaintiff or Plaintiffs therein, the Defendant or Defendants therein shall be entitled to double costs, for which he or they shall have the like remedy as in other cases in which costs by law are given to Defendants.

III. And be it further enacted by the authority aforesaid, That if any action, suit, indictment, information, prosecution or proceeding, shall be brought, commenced, preferred, exhibited or had in any Court, against any person or persons, for or on account of any such act, matter or thing, as aforesaid, it shall be lawful for the Defendant or Defendants in any such action, suit, indictment, information, prosecution or proceeding, or for any of them, to apply by motion, petition or otherwise, in a summary way, to the Court in which the same hath been or shall be brought, commenced, preferred, exhibited or had, or shall be depending, if such Court shall be sitting, and if not sitting, then to any one of the Judges or Justices of such Court, to stay all further proceedings in such action, suit, indictment, information, prosecution or proceeding; and such Court, and any Judge or Justice thereof when the said Court shall not be sitting, is hereby authorised and required to examine the matter of such application, and upon proof by the oath or affidavit of the person or persons making such application, or any of them, or other proof to the satisfaction of such Court, Judge or Justice, that such action, suit, indictment, information, prosecution or proceeding, is brought, commenced, preferred, exhibited or had, for or on account of any such act, matter or thing, as aforesaid, to make an order for staying execution and all other proceedings in such action, suit, indictment, information, prosecution or proceeding, in whatever state the same shall or may then be; and the Court, or the Judge or Justice making such order for stay of proceedings in any action or suit as aforesaid, shall also order unto the Defendant or Defendants, and he or they shall have or be entitled to double costs for all such proceedings as shall be had or carried on in any such action or suit, after the passing of this Act, and for which costs he and they shall have the like remedy as in cases where costs are by Law given to Defendants: Provided always, that it shall be lawful for any person or persons being a party or parties to any such action, suit, indictment, information, prosecution or other proceeding, to apply by motion, petition or otherwise, in a summary way, to the Court in which the same shall have been brought, commenced, preferred, exhibited or bad, or shall be depending, to vacate, discharge or set aside, any order made by any Judge or Justice of that Court for staying proceedings, or for payment of costs as aforesaid, so as

such application be made within the first four days of the Term next ensuing the making of any such order by any Judge or Justice as aforesaid, and such Court is required to examine the matter of such application, and to make such order therein, as if the application had been originally made to the said Court: But nevertheless, in the mean time, and until such application shall be made to the said Court, and unless the said Court shall think fit to vacate, discharge, set aside, or reverse the order made by any such Judge or Justice as aforesaid, the same shall continue in full force to all intents and purposes whatsoever.

IV. And be it further enacted by the authority aforesaid, That all and every person or persons discharged out of custody as aforesaid, although he shall not have been discharged according to Law, shall be deemed and taken to have been legally discharged out of custody.