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No. 220.

3rd Session, 5th Parliament, 20 Victoriae, 1857.

B I L L .

**An Act for diminishing expence and delay
in the administration of Criminal Jus-
tice in certain cases.**

**Received and read first time, Friday, 17th
April, 1857.**

Second reading, Tuesday, 21st April, 1857.

Hon. Atty. Genl. CARTIER.

S. Derbishire & G. Desbarats, Queen's Printer .

An Act for diminishing expence and delay in the administration of Criminal Justice in certain cases.

WHEREAS it would tend to diminish expence and delay Preamble.
in the administration of Justice in certain cases of
Larceny if the Recorders and certain other Administrators of
Criminal Justice in Cities were authorized to hear and deter-
mine such cases summarily: Therefore, Her Majesty, by and
with the advice and consent of the Legislative Council and
Assembly of Canada, enacts as follows :

I. Where any person is charged before the Recorder of any
City with having committed simple larceny, and the value
of the whole of the property alleged to have been stolen does
not, in the judgment of such Recorder, exceed five shillings,
or with having attempted to commit larceny from the person,
or simple larceny, it shall be lawful for such Recorder to hear
and determine the charge in a summary way; and if the per-
son charged shall confess the same, or if such Recorder, after
hearing the whole case for the prosecution and for the defence,
shall find the charge to be proved, then it shall be lawful for
such Recorder to convict the person charged and commit him
to the Common Gaol or House of Correction, there to be im-
prisoned, with or without hard labour, for any period not ex-
ceeding three months; and if he find the offence not proved he
shall dismiss the charge, and make out and deliver to the per-
son charged a certificate under his hand stating the fact of such
dismissal: and every such conviction and certificate respec-
tively may be in the forms A and B, in the Schedule to this
Act, or to the like effect: Provided always, that if the person
charged do not consent to have the case heard and determined
by such Recorder, or if it appear to such Recorder that the
offence is one which, owing to a previous conviction of the
person charged, is by law a felony, or if such Recorder be of
opinion that the charge is, from any other circumstances, fit to
be made the subject of prosecution by indictment, rather than
to be disposed of summarily, such Recorder shall, instead of
summarily adjudicating thereon, deal with the case in all res-
pects as if this Act had not been passed: Provided also, that
if upon the hearing of the charge such Recorder shall be of
opinion that there are circumstances in the case which render
it inexpedient to inflict any punishment, he shall have power
to dismiss the person charged without proceeding to a convic-
tion.

Power to Re-
corders to try
persons guilty
of Larceny,
&c., summa-
rily.

And to sen-
tence such
persons if
found guilty.

Provido.

Provido.

II. Where the Recorder before whom any person is charged
as aforesaid proposes to dispose of the case summarily under the
Accused to be
asked whether

he consents to the charge being tried summarily.

foregoing provisions, such Recorder, after the examinations of all the witnesses for the prosecution have been completed, and before calling upon the person charged for any statement which he may wish to make, shall state to such person the substance of the charge against him, and shall then say to him these words, or words to the like effect: "Do you consent that the charge against you shall be tried by me, or do you desire that it shall be sent for trial by a jury at the (*naming the Court at which it could soonest be tried*);" and if the person charged shall consent to the charge being summarily tried and determined as aforesaid, then the Recorder shall reduce the charge into writing, and read the same to such person, and shall then ask him whether he is guilty or not of such charge; and if such person shall say that he is guilty, the Recorder shall then proceed to pass such sentence upon him as may by law be passed, subject to the provisions of this Act, in respect to such offence; but if the person charged shall say that he is not guilty, the Recorder shall then inquire of such person whether he has any defence to make to such charge, and if he shall state that he has a defence, the Recorder shall hear such defence, and then proceed to dispose of the case summarily.

Accused person may plead guilty and be sentenced forthwith.

III. Where any person is charged before any Recorder with simple larceny (the property alleged to have been stolen exceeding in value five shillings) or stealing from the person, or larceny as a clerk or servant, and the evidence, when the case on the part of the prosecution has been completed, is in the opinion of such Recorder sufficient to put the person charged on his trial for the offence with which he is charged, such Recorder, if the case appear to him to be one which may properly be disposed of in a summary way, and may be adequately punished by virtue of the powers of this Act, shall reduce the charge into writing, and shall read it to the said person, and shall then ask him whether he is guilty or not of the charge; and if such person shall say that he is guilty, such Recorder shall thereupon cause a plea of guilty to be entered upon the proceedings, and shall convict him of such offence, and commit him to the common Gaol or House of Correction, there to be imprisoned, with or without hard labour, for any term not exceeding six Calendar Months; and every such conviction may be in the form C, in the Schedule to this Act, or to the like effect; Provided always that such Recorder, before he asks such person whether he is guilty or not, shall explain to him that he is not obliged to plead or answer before him at all, and that if he do not plead or answer before him he will be committed for trial in the usual course.

Proviso.

Accused person allowed to make full answer and defence, &c.

IV. In every case of summary proceedings under this Act, the person accused shall be allowed to make his full answer and defence, and to have all witnesses examined and cross-examined, by Counsel or Attorney.

V. Where any person is charged before any Justice or Justices of the Peace, with any offence mentioned in this Act, and in the opinion of such Justice or Justices, the case may be proper to be disposed of by a Recorder, or by an Inspector and Superintendent of the Police or a Police Magistrate, as hereinafter provided, under this Act, the Justice or Justices before whom such person is so charged may, if he or they see fit, remand such person for farther examination before the Recorder or before the Inspector and Superintendent of the Police of the nearest City, or before the nearest Police Magistrate, in like manner in all respects as a Justice or Justices are authorized to remand a party accused under the Act passed in the Session held in the fourteenth and fifteenth years of Her Majesty's reign, chapter ninety-six, section thirteen, or under the Act passed in the sixteenth year of Her Majesty's reign, chapter one hundred and seventy-nine, section thirteen; Provided always, that it shall not be lawful for any Justice or Justices of the Peace in Upper Canada, so to remand any person for further examination before any Recorder, Inspector and Superintendent of Police, or Police Magistrate in Lower Canada, nor for any Justice or Justices of the Peace so to remand any person for further examination before any Recorder or Police Magistrate in Lower Canada; And provided also, that any person so remanded for further examination before the Recorder of any City, may be examined and dealt with by the Inspector and Superintendent of the Police or Police Magistrate of the same City, and any person so remanded for further examination before the Inspector and Superintendent of the Police or the Police Magistrate of any City, may be examined and dealt with by the Recorder of the same City.

Power to Justices of the Peace to remand persons charged for further examination before Recorder, &c.

Proviso.

Proviso.

VI. If any person suffered to go at large upon entering into such recognizance as the Justice or Justices are authorized under the last mentioned Acts to take on the remand of a party accused conditioned for his appearance before a Recorder under the next preceding section of this Act, do not afterwards appear pursuant to such recognizance, then the Recorder before whom he ought to have appeared shall certify (under his hand) on the back of the recognizance, to the Clerk of the Peace of the District, in Lower Canada, or County or Union of Counties in Upper Canada, the fact of such non-appearance, and such recognizance shall be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such non-appearance.

Case of party remanded failing to appear pursuant to recognizance provided for.

VII. The Recorder adjudicating under this Act, shall transmit the conviction, or a duplicate of a certificate of dismissal, with the written charge, the depositions of witnesses for the prosecution and for the defence, and the statement of the accused, to the next Court of Quarter Sessions for the District in Lower Canada, or the County or Union of Counties in Upper Canada, there to be kept by the proper Officer among the Records of the

Convictions and other proceedings to be returned to the Court of Quarter Sessions.

Court ; and a copy of such conviction, or of such certificate of dismissal, certified by the proper Officer of the Court, or proved to be a true copy, shall be sufficient evidence to prove a conviction or dismissal for the offence mentioned therein, in any legal proceeding whatever.

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Restitution of the property may be ordered.

VIII. It shall be lawful for the Recorder, by whom any person is convicted under this Act, to order restitution of the property stolen, taken or obtained by false pretences, in those cases in which the Court, before whom the person convicted would have been tried but for this Act, may be by law authorized to order restitution.

Recorder's Court to be an open Public Court.

IX. Every Recorder's Court, for the purposes of this Act, shall be an open public Court, and a written or printed notice of the day and hour for holding such Court, shall be posted or affixed by the Clerk of the said Court upon the outside of some conspicuous part of the building or place where the same is held.

Provisions of 14, 15 V. c. 95, or of 16 V. c. 178, not to apply to proceedings under this Act.

X. The provisions of the Act passed in the Session held in the fourteenth and fifteenth years of Her Majesty's Reign, chapter ninety-five, or of the Act passed in the sixteenth year of Her Majesty's Reign, chapter one hundred and seventy-eight, shall not be construed as applying to any proceeding under this Act.

Effect of conviction under this Act.

XI. Every conviction by a Recorder under this Act shall have the same effect as a conviction upon indictment for the same offence would have had, save that no conviction under this Act shall be attended with forfeiture.

Proceedings under this Act a bar to further proceedings.

XII. Every person who obtains a certificate of dismissal or is convicted under this Act, shall be released from all further or other criminal proceedings for the same cause.

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No conviction under this Act to be quashed for want of form.

XIII. No conviction, sentence or proceeding under this Act shall be quashed for want of form ; and no warrant of commitment upon a conviction shall be held void by reason of any defect therein, if it be therein alleged that the offender has been convicted, and there be a good and valid conviction to sustain the same.

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Powers given by this Act to Recorders may be exercised by certain other Functionaries.

XIV. The Inspector and Superintendent of Police for the City of Quebec, the Inspector and Superintendent of Police for the City of Montreal, and the Police Magistrate for any City in Upper Canada, sitting in open Court, may respectively in the case of persons charged before them, do all acts by this Act authorized to be done by Recorders, and all the provisions of this Act referring to Recorders and Recorder's Court and the Clerks of the Recorders Courts shall be read and construed also as referring to such Inspectors and Superintendents of the

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Police and Police Magistrates and the Courts and the Clerks of the Courts held by them respectively.

XV. Nothing in this Act shall affect the provisions of any Act of this Session, *For the more speedy Trial and Punishment of Juvenile offenders*, and this Act shall not extend to persons punishable under the said Act, so far as regards offences for which such persons may be punished thereunder.

Nothing in this Act to affect provisions of Act *For the more speedy trial and punishment of juvenile offenders*.

XVI. In the interpretation of this Act "property" shall be construed to include everything included under the words "chattel, money, or valuable security," as used in the Act of the Parliament of the United Kingdom passed in the Session thereof holden in the seventh and eighth years of the Reign of King George the Fourth, chapter twenty-nine; and in case of any "valuable security," the value of the share, interest or deposit to which the security may relate, or of the money due thereon, or secured thereby, and remaining unsatisfied, or of the goods or other valuable thing mentioned in the warrant or order, shall be deemed to be the value of such security.

Interpretation clause.

SCHEDULES.

FORM (A.)

CONVICTION.

To wit : } }

Be it remembered that on the _____ day of _____ in the year of Our Lord _____ at _____ A. B., being charged before me the undersigned _____ of the said City, and consenting to my deciding upon the charge summarily, is convicted before me, for that he the said A. B., &c., (*stating the offence, and the time and place when and where committed*); and I adjudge the said A. B., for his said offence, to be imprisoned in the _____ (and there kept to hard labour) for the space of _____

Given under my hand and seal, the day and year first above mentioned, at _____ aforesaid.

J. S. [L. S.]

FORM (B.)

CERTIFICATE OF DISMISSAL.

To wit: ' }

I, the undersigned of the City
of certify that on the day of
in the year of Our Lord at
aforesaid, A. B., being charged before me and consenting to
my deciding upon the charge summarily, for that he the said
A. B., &c., (*stating the offence charged, and the time and place
when and where alleged to have been committed,*) I did, having
summarily adjudicated thereon, dismiss the said charge.

Given under my hand and seal, this
day of at aforesaid.
J. S. [L. S.]

FORM (C.)

CONVICTION UPON A PLEA OF GUILTY.

To wit: ' }

Be it remembered that on the day of
in the year of Our Lord at A. B.,
being charged before me the undersigned of the said
City, for that he the said A. B., &c., (*stating the offence, and
the time and place when and where committed*); and pleading
guilty to such charge, he is thereupon convicted before me of
the said offence; and I adjudge him the said A. B., for his said
offence, to be imprisoned in the (and there kept to
hard labour) for the space of

Given under my hand and seal, the day and year first above
mentioned, at aforesaid.

J. S. [L. S.]