



No. 36.

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

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**BILL.**

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

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

Second reading, Tuesday, 13th April, 1858.

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Hon. Mr. Atty. Genl. CARTIER.

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

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

**W**HEREAS the powers of summary conviction given by Act twentieth Victoria, chapter twenty-seven, intituled, *An Act for diminishing expense and delay in the Administration of Justice in certain cases*, have been attended with great benefit, 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 :

- 10 I. The powers for the summary trial and conviction of persons charged with certain offences, vested in the Recorder of any City, by the first section of the said Act, are hereby extended to cases where any person is charged before such Recorder with having committed any of the following offences, that is to say :
- 15 1. With having committed an aggravated assault, by unlawfully and maliciously inflicting upon any other person, either 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 whatever, or upon any male child whose age shall not in the opinion of such Recorder exceed fourteen years, such assault being of a nature which cannot in the opinion of the Recorder be sufficiently punished by a summary conviction before him under 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 Constable or other officer in the lawful performance of his duty, or with intent to prevent the performance thereof ; or
- 30 4. With keeping or being an inmate, or habitual frequenter of any disorderly house, house of ill-fame or bawdy house ;

Preamble.

20 V. c. 27.

Powers of summary conviction under 20 V. c. 27, extended to certain cases.

Aggravated assaults.

Assaults on children or females of any age.

Assaulting officers of justice.

Keeping or frequenting bawdy houses.

Provisions of sect. 1 of 20 V. c. 27 to apply—

And all the provisions of the said first section and of the other enactments of the said Act shall apply to the cases mentioned in this section, in so far as they are applicable to such cases, but 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 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 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 of distress under the hand and seal of such Recorder, or the party convicted may be condemned (in addition to any other 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 ;

Levying fine.

Forms in 20 V. c. 27, to be altered.

3. In such cases as aforesaid, the forms given in the Schedules 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 convicted 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 circumstances 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, ss. 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 sections, 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 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 under the first section of the said Act proposes to dispose of the case summarily under the provisions of the said first section, such Recorder, after ascertaining the nature and extent of the charge, but before the formal examination of the witnesses for the 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 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 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 examine the witnesses for the prosecution, and when the examination is completed, the Recorder shall inquire of the person charged 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 shall then proceed to dispose of the case summarily.”

Accused party to be asked whether he consents to be tried summarily.

If he consents to be so tried.

And pleads guilty;

and if he pleads not guilty.

IV. It shall be lawful for any Recorder before whom any person is charged under the said Act as hereby amended, by summons to require the attendance of any person as a witness 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 give evidence upon the hearing of such charge; And in case any person so summoned or required or bound as aforesaid, shall neglect or refuse to attend in pursuance of such summons or recognizance, then upon proof being first made of such persons having been duly summoned as hereinafter mentioned, or 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.

Recorder may compel attendance of witnesses.

Warrant may issue to compel attendance in certain cases.

V. Every summons issued under this Act may be served by delivering a copy of the summons to the party summoned, or by delivering a copy of the summons to some inmate of 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.

How any summons under this Act shall be served.

**Recital.** 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 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 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 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, Bailiffs, 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 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.

**Payment and application of fines under this Act.** VIII. Every fine imposed under the authority of this Act shall be paid to the Recorder, Superintendent of Police, Sheriff, 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 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 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 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 the Act hereby amended, all the provisions for the interpretation whereof shall apply to this Act so that (among other things,) all the provisions of this Act referring to Recorders and  
 5 Recorders' Courts shall be read and construed as applying and referring also to and giving jurisdiction to the Inspector and Superintendent of Police for the City of Quebec and for the City of Montreal respectively, and to the Police Magistrate  
 10 for any City in Upper Canada, sitting in open Court, and to 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.

This Act to be read as one Act with 20 V. c. 27: and powers of Recorders to be vested also in Superintendents of Police, &c.