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Séminaire de Québec
#1, rue de l'Université,
Québec 4, QUE.

PLAN OF A BILL,

For altering the Criminal Law,

SENT BY THE

LEGISLATIVE COUNCIL,

TO THE ASSEMBLY,

MONDAY, 16th February, 1795.



QUEBEC.-PRINTED AT THE NEW PRINTING-OFFICE.
M.DCC.XCV.

HOUSE OF ASSEMBLY, QUEBEC, }
Monday, 16th February, 1795. }

ORDERED,

THAT one Hundred Copies of the Bill be printed in French and English, under the direction of Mr. Speaker, with all convenient speed, and that two Copies; in each Language be sent by the Clerk of this House to each Member in Town, as soon as can be conveniently done.

(Attest)

SAM. PHILLIPS, CLK.

An Act to alter and amend the Criminal Law in certain Cases, and to provide more effectual Remedies against the Commission of Crimes and Offences.



HEREAS many Penal Statutes and Laws, now in force in this Province, are not applicable to the state and condition of this Colony, and it is requisite to provide other and more adequate remedies to prevent the Commission of Crimes and Offences; *Be it therefore enacted* by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of *Lower-Canada*, constituted and assembled by virtue of and under the authority of an Act, passed in the Parliament of *Great Britain*, intituled "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, intituled "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 it is hereby enacted* by authority of the same: "

I. That an Act passed in the ninth year of the Reign of His Majesty, King *GEORGE* the first, intituled, "An Act for the more effectual punishing evil disposed persons, going armed in disguise and doing injuries and violation to persons and properties of His Majesty's subjects, and for the more speedy bringing the offenders to Justice." nor any part of the said Act or Statute shall from and after the passing of this Act be held, taken or considered as making part of the Laws of this Province, or have force or effect within the same, otherwise than herein after provided: *Provided always*; that, nothing herein contained shall extend to repeal that part of the above recited Act, which takes away the Benefit of Clergy from any person who shall be lawfully convicted of setting fire to any House, Barn or Out-house.

II. *And Be it further enacted*, that so much of an Act or Ordinance, passed by the Governor and Legislative Council, in the twenty-ninth year of His Majesty's Reign, intituled "An Act to continue the Ordinances regulating the practice of the Law and to provide more effectually for the dispensation of Justice and especially in the new Districts, as respects Simple Larceny and declares what shall be considered Petit Larceny and the manner of accusation, trial and punishment to be inflicted, as well for Petit Larceny as Breach of the Peace, and the duties of Gaolers, Constables and Peace-officers, respecting the punishments in the said Act mentioned, shall from and after the passing of this Act cease and determine, and such parts of the said Act or Ordinance are hereby repealed.

III. *And whereas it is requisite to annex such punishment, to the commission of crimes and offences, as that wicked and evil disposed persons may not hope to escape judgment; Be it therefore further enacted*, that simple Larceny, where the goods or chattels stolen shall not in value exceed twenty shillings sterling money of Great Britain, shall be considered and adjudged only Petit Larceny and that the Judgment of Law to be pronounced upon any felon, committing Simple Larceny, to the value aforesaid, shall be as in cases of Petit Larceny, any Law to the contrary notwithstanding.

IV. *And whereas the Benefit of Clergy was heretofore extended by the Laws of England, and more particularly by a Statute, passed in the twenty-fifth year of the Reign of King Edward the third, to the crime of Larceny of every denomination, but the said Benefit has by several Statutes since the period above mentioned, been taken away from various kinds of the said crime, for reasons that are not applicable to the condition of this Province, Be it therefore further enacted*, that all and every person who hereafter may be convicted of Simple Grand Larceny, and from which the Benefit of Clergy shall have been taken away by any Statute, passed since the twenty-fifth year of the Reign of King Edward the third, shall be restored to and receive the Benefit of Clergy for the first offence, except where it is otherwise provided and directed by this Act; any Statute or Law to the contrary notwithstanding.

And

V. *And be it further enacted*, that in every case of Compound Larceny, where the goods and chattels stolen may not exceed the value of ten pounds like money and may be feloniously taken from a dwelling house out-house, shop or ware house thereunto belonging or any store-house and repository of goods and chattels and without force or violence in breaking and entering the same or without any person to the same dwelling-house, out-house, shop, ware-house or store-house thereunto belonging or having charge and custody of the same, being therein at the time of the felony committed, the felon nor felons nor any accessory to the same felony shall be excluded the Benefit of Clergy for the first offence, any Law to the contrary notwithstanding.

VI. *Provided always and be it further enacted*, that all and every person who hereafter shall be convicted of having feloniously broken and entered any house, out-house, barn, granary, ware-house, shops, store, stable, booth or stall in any market or other repository of goods, chattels, wares or merchandize, and therefrom stolen any such goods or chattels to the value of five pounds sterling money *foresaid* or upwards, shall be debarred and excluded the Benefit of Clergy, and for all and every such felony and also the accessory to and before any such felony committed, and shall receive Judgment of and suffer Death for the first offence.

VII. *And be it further enacted*, that all and every person or persons, who hereafter shall, in the day time, unlawfully break and enter any dwelling-house, out-house, coach-house or stable or any barn, granary, ware-house, store, shop, counting-house or repository of goods and chattels and therefrom shall feloniously steal any goods or chattels to the value of forty shillings, like sterling money as *foresaid*, any person being therein and having custody of such goods or chattels, he, she or they, and the accessories before the fact, shall, upon Conviction thereof, be adjudged and suffer as in cases of felony without the Benefit of Clergy,

VIII. *Provided also and it is hereby declared and enacted*, that nothing in this Act contained shall alter or lessen or be construed to alter or lessen the

punishment by Law inflicted on any person or persons convicted of the crime of Sacrilege or Burglary or Robbery from any person on or near the high-way, nor for Robbery from any person in a dwelling-house, out-house, store or other building in the day or night time, without breaking the same, and the person so robbed being put in fear; but that every person who may commit Sacrilege or Burglary or Robbery as aforesaid, and the accessaries before the fact, and being thereof lawfully convicted, shall suffer Death without Benefit of Clergy.

VIII. *And be it further enacted*, that if any person or persons shall with any offensive weapon or instrument, unlawfully and maliciously assault, or shall by menaces or in or by any forcible or violent manner demand any money, goods, or chattels of or from any other person or persons, with a felonious intent to rob or commit robbery upon any such person or persons, that then and in every such case all and every such person and persons so offending, being thereof lawfully convicted, shall be adjudged guilty of Felony, and shall suffer as by this Act is directed in cases of Grand Larceny.

IX. *Provided always and be it further enacted*, that no person or persons, who hereafter may be convicted of having feloniously taken any money, goods or chattels from the person of any other, privily without his or her knowledge, shall be debarred the Benefit of Clergy for the first offence or felony committed, where the value of the money, goods or chattels so privily taken, may not exceed ten pounds sterling money aforesaid; any Law to the contrary notwithstanding.

X. *Provided always and be it declared and enacted*, that nothing in this Act contained shall alter or lessen or be construed to alter or lessen the crime of secreting, embezzling or destroying any letter or packet, containing any bond, note, bill, receipt or other valuable paper, or of sealing out of any letter any bond, draught, bill or promisory note, whatsoever, for the payment of money, or of robbing any mail of any letter or letters, sent or conveyed by post, or shall in any degree alter or lessen the offence aforesaid or the punishment therefor directed by

By a certain Statute, passed in the seventh year of his present Majesty's reign, intituled "An Act for amending certain Laws, relating to the Revenues of the Post-office, and for granting rates of postage for the conveyance of letters and Packets between Great Britain and the Isle of man, and within that Island"; but that the said Statute shall continue and remain in full force, and be observed in the same manner as if this Act had not been made; any thing herein contained to the contrary notwithstanding.

XI. *And be it further enacted*, that whensoever any person may be entrusted by his Majesty, his Heirs or Successors, for preserving any naval, ordnance or military stores or provissions or other stores or goods or chattels of and belonging to the Crown, and shall embezzle or purloin the same or any part thereof, at one or more times, every such taking, embezzling or purloining, as abovesaid, shall be to all intents and purposes reputed and adjudged to be felony, and every offender shall, upon conviction, suffer as in cases of felony by this Act is directed for the punishment of Simple Larceny, where the ordnance, stores, provissions, goods or chattels may not exceed twenty pounds sterling money as aforesaid, and in all and every case where the said ordnance, stores, provissions, goods or chattels shall exceed twenty pounds sterling, whether the taking be at one or more times, the offender shall be excluded the Benefit of Clergy, any Law to the contrary notwithstanding.

XII. *And whereas* by the present Laws, persons maliciously killing, maiming or wounding cattle, and also those who unlawfully kill cattle or sheep or feloniously drive them away with intent to steal the same or part thereof, and the accessories are liable to severe, penalties and punishment and excluded the Benefit of Clergy; *Be it further enacted*, that all and every person who shall maliciously and unlawfully kill, maim or wound any horse or cattle or who shall feloniously lead or drive away or kill one or more horse, bull, cow, ox, steer, bullock, heifer, calf, lamb or sheep, with intention to steal the same or any part thereof, or shall assist or aid any person to commit any such offence, or offences.

ces as aforesaid, he, she and they being lawfully convicted, shall be adjudged guilty of felony and shall suffer such punishment, as by this Act is directed in cases of Grand Larceny and no otherwise, any Law to the contrary notwithstanding.

XIII. *And whereas*, by the Criminal Law, persons who may send letters subscribed with fictitious names or letters, demanding money or other valuable thing or threatening to kill or murder or to burn the houses, barns, stacks, of corn, or grain, hay or straw of His Majesty's subjects, though no money or other valuable thing be demanded in such letter, are upon conviction excluded the Benefit of Clergy, and which in many cases may become a punishment disproportioned to the crime; *Be it therefore further enacted*, that all and every person who shall knowingly send any letter without any name subscribed thereto or signed with a fictitious name, or letter or Letters, thereby demanding money or other valuable thing, or threatening to kill or murder any person or persons or to burn their houses, out-houses, barns, stacks of corn or grain, hay or straw or stores or ware-houses, though no money or other valuable thing be demanded in such letter or letters, or shall forcibly rescue any person, being lawfully in custody of any officer or other person for either of the said offences, every person so offending, and being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer as in cases of felony by this Act is directed for the punishment of Simple Grand Larceny, any Law to the contrary notwithstanding.

XIV. *And be it further enacted*, that all and every person, who shall wilfully and maliciously shoot at, and discharge or cause to be shot at and discharged, any musket, gun, pistol or other fire-arms, upon any person or persons, in any dwelling-house or other place, he, she or they, being lawfully convicted, shall be adjudged guilty of felony, and suffer as a felon, with Benefit of Clergy for the first offence. *Provided always*, that nothing herein above contained shall extend to lessen or alter the Law and Judgment on felons, who may be convicted of maiming or disabling any person of any limb or member and with intention

to maim or disfigure, or the accessories thereto, but that in all and every case of maiming or disabling any person of any limb or member, or disfiguring, whether the same be wilfully done with a sharp instrument or fire-arms or any other weapon, the person so offending and the aiders and abettors, being lawfully thereof convicted, shall be adjudged guilty of felony and excluded the Benefit of Clergy.

XV. *And whereas*, by divers Statutes and Laws, persons guilty, as well of felony as of divers misdemeanors, are liable to be imprisoned and confined to labour in public work-houses and Bridewells, and in order to provide for the just punishment of all such offenders; *Be it enacted*, by the authority aforesaid, that until suitable work-houses, Bridewells or penitentiary-houses, may be provided, it shall and may be lawful for all and every court or magistrate, who by law hath power to commit any felon or offender to any work house or Bridewell, and every such court or magistrate is hereby authorized, by the sentence of such court or by warrant under the hand and seal of the magistrate, having authority in the premises, to commit the felon or offender to the common gaol of the District, where the offence may be committed, and there to remain for such period and time, as by law the offender ought to bear and suffer in any work-house or Bridewell for the felony, misdemeanor or crime by him done and committed.

XVI. *And whereas* the punishment of burning in the hand, when any person is convicted of felony within the Benefit of Clergy, is often disregarded and ineffectual, and sometimes may fix a lasting mark of disgrace and infamy on offenders, who might otherwise become good subjects and profitable members of this government, *Be it therefore further enacted*, that from and after the passing of this Act, when any person shall be lawfully convicted of any felony within the Benefit of Clergy, for which he or she is liable by law to be burned or marked in the brawn of the left thumb, it shall and may be lawful for the court before which any person shall be so convicted, or any court holden for the same place with like authority, if such court shall think fit, instead of such burning or marking, to impose upon such offender such

a moderate pecuniary fine, as to the court in its discretion it shall seem meet, or otherwise it shall be lawful, instead of such burning or marking in any of the cases aforesaid, except in case of manslaughter, to order and adjudge, that such offender shall be once or oftener, but not more than three times, either publicly or privately whipped, and at such times and place and in such manner and degree as to the said court in its discretion shall seem meet, such private whipping to be inflicted in the presence of not less than two persons, besides the offender and the officer who inflicts the same, and in case of female offenders, in the presence of females only and such fine or whipping so imposed or inflicted, instead of such burning or marking, shall have the like effects and consequences to the party on whom the same or either of them shall be so imposed or inflicted, with respect to any discharge from the same or other felonies, or any restitution to his or her estates, capacities and credits, as if he or she had been burned or marked as aforesaid; *Provided always and be it further enacted*, that nothing in this Act contained shall abridge or deprive any court of the powers now vested in the same by Law of detaining and keeping in prison any such offender as aforesaid, for any time not exceeding one year, or of committing him or her to the house of correction or public work-house, to be kept to hard labour or in confinement, under such legal regulations, as may be established and directed for persons confined to the said house, for any time not less than six months, nor exceeding two years, but that such offender may, if such court shall think fit, after such burning or marking, or after such whipping or fine, as shall, by virtue of this present Act, be inflicted or imposed instead thereof, be so detained or committed to the said house of correction, and with such accumulated punishment as aforesaid, any Law to the contrary notwithstanding.

XVII. *And whereas*, by deterring persons from buying or receiving stolen goods, divers felonies and crimes may be thereby prevented; *Be it therefore further enacted*, that from and after the passing of this Act in all cases whatsoever, where any goods or chattels shall have been feloniously taken or stolen, whether the offence of the person or persons

sons to taking or stealing the same shall amount to Grand Larceny or some greater offence or to Petit Larceny, only except where the person or persons, actually committing the felony, shall have been already convicted of Grand Larceny or of some greater offence, every person who shall buy or receive any such goods and chattles, knowing the same to have been so taken or stolen, shall be held and deemed guilty of, and may be prosecuted for a misdemeanor, and shall be punished by fine, imprisonment or whipping as the court of quarter sessions, who are hereby empowered to try such offender or as any other court before which he, she or they shall be tried, shall think fit to inflict, although the principal felon or felons be not before convicted of the said felony, and whether he, she or they is or are amenable to Justice or not, any Law or Statute to the contrary notwithstanding; and in cases where the felony actually committed shall amount to Grand Larceny, or to some greater offence and where the person or persons actually committing such felony shall not be before convicted, such offender or offenders, shall be exempted from being punished as accessory or accessories, if such principal felon or felons shall be afterwards convicted.

XVIII. *And be it further enacted*, that it shall and may be lawful for any one Justice of the peace, upon complaint made before him, upon oath that there is reason to suspect, that stolen goods are knowingly concealed in any dwelling-house, out-house, garden, yard, croft, or other place or places, by warrant under his hand and seal, to cause every such dwelling-house, out-house, garden, yard, croft or other place or places, to be searched in the day time, and the person or persons knowingly concealing the said stolen goods or any part thereof, or in whose custody the same or any part thereof shall be found, he, she or they, being privy thereto, shall be deemed and held guilty of a Misdemeanor, and shall and may be brought before any Justice of the peace, for the district, county, city, town or place, and made amenable to answer the same by like warrant of any such Justice, and being thereof convicted by due course of Law, shall be punishable in the manner aforesaid.

XIX. *And be it further enacted*, that every person to whom any goods or chattels, which have been feloniously stolen or taken, shall be brought and offered to be sold, pawned or delivered, shall and is hereby empowered and required, there being reasonable cause to suspect that such goods or chattels were stolen, to apprehend, secure and carry before a Justice of the peace, for the district, county, city, town or place, where the same goods and chattels, shall be so brought or offered to be sold, pawned or delivered, having it in his or her power so to do, the person and persons bringing or offering the same; *Provided always*, that nothing herein contained shall extend to repeal any former Law now in being, for the punishment of such offenders, and provided also that such offender, after having been prosecuted and convicted under this Act, shall not for the same offence be afterwards punished or liable to be punished by any such former Law.

XX. *And whereas* persons convicted of Grand Larceny are by their punishment restored to their credit as witnesses, but persons convicted of Petit Larceny are rendered and remain wholly incompetent to be examined as witnesses; *Be it therefore further enacted*, that from and after the passing of this Act no person shall be an incompetent witness by reason of a conviction for Petit Larceny.

XXI. *Whereas* it is expedient that the judgment which has been required by law, to be given and awarded against any woman or women in the cases of High Treason or of Petit Treason should be no longer continued; *Be it further enacted*, that the judgment hereafter to be given and awarded against any woman or women convicted of the crime of High Treason or of the crime of Petit Treason or of abetting, procuring or countessing any Petit Treason, shall be, that such woman or women, being so convicted as aforesaid, shall be severally drawn to the place of execution and be there hanged by the neck until she or they be severally dead, any law or usage to the contrary thereof in any wise notwithstanding.

XXII. *And be it further enacted by the Authority aforesaid*, that if any woman or women shall be convicted of the crime of Petit Treason or

of

of abetting, procuring or counselling any Petit Treason, then and in every such case such woman or women shall be subject and liable to such further pains and penalties as are particularly specified and declared with respect to persons convicted of wilful murder, in an Act, passed in the twenty-fifth year, of the Reign of King GEORGE the second, intituled, "An Act for better preventing the horrid crime of murder," and the Court before whom any such woman or women shall be convicted, shall pass sentence at such time, and shall give such orders with respect to the time of execution, the disposal of the convict's body after execution and all such other matters and things, as are directed to be given by the said Act, with respect to persons convicted of wilful murder.

F I N I S.

