

UPPER
CANADA.

Citizens or subjects of foreign countries offending against this Act, may be tried before court of oyer and terminer.

like manner as any citizen or subject of a foreign state or country at peace with Her Majesty, her heirs or successors, is liable under this Act to be tried and punished.

III. And be it further enacted by the authority aforesaid, that the citizen or subject of any foreign state or country offending against the provisions of this Act shall be deemed guilty of felony, and may notwithstanding the provisions hereinbefore contained, be prosecuted and tried before any court of oyer and terminer, and general gaol delivery in and for any district of this province, in the same manner as if the offence had been committed in such district, and upon conviction shall suffer death as in cases of felony.

CAP. IX.

No. 1093.

AN ACT to provide for the more speedy Attainder of Persons indicted for High Treason, who have fled from this Province, or remain concealed therein, to escape from Justice. (Passed 6 March 1838.)

Preamble.

Proceedings to be had against persons indicted for high treason, &c., against whom process shall have issued, and who may not be apprehended, and upon which the attainder of such persons shall be founded.

Proclamation to issue, calling on person indicted to surrender himself, and in default to be adjudged attainted of the crime charged in the indictment.

Justices of oyer and terminer to certify indictment and return of sheriff, that party has not been arrested into the Court of Queen's Bench.

Person against whom judgment of attainder shall have been entered, may surrender himself within three months, and upon proof that such person was prevented from surrendering himself, the Court of Queen's Bench may reverse the attainder and admit party to be tried.

WHEREAS a wicked and unnatural rebellion against Her Majesty hath been raised and carried on within this province; and whereas divers persons who were concerned in such rebellion have fled from this province, or remained concealed therein, in order to escape from justice; and whereas it is expedient and necessary to provide for the speedy attainder of such persons, in order to deter others from the like high crimes and offences: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, intituled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, intituled, 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province,'" and by the authority of the same, that from and after the passing of this Act, in case any indictment shall be found by a grand jury at and before any court of competent jurisdiction in this province, against any person or persons, for high treason, misprision of treason, or treasonable practices; and when the sheriff shall make return to any warrant or capias that may issue thereupon, that such persons, or any of them, is or are not to be found in his district, it shall and may be lawful for the Governor of this province, by and with the advice of the Executive Council, immediately upon the making of such return to issue a proclamation to be published not less than six weeks in the Upper Canada Gazette, calling upon and requiring the person or persons against whom any such indictment or indictments shall have been found, to surrender himself or themselves to the custody of the sheriff of the district within which the court before whom such indictment or indictments were found was held, by a day to be within the said proclamation named, such day not to be less than three calendar months from the first publication of such proclamation in the Gazette; and if such person or persons shall not by the day in such proclamation named, surrender themselves to the custody aforesaid, and submit to justice, then and in such case they and every of them, after the day in such proclamation named, shall stand and be adjudged attainted of the crime expressed and set forth in such indictment or indictments, and shall suffer and forfeit as a person attainted of such crime by the laws of the land ought to suffer and forfeit.

II. And be it further enacted by the authority aforesaid, that the justices of all and every court of oyer and terminer, and general gaol delivery, at which any such indictment shall be found as aforesaid, shall, upon the return of the sheriff that the person or persons named in such indictment is not to be found within the district of such sheriff, certify the said indictment, and the proceedings thereon, into the Court of Queen's Bench in this province; and it shall be the duty of every such sheriff, at the expiration of the term limited in such proclamation, to make a return to the said Court of Queen's Bench of the names of all and every such person or persons, who, being named in any such proclamation as aforesaid, shall not have surrendered themselves to the custody of the said sheriff, pursuant to the exigency of such proclamation, and the said Court of Queen's Bench shall, during the term in or before which such last-mentioned return shall be made, direct judgment of attainder against all and every such person or persons to be entered on record.

III. Provided always, and be it further enacted by the authority aforesaid, that if any person against whom any such judgment of attainder shall have been entered, shall, within three calendar months next after the day of entry of such judgment, surrender himself to the custody of the sheriff of the home district, and by the oath of two credible witnesses shall establish to the satisfaction of the Court of Queen's Bench, that such person was actually and *bonâ fide* prevented from surrendering himself pursuant to the exigency of such proclamation, by reason of absence beyond seas, sickness, or other inevitable necessity, then and in such case it shall and may be lawful for the said Court of Queen's Bench to reverse the said judgment of attainder, and to transmit the indictment or indictments to any court of oyer and terminer to be held in and for the district wherein such indictment or indictments was or were found; and such person so surrendering shall be tried for the offence charged in such indictment, in like manner as if no such judgment of attainder had been entered.