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No. 273.

4th Session, 2d Parliament, 14 & 15 Victoria, 1851.

BILL.

An Act to authorize the confinement of Lunatics, in cases where their being at large may be dangerous to the Public.

Received and read a first time, Friday, 1st August, 1851.

Second reading, Tuesday, 5th August, 1851.

Mr. Sol. Gen. MACDONALD

TORONTO: PRINTED BY LOVELL AND GIBSON.

B I L L.

An Act for making provision 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.

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, &c.,

Preamble.

I. 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 the 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 offences 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 grounds of insanity.

Jury acquitting prisoner on ground of insanity to state so specially in their verdict;

Court in that case to order such insane person to be kept in custody until Her Majesty's pleasure shall be known.

And Governor may give an Order for the safe custody of such insane person.

II. And be it enacted, That if any person indicted for any offence shall be insane, and shall upon arraignment

Similar provisions with respect to

persons indicted for any offence and found to be insane by a Jury, to be impanelled for the purpose on their arraignment.

be found so to be by a jury lawfully empaneled 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 5 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 10 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 empanelled to try the sanity of such person; and if the jury so empanelled shall find such person to be 15 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 20 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.

Persons committed by Justice of Peace on account of being insane and dangerous shall not be bailed except by two Justices, the Quarter Sessions or a Judge of a Superior Court of Law or Equity.

III. And, for the better prevention of crimes being 25 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 30 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 35 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 40 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.

Two Justices, with medical aid, may inquire into case of prisoner becoming insane.

IV. And be it enacted, That if any person, while imprisoned in any prison, or other place of confinement, 45 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 50 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 Justices 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.

On their certificate of his insanity the Governor may order his removal to a Lunatic Asylum.

There to remain until duly certified to be sane:

And then to be removed back to prison, or 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 or others if permitted to go at large, he 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 and 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

Dangerous lunatics to be confined by warrant of Justices;

and if necessary sent to place of settlement.

Goods and Lands of such Lunatics if any, to be seized and sold to pay charges of removal and maintenance.

Otherwise at the charge of the Municipality of his place of settlement.

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 10 only as such lunacy or madness shall continue) shall be satisfied and paid (such charges being first 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 15 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 20 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 25 belongs, by order of two Justices, directed to the Treasurer of the Municipal Corporation thereof for that purpose.

Proviso.

VI. Provided always, and be it enacted, That the next preceding section of this Act, or anything 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 35 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; 40 anything in the said section of this Act contained to the contrary notwithstanding.

When insane persons are kept in custody under first and second sections, Justices to inquire of their settlement and make order for their maintenance.

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 45 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 Dis-

1689

trict 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 in-
 5 quire 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 suffi-
 10 cient property which can be applied to his or her main-
 tenance, to make 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
 15 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 Corpo-
 20 ration 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
 25 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
 30 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
 35 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
 40 authorized and empowered to hear and determine, in the
 same manner as other appeals to Courts of Quarter
 Sessions are now heard and determined in Upper or in
 Lower Canada respectively.

VIII. And whereas it is expedient that provision should
 45 be made for the due care of persons who may after con-
 viction for any criminal offence become insane, be it
 therefore enacted, That if any person having been duly
 convicted of any offence, who after such conviction, and
 during his or her imprisonment, or continuance in the
 50 Provincial Penitentiary, or in any gaol, prison, or house
 of correction, under sentence of transportation or impri-
 sonment, shall become insane, and it shall be duly certi-

*Convicts be-
 coming in-
 sane during
 imprison-
 ment to be
 dealt with
 in the same
 manner as
 persons
 found to be
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 trial or
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 ment.*

fied by two Physicians or Surgeons, that such person is insane, it shall be lawful for the Governor of this Province to direct by warrant under his hand and privy seal, that such person as aforesaid shall be removed to such public Lunatic Asylum or other proper receptacle for insane persons, as the Governor of this Province through the Provincial Secretary may judge proper and appoint; and every such person so removed as aforesaid, shall remain under confinement in such public Lunatic 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 by any like order, until it shall be duly certified to the Governor of this Province, by two Physicians or Surgeons, that such person has become of sound mind; whereupon the Governor of this Province is hereby authorised, if such person shall still remain subject to imprisonment, or to be continued in custody, to issue his warrant to the keeper or other person having the care of any such public Lunatic Asylum, or other proper receptacle as aforesaid, directing that such person shall be removed back from such Lunatic Asylum or other proper receptacle, to the Provincial Penitentiary, or to the gaol, prison, or house of correction, from whence the said person or persons shall have been taken for the purposes of being confined in such Lunatic Asylum or other proper receptacle as aforesaid during the time of their being insane; or if the period of imprisonment or custody of such person had expired, that such person shall be discharged.

Settlement
what and how
gained.

IX. 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: 1st. 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. 2d. If a male, by being married, and residing for one year separately from the family of his father. 3d. By being bound as an apprentice, and serving one year as such under indentures of apprenticeship. 4th. 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,

1691

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
5 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.