

AN ACT

To authorise the apprehending and detention of Persons suspected of High Treason, Misprision of Treason, and Treasonable practices.

[Received the Royal Assent, 12th January, 1838.]

WHEREAS a traitorous conspiracy hath been formed for the purpose of overthrowing, by means of insurrection, the Government, Laws, and Constitution of this Province, and the happy connection thereof with the Mother Country: *And whereas*, designs and practices of a treasonable and highly dangerous nature are now carrying on in some parts of this Province: Therefore for the better preservation of the peace, laws and liberties of this Province, *Be it enacted*, by the Queen's most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled, 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America,' and to make further Provision for the Government of the said Province," and by the authority of the same, That all or any person or persons that are or shall be in prison in this Province, at or upon the day on which this Act shall receive the Royal Assent, or after by warrant of the Lieutenant Governor of this Province, in Council, for High Treason, suspicion of High Treason, or treasonable practices, may be detained in safe custody, without bail or mainprize, during the continuance of this Act; and that no Judge or Justice of the Peace shall, during such continuance, bail or try any such person or persons so committed, without an order from the Lieutenant Governor of this Province, in Council, any law or statute to the contrary notwithstanding: *Provided always*, that nothing in this Act contained shall extend, or be construed to extend to any seditious language or other act of sedition, only uttered, spoken, committed or done, before the first day of December last past.

2. *Provided always, and be it further enacted by the authority aforesaid*, That from and after the expiration of this Act, the said persons so committed shall have the benefit and advantage of all laws and statutes in any way relating to or providing for the liberty of the subjects of this Province.

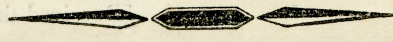
3. *Provided always, and be it further enacted by the authority aforesaid*, That nothing in this Act contained shall be construed to extend to invalidate the rights and privileges of this Provincial Parliament, or to the imprisonment or detaining of any Member of either House of the Legislature thereof, during the sitting of the same, until the matter of which he stands suspected be communicated to the House of which he is a Member, and the consent of the said House be obtained for his commitment or detaining.

4. *And be it further enacted by the authority aforesaid*, That it shall and may be lawful for the Lieutenant Governor of this Province, as he shall see occasion, by and with the advice of the Executive Council, to order any person committed to any gaol, on any charge of High Treason, suspicion of High Treason, or treasonable practices, either before or after indictment found, to be conveyed to or detained in any other gaol, or other prison, or safe place of confinement until discharged by due course of law, and to issue all warrants necessary for such purposes: *Provided always, nevertheless*, that no person who shall be removed by any such warrant, as aforesaid, shall be by means of such removal, deprived of such right to be tried or discharged, as such person would by law have been entitled to if not so removed; and in every case in which any such person would have been entitled to have been tried or discharged, if such person had continued in the gaol or prison to which such person was before committed, it shall and may be lawful for such person to apply to be bailed or discharged, in the same manner as such person might have done if he had remained in the gaol or prison to which such person was before committed, as aforesaid.

5. *And be it further enacted by the authority aforesaid*, That for and during the continuance of this Act, in all and every case in which application shall be made for Her Majesty's Writ of Habeas Corpus to any Court or Courts, Judge or Judges, within this Province, by any person or persons who are or shall be in prison within this Province, at or upon the day on which this Act shall receive the Royal Assent, or afterwards charged by any public authority, with High Treason, misprision of High Treason, or treasonable practices, such Writ of Habeas Corpus, if allowed, shall not be made returnable in less than thirty days from the time of its being allowed; and in all and every such case and cases, it shall be the duty of such Court, or Judge or Judges, and of each and every

of them, and they are hereby required, when and so soon as such application for such Writ of Habeas Corpus shall to them be respectively made, to give notice and information thereof in writing, together with copies of such application, and of the affidavit or affidavits, or other paper writings, on which such application shall be founded, to the Governor, Lieutenant Governor, or Person Administering the Government of this Province, for the time being.

6. *And be it further enacted by the authority aforesaid,* That this Act shall be and continue in force to the end of the next ensuing Session of Parliament, and no longer.



AN ACT

To provide for the more effectual and impartial Trial of Persons charged with Treason and Treasonable Practices, committed in this Province.

[Passed 12th January, 1838.]

FOR the more impartial and effectual trial and punishment of all offences of High Treason, and misprision of High Treason, and treasonable practices, committed in this Province, and for taking away hopes of impunity from persons guilty of crimes so dangerous to Her Majesty's Government—*Be it enacted,* by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled, 'An Act for making more effectual provision for the Government of the Province of Quebec in North America,' and to make further provision for the Government of the said Province," and by the authority of the same, That from and after the passing of this Act, all offences of High Treason, and misprision of High Treason, and of treasonable practices already committed or to be committed within this Province, may be enquired of, heard, tried and determined, in the Court of King's Bench within the same in the District where that Court shall sit, or before such Justices of Oyer and Terminer and Gaol Delivery, within such District of this Province as shall be assigned by the Lieutenant Governor of this Province, by Commission under the Great Seal thereof, in like maner and form, and to all intents and purposes as if such offences had been done or committed in the same District where they shall be so enquired of, heard and determined, as aforesaid.

2. *And be it further enacted by the authority aforesaid,* That all enquiries and trials for High Treason, or misprision of High Treason, or treasonable practices committed or to be committed in the said Province, may be had by good and lawful men of the District where the said Court of King's Bench shall sit, or of the District where the said Justices of Oyer and Terminer and Gaol Delivery shall execute their said Commissions by virtue of the provisions of this Act, and that no challenge to Jurors, for not being of the District where the offence was committed, shall be allowed.

3. *And be it further enacted by the authority aforesaid,* That Her Majesty's Chief Justice of the said Province, and the Justices of the Court of King's Bench therein, shall be named and assigned Justices in every such Commission, whereof one to be of the quorum.

4. *Provided always, and be it further enacted by the authority aforesaid,* That all persons convicted or attainted of High Treason, or misprision of High Treason, or treasonable practices, pursuant to this Act, shall be subject and liable to the same corruption of blood, pains, penalties and forfeitures, as persons convicted and attainted of High Treason, or misprision of High Treason, or treasonable practices, in the same District where such offences have been committed.

5. *And be it further enacted by the authority aforesaid,* That this Act shall be and continue in force until the first day of January next, and from thence until the end of the next ensuing Session of Parliament.



AN ACT

To protect the Inhabitants of this Province against lawless aggressions from the Subjects of Foreign Countries, at Peace with Her Majesty.

[Passed 12th January, 1838.]

WHEREAS a number of persons lately inhabiting the State of New York, or some one of the other United States of America, have within the said State of New York, lately enlisted or engaged themselves to serve as Soldiers, or have procured others to enlist or engage themselves

to serve as Soldiers. and have within the said State of New York, collected Artillery, Arms and Ammunition, and made other preparations for a hostile invasion of this Province, under the pretext of assisting certain Traitors who have fled from this Province to the said United States: *And whereas*, the said persons, without the authority of their Government, and in defiance of its express injunctions, have actually invaded this Province, contrary to the faith and obligation of the Treaties subsisting between the United Kingdom of Great Britain and Ireland and the said United States, and during the continuance of the relations of amity and peace between the two Countries: *And whereas*, it is necessary for protecting the peace and security of this Province, to provide for the prompt punishment of persons so offending: *Be it enacted*, by the Queen's most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled, 'An Act for making more effectual provision for the Government of the Province of Quebec in North America,' and to make further provision for the Government of the said Province," and by the authority of the same, That if any person, being a Citizen or Subject of any Foreign State or Country at peace with the United Kingdom of Great Britain and Ireland, having joined himself before or after the passing of this Act, to any Subjects of our Sovereign Lady the Queen, Her Heirs or Successors, who are or hereafter may be traitorously in arms against Her Majesty, Her Heirs or Successors, shall after the passing of this Act, be or continue in arms against Her Majesty, Her Heirs or Successors within this Province, or commit any act of hostility therein, then it shall and may be lawful for the Governor of this Province to order the assembling of a Militia General Court Martial, for the trial of such person agreeably to the Militia Laws of this Province, and upon being found guilty by such Court Martial of offending against this Act, such person shall be sentenced by the said Court to suffer death, or such other punishment as shall be awarded by the Court.

2. *And be it further enacted by the authority aforesaid*, That if any Subject of Her Majesty, Her Heirs or Successors, shall within this Province, levy War against Her Majesty, Her Heirs or Successors, in company with any of the Citizens or Subjects of any Foreign State or Country, then being at peace with the United Kingdom of Great Britain and Ireland, and offending against the provisions of this Act, then such Subject of Her Majesty, Her Heirs or Successors, shall be liable to be tried and punished by a Militia General Court Martial in like manner as any Citizen or Subject of a Foreign State or Country at peace with Her Majesty, Her Heirs or Successors, is liable under this Act to be tried and punished.

3. *And be it further enacted by the authority aforesaid*, That the Citizen or Subject of any Foreign State or Country, offending against the provisions of this Act, shall be deemed guilty of felony, and may, notwithstanding the provisions hereinbefore contained, be prosecuted and tried before any Court of Oyer and Terminer and General Gaol Delivery in and for any District of this Province, in the same manner as if the offence had been committed in such District, and upon conviction shall suffer death as in cases of felony.

THREE ACTS OF PARLIAMENT,

Authorising the Apprehension and Detention of Persons suspected of Treason.

Providing for the Trial of Persons charged with Treason—

And to prevent Lawless Aggression from Foreigners.

BY ORDER OF THE HOUSE OF ASSEMBLY

C. F. FOTHERGILL, *Printer*