

Laws of His Majesty's Province of Upper Canada, passed in the year 1857. Toronto: Stewart Derbishire & George Desbarats, 1857.

20 Victoria – Chapter 27

An Act for diminishing expense and delay in the administration of Criminal Justice in certain cases. Assented to 10th June, 1857.

Whereas it would tend to diminish expense and delay in the administration of Justice in certain cases of Larceny, if the Recorders and certain other Administrators of Criminal Justice in Cities were authorized to hear and determine such cases summarily: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

I. Where any person is charged before the Recorder of any City with having committed simple larceny, and the value of the whole of the property alleged to have been stolen does not, in the judgment of such Recorder, exceed five shillings, or with having attempted to commit larceny from the person, or simple larceny, it shall be lawful for such Recorder to hear and determine the charge in a summary way; and if the person charged shall confess the same, or if such Recorder, after hearing the whole case for the prosecution and for the defence, shall find the charge to be proved, then it shall be lawful for such Recorder to convict the person charged and commit him to the Common Gaol or House of Correction, there to be imprisoned, with or without hard labour, for any period not exceeding three months; and if he find the offence not proved he shall dismiss the charge, and make out and deliver to the person charged a certificate under his hand stating the fact of such dismissal: and every such conviction and certificate respectively may be in the forms A and B, in the Schedule to this Act, or to the like effect: Provided always, that if the person charged do not consent to have the case heard and determined by such Recorder, or if it appear to such Recorder that the offence is one which, owing to a previous conviction of the person charged, is by law a felony, or if such Recorder be of opinion that the charge is, from any other circumstances, fit to be made the subject of prosecution by indictment, rather than to be disposed of summarily, such Recorder shall, instead of summarily adjudicating thereon, deal with the case in all respects as if this Act had not been passed: Provided also, that if upon the hearing of the charge such Recorder shall be of opinion that there are circumstances in the case which render it inexpedient to inflict any punishment, he shall have power to dismiss the person charged without proceeding to a conviction.

II. Where the Recorder before whom any person is charged as aforesaid proposes to dispose of the case summarily under the foregoing provisions, such Recorder, after the examinations of all the witnesses for the prosecution have been completed, and before calling upon the person charged for any statement which he may wish to make, shall slate to such person the substance of the charge against him, and shall then say to him these words, or words to the like effect: "Do you consent that the charge against you shall be tried by me, or do you desire that it shall be sent, for trial by a jury at the (naming the Court at which it could soonest be tried);" and if the person charged shall consent to the charge being summarily tried and determined as aforesaid, then the Recorder shall reduce the charge into writing, and read the same to such person, and shall then ask him whether he is guilty or not of such charge; and if such person shall say that he is guilty, the Recorder shall then proceed to pass such

sentence upon him as may bylaw be passed, subject to the provisions of this Act, in respect to such offence; but if the person charged shall say that he is not guilty, the Recorder shall then inquire of such person whether he has any defence to make to such charge, and if he shall state that he has a defence, the Recorder shall hear such defence, and then proceed to dispose of the case summarily.

III. Where any person is charged before any Recorder with simple larceny (the property alleged to have been stolen exceeding in value five shillings) or stealing from the person, or larceny as a clerk or servant, and the evidence, when the case on the part of the prosecution has been completed, is in the opinion of such Recorder sufficient to put the person charged on his trial for the offence with which he is charged, such Recorder, if the case appear to him to be one which may properly be disposed of in a summary way, and may be adequately punished by virtue of the powers of this Act, shall reduce the charge into writing, and shall read it to the said person, and shall then ask him whether he is guilty or not of the charge; and if such person shall say that he is guilty, such Recorder shall thereupon cause a plea of guilty to be entered upon the proceedings, and shall convict him of such offence, and commit him to the common Gaol or House of Correction, there to be imprisoned, with or without hard labour, for any term not exceeding six Calendar Months; and every such conviction may be in the form C in the Schedule to this Act, or to the like effect; Provided always that such Recorder, before he asks such person whether he is guilty or not, shall explain to him that he is not obliged to plead or answer before him at all, and that if he do not plead or answer before him he will be committed for trial in the usual course.

IV. In every case of summary proceedings under this Act, the person accused shall be allowed to make his full answer and defence, and to have all witnesses examined and cross-examined, by Counsel or Attorney.

V. Where any person is charged before any Justice or Justices of the Peace, with any offence mentioned in this Act, and in the opinion of such Justice or Justices, the case may be proper to be disposed of by a Recorder, or by an Inspector and Superintendent of the Police or a Police Magistrate, as hereinafter provided, under this Act, the Justice or Justices before whom such person is so charged may, if he or they see fit, remand such person for further examination before the Recorder or before the Inspector and Superintendent of the Police of the nearest City, or before the nearest Police Magistrate, in like manner in all respects as a Justice or Justices are authorized to remand a party accused under the Act passed in the Session held in the fourteenth and fifteenth years of Her Majesty's reign, chapter ninety-six, section thirteen, or under the Act passed in the sixteenth year of Her Majesty's reign, chapter one hundred and seventy-nine, section thirteen; Provided always, that it shall not be lawful for any Justice or Justices of the Peace in Upper Canada, so to remand any person for further examination before any Recorder, Inspector and Superintendent of Police, or Police Magistrate in Lower Canada, nor for any Justice or Justices of the Peace in Lower Canada so to remand any person for further examination before any Recorder or Police Magistrate in Upper Canada; And provided also, that any person so remanded for further examination before the Recorder of any City, may be examined and dealt with by the Inspector and Superintendent of the Police or Police Magistrate of the same City, and any person so remanded for further examination before the Inspector and Superintendent of the Police or the Police Magistrate of any City, may be examined and dealt with by the Recorder of the same City.

VI. If any person suffered to go at large upon entering into such recognizance as the Justice or Justices are authorized under the last mentioned Acts to take, on the remand of a party accused conditioned for his appearance before a Recorder under the next preceding section of this Act, do not afterwards appear pursuant to such recognizance, then the Recorder before whom he ought to have appeared shall certify (under his hand) on the back of the recognizance, to the Clerk of the Peace of the District, in Lower Canada, or County or Union of Counties in Upper Canada, the fact of such non-appearance, and such recognizance shall be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *primâ facie* evidence of such non-appearance.

VII. The Recorder adjudicating under this Act, shall transmit the conviction, or a duplicate of a certificate of dismissal, with the written charge, the depositions of witnesses for the prosecution and for the defence, and the statement of the accused, to the next Court of Quarter Sessions for the District in Lower Canada, or the County or Union of Counties in Upper Canada, there to be kept by the proper Officer among the Records of the Court; and a copy of such conviction, or of such certificate of dismissal, certified by the proper Officer of the Court, or proved to be a true copy, shall be sufficient evidence to prove a conviction or dismissal for the offence mentioned therein, in any legal proceeding whatever.

VIII. It shall be lawful for the Recorder, by whom any person is convicted under this Act, to order restitution of the property stolen, taken or obtained by false pretences, in those cases in which the Court, before whom the person convicted would have been tried but for this Act, may be by law authorized to order restitution.

IX. Every Recorder's Court, for the purposes of this Act, shall be an open public Court, and a written or' printed notice of the day and hour for holding such Court, shall be posted or affixed by the Clerk of the said Court upon the outside of some conspicuous part of the building or place where the same is held.

X. The provisions of the Act passed in the Session held in the fourteenth and fifteenth years of Her Majesty's Reign, chapter ninety-five, or of the Act passed in the sixteenth year of Her Majesty's Reign, chapter one hundred and seventy- eight, shall not be construed as applying to any proceeding under this Act.

XI. Every conviction by a Recorder under this Act shall have the same effect as a conviction upon indictment for the same offence would have had, save that no conviction under this Act shall be attended with forfeiture.

XII. Every person who obtains a certificate of dismissal or is convicted under this Act, shall be released from all further or other criminal proceedings for the same cause.

XIII. No conviction, sentence or proceeding under this Act shall be quashed for want of form; and no warrant of commitment upon a conviction shall be held void by reason of any defect therein, if it be

therein alleged that the offender has been convicted, and there be a good and valid conviction to sustain the same.

XIV. The Inspector and Superintendent of Police for the City of Quebec, the Inspector and Superintendent of Police for the City of Montreal, and the Police Magistrate for any City in Upper Canada, sitting in open Court, may respectively in the case of persons charged before them, do all acts by this Act authorized to be done by Recorders, and all the provisions of this Act referring to Recorders and Recorders' Courts and the Clerks of the Recorders' Courts, shall be read and construed also as referring to such Inspectors and Superintendents of the Police and Police Magistrates and the Courts and the Clerks of the Courts held by them respectively.

XV. Nothing in this Act shall affect the provisions of any Act of this Session, *For the more speedy Trial and Punishment of Juvenile offenders*; and this Act shall not extend to persons punishable under the said Act, so far as regards offences for which such persons may be punished thereunder.

XVI. In the interpretation of this Act "property" shall be construed to include every thing included under the words "chattel, money, or valuable security," as used in the Act of the Parliament of this Province passed in the Session thereof holden in the fourth and fifth years of the Reign of Her present Majesty, chapter twenty-five; and in ease, of any "valuable security," the value of the share, interest or deposit to which the security may relate, or of the money due thereon, or secured thereby, and remaining unsatisfied, or of the goods or other valuable thing mentioned in the warrant or order, shall be deemed to be the value of such security.

Schedules.

Form (A.)

Conviction.

To wit: ' }

Be it remembered that on the _____ day of _____ in the year of Our Lord _____ at _____, A. B., being charged before me the undersigned _____, of the said City, and consenting to my deciding upon the charge summarily, is convicted before me, for that he the said A. B., &c., (stating the offence, and the time and place when and where committed); and I adjudge the said A. B., for his said offence, to be imprisoned in the _____ (and there kept to hard labour) for the space of _____

Given under my hand and seal, the day and year first above mentioned, at _____ aforesaid.

J. S. [L. S.]

Form (B.)

Certificate of Dismissal.

To wit: ' }
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I, the undersigned, _____, of the City of _____, certify that on the _____ day of _____ in the year of Our Lord _____, at _____ aforesaid, A. B., being charged before me and consenting to my deciding upon the charge summarily, for that he the said A. B., &c., (stating the offence charged, and the time and place when and where alleged to have been committed,) I did, having summarily adjudicated thereon, dismiss the said charge.

Given under my hand and seal, this _____ day of _____, at _____ aforesaid.

J. S. [L. S.]

Form (C.)

Conviction Upon a Plea of Guilty.

To wit: ' }
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Be it remembered that on the _____ day of _____, in the year of Our Lord _____, at _____ A. B., being charged before me the undersigned _____, of the said City, for that he the said A. B., &c., (stating the offence, and the time and place when and where committed), and pleading guilty to such charge, he is thereupon convicted before me of the said offence; and I adjudge him the said A. B., for his said offence, to be imprisoned in the _____ (and there kept to hard labour) for the space of _____

Given under my hand and seal, the day and year first above mentioned, at _____ aforesaid.

J. S. [L. S.]