

Laws of Her Majesty's Province of United Canada, passed in the year 1851. York: Stewart Derbishire and George Desbarts, 1851.

14 & 15 Victoria – Chapter 83

An Act to authorize the confinement of Lunatics in cases where there being at large may be dangerous to the public. 30th August, 1851.

Whereas it is expedient that provision should be made for the confinement and maintenance of Lunatics and other persons of unsound mind, charged with or convicted of offences; or whom, from the character of their malady, it may be dangerous to permit to go abroad: 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 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 given in evidence upon the trial of any person charged with any offence, whether the same be treason, felony or misdemeanor, that such person was insane at the time of the commission of such offence, and such person shall be acquitted, the Jury shall be required to find specially whether such person was insane at the time of the commission of such offence, and to declare whether such person was acquitted by them on account of such insanity; and if they shall find that such person was insane at the time of committing such offence, the Court before whom such trial shall be had, shall order such person to be kept in strict custody in such places and in such manner as to the Court shall seem fit, until Her Majesty's pleasure shall be known; and it shall thereupon be lawful for the Governor of this Province to give such order for his safe custody of such person during Her Majesty's pleasure, in such place and in such manner as to such Governor shall seem fit; and in all cases where any person before the passing of this Act has been acquitted of any such offence on the ground of insanity at the time of the commission thereof, and has been detained in custody as a dangerous person by order of the Court before whom such person has been tried, and still remains in custody, it shall be lawful for the Governor of this Province to give the like order for the safe custody of such person during the pleasure of Her Majesty as such Governor is hereby enabled to give in the cases of persons who shall hereafter be acquitted on the ground of insanity.

II. And be it enacted, That if any person indicted for any offence shall be insane, and shall upon arraignment be found so to be by a jury lawfully empannelled for that purpose, so that such person cannot be tried upon such indictment, or if, upon the trial of any person so indicted, such person shall appear to the jury charged with such indictment to be insane, it shall be lawful for the Court before whom any such person shall be brought to be arraigned or tried as aforesaid, to direct such finding to be recorded, and thereupon to order such person to be kept in strict custody until Her Majesty's pleasure shall be known; and if any person charged with any offence shall be brought before any Court to be discharged for want of prosecution, and such person shall appear to be insane, it shall be lawful for such Court to order a jury to be empannelled to try the sanity of such person; and if the jury so empannelled shall find such person to be insane, it shall be lawful

for such Court to order such person to be kept in strict custody in such place and in such manner as to such Court shall seem fit, until Her Majesty's pleasure shall be known; and in all cases of insanity so found, it shall be lawful for the Governor of this Province to give such order for the safe custody of such person so found to be insane, during Her Majesty's pleasure, in such place and in such manner as to him shall seem fit.

III. And for the better prevention of crimes being committed by "persons insane," Be it enacted, That if any person shall be discovered and apprehended under circumstances that denote a derangement of mind, and a purpose of committing some crime, for which, if committed, such person would be liable to be indicted, and any of Her Majesty's Justices of the Peace before whom such person may be brought, shall think fit to issue a Warrant for committing him or her as a dangerous person suspected to be insane, such cause of commitment being plainly expressed in the Warrant, the person so committed shall not be bailed except by two Justices of the Peace, one whereof shall be the Justice who has issued such Warrant, or by the Court of General Quarter Sessions, or in Lower Canada by one of the Judges of Her Majesty's Court of Queen's Bench, or one of the Judges of Her Majesty's Superior Court for that Section of the Province, or in Upper Canada by one of the Judges of Her Majesty's Superior Courts of Law or Equity at Toronto.

IV. And be it enacted, That if any person, while imprisoned in any prison, or other place of confinement, under any sentence of death, transportation, or imprisonment, or under a charge of any offence, or for not finding bail for good behaviour or to keep the peace, or to answer a criminal charge, or in consequence of any summary conviction or order by any Justice or Justices of the Peace, or under any other than Civil Process, shall appear to be insane, it shall be lawful for any two Justices of the Peace of the District, County, City, Town or place where such person is imprisoned, of whom the Chairman of the Quarter Sessions for the County, if in Upper Canada, or a Circuit Judge if in Lower Canada, shall be one, to inquire, with the aid of two Physicians or Surgeons, as to the insanity of such person; and if it shall be duly certified by such Justice and such Physicians or Surgeons that such person is insane, it shall be lawful for the Governor of this Province, upon receipt of such Certificate through the Provincial Secretary, to direct by Warrant under his Hand and Privy Seal, that such person shall be removed to such public Lunatic Asylum, or other proper receptacle for insane persons, as he may judge proper and appoint on that behalf; and every person so removed under this Act, or already removed, or in custody, by authority of the Governor of this Province, shall remain under confinement in such Asylum or other proper receptacle as aforesaid, or in any other public Lunatic Asylum, or other proper receptacle to which such person may be removed, or in which he or she may be in custody by virtue of any like order, until it shall be duly certified to the Governor of this Province through the Provincial Secretary, by two Physicians or Surgeons, that such person has become of sound mind, whereupon the Governor of this Province is hereby authorized, if such person shall still remain subject to be continued in custody, to issue his Warrant under his Privy Seal to the Keeper or other person having the care of any such public Asylum or receptacle as aforesaid, directing that such person shall be removed back from thence to the Prison or other place of confinement from whence he or she shall have been taken, or if the period of imprisonment or custody of such person shall have expired, that he or she shall be discharged.

V. And whereas there are sometimes persons who, by lunacy or otherwise, are furiously mad, or so disordered in their senses as to endanger their own persons or property, or the persons or property of others, if permitted to go at large; Be it therefore enacted, That it shall and may be lawful for any two or more Justices of the Peace, residing in the City, Town, Village, Township, Parish or place where such lunatic or mad person shall be found, of whom the Chairman of the Quarter Sessions for the County if in Upper Canada, or a Circuit Judge if in Lower Canada, shall be one, by Warrant under their Hands and Seals, directed to the Constables of any such City, Town, Village, Township, Parish or place, or some of them, to cause such person to be apprehended and kept safely locked up in some secure place within the District or County where such City, Town, Village, Township, Parish or place shall lie, as such Justices shall under their Hands and1 Seals direct and appoint; if the last legal settlement of such person shall be in any Parish, Town or place within Such District or County, and if such settlement shall not be there, then such person shall be sent to the place of his or her last legal settlement, and shall be locked up by Warrant of two Justices of the District or County to which such person is so sent, of whom the Chairman of the Quarter Sessions for such last mentioned County if in Upper Canada, or a Circuit Judge if in Lower Canada, shall be one, in manner aforesaid; and the reasonable charges, of removing, and of keeping, maintaining and curing of such person during such restraint, (which shall be for and during such time only as such lunacy or madness shall continue) shall be satisfied and paid (such charges being proved upon oath), by order of two or more Justices of the Peace, directing the, Treasurer of the Municipal Corporation of the City, Town, Village, Township, Parish or place where any goods, chattels, lands or tenements of such person shall be, to seize and sell so much of the goods and chattels, or receive so much of the annual rents of the lands and tenements as is necessary to pay the same, and to account for what is so seized, sold or received, to the next Quarter Sessions; but if such person hath not an estate to pay and satisfy the same, over and above what shall be sufficient to maintain his or her family, then such charges shall be satisfied and paid by the City, Town, Village, Township, Parish or place to which such person belongs, by order of two Justices, directed to the Treasurer of the Municipal Corporation thereof, for that purpose.

VI. Provided always, and be it enacted, That the next preceding section of this Act, or any thing therein contained, shall not extend or be construed to extend to restrain or abridge the prerogative of the Queen, or the power or authority of the Court of Chancery in Upper Canada, or the Superior and Circuit Courts in Lower Canada, or of any Master or Judge thereof, or of any Committee or Curator appointed by or under the authority of the same, touching or concerning such last mentioned lunatics, or to restrain or prevent any such Committee or Curator, or any friend or relation of such last mentioned lunatics, from taking them under their own care and protection; any thing in the said section of this Act contained to the contrary notwithstanding.

VII. And whereas it is expedient that provision should be made for the due maintenance and care of persons directed to be kept in custody under the first and second sections of this Act, while they shall be so kept in custody, Be it enacted, That in all cases where any person shall, by virtue of the said first and second sections of this Act, be kept in such custody as a lunatic or insane person by order of any Court, or by order of the Governor of this Province subsequent thereto, it shall and may be lawful for any two Justices of the Peace of the District or County where such person shall be so kept in custody, of whom the Chairman of the Quarter Sessions for the County, if in Upper

Canada, or a Judge of the Circuit Court, if in Lower Canada, shall be one, to inquire into and ascertain by the best legal evidence that can be procured, under the circumstances of personal legal disability, of such lunatic, the place of the last legal settlement, and the circumstances of such person; and if it shall not appear that he or she is possessed of sufficient property which can be applied to his or her maintenance, to make an order upon such City, Town, Village, Township, Parish or place where they shall adjudge him or her to be legally settled, to pay such weekly sum for his or her maintenance in such place of custody as such Court or the Governor of this Province shall appoint, as shall from time to time be fixed upon and directed in writing, by the Governor of this Province, through the Provincial Secretary; and that where such place of settlement cannot be ascertained, such allowance shall be paid by the Treasurer of the Municipal Corporation of the City, Town, Village, Township, Parish or place where such person shall have been apprehended; but if it shall appear that such person is possessed of such sufficient property as aforesaid, then such Justices shall order and direct the same to be applied to pay and satisfy the expense of the maintenance of such person, in the manner directed, in the case of lunatics and mad persons, by the fifth section of this Act: Provided always, that the Municipal Corporation of the City, Town, Village, Township, Parish or place in which the said Justices shall adjudge any lunatic to be legally settled, may appeal against such order to the General Quarter Sessions of the Peace, to be holden for the District or County where such order shall be made, in like manner and under like restrictions and regulations as against any other judgment order or decision of a Justice or Justices, giving reasonable notice thereof to the Clerk of the Peace of such District or County, who shall be respondent in such appeal, which said appeal the Justices of the Peace, assembled at the said General Quarter Sessions, are hereby Authorized and empowered to hear and determine, in the same manlier as other appeals to Courts of Quarter Sessions are now heard and determined in Upper or in Lower Canada respectively.

VIII. And be it enacted, That every person of full age who, after the passing of this Act, shall be a resident and inhabitant of any City, Town, Village, Township, Parish or place for one year, and the members of his family who shall not have gained a separate settlement, shall, for the purposes of this Act, be deemed settled in such City, Town, Village, Township or place; and that a minor may be emancipated from his or her father, and may gain a settlement in one or more of the following ways, viz: First, If a female, by being married, and living for one year with her husband, in which case the husband's settlement shall determine that of the wife. Second, if a male, by being married, and residing for one year separately from the family of his father. Third, By being bound as an apprentice, and serving one year as such under indentures of apprenticeship. Fourth, By being hired and actually serving for one year for wages to be paid to such minor; and that a woman of full age, by marrying, shall acquire the settlement of her husband, if he have any; and until a person shall have gained a Settlement in his own right, his settlement shall be deemed that of his father or mother; but no child born in any Hospital, Lunatic or other Asylum, Gaol, or House of Correction, or other like place of reception or involuntary residence, and no child born while its mother is restrained of her liberty in virtue of this Act, shall gain any settlement, merely by reason of the place of such birth; nor shall any residence of any person as a lunatic in any such place as aforesaid of reception or involuntary residence, operate to give such lunatic a settlement in the City, Town, Village, Township, Parish or place where such actual residence may be had.