

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

20 Victoria – Chapter 29

An Act for the more speedy trial and punishment of juvenile offenders. Assented to 10th June, 1857.

Whereas in order in certain cases to ensure the more speedy trial of juvenile offenders, and to avoid the evils of their long imprisonment previously to trial, it is expedient to allow of such offenders being proceeded against in a more summary manner than is now by law provided, and to give further power to bail them: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

I. Every person who shall, subsequently to the passing of this Act, be charged with having committed or having attempted to commit, or with having been an aider, abettor, counsellor or procurer in the commission of, any offence which now is or hereafter shall or may be by law deemed or declared to be simple larceny, or punishable as simple larceny, and whose age at the period of the commission or attempted commission of such offence shall not, in the opinion of the Justices before whom he or she shall be brought or appear as hereinafter mentioned, exceed the age of sixteen years, shall, upon conviction thereof, upon his own confession or upon proof before two or more Justices of the Peace for any District in Lower Canada, or City, County, or Union of Counties in Upper Canada, in open Court, be committed to the Common Gaol or House of Correction within the jurisdiction of such Justices, there to be imprisoned with or without hard labor, for any term not exceeding three calendar months, or, in the discretion of such Justices shall forfeit and pay such sum, not exceeding five pounds, as the said Justices shall adjudge: Provided always, that if such Justices, upon the hearing of any such case, shall deem the offence not to be proved, or that it is not expedient to inflict any punishment, they shall dismiss the party charged on finding surety or sureties for his future good behaviour, or without such sureties, and then make out and deliver to the party charged, a certificate under the hands of such Justices stating the fact of such dismissal; and such certificate shall and may be in the form or to the effect, set forth in the Schedule hereunto annexed in that behalf: Provided also, that if such Justices shall be of opinion, before the person charged shall have made his or her defence, that the charge is from any circumstance a fit subject for prosecution by indictment, or if the person charged shall, upon being called upon to answer the charge, object to the case being summarily disposed of under the provisions of this Act, such Justices shall, instead of summarily adjudicating thereupon, deal with the case in all respects as if this Act had not been passed.

II. The Justices before whom any person shall be charged and proceeded against under this Act, before such person shall be asked whether he or she has any cause to shew why he or she should not be convicted, shall say to the person so charged these words, or words to the like effect:

“We shall have to hear what you wish to say in answer to the charge against you; but if you wish to be tried by a Jury, you must object now to our deciding upon it at once.”

And if such person, or a parent or guardian of such person, shall then object, such person shall be dealt with as if this Act had not been passed.

III. Any two or more Justices of the Peace, for any District in Lower Canada, or for any City, County or Union of Counties in Upper Canada, sitting in open Court, before whom any such person, as aforesaid, charged with any offence made punishable under this Act, shall be brought or appear, is hereby authorized to hear and determine the case under the provisions of this Act; Provided always, that the Recorder or Inspector and Superintendent of Police, of either of the Cities of Quebec or Montreal, the Sheriff of any District in Lower Canada, other than the Districts of Quebec and Montreal, any Deputy Sheriff in the District of Gaspé, any Judge of a County Court in Upper Canada, being a Justice of the Peace, any Recorder of a City in Upper Canada, being a Justice of the Peace, any Police Magistrate in Upper Canada, sitting in open Court, and any Stipendiary Magistrate in Upper Canada, sitting in open Court, and having by law the power to do acts usually required to be done by two or more Justices of the Peace, shall and may, within their respective jurisdictions, hear and determine every charge under this Act, and exercise all the powers herein contained, in like manner and as fully and effectually as two or more Justices of the Peace can or may do by virtue of the provisions in this Act contained.

IV. The Sheriffs of such Districts as aforesaid respectively, and any Deputy Sheriff in the District of Gaspé, when sitting or acting under the provisions of this Act, shall be assisted, attended and obeyed by the Clerks of the Peace, Bailiffs, Constables and other Officers of such Districts respectively, in the same manner as Justices of the Peace in and for the said Districts respectively would, be assisted, attended and obeyed by them respectively, under the same or similar circumstances; and the Clerk of the Peace of each such District, shall be and act as the Clerk of the Court of the Sheriff of such District, under the provisions of this Act.

V. Every person who shall have obtained such certificate of dismissal as aforesaid, and every person who shall have been convicted under the authority of this Act, shall be released from all further or other proceedings for the same cause.

VI. Where any person whose age is alleged not to exceed sixteen years shall be charged with any such offence, on the oath of a credible witness before any Justice of the Peace, such Justice may issue his summons or warrant to summon or to apprehend the person so charged to appear before any two Justices of the Peace, at a time and place to be named in such summons or warrant.

VII. Any Justice or Justices of the Peace, if he or they shall think fit, may¹ remand for further examination or for trial, or suffer to go at large upon his or her finding sufficient surety or sureties, any such person as aforesaid charged before him or them with any such offence as aforesaid; and every such surety shall be bound by recognizance, to be conditioned for the appearance of such person before the same or some other Justice or Justices of the Peace for further examination, or for trial before two or more Justices of the Peace as aforesaid, or for trial at some Superior Criminal Court, as the case may be; and every such recognizance may be enlarged from time to time by any such Justice or Justices to such further time as he or they shall appoint; and every such recognizance which shall not be enlarged shall be discharged without fee or reward when the party shall have appeared according to the condition thereof.

VIII. Every fine imposed under the authority of this Act shall be paid to the Justices who shall have imposed the same, or to the Clerk of the Recorder's Court, the Clerk of the County Court or The Clerk of the Peace, as the case may be, and shall be by him or them paid over to the County Treasurer for County purposes, if the same have been imposed in Upper Canada, and if it have been imposed in any New District in Lower Canada constituted by any Act of this Session, to the Sheriff of such District as Treasurer of the Building and Jury Fund for such District, to form part of the said Fund, and if it have been imposed in any other District in Lower Canada, then to the Prothonolary of such District, to be by him applied, under the direction of the Governor in Council, towards the keeping in repair of the Court House in such District, or to be by him added to the moneys or fees collected by him, for the erection of a Court House or Gaol in such District, so long as such fees shall be collected to defray the cost of such erection.

IX. It shall be lawful for any Justice of the Peace by Summons to require the attendance of any person as a witness upon the hearing of any case before two Justices under the authority of this Act, at a time and place to be named in such summons; and such Justice may require and bind by recognizance all persons whom he may consider necessary to be examined touching the matter of such charge to attend at the time and place to be appointed by him, and then and there to give evidence upon the bearing of such charge; and in case any person so summoned or required or bound as aforesaid shall neglect or refuse to attend in pursuance of such summons or recognizance, then upon proof being first given of such person's having been duly summoned as hereinafter mentioned, or bound by recognizance as aforesaid, it shall be lawful for either of the Justices before whom any such person ought to have attended to issue a warrant to compel his appearance as a witness.

X. Every summons issued under the authority of this Act may be served by delivering a copy of the summons to the party, or by delivering a copy of the summons to some inmate at such party's usual place of abode, and every person so required by any writing under the hand or hands of any Justice or Justices to attend and give evidence as aforesaid, shall be deemed to have been duly summoned.

XI. The Justices before whom any person shall be summarily convicted of any such offence as hereinbefore mentioned, may cause the conviction to be drawn up in the form of words set forth in the schedule to this Act annexed, or in any other form of words to the same effect, which conviction shall be good and effectual to all intents and purposes.

XII. No such conviction shall be quashed for want of form, or be removed, by *certiorari* or otherwise, into any of Her Majesty's Superior Courts of Record; and no Warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same.

XIII. The Justices of the Peace before whom any person shall be convicted under the provisions of this Act shall forthwith thereafter transmit the conviction and recognizances to the Clerk of the Peace for the District in Lower Canada, or for the City, County or Union of Counties in Upper Canada, wherein the offence shall have been committed, there to be kept by the proper officer among the records of the Court of General Quarter Sessions of the Peace; and the said Clerk of the Peace shall transmit to the

Provincial Secretary a quarterly return of the names, offences and punishments mentioned in the convictions, with such other particulars as may from time to time be required.

XIV. No conviction under the authority of this Act shall be attended with any forfeiture, but whenever any person shall be deemed guilty under the provisions of this Act it shall be lawful for the presiding Justices to order restitution of the property in respect of which such offence shall have been committed, to the owner thereof or his representatives; and if such property shall not then be forthcoming, the same Justices, whether they award punishment or dismiss the complaint, may inquire into and ascertain the value thereof in money, and if they think proper, order payment of such sum of money to the true owner, by the person or persons convicted, either at one time or by instalments, at such periods as the Court may deem reasonable; and the party or parties so ordered to pay shall be liable to be sued for the same as a debt in any Court in which debts of the like amount may be by law recovered, with costs of suit, according to the practice of such Court.

XV. Whenever any Justices of the Peace shall adjudge any offender to forfeit and pay a pecuniary penalty under the authority of this Act, and such penalty shall not be forthwith paid, it shall be lawful for such Justices, if they shall deem it expedient, to appoint some future day for the payment of such penalty, and to order the offender to be detained in safe custody until the day so to be appointed, unless such offender shall give security to the satisfaction of such Justices for his or her appearance on such day; and such Justices are hereby empowered to take such security by way of recognizance or otherwise at their discretion; and if at the time so appointed such penalty shall not be paid, it shall be lawful for the same or any other Justices of the Peace, by Warrant under their hands and seals to commit the offender to the Common Gaol or House of Correction within their jurisdiction, there to remain for any time not exceeding three months, reckoned from the day of such adjudication; such imprisonment to cease on payment of the said penalty.

XVI. The Justices of the Peace before whom any person shall be prosecuted or tried for any offence cognizable under this Act, are hereby authorized and empowered, at their discretion, at the request of the prosecutor or of any other person who shall appear on recognizance or summons to prosecute or give evidence against any person accused of any such offence, to order payment to the prosecutor and witnesses for the prosecution of such sums of money as to them shall seem reasonable and sufficient to reimburse such prosecutor and witnesses for the expenses they shall have severally incurred in attending before them, and in otherwise carrying on such prosecution, and also to compensate them for their trouble and loss of time therein, and to order payment to the Constables and other Peace Officers for the apprehension and detention of any person or persons so charged; and although no conviction shall actually take place, it shall be lawful for the said Justices to order all or any of the payments aforesaid, when they shall be of opinion that the parties or any of them have acted *bonâ fide*; and the amount of expenses of attending before the examining Justices and the compensation for trouble and loss of time therein, and the allowances to the Constables and other Peace Officers for the apprehension and detention of the offender, and the allowances to be paid to the prosecutor, witnesses and constables for attending at the trial or examination of the offender, shall be ascertained by and certified under the hands of such Justices: Provided always that the amount of the costs, charges and expenses attending any such prosecution, to be allowed and paid) as aforesaid, shall not in any one case exceed the sum of forty shillings.

XVII. Every such order of payment to any prosecutor or other person, after the amount thereof shall have been certified by the proper Justices of the Peace as aforesaid, shall be forthwith made out and delivered by the said Justices or one of them, or by the Clerk of the Recorder's Court, Clerk of the County Court or Clerk of the Peace, as the case may be, unto such prosecutor or other person, upon such Clerk being paid for the same the sum of one shilling and no more, and shall be made upon the Officer to whom fines imposed under the authority, of this Act are hereby required to be paid over in the District, City, County or Union of Counties in which the offence shall have been committed, or shall be supposed to have been committed, who is hereby authorized and required, upon sight of every such order, forthwith to pay to the person named therein, or to any other person duly authorized to receive the same on his or her behalf, the money in such order mentioned, and shall be allowed the same in his accounts.

XVIII. For the protection of persons acting in the execution of this Act, all actions and prosecutions to be commenced against any person for any thing done in pursuance of this Act, shall be laid and tried in the District or Circuit in Lower Canada, or in the County or Union of Counties in Upper Canada where the fact was committed, and shall be commenced within three months after the fact committed, and not otherwise; and notice in writing of such action or prosecution and of the cause thereof, shall be given to the Defendant, one month at least before the commencement of the action or prosecution; and in any such action or prosecution, the Defendant may plead the general issue and give this Act and the special matter in evidence at any trial to be had thereupon; and no Plaintiff shall recover in any such action, if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into Court after such action brought by or on behalf of the Defendant and if a verdict shall pass for the Defendant, or the Plaintiff shall become non-suit, or discontinue any such action or prosecution after issue joined, or if, upon demurrer or otherwise, judgment shall be given against the Plaintiff, the Defendant shall recover his full costs and have the like remedy for the same as any Defendant hath by law in other cases.

Schedule of Forms

To which this Act refers.

Form of Certificate of Dismissal

To wit: , } We, _____, of _____ Her Majesty's Justices of the Peace for the
 } _____, of _____ (or 1, a _____, of the _____ of
_____, as the case may be) do hereby certify, that on the _____ day of _____ in the
year of Our Lord _____, at _____, in the said _____ of _____, IN. N. was
brought before us the said Justices (or me the said _____) charged with the following offence,
that is to say (here state briefly the particulars of the charge); and that we the said Justices (or I, the said
_____) thereupon dismissed the said charge.

Given under our hands (or my hand) this _____ day of _____

Form of Conviction.

To wit: , } Be it remembered that on the _____ day of _____, in the year of
 } Our Lord one thousand eight hundred and _____, at _____, in the
District _____, (County or United Counties, &c. as the case may be) A. O. is convicted before us J.
P. and J. R. two of Her Majesty's Justices of the Peace for the said District (or city, &c.) (or me S. J.
_____, of the _____ of _____, as the case may be) for that he the said A. O. did
(specify the offence and the time and place when and where the same was committed, as the case
may be, but without setting forth the evidence), and we the said J. P. and J. R. (or I the said S. J.)
adjudge the said A. O. for his said offence to be imprisoned in the _____ (or to be imprisoned in
the and there kept at hard labour for the space of _____) (or we (or I) adjudge the said A. O. for
his said offence to forfeit and pay _____) (here slate the penalty actually imposed), and in default
of immediate payment of the said sum, to be imprisoned in the _____ (or to be imprisoned in
the _____, and there kept to hard labour) for the space of _____, unless the said sum shall
be sooner paid.

Given under our hands and seals (or my hand and seal) the day and year first above mentioned.