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c 303 Public Authorities Protection Act

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CHAPTER 303

The Public Authorities Protection Act

1. In this Act, "justice of the peace" includes a magis-^{Interpreta-}trate, a person who is *ex officio* a justice of the peace, and a person who has by law the powers of a justice of the peace, either generally or with regard to any particular matter, and any other person authorized to hear and determine any argument or to try any offence. R.S.O. 1937, c. 135, s. 1.

2. No action shall lie or be instituted against a 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, unless the act was done maliciously and without reasonable and probable cause. R.S.O. 1937, c. 135, s. 2.

3.—(1) For any act done by a justice of the peace in a matter in which by law he has not jurisdiction, or in which he has exceeded his jurisdiction, or for any act done under a conviction or order made or a warrant issued by him in such matter, any person injured thereby may maintain an action against the justice in the same case as he might have heretofore done, and it shall not be necessary to allege or prove that the act was done maliciously and without reasonable and probable cause.

(2) Where a conviction or order has been made by a justice of the peace, and a warrant of distress or of commitment has been issued thereon by some other justice of the peace, *bona fide* and without collusion, no action shall be brought against the justice who issued the warrant by reason of any defect in the conviction or order, or for any want of jurisdiction in the justice who made the same, but the action, if any, shall be brought against the justice who made the conviction or order.

(3) No such action as is mentioned in this section shall be brought for anything done under a conviction or order or under a warrant issued by a justice of the peace to procure the appearance of the party, which has been followed by a conviction or order in the same matter, until the conviction or order has been quashed.

(4) Where such warrant has not been followed by a conviction or order, or is a warrant upon an information for an indictable offence, if a summons was issued previously to the

warrant, and the summons was served upon such party, either personally or by leaving the same for him with some person at his last or usual place or abode, and he did not appear according to the exigency of the summons, no such action shall be maintained against the justice for anything done under the warrant.

Nor when order of protection made.

(5) Notwithstanding this section, no action shall lie when an order has been made under section 7 for the protection of the justice. R.S.O. 1937, c. 135, s. 3.

Where acting under order of the court.

4. Where a justice of the peace refuses to do any act relating to the duties of his office as such justice, the person requiring the act to be done may, upon affidavit stating the facts, and upon six days notice to him, and also to the party to be affected by the act, apply to a judge of the Supreme Court, or to the judge of the county or district court of the county or district in which the justice resides, for an order directing the act to be done. R.S.O. 1937, c. 135, s. 4.

Where conviction, etc., confirmed on appeal.

5. Where a justice of the peace has issued a warrant of distress or a warrant of commitment upon a conviction or order which either before or after the issuing of the warrant has been confirmed upon appeal, no action shall be brought against such justice by reason of any defect in the conviction or order or for anything done under the warrant. R.S.O. 1937, c. 135, s. 5.

Where protection may be claimed notwithstanding defects in proceedings.

6.—(1) No defect in an information taken before or in a warrant issued by a justice of the peace shall prevent him from claiming the benefit and protection of this Act if the court is of opinion that he acted in good faith, and that the informant or complainant intended, by the facts stated to the justice, to charge the commission of an offence which, if the same had been set forth in proper form in the information or warrant, would have been one within the jurisdiction of the justice, and in such case the informant or complainant shall be liable as if the information had charged in proper form the commission of the offence so intended to be charged.

Non-liability of informant where offence not properly described.

(2) An action shall not be brought against a person who has in good faith laid an information before a justice of the peace or by reason of the information not containing a proper description of the offence or being otherwise defective. R.S.O. 1937, c. 135, s. 6.

Conditions on quashing convictions.

7.—(1) Where an order is made quashing a summary conviction, the court may provide that no action shall be brought against the justice of the peace who made the conviction or against the informant or any officer acting thereunder or under any warrant issued to enforce the conviction or order.

(2) Such an order may be made conditional upon payment of the costs of the motion to quash or upon such other condition as may be deemed proper. R.S.O. 1937, c. 135, s. 7.

Order may be made conditional.

8. If an action is brought where by this Act it is enacted that no action shall be brought, it may be stayed upon a summary application. R.S.O. 1937, c. 135, s. 8.

When action may be stayed upon summary application.

9. Where the plaintiff is entitled to recover, and he proves the levying or payment of any penalty or sum of money under any conviction or order as part of the damages he seeks to recover, or if he proves that he was imprisoned under the conviction or order, and seeks to recover damages for the imprisonment, he shall not be entitled to recover the amount of the penalty or sum so levied or paid, or any sum beyond the sum of three cents as damages for the imprisonment, or any costs of suit, if it is proved that he was actually guilty of the offence of which he was convicted, or that he was liable by law to pay the sum he was so ordered to pay, and, with respect to the imprisonment, that he has undergone no greater punishment than that assigned by law for the offence of which he was so convicted, or for non-payment of the sum he was so ordered to pay. R.S.O. 1937, c. 135, s. 9.

Damages nominal in certain cases.

10.—(1) No action shall be brought against a constable, division court bailiff or other officer, or against any person acting by his order and in his aid, for anything done in obedience to a warrant issued by a justice of the peace or clerk of a division court until demand has been made or left at his usual place of abode by the person intending to bring such action or by his solicitor or agent in writing, signed by the person demanding the same, for the perusal and copy of the warrant and the same has been refused and neglected for six days after such demand.

Actions against constable, division court bailiff or other officer.

(2) If, after such demand and compliance therewith by showing the warrant to and permitting a copy thereof to be taken by the person demanding the same, an action is brought against such constable, bailiff or officer, or such person so acting, for any cause without making the justice or clerk who issued the warrant a defendant, on the production and proof of the warrant at the trial of the action judgment shall be given for the defendant notwithstanding any defect of jurisdiction in the justice or clerk.

Dismissal of action.

(3) If the action is brought jointly against such justice or clerk and such constable or bailiff or other officer or person so acting, on proof of such warrant, judgment shall be given for the constable or bailiff or other officer and for the person so acting notwithstanding the defect in jurisdiction.

Action brought jointly against justice or clerk and constable or bailiff.

Costs.

(4) If the judgment is given against the justice or clerk the plaintiff shall, in addition to any costs awarded to him, be entitled to recover such costs as he is liable to pay to the defendant for whom judgment is given. R.S.O. 1937, c. 135, s. 10.

Action for act done under public authority to be begun within six months.

11. No action, prosecution or other proceeding shall lie or be instituted against any person for an act done in pursuance or execution or intended execution of any statutory or other public duty or authority, or in respect of any alleged neglect or default in the execution of any such duty or authority, unless it is commenced within six months next after the act, neglect or default complained of, or, in case of continuance of injury or damage, within six months after the ceasing thereof. R.S.O. 1937, c. 135, s. 11.

Persons obeying mandamus protected.

12. No action or other proceeding shall be commenced or prosecuted against any person for or by reason of anything done in obedience to a mandamus or mandatory order. R.S.O. 1937, c. 135, s. 12.

Protection of those acting under *ultra vires* statutes.

13. No action shall be brought against a judge, justice of the peace, or officer for anything done by him under the supposed authority of a statute of Ontario or of Canada which was beyond the legislative jurisdiction of the Legislature or of the Parliament of Canada, as the case may be, if the action would not lie against him had the statute been within the legislative jurisdiction of the Legislature or Parliament which assumed to enact it. R.S.O. 1937, c. 135, s. 13.

Applications for security for costs.

14. Where an action is brought against a justice of the peace or against any person for any act done in pursuance or execution or intended execution of any public duty, statutory or otherwise, or authority, or in respect of any alleged neglect or default in the execution of any such statute, duty or authority, the defendant may at any time after the service of the writ apply for security for costs if it is shown that the plaintiff is not possessed of property sufficient to answer the costs of the action in case a judgment is given in favour of the defendant, and that the defendant has a good defence upon the merits, or that the grounds of action are trivial or frivolous. R.S.O. 1937, c. 135, s. 14.

Application of Act.

15. This Act shall not apply to a municipal corporation. R.S.O. 1937, c. 135, s. 15.

Application of Act to sheriffs and their officers.

16. A sheriff or his officer acting under a writ of execution or other process shall be deemed to be a person acting in the discharge of a public duty or authority within the meaning of this Act. R.S.O. 1937, c. 135, s. 16.