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21 Victoriæ, 1st Session, 6th Parliament, 1858.

BILL.

An Act to extend the Jurisdiction of Recorders, Inspectors and Superindents of Police, Police Magistrates and other officers in Criminal Matters.

Received and read 1st time, Friday, 9th April, 1858.

Second reading, Tuesday, 13th April, 1858.

Hon. Mr. Atty. Genl. CARTIER.

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

[No. 36.

An Act to amend and extend the Act of 1857, for diminishing the expense and delay in the Administration of Justice in certain cases.

HEREAS the powers of summary conviction given by Preamble. Act twentieth Victoria, chapter twenty-seven, intituled, An Act for diminishing expense and delay in the Administration 20 V. c. 27. of Justice in certain cases, have been attended with great benefit, 5 and it is expedient to extend them to certain other cases, and to amend the said Act so as to render its operation more direct and effective: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

I. The powers for the summary trial and conviction of persons Powers of charged with certain offences, vested in the Recorder of any summary con-City, by the first section of the said Act, are hereby extended to viction under city, by the first section of the said Act, are hereby extended to viction under city, by the first section of the said Act, are hereby extended to viction under city, by the first section of the said Act, are hereby extended to viction under city, by the first section of the said Act, are hereby extended to viction under city, by the first section of the said Act, are hereby extended to viction under city, by the first section of the said Act, are hereby extended to viction under city, by the first section of the said Act, are hereby extended to viction under city, by the first section of the said Act, are hereby extended to viction under city, are hereby extended to viction under city, are hereby extended to viction under city, are hereby extended to viction under city. cases where any person is charged before such Recorder with extended to having committed any of the following offences, that is to say: certain cases.

1. With having committed an aggravated assault, by unlaw- Aggravated fully and maliciously inflicting upon any other person, either assaults. with or without any weapon or instrument, any grievous bodily harm, or by unlawfully and maliciously cutting, stabbing or wounding any other person; or

20 2. With having committed an assault upon any female what- Assaults on ever, or upon any male child whose age shall not in the opinion children or of such Recorder exceed fourteen years, such assault being of a females of any nature which cannot in the opinion of the Recorder be sufficiently punished by a summary conviction before him under 25 any other Act, and not amounting in his opinion to an assault with intent to commit a rape if such assault be on a female; or

3. With having assaulted any Magistrate, Bailiff, or Con-Assaulting stable or other officer in the lawful performance of his duty, or officers of justice. with intent to prevent the performance thereof; or

4. With keeping or being an inmate, or habitual frequenter of Keeping or any disorderly house, house of ill-fame or bawdy house;

frequenting bawdy houses.

And all the provisions of the said first section and of the other Provisions enactments of the said Act shall apply to the cases mentioned in of seot. 1 of 20. this section, in so far as they are applicable to such cases, but apply— 35 subject to the provisions hereinafter made.

But subject to certain modifications,

II. The provisions of the said Act shall be subject to the following modifications, as applied to the cases mentioned in the next preceding section:

Consent of party not requisite.

1. The jurisdiction of the Recorder in any of the said cases shall be absolute, and shall not depend on the consent of the 5 party charged to be tried by such Recorder, nor shall such party be asked whether he consents to be so tried;

Punishment in cases under this Act.

2. If the Recorder finds any charge mentioned in the next preceding section to be proved, he may convict the person charged and commit him to the Common Gaol or House of 10 Correction, there to be imprisoned with or without hard labour for any period not exceeding six months, or condemn him to pay a fine not exceeding, with the costs in the case, one hundred dollars, or to both fine and imprisonment, not exceeding the said period and sum; and such fine may be levied by warrant 15 of distress under the hand and seal of such Recorder, or the party convicted may be condemned (in addition to any other

Levying fine.

imprisonment on the same conviction) to be committed to the Common Gaol, for a further period not exceeding six months unless such fine be sooner paid;

Forms in 20 altered.

3. In such cases as aforesaid, the forms given in the Sche-V. c. 27, to be dules to the said Act, shall be altered by omitting the words stating the consent of the party to be tried before the Recorder, and by adding the requisite words stating the fine imposed (if any) and the imprisonment (if any) to which the party con- 25 victed is to be subject if the fine be not sooner paid;

Recorder may send the case to be tried by a jury, &c.

4. In any such case, if the Recorder thinks it is one which ought to be made the subject of prosecution by indictment rather than to be disposed of summarily, he may deal with it as if this Act had not been passed, or if he thinks there are cir- 30 cumstances inexpedient to inflict punishment, he may dismiss it without proceeding to a conviction, as in the cases mentioned in the first section of the said Act;

Justices of the Peace may act in such cases under 20 V. c. 27, sa. 5 and 6.

5. The powers of Justices of the Peace under the fifth and sixth sections of the said Act, and all the provisions of the said sec- 35 tions, shall extend to the cases to which the jurisdiction of the Recorder is extended by this Act.

Recital.

III. And whereas it is found inconvenient that in the cases mentioned in the first section of the Act first above cited, the examinations of the witnesses for the prosecution should 40 be completed before the person charged is asked whether he consents to be tried by the Recorder; therefore the second section of the said Act is repealed, and the following is substituted therefor:

Sect. 2 of 20 V. c. 27, repealed, and new section substituted.

"Whenever the Recorder before whom any person is charged Accused party under the first section of the said Act proposes to dispose of to be asked the case summarily under the provisions of the said first section, whether he such Recorder, after ascertaining the nature and extent of the tried summa-5 charge, but before the formal examination of the witnesses for the rily. prosecution, and before calling on the party 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 10 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 so next be tried ;)" and if the per- If he consents son charged shall consent to the charge being summarily tried to be so tried. and determined as aforesaid, then the Recorder shall reduce 15 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 And pleads shall then proceed to pass such sentence upon him as may by guilty; law be passed, subject to the provisions of this Act in respect 20 to such offence; but if the person charged shall say that he is and if he not guilty, the Recorder shall then examine the witnesses for pleads not the prosecution, and when the examination is completed, the guilty. Recorder shall inquire of the person charged whether he has any defence to make to such charge, and if he shall state that 25 he has a defence, the Recorder shall hear such defence and shall then proceed to dispose of the case summarily."

IV. It shall be lawful for any Recorder before whom any Recorder may person is charged under the said Act as hereby amended, by compelattendsummons to require the attendance of any person as a witness ance of wit-30 upon the hearing of the case at a time and place to be named in such summons; and such Recorder may bind by recognizance all persons whom he may consider necessary to be examined touching the matter of such charge, to attend at the time and place to be appointed by him, and then and there to 35 give evidence upon the hearing of such charge; And in case Warrant may any person so summoned or required or bound as aforesaid, issue to comshall neglect or refuse to attend in pursuance of such summons pel attendance in certain or recognizance, then upon proof being first made of such per- cases, sons having been duly summoned as hereinafter mentioned, or 40 bound by recognizance as aforesaid, it shall be lawful for the Recorder before whom such person ought to have attended, to issue a warrant to compel his appearance as a witness.

V. Every summons issued under this Act may be served Howany sumby delivering a copy of the summons to the party summoned, mons under 45 or by delivering a copy of the summons to some inmate of this Act shall be served. such party's usual place of abode; and every person so required by any writing under the hand of any Recorder to attend and give evidence as aforesaid, shall be deemed to have been duly summoned.

Recital.

Jurisdiction of Recorder given to Sheriffs and Justices of the Peace, in certain places in Lower Canada,

Proviso.

VI. And inasmuch as it will conduce to diminish expense and delay in the administration of justice in criminal matters, to confer certain powers on certain Justices of the Peace and Sheriffs in Lower Canada; Therefore, all the jurisdiction and powers vested by the Act aforesaid as hereby amended or by this Act, in the Recorder of any City, are hereby conferred upon and vested in any two or more Justices of the Peace for any district in Lower Canada when present at the chef-lieu thereof, and there sitting in open Court, and upon and in the Sheriff of any district in Lower Canada, (other than the districts 10 of Quebec and Montreal,) and upon and in any Deputy Sheriff in the district of Gaspé, sitting in open Court: Provided always. that such jurisdiction and powers shall not be exercised by any two or more Justices of the Peace or Sheriff in any new district until such district shall be established as such for all 15 purposes of the administration of Justice in criminal as well as civil matters, under any proclamation of the Governor to that effect.

Sheriffs exercising such jurisdiction to be attended by certain officers.

VII. The Sheriffs of such districts as aforesaid in Lower Canada, or any Deputy Sheriff in the district of Gaspé, when 20 sitting or acting under the provisions of the Act hereby amended and this Act, shall be assisted, attended and obeyed by the Clerk of the Peace, Bailiss, Constables and other Officers of such districts respectively, in the same manner as Justices of the Peace in and for the said districts respectively, would be 25 attended, assisted and obeyed by them respectively, under the same or similar circumstances; and the Clerk of the Peace for each such district shall be and act as the Clerk of the Court of the Sheriff of such district under the provisions of this Act and of the Act hereby amended. 30

Payment and this Act.

VIII. Every fine imposed under the authority of this Act application of shall be paid to the Recorder, Superintendent of Police, Sheriff, fines under

Deputy-Sheriff or Justices of the Peace, who shall have imposed the same or to the Clerk of Recorder's Court or Clerk of the Peace, as the case may be, and shall be by him or them 35 paid over to the County Treasurer for County purposes if it has been imposed in Upper Canada,—and if it has been imposed in any New District in Lower Canada constituted by any Act of the session held in 1857, or to be passed in any subsequent session, then to the Sheriff of such District as Treasurer 40 of the Building and Jury Fund for such District, to form part of the said Fund,—and if it has been imposed in any other District in Lower Canada, then to the Prothonotary of such District to be by him applied under the direction of the Governor in Council, towards the keeping in repair of the Court 45 House in such District, or to be by him added to the moneys and fees collected by him for the erection of a Court House and Gaol in such District, so long as such fees shall be collected to defray the cost of such erection.

IX. This Act shall be read and construed as one Act with This Act to be the Act hereby amended, all the provisions for the interpreta-read as one tion whereof shall apply to this Act so that (among other V. c. 27: and things,) all the provisions of this Act referring to Recorders and powers of Re-5 Recorders' Courts shall be read and construed as applying corders to be and referring also to and giving jurisdiction to the Inspector vested also in Superintendand Superintendent of Police for the City of Quebec and for ents of Police, the City of Montreal respectively, and to the Police Magistrate &c. for any City in Upper Canada, sitting in open Court, and to

10 the Courts held by them respectively, and as giving them respectively full power to do all Acts authorized to be done by Recorders in the case of persons charged before them respectively.