

would arise from extending the advantages of the Institution to the whole Province caused an Act to be passed to authorize its sale and transfer to the Government.

4th. That consequently under and by virtue of the Act of Assembly of New Brunswick, fourth Victoria, chapter forty-four, from the said building so erected by the said Justices with the tract of land and premises aforesaid were surrendered to Her Majesty the Queen, and then became and were used and known as the Provincial House of Correction, and subsequently as the Provincial Penitentiary of New Brunswick.

5th. That part of the terms of transfer made and agreed upon by and between the said Justices and the Province of New Brunswick was the reservation to the said Justices of the right in perpetuity to commit to the said House of Correction or Penitentiary all vagabonds, suspicious and disorderly persons within the said City and County, and the further right in common with all the other counties of the Province, to cause all persons sentenced to imprisonment with hard labor and confined in the County Gaol to be removed therefrom to the said House of Correction or Penitentiary is by reference to the fourteenth and fifteenth sections of the said recited Act, here following will more fully appear, that is to say:—

“14th. And be it further enacted that it shall and may be lawful for the Mayor or Recorder and the Aldermen of the said City or either of them, and Her Majesty's Justices of the Peace for the said City and County for the time being, or either of them, to take up and arrest, or by warrant to order to be taken up and arrested, all and any rogues, vagabonds, stragglers, idle, suspicious or disorderly persons within the said City and County, and to order such rogues, vagabonds, stragglers, idle, suspicious or disorderly persons to be committed to the said House of Correction, there to remain and be kept to hard labor for any time not exceeding forty days.

“15. And be it further enacted that it shall and may be lawful for the Justices of the Peace in and for any County or City and County of this Province in General Sessions, or in any special Sessions to be for that purpose held, to cause all prisoners sentenced to imprisonment with hard labour, and all vagrants, rogues, vagabonds, stragglers, and other idle, suspicious, or disorderly persons at such time in confinement in the Common Gaol or Workhouse of the said County, or City and County, under and by virtue of any conviction, to be removed from such Common Gaol or Workhouse, and to be carried, conveyed and taken to the said House of Correction, and to make such necessary orders and regulations for the carrying and taking, together with the necessary costs and charges of the same, as the said Justices may seem fit; and the keeper of the said House of Correction shall forthwith receive such person or persons into his custody; and the said person or persons when so removed and placed in the said House of Correction shall remain there and be kept to hard labor until the several and respective terms of imprisonment shall expire.”

6th. That up to the time of the Confederation of the said Province the right thus reserved and secured to the said City and County were never questioned; but, on the contrary, were fully recognized and maintained in the year one thousand eight hundred and fifty-four by the Government and Legislature of the Province, as will appear by reference to the Revised Statutes passed in that year, chapter ninety-one, sections 12, 13 and 14.

7th. That under and by virtue of the British North America Act, of the year one thousand eight hundred and sixty-seven, and a subsequent Act of the Dominion Parliament, namely, 21st Victoria, chapter 75, the institution and premises above mentioned passed over to the Dominion of Canada, and inadvertently, as your memorialists conceive, without any reference to the vested rights of the said Justices and of the said City and County of St. John therein.

8th. That in 1869, by 32nd and 33rd Victoria, chapter 29, it was enacted that imprisonment for any term short of two years should be in a Common Gaol or some prison or place other than the penitentiary, but by section 96 of the same chapter the Provinces of Nova Scotia and New Brunswick were exempted from the operation of this Statute.