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No. 74.

4th Session, 3rd Parliament, 14 Victoria, 1851.

BILL.

An Act to amend and consolidate the
Laws affording protection to Magis-
trates and others in the performance
of public duties.

Received and read a first time, Monday, 5th
June, 1851.

Second reading, Thursday, 12th June, 1851.

Mr. MORRISON.

TORONTO : PRINTED BY LOVELL AND GIBSON.

BILL.

An Act to amend and consolidate the Laws affording protection to Magistrates and others in the performance of public duties.

WHEREAS there are divers Acts of Parliament in force in Upper Canada, both public, local and personal, whereby certain protections and privileges are afforded to Magistrates and others, and whereas the said Acts are not of an uniform character, and it is desirable that many of the provisions of such Acts should be altered and amended, and the whole reduced into one Act.: Be it therefore enacted, &c.,

Preamble.

That so much of any such Act or Acts now in force in Upper Canada, whether public, local or personal, as confers any privilege, either as to notice or limitation of action, or as to amount of costs, or as to pleading the general issue and giving the special matter in evidence, or as to the *venue* of the action, or as to tender of amends or payment of money into Court, upon any Magistrate, public officer; or other persons, for any act done, either by virtue of his office, or under the provisions of any such Act or Acts, be and the same is hereby repealed, except as to any action, suit or proceeding which has been commenced or prosecuted before the passing of this Act.

So much of any Act as confers certain privileges on any Magistrate, &c., repealed.

II. And be it enacted, That no writ shall be sued out against any Justice of the Peace or other officer or person fulfilling any public duty, for any thing by him done in the performance of such public duty, whether such duty arises out of the common law, or is imposed by act of Parliament, either Imperial or Provincial, nor shall any verdict be rendered against him, unless notice in writing of such intended writ, specifying the cause of action with reasonable clearness, shall have been delivered to such Justice, officer or other person, or left at the usual place of his abode, by the attorney or agent of the party who intends to sue out such writ, at least one calendar month before suing out such writ, and in computing such calendar month, the day of the service of such notice and the day of suing out such writ shall both be excluded, and on such notice shall be written the name and place of abode of such attorney or agent suing out such writ, and by the cause of action stated in such notice the party suing out such writ shall be bound, and shall not be allowed to give evidence of any other cause of action at the trial thereof.

Notice to be given to any Magistrate, in a certain form, and the Plaintiff to be bound by such notice.

Such Magistrate, &c., may tender amends: consequences of such tender.

III. And be it enacted, That any such Justice, officer or other person acting as aforesaid, may, at any time within one calendar month after the service of such notice as aforesaid, tender amends to the party complaining, or his agent or attorney; and in case the same is not accepted, may plead such tender in bar to any action brought against him grounded on such writ, together with the plea of not guilty, and any other plea; and if the jury shall find the amount tendered to have been sufficient, they shall find for the defendant; but if the jury shall find they were insufficient, or that no tender of amends was made, and they shall also find the other issues against the defendant, or if they find against the defendant where no tender of amends is made or pleaded, then they shall give a verdict for the plaintiff, with such damages as they shall think proper, and the plaintiff shall have his costs of suit. 5

In what County the venue shall be laid.

Proviso: as to changing the venue.

IV. And be it enacted, That any such action against such Justice, officer or other person, acting as aforesaid, shall be laid and tried within the county where the act complained of was done and committed: Provided always, that such Justice, officer or other person acting as aforesaid may change the *venue* in such action, upon notice to the plaintiff in such action, if he shall think fit so to do; and provided also, that the *venue* may be changed to any County that the Court in which such action is brought, or any Judge in chambers may order, if it shall be made appear to such Court or Judge that such action cannot be tried fairly and without prejudice in the County in which the *venue* in such action is laid. 20 25 30

General issue may be pleaded and special matter given in evidence.

V. And be it enacted, That every such Justice, officer or person acting as aforesaid, in any such action or suit as aforesaid, may plead the general issue only thereto, that he or they is or are not guilty, and give all special matters of justification or excuse, or that he or they received no notice of action thereunder, as fully and amply as if the same were specially pleaded in such action. 35

Magistrate may pay money into Court.

VI. And be it enacted, That it shall be lawful for such Justice, officer or other person acting as aforesaid, if he shall not have tendered amends, or shall have tendered insufficient amends, to pay into Court such sum as he shall think fit, without requiring the leave of the Court or a Judge therefor; and such payment into Court shall be specially pleaded, and shall have the same effect, and such proceedings shall be had thereafter, as in ordinary cases of payment of money into Court. 40 45

What costs the Defendant shall recover if successful.

VII. And be it enacted, That if in any such action or suit, judgment shall be rendered in favor of such Justice, officer or other person acting as aforesaid, either in demurrer, verdict, non-suit, or *non-pros*, or the plaintiff 50

shall discontinue his suit, the defendant shall be entitled to and recover against the plaintiff all his costs, as between attorney and client, but no double or treble costs shall in any case be taxed or allowed against the plaintiff.

5 VIII. And be it enacted, That no such action or suit shall be brought against any Justice, officer or other person acting as aforesaid, for any thing done by him in the performance of his public duty, as aforesaid, unless commenced within six calendar months after the act
10 committed.

Limitation of action against Magistrates, &c.

IX. And be it enacted, That the privileges and protection given by this Act, shall be given to such Justice, officer or other person acting as aforesaid, only, and to no other person or persons whatever, and any such
15 Justice, officer and other person acting as aforesaid, shall be entitled to such protection and privileges in all such cases as he shall act *bona fide* in the execution of his duty, although in such act done, he shall have exceeded his powers or jurisdiction, and have acted clearly contrary
20 to law.

Privileges to extend to the Magistrate, &c., only: and in what cases to him.

X. And be it enacted, That this Act shall extend only
to Upper Canada.

Extent of Act.