



ANNO DECIMO ET UNDECIMO
VICTORIÆ REGINÆ.

CAP. XII.

An Act to amend the Laws relative to the appointment of Special Constables, and for the better preservation of the Peace.

[28th July, 1847.]

WHEREAS it is expedient to amend the laws relative to the appointment of Special Constables, and to make other provisions for the better preservation of the public peace in that part of this Province formerly Upper Canada: Be it therefore enacted by the Queen's Most excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That in all cases where it shall be made to appear to any two or more Justices of the Peace of any District, City or Town in this Province, upon the oath of any credible witness, that any tumult, riot or felony has taken place or is continuing, or may be reasonably apprehended in any Parish, Township, Town or place situate within the limits for which the said respective Justices usually act, and such Justices shall be of opinion that the ordinary officers appointed for preserving the peace are not sufficient for the preservation of the peace and for the protection of the inhabitants and the security of the property in any such Parish, Township, Town or place as aforesaid, then and in every such case such Justices or any two or more Justices acting for the same limits are hereby authorized to nominate and appoint, by precept in writing under their hands, so many as they shall think fit of the householders or other persons (not legally exempt from serving the office of Constable) residing in such Parish, Township, Town or place as aforesaid, or in the neighbourhood thereof, to act as Special Constables for such time and in such manner as to the said Justices respectively shall seem fit and necessary, for the preservation of the public peace and for the protection of the inhabitants and the security of the property in such Parish, Township, Town or place; and the Justices of Peace who shall appoint any Special Constables by virtue of this Act, or any one of them, or any other Justice of the Peace acting for the same limit, are and is hereby authorized to administer to any person so appointed the following Oath, that is to say:

Preamble:

Any two or more Justices of the Peace empowered to appoint Special Constables in certain cases of apprehension of riot, felony, &c.

Who may be appointed.

Such Justices may administer an oath of office to the persons so appointed.

" I, A. B., do swear that I will well and truly serve our Sovereign Lady the Queen
 " in the office of Special Constable for the _____ of _____, without
 " favour

Form of the oath.

“favour or affection, malice, or ill will ; and that I will to the best of my power cause the peace to be kept and preserved, and will prevent all offences against the persons and properties of Her Majesty’s subjects ; and that while I continue to hold the said office, I will to the best of my skill and knowledge discharge all the duties thereof faithfully according to law : So help me God.”

Proviso :
Notice of such
appointment
to be sent to
the Provincial
Secretary.

Provided always, that whenever it shall be deemed necessary to nominate and appoint such Special Constables as aforesaid, notice of such nomination and appointment, and of the circumstances which have rendered such nomination and appointment expedient shall be forthwith transmitted by the Justices making such nomination and appointment, to the Secretary of the Province.

Justices may
make regula-
tions touch-
ing such Special
Constables.

II. And be it enacted, That the Justices of the Peace who shall have appointed any Special Constables under this Act, or any two of them, or the Justices acting for the limit within which such Special Constables shall have been called out, at a Special Session of such last-mentioned Justices, or the major part of such last-mentioned Justices at such Special Session, shall have power to make such orders and regulations as may, from time to time, be necessary and expedient for rendering such Special Constables more efficient for the preservation of the public peace, and shall also have power to remove any such Special Constable from his office for any misconduct or neglect of duty therein.

And may re-
move any of
them.

Powers of
such Special
Constables,
and local ex-
tent of such
powers.

III. And be it enacted, That every Special Constable appointed under this Act shall, not only within the Parish, Township, Town or place for which he shall have been appointed, but also throughout the entire jurisdiction of the Justices so appointing him, have, exercise and enjoy all such powers, authorities, advantages and immunities, and be liable to all such duties and responsibilities, as any Constable duly appointed now has by virtue of any law or statute whatsoever.

Such Special
Constables
may act in an
adjoining Dis-
trict in certain
cases, and
upon a cer-
tain order.

IV. And be it enacted, That where any Special Constables appointed under this Act shall be serving within any District, and two or more Justices of the Peace of any adjoining district shall make it appear to the satisfaction of any two or more Justices of the Peace acting for the limits within which such Special Constables are serving, that any extraordinary circumstances exist which render it expedient that the said Special Constables should act in such adjoining District, then and in every such case the said last mentioned Justices are hereby authorized (if they shall think fit) to order all or any of the said Special Constables to act in such adjoining District, in such manner as to the said last mentioned Justices shall seem meet ; and every such Special Constable, during the time that he shall so act in such adjoining District, shall have, exercise and enjoy all such powers, authorities, advantages and immunities, and be liable to all such duties and responsibilities, as if he were acting within the Parish, Township, Town or place for which he was originally appointed.

Their powers
in such adjoining
District.

Penalty on
persons ap-
pointed and
refusing to
take the oath.

V. And be it enacted, That if any person being appointed a Special Constable as aforesaid, shall refuse to take the oath hereinbefore mentioned when thereunto required by the Justices of the Peace so appointing him, or by any two of them, or by any other two Justices of the Peace acting for the same limits, he shall be liable to be convicted thereof forthwith before the said Justices so requiring him, and to forfeit and pay such sum of money not exceeding five pounds as to the said Justices so requiring him shall seem

seem meet; and if any person being appointed a Special Constable as aforesaid shall neglect or refuse to appear at the time and place for which he shall be summoned for the purpose of taking the said oath, he shall be liable to be convicted thereof before the Justices so appointing him or any two of them, or before any other two Justices of the Peace acting for the same limits, and to forfeit and pay such sum of money not exceeding five pounds as to the convicting Justices shall seem meet, unless such person shall prove to the satisfaction of the said Justices that he was prevented by sickness or such other unavoidable accidents as shall in the judgment of the said Justices be a sufficient excuse.

Or to appear at the place appointed for taking such oath.

Sufficient excuse may be allowed.

VI. And be it enacted, That if any person being appointed a Special Constable as aforesaid, and being called upon to serve, shall neglect or refuse to serve as such Special Constable, or to obey such lawful orders or directions as may be given to him for the performance of the duties of his office, every person so offending shall, on conviction thereof before any two Justices of the Peace, forfeit and pay for every such neglect or refusal such sum of money not exceeding five pounds, as to the said Justices shall seem meet, unless such person shall prove to the satisfaction of the said Justices that he was prevented by sickness or such other unavoidable accident as shall in the judgment of the said Justices be a sufficient excuse.

Penalty for refusing to act, or to obey orders.

Sufficient excuse may be allowed.

VII. And be it enacted, That the Justices who shall have appointed any Special Constables under this Act, or the Justices acting for the limits within which such Special Constables shall have been called out, at a Special Session to be held for that purpose, or the major part of such last mentioned Justices at such Special Session, are hereby empowered to suspend or determine the service of all or any of the Special Constables so called out as to the said Justices respectively shall seem meet; and notice of such suspension or determination of the services of all or any of the said Special Constables shall be forthwith transmitted by such respective Justices to the Secretary of the Province.

Justice may suspend or determine the services of Special Constables.

Notice to be sent to the Provincial Secretary.

VIII. And be it enacted, That every such Special Constable shall, within one week after the expiration of his office, or after he shall cease to hold or exercise the same pursuant to this Act, deliver over to his successor (if any such shall have been appointed, or otherwise to such person and at such time and place as may be directed by any Justice of the Peace acting for the limits within which such Special Constable may have been called out) every staff, weapon and other article which shall have been provided for such Special Constable under this Act; and if any such Special Constable shall omit or refuse so to do, he shall on conviction thereof before two Justices of the Peace forfeit and pay for such offence such sum of money not exceeding two pounds as to the convicting Justices shall seem meet.

Special Constables to deliver up their staves &c. when discharged.

Penalty for refusal or neglect.

IX. And be it enacted, That if any person shall assault or resist any Constable appointed by virtue of this Act while in the execution of his office, or shall promote or encourage any other person so to do, every such person shall, on conviction thereof before two Justices of the Peace, forfeit and pay for such offence any sum not exceeding ten pounds, or shall be liable to such other punishment upon conviction on any indictment or information for such offence, as any persons are by law liable to for assaulting any Constable in the execution of the duties of his office.

Punishment of persons assaulting Special Constables or encouraging others to do so.

Special Constables may be allowed a certain sum *per diem* for their services.

To be paid by the Treasurer of the Municipality.

X. And be it enacted, That the Justices of the Peace acting for the limits within which such Special Constables shall have been called out to serve, at a Special Session to be held for that purpose, or the major part of the Justices at such Special Session, are hereby empowered to order from time to time such reasonable allowances for their trouble, loss of time and expenses (not however to exceed five shillings per diem) to be paid to such Special Constables who shall so have served or be then serving, as to such Justices or to such major part of them shall seem proper; and the Justices so ordering shall make every order for the payment of such allowances and expenses upon the Treasurer of the District or other Municipal division within which such Special Constables shall have been called out to serve, who is hereby required to pay the same out of any monies in his hands at the time; and the said Treasurer shall be allowed the same in his accounts, and the sum shall be provided for by the Council of the District or other Municipality wherein the expense shall arise.

Special Sessions may be adjourned.

They shall be held legal until the contrary be proved.

XI. And be it enacted, That the Justices of the Peace assembled at any Special Session for any of the purposes mentioned in this Act, shall have power to adjourn the same from time to time as they shall think proper; and that every Special Session which shall have been actually holden for any of the purposes mentioned in this Act, shall be deemed and taken to have been legally holden until the contrary be proved,

Limitation of prosecutions under this Act. Application of penalties. Inhabitants of Municipalities to be competent witnesses.

XII. And be it enacted, That the prosecution for every offence punishable upon summary conviction by virtue of this Act, shall be commenced within two calendar months after the commission of the offence; and that every penalty or forfeiture for any offence against this Act shall be paid to the Treasurer of the District or other Municipal Division within which the offence shall have been committed; and no inhabitant of any such District or other Municipal Division shall, by reason of the payment of such forfeiture or penalty to the Treasurer of such District or other Municipal Division, be deemed an incompetent witness in proof of any offence against this Act.

How penalties may be levied if not paid within the time to be appointed.

Imprisonment in default of payment.

XIII. And be it enacted, That the Justices of the Peace by whom any person shall be summarily convicted and adjudged to pay any sum of money for any offence against this Act, may adjudge that such person shall pay the same either immediately or within such period as the said Justice shall think fit; and in case such sum of money shall not be paid at the time so appointed, the same shall be levied by distress and sale of the goods and chattels of the offender, together with the reasonable charge of such distress; and for want of sufficient distress such offender shall be imprisoned in the Common Gaol for any term not exceeding one calendar month when the fine to be paid shall not exceed five pounds, and for any term not exceeding two calendar months in any other case; the imprisonment to cease in every case upon payment of the sum due.

A form of conviction appointed.

The form.

XIV. And be it enacted, That the Justices of the Peace before whom any person shall be summarily convicted of any offence against this Act, may cause the conviction to be drawn up in the following form of words or to the like effect, that is to say:

To Wit: } " Be it remembered, that on the _____ day of _____ in the _____ }
" year of Our Lord _____ in the _____ of _____ in the Dis-
" trict of _____, J. N. is convicted before us A. B. and C. D., two of Her
" Majesty's

“ Majesty’s Justices of the Peace for the said District of _____ for that he the
 “ said J. N. did (*here specify the offence, and the time and place, when and where the*
 “ *same was committed, as the case may be*), and we do adjudge that the said J. N. shall
 “ for the said offence forfeit the sum of _____ and shall pay the same immediately
 “ (*or shall pay the same on or before the* _____ *day of* _____) to the Treasurer
 “ of the _____

“ Given under our hands the day and year first above mentioned.

“ A. B.
 “ C. D.”

XV. And be it enacted, That no conviction for any offence against this Act 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 that no Warrant of Commitment shall be held void by reason of any defect therein, provided it be therein alleged that is is founded on a conviction, and there be a good and valid conviction to sustain the same; and that when any distress shall be made for levying any monies by virtue of this Act, the distress itself shall not be deemed unlawful, nor the party making the same, be deemed a trespasser on account of any defect or want of form in the summons, conviction, warrant, distress, or other proceedings relating thereto, nor shall the party distraining be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him; but the person aggrieved by such irregularity, may secure full satisfaction for the special damage, if any, in an action upon the case.

Convictions not to be removed or declared void for want of form. Nor any Warrant of commitment. Similar provisions as to distress, and proceedings under it.

XVI. And be it enacted, for the protection of persons acting in the execution of this Act, That all actions and prosecutions to be commenced against any person for anything done in pursuance of this Act, shall be laid and tried in the District where the fact was committed, and shall be commenced within six calendar months after the fact committed, and not otherwise; and notice in writing of such cause of action shall be given to the Defendant one calendar month, at least, before the commencement of the action: 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 though a verdict shall be given for the Plaintiff in any such action, such Plaintiff shall not have costs against the Defendant, unless the Judge before whom the trial is, shall certify his approbation of the action, and of the verdict obtained thereupon.

Provisions for the protection of persons acting under this Act. Notice of action. Amends. No costs unless on certificate of the Judge.