

ANNO UNDECIMO & DUODECIMO

VICTORIÆ REGINÆ.

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CAP. XLIV.

An Act to protect Justices of the Peace from vexatious Actions for Acts done by them in execution of their Office. [14th *August* 1848.]

WHEREAS it is expedient to protect Justices of the Peace in the Execution of their Duty: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That every Action hereafter to be brought against any Justice of the Peace for any Act done by him in the Execution of his Duty as such Justice, with respect to any Matter within his Jurisdiction as such Justice, shall be an Action on the Case as for a Tort; and in the Declaration it shall be expressly alleged that such Act was done maliciously, and without reasonable and probable Cause; and if at the Trial of any such Action, upon the General Issue being pleaded, the Plaintiff shall fail to prove such Allegation, he shall be nonsuit, or a Verdict shall be given for the Defendant.

For an Act by a Justice of Peace within his Jurisdiction the Action shall be on the Case, and it shall be alleged to have been done maliciously, and without probable Cause.

II. And be it enacted, That for any Act done by a Justice of the Peace in a Matter of which by Law he has not Jurisdiction, or in which he shall have exceeded his Jurisdiction, any Person injured thereby, or by any Act done under any Conviction or Order made or Warrant

For an Act done by him without Jurisdiction, or exceeding his Jurisdiction, an Action may be

maintained without such Allegation;

but not for an Act done under a Conviction or Order, until after such Conviction or Order shall have been quashed;

nor for an Act done under a Warrant to compel Appearance, if a Summons were previously served and not obeyed.

Warrant issued by such Justice in any such Matter, may maintain an Action against such Justice in the same Form and in the same Case as he might have done before the passing of this Act, without making any Allegation in his Declaration that the Act complained of was done maliciously, and without reasonable and probable Cause: Provided nevertheless, that no such Action shall be brought for any thing done under such Conviction or Order until after such Conviction shall have been quashed, either upon Appeal or upon Application to Her Majesty's Court of Queen's Bench; nor shall any such Action be brought for any thing done under any such Warrant which shall have been issued by such Justice to procure the Appearance of such Party, and which shall have been followed by a Conviction or Order in the same Matter, until after such Conviction or Order shall have been so quashed as aforesaid; or if such last-mentioned Warrant shall not have been followed by any such Conviction or Order, or if it be a Warrant upon an Information for an alleged indictable Offence, nevertheless if a Summons were issued previously to such Warrant, and such Summons were served upon such Person, either personally or by leaving the same for him with some Person at his last or most usual Place of Abode, and he did not appear according to the Exigency of such Summons, in such Case no such Action shall be maintained against such Justice for any thing done under such Warrant.

If one Justice make a Conviction or Order, and another grant a Warrant upon it, the Action must be brought against the former, not the latter, for a Defect in the Conviction or Order.

III. And be it enacted, That where a Conviction or Order shall be made by One or more Justice or Justices of the Peace, and a Warrant of Distress or of Commitment shall be granted thereon by some other Justice of the Peace *bonâ fide* and without Collusion, no Action shall be brought against the Justice who so granted such Warrant by reason of any Defect in such Conviction or Order, or for any Want of Jurisdiction in the Justice or Justices who made the same, but the Action (if any) shall be brought against the Justice or Justices who made such Conviction or Order.

No Action for issuing a Distress Warrant for Poor Rate by reason of any Defect or that the Party is not rateable.

No Action against Justices for the Manner in which they exercise a discretionary Power.

IV. And be it enacted, That where any Poor Rate shall be made, allowed, and published, and a Warrant of Distress shall issue against any Person named and rated therein, no Action shall be brought against the Justice or Justices who shall have granted such Warrant by reason of any Irregularity or Defect in the said Rate, or by reason of such Person not being liable to be rated therein; and that in all Cases where a discretionary Power shall be given to a Justice of the Peace by any Act or Acts of Parliament, no Action shall be brought against such Justice for or by reason of the Manner in which he shall have exercised his Discretion in the Execution of any such Power.

If a Justice refuse to do an Act, the Court of Queen's Bench may by Rule order him to do it, and no Action shall be brought against him for doing it.

V. And whereas it would conduce to the Advancement of Justice, and render more effective and certain the Performance of the Duties of Justices, and give them Protection in the Performance of the same, if some simple Means, not attended with much Expense, were devised by which the Legality of any Act to be done by such Justices might be considered and adjudged by a Court of competent Jurisdiction, and such Justice enabled and directed to perform it without Risk of any Action or other Proceeding being brought or had against him;

be it therefore enacted, That in all Cases where a Justice or Justices of the Peace shall refuse to do any Act relating to the Duties of his or their Office as such Justice or Justices, it shall be lawful for the Party requiring such Act to be done to apply to Her Majesty's Court of Queen's Bench, upon an Affidavit of the Facts, for a Rule calling upon such Justice or Justices, and also the Party to be affected by such Act to show Cause why such Act should not be done; and if after due Service of such Rule good Cause shall not be shown against it, the said Court may make the same absolute, with or without or upon Payment of Costs, as to them shall seem meet; and the said Justice or Justices upon being served with such Rule absolute shall obey the same, and shall do the Act required; and no Action or Proceeding whatsoever shall be commenced or prosecuted against such Justice or Justices for having obeyed such Rule, and done such Act so thereby required as aforesaid.

After Conviction or Order confirmed on Appeal, no Action for any thing done under a Warrant upon it.

VI. And be it enacted, That in all Cases where a Warrant of Distress or Warrant of Commitment shall be granted by a Justice of the Peace upon any Conviction or Order which, either before or after the granting of such Warrant, shall have been or shall be confirmed upon Appeal, no Action shall be brought against such Justice who so granted such Warrant for any thing which may have been done under the same by reason of any Defect in such Conviction or Order.

If an Action be brought where by this Act it is prohibited, a Judge may set aside the Proceedings.

VII. And be it enacted, That in all Cases where by this Act it is enacted that no Action shall be brought under particular Circumstances, if any such Action shall be brought it shall be lawful for a Judge of the Court in which the same shall be brought, upon Application of the Defendant, and upon an Affidavit of Facts, to set aside the Proceedings in such Action, with or without Costs, as to him shall seem meet.

Limitation of Action.

VIII. And be it enacted, That no Action shall be brought against any Justice of the Peace for any thing done by him in the Execution of his Office, unless the same be commenced within Six Calendar Months next after the Act complained of shall have been committed.

Notice of Action.

IX. And be it enacted, That no such Action shall be commenced against any such Justice of the Peace until One Calendar Month at least after a Notice in Writing of such intended Action shall have been delivered to him, or left for him at his usual Place of Abode, by the Party intending to commence such Action, or by his Attorney or Agent, in which said Notice the Cause of Action, and the Court in which the same is intended to be brought, shall be clearly and explicitly stated; and upon the Back thereof shall be endorsed the Name and Place of Abode of the Party so intending to sue, and also the Name and Place of Abode or of Business of the said Attorney or Agent, if such Notice have been served by such Attorney or Agent.

X. And

Venue.

X. And be it enacted, That in every such Action the Venue shall be laid in the County where the Act complained of was committed, or in Actions in the County Court the Action must be brought in the Court within the District of which the Act complained of was committed; and the Defendant shall be allowed to plead the General Issue therein, and to give any special Matter of Defence, Excuse, or Justification in Evidence under such Plea, at the Trial of such Action: Provided always, that no Action shall be brought in any such County Court against a Justice of the Peace for any thing done by him in the Execution of his Office if such Justice shall object thereto; and if within Six Days after being served with a Summons in any such Action such Justice, or his Attorney or Agent, shall give a written Notice to the Plaintiff in such Action that he objects to being sued in such County Court for such Cause of Action, all Proceedings afterwards had in such County Court in any such Action shall be null and void.

Defendant may plead the General Issue, any Special Matter &c., in Evidence.

Tender, and Payment of Money into Court.

XI. And be it enacted, That in every such Case after Notice of Action shall be so given as aforesaid, and before such Action shall be commenced, such Justice to whom such Notice shall be given may tender to the Party complaining, or to his Attorney or Agent, such Sum of Money as he may think fit as Amends for the Injury complained of in such Notice; and after such Action shall have been commenced, and at any Time before Issue joined therein, such Defendant, if he have not made such Tender, or in addition to such Tender, shall be at liberty to pay into Court such Sum of Money as he may think fit, and which said Tender and Payment of Money into Court, or either of them, may afterwards be given in Evidence by the Defendant at the Trial under the General Issue aforesaid; and if the Jury at the Trial shall be of opinion that the Plaintiff is not entitled to Damages beyond the Sum so tendered or paid into Court, or beyond the Sums so tendered and paid into Court, then they shall give a Verdict for the Defendant, and the Plaintiff shall not be at liberty to elect to be nonsuit, and the Sum of Money, if any, so paid into Court, or so much thereof as shall be sufficient to pay or satisfy the Defendant's Costs in that Behalf, shall thereupon be paid out of Court to him, and the Residue, if any, shall be paid to the Plaintiff; or if, where Money is so paid into Court in any such Action, the Plaintiff shall elect to accept the same in satisfaction of his Damages in the said Action, he may obtain from any Judge of the Court in which such Action shall be brought an Order that such Money shall be paid out of Court to him, and that the Defendant shall pay him his Costs to be taxed, and thereupon the said Action shall be determined, and such Order shall be a Bar to any other Action for the same Cause.

In what Cases nonsuit, or Verdict for Defendant.

XII. And be it enacted, That if at the Trial of any such Action the Plaintiff shall not prove that such Action was brought within the Time herein-before limited in that Behalf, or that such Notice as aforesaid was given One Calendar Month before such Action was commenced, or if he shall not prove the Cause of Action stated in such Notice, or if he shall not prove that such Cause of Action arose in the County or Place laid as Venue in the Margin of the Declaration,

Declaration, or (when such Plaintiff shall sue in the County Court) within the District for which such Court is holden, then and in every such Case such Plaintiff shall be nonsuit, or the Jury shall give a Verdict for the Defendant.

Damages.

XIII. And be it enacted. That in all Cases where the Plaintiff in any such Action shall be entitled to recover, and he shall prove the levying or Payment of any Penalty or Sum of Money under any Conviction or Order as Parcel of the Damages he seeks to recover, or if he prove that he was imprisoned under such Conviction or Order, and shall seek to recover Damages for any such Imprisonment, he shall not be entitled to recover the Amount of such Penalty or Sum so levied or paid, or any Sum beyond the Sum of Two-pence as Damages for such Imprisonment, or any Costs of Suit whatsoever, if it shall be proved that he was actually guilty of the Offence of which he was so convicted, or that he was liable by Law to pay the Sum he was so ordered to pay, and (with respect to such Imprisonment) that he had undergone no greater Punishment than that assigned by Law for the Offence of which he was so convicted, or for Nonpayment of the Sum he was so ordered to pay.

Costs.

XIV. And be it enacted, That if the Plaintiff in any such Action shall recover a Verdict, or the Defendant shall allow Judgment to pass against him by Default, such Plaintiff shall be entitled to Costs in such Manner as if this Act had not been passed; or if in such Case it be stated in the Declaration, or in the Summons and Particulars in the County Court if he sue in that Court, that the Act complained of was done maliciously and without reasonable and probable Cause, the Plaintiff, if he recover a Verdict for any Damages, or if the Defendant allow Judgment to pass against him by Default, shall be entitled to his full Costs of Suit, to be taxed as between Attorney and Client; and in every Action against a Justice of the Peace for any thing done by him in the Execution of his Office the Defendant, if he obtain Judgment upon Verdict or otherwise, shall in all Cases be entitled to his full Costs in that Behalf, to be taxed as between Attorney and Client.

Act to extend only to England, Wales, and Berwick.

XV. And be it enacted, That this Act shall extend only to *England* and *Wales* and the Town of *Berwick-upon-Tweed*.

Commencement of Act.

XVI. And be it enacted, That this Act shall commence and take effect on the Second Day of *October* in the Year of our Lord One thousand eight hundred and forty-eight.

After Commencement of this Act the following Statutes or Parts of Statues repealed.

XVII. And be it enacted, That from and after the Time this Act shall so commence and take effect as aforesaid the following Statutes and Parts of Statutes, except so far as they may repeal other Statutes, shall be and shall be deemed and taken to be repealed; that is to say, so much of an Act of Parliament made and passed in the Seventh Year of the Reign of His Majesty King *James* the First, intituled *An Act for Ease in pleading against troublesome and contentious Suits prosecuted against Justices of the Peace, Mayors, Constables, and certain other His Majesty's Officers, for the lawful Execution of*

7 Jac. 1. c. 5.

their Office, as relates to Actions against Justices of the Peace; and so much of an Act made and passed in the Twenty-first Year of the Reign of His said Majesty King *James* the First, intituled *An Act to enlarge and make perpetual the Act made for Ease in pleading against troublesome and contentious Suits prosecuted against Justices of the Peace, Mayors, Constables, and certain other His Majesty's Officers, for the lawful Execution of their Office, made in the Seventh Year of His Majesty's most happy Reign*, as relates to Actions against Justices of the Peace; and so much of an Act made and passed in the Twenty-fourth Year of the Reign of His Majesty King *George* the Second, intituled *An Act for the rendering Justices of the Peace more safe in the Execution of their Office, and for indemnifying Constables and others acting in obedience to their Warrants*, as relates to Actions against Justices of the Peace; and a certain other Act made and passed in the Forty-third Year of the Reign of His late Majesty King *George* the Third, intituled *An Act to render Justices of the Peace more safe in the Execution of their Duty;* and all other Act or Acts or Parts of Acts which are inconsistent with the Provisions of this Act; save and except so much of the said several Acts as repeal any other Acts or Parts of Acts, and also except as to Proceedings now pending, to which the same or any of them may be applicable.

21 Jac. 1. c. 12. s. 5.

24 G. 2. c. 44. ss. 1, 2. and Part of s. 8.

43 G. 3. c. 141.

Act to apply to Persons protected by the repealed Statutes.

XVIII. And be it enacted, That this Act shall apply for the Protection of all Persons for any thing done in the Execution of their Office, in all Cases in which, by the Provisions of any Act or Acts of Parliament, the several Statutes or Parts of Statutes herein-before mentioned and by this Act repealed would have been applicable if this Act had not passed.

Act may be amended, &c.

XIX. And be it enacted, That this Act may be amended or repealed by any Act to be passed in the present Session of Parliament.

LONDON: Printed by GEORGE E. EYRE and WILLIAM SPOTTISWOODE, Printers to the Queen's most Excellent Majesty. 1848.