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*Clerk of the Peace Office*  
*Wm. Dewart* THE *Godwin*

# CRIMINAL STATUTES

OF

# CANADA,

WITH NOTES,

AND

# A COPIOUS INDEX.

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Kingston:

PRINTED BY S. DERBISHIRE & G. DESBARATS.

Printer to the Queen's Most Excellent Majesty.

1843.

THE publishers have been induced by considerations of convenience to the legal profession, and a conviction of the utility to the community generally, to print the important Statutes relating to the Criminal Laws, with full Index to their comprehensive enactments, in the present separate and more compendious form.

KINGSTON, May, 1843.

*Clerk of the Peace Office  
Godwin*

THE  
CRIMINAL STATUTES

OF  
CANADA.

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4TH & 5TH VICTORIA.

C A P. XXIV.

An Act for improving the administration of Criminal Justice in this Province.

[18th September, 1841.]

**W**HEREAS it is expedient, with a view to improve the administration of Justice in Criminal Cases in this Province, to define under what circumstances persons may be admitted to bail in cases of Felony; and to make better provision for taking examinations, informations, bailments and recognizances, and returning the same to the proper tribunals; and to relax in some instances the technical strictness of criminal proceedings, so as to insure the punishment of the guilty without depriving the accused of any just means of defence; and to abolish the benefit of Clergy and some matters of form which impede the due administration of Justice; and to make better provision for the punishment of offenders in certain cases; Be it therefore enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled *An Act to Re-unite the*

Preamble.

Who may be admitted to bail on a charge of Felony, and who may not.

*Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted, by the authority of the same, that where any person shall be taken on a charge of Felony or suspicion of Felony, before one or more Justice or Justices of the Peace, and the charge shall be supported by positive and credible evidence of the fact, or by such evidence as if not explained or contradicted, shall, in the opinion of the Justice or Justices raise a strong presumption of the guilt of the person charged, such person shall be committed to prison by such Justice or Justices in the manner hereinafter mentioned; but if there shall be only one Justice present, and the whole evidence given before him shall be such as neither to raise a strong presumption of guilt, nor to warrant the dismissal of the charge, such Justice shall order the person charged to be detained in custody, and such person shall be taken before two Justices at the least; and where any person so taken, or any person in the first instance taken before two Justices of the Peace, shall be charged with Felony or on suspicion of Felony, and the evidence given in support of the charge, shall, in the opinion of such Justices, not be such as to raise a strong presumption of the guilt of the person charged, and to require the committal of such person, or such evidence shall be adduced on behalf of the person charged as shall, in the opinion of such Justices, weaken the presumption of guilt, but there shall, notwithstanding, appear to such Justices, in either of such cases, to be sufficient ground for judicial inquiry into the guilt of the person charged, such person shall be admitted to bail by such two Justices in the manner hereinafter mentioned: Provided always, that nothing herein contained shall be construed to require any such Justice or Justices to hear evidence on behalf of any person so charged as aforesaid, unless it shall appear to such Justice or Justices, to be meet and conducive to the ends of Justice to hear the same.

Before any person charged with Felony, &c., shall be bailed or com-

II. And be it enacted, that two Justices of the Peace, before they shall admit to bail, and one or more Justice or Justices, before he or they shall commit to prison, any person arrested for

Felony, or on suspicion of Felony, shall take the examination of such person and the information upon oath of those who shall know the facts and circumstances of the case, and shall put the same, or as much thereof as shall be material, into writing in the presence of the party accused if he be in custody, who shall have full opportunity afforded him of cross-examining such witnesses, if he shall think proper so to do, and the two Justices admitting to bail shall certify the bailment in writing; and every such Justice shall have authority to summon any person within his jurisdiction, whom he shall have reason to consider capable of giving material evidence concerning any such Felony or suspicion of Felony, and to examine such person on oath touching the same, and to bind by recognizance all such persons as know or declare any thing material touching any such Felony, or suspicion of Felony, to appear at the next Court of Oyer and Terminer, or Gaol Delivery, or other Court at which the trial of such offence is intended to be had, then and there to prosecute and give evidence against the party accused; and such Justices and Justice, respectively, shall subscribe all such examinations, informations, bailments and recognizances, and deliver, or cause to be delivered, the same to the proper Officer of the Court in which the trial is to be, before, or at the opening of the Court; and in case any person so summoned shall refuse to submit to such examination or to enter into such recognizance, it shall be lawful for the Justice or Justices to commit such person to the Common Gaol of the District, County, City or Town, until such person shall submit to such examination, or shall enter into such recognizance, or be discharged by due course of Law: Provided that no such examination shall subject the party examined to any prosecution or penalty, or be given in evidence against such party, save on any indictment for having committed wilful and corrupt perjury in such examination.

mitted, the Justice shall take down in writing the examination, &c., and bind witnesses to appear at trial.

Examinations, &c., to be delivered to the Court.

III. And be it enacted, that every Justice of the Peace, before whom any person shall be taken on a charge of misdemeanor, or suspicion thereof, shall take the examination of the person charged, and the information upon oath of those who shall know the facts

Duty of Justices on charges of misdemeanor.

and circumstances of the case, and shall put the same, or as much thereof as shall be material, into writing, before he shall commit to prison or require bail from the person so charged; and in every case of bailment, shall certify the bailment in writing, and shall have authority to bind all persons by recognizance to appear to prosecute or give evidence against the party accused in like manner as in cases of Felony; and shall subscribe all examinations, informations, bailments, and recognizances, and deliver or cause to be delivered the same to the proper Officer of the Court in which the trial is to be, before, or at the opening of the Court, in like manner as in cases of Felony, and that no traverse or other postponement of any trial thereupon had, shall be allowed except upon special cause shewn to the satisfaction of the said Court or by consent of the Prosecutor.\*

No traverse allowed.

Duty of Coroner.

IV. And be it enacted, that every Coroner, upon any inquisition taken before him, whereby any person shall be indicted for manslaughter or murder, or as an accessory to murder before the fact, shall, in presence of the party accused, if he can be apprehended, put in writing the evidence given to the jury before him, or as much thereof as shall be material, giving the party accused full opportunity of cross-examination; and shall have authority to bind by recognizance all such persons as know or declare any thing material touching the said manslaughter or murder, or the said offence of being accessory to murder, to appear at the next Court of Oyer and Terminer, or Gaol Delivery, or other Court at which the trial is to be, then and there to prosecute or give evidence against the party charged; and every such Coroner shall certify and subscribe the same evidence, and all such recognizances, and also the inquisition before him taken, and shall deliver the same to the proper Officer of the Court in which the trial is to be, before, or at the opening of the Court.

When party committed wishes to be

V. And be it enacted, that when, and so often as any person shall be committed for trial by any Justice or Justices, or Coro-

\* See also for Canada East, 2 Vic. (3) cap. 23, taking away the right to traverse in cases for misdemeanor before Courts of Oyer and Terminer.

ner as aforesaid, it shall and may be lawful for such Prisoner, his Counsel, Attorney or Agent, to notify the said committing Justice or Justices, or Coroner, that he will so soon as Counsel can be heard, move Her Majesty's Court of Superior Jurisdiction for that part of the Province in which such person stands committed, or one of the Judges thereof, for an order to the Justices of the Peace, or Coroner for the District where such Prisoner shall be confined, to admit such Prisoner to bail, whereupon it shall be the duty of such committing Justice or Justices, or Coroner, with all convenient expedition to transmit to the office of the Clerk of the Crown, close under the hand and seal of one of them, a certified copy of all informations, examinations, and other evidences, touching the offence wherewith such Prisoner shall be charged, together with a copy of the warrant of commitment and inquest if any such there be, and that the packet containing the same shall be handed to the person applying therefor, in order to such transmission, and it shall be certified on the outside thereof to contain the information touching the case in question.

bailed, the Justices on notice thereof to forward all informations to Clerk of the Crown.

VI. And be it enacted, that upon any application to Her Majesty's Court of Superior Criminal Jurisdiction, for that part of the Province within which such person stands committed, or to any Judge thereof the same order touching the Prisoner being bailed or continued in custody, shall be made as if the party were brought up upon a Habeas Corpus.

Same orders to be made as in Habeas Corpus.

VII. And be it enacted, that if any Justice or Coroner shall neglect or offend in any thing contrary to the true intent and meaning of any of the provisions of this Act, it shall be lawful for the Court to whose Officer any such examination, information, evidence, bailment, recognizance, or inquisition ought to have been delivered, and such Court is hereby authorized and required upon examination and proof of the offence, in a summary manner, to set such fine upon every such Justice or Coroner as the Court shall think meet.

Penalty on Justices and Coroners contravening this Act.

Provisions to apply to all Justices and Coroners. VIII. And be it enacted, that the provisions of this Act relating to Justices and Coroners, shall apply to the Justices and Coroners, not only of Districts and Counties at large, but also of all other jurisdictions.

Persons tried for felony to have benefit of Counsel. IX. And be it enacted, that all persons tried for Felonies shall be admitted, after the close of the case for the prosecution, to make full answer and defence thereto by Counsel, learned in the Law, or by Attorney in the Courts where Attornies practice as Counsel.\*

Same in cases of summary conviction. X. And be it enacted, that in all cases of summary conviction persons accused shall be admitted to make their full answer and defence, and to have all witnesses examined and cross-examined by Counsel or Attorney.

Orders for delivery of prisoners to be tried at Assizes. XI. And be it enacted, that when and so often as the attendance of any person confined in any Gaol or Prison in this Province, or upon the limits thereof, shall be required in any Court of Assize and Nisi Prius, or Oyer and Terminer or General Gaol Delivery, or other Court, it shall and may be lawful for the Court before whom such Prisoners shall be required to attend, in its discretion to make order upon the Sheriff, Gaoler or other person having the custody of such Prisoner, to deliver such Prisoner to the person named in such order to receive him, which person shall thereupon instantly convey such Prisoner to the place where the Court issuing such order shall be sitting, there to receive and obey such further order as to the said Court shall seem meet : Provided always, that no Prisoner confined for any debt or damages in any civil suit shall be thereby removed out of the District where he shall be confined.

Prisoners entitled to copies of depositions against them. XII. And be it enacted, that all persons, who, after the passing of this Act, shall be held to bail or committed to prison for any offence against the Law, shall be entitled to require and have on demand (from the person who shall have the lawful custody there-

\* See also for C. E. 5 W. 4. cap. 1.

of and who is hereby required to deliver the same,) copies of the examinations of the witnesses, respectively, upon whose depositions they have been so held to bail, or committed to prison, on payment of a reasonable sum for the same, not exceeding three pence for each folio of one hundred words: Provided always, that if such demand shall not be made before the day appointed for the commencement of the Assize or Sessions at which the trial of the person on whose behalf such demand shall be made, is to take place, such person shall not be entitled to have any copy of such examination of witnesses unless the Judge or other person to preside at such trial, shall be of opinion that such copy may be made and delivered without delay or inconvenience to such trial, but it shall, nevertheless, be competent for such Judge or other person so to preside at such trial, if he shall think fit, to postpone such trial on account of such copy of the examination of witnesses not having been previously had by the party charged.

XIII. And be it enacted, that all persons under trial shall be entitled, at the time of their trial, to inspect without fee or reward all depositions (or copies thereof) which have been taken against them, and returned into the Court before which such trial shall be had.

Persons under trial may inspect all depositions.

XIV. And be it enacted, that if any person, whatever, being arraigned upon any Indictment for Treason, Felony, or Piracy, shall plead thereto a plea of "not guilty," such person shall, by such plea, without any further form, be deemed to have put himself or herself upon the Country for trial, and the Court shall, in the usual manner, order a Jury for the trial of such person accordingly.

A plea of "not guilty" shall put the prisoner on his trial by Jury.

XV. And be it enacted, that if any person, being arraigned upon or charged with any Indictment or information for Treason, Felony, Piracy, or Misdemeanor, shall stand mute of malice, or will not answer directly to the Indictment or Information, in every such case, it shall be lawful for the Court, if it shall so think fit,

If he refuse to plead, the Court may order a plea of "not guilty" to be entered.

to order the proper Officer to enter a plea of "not guilty" on behalf of such person; and the plea so entered shall have the same force and effect as if such person had actually pleaded the same.

Every challenge beyond the legal number shall be void.

XVI. And be it enacted, that if any person indicted for any<sup>5</sup> Treason, Felony or Piracy, shall challenge peremptorily a greater number of the men returned to be of the Jury, than such person is entitled by Law so to challenge, in any of the said cases, every peremptory challenge beyond the number allowed by Law in any of the said cases, shall be entirely void, and the trial of such shall<sup>10</sup> proceed as if no such challenge had been made.

Attainder of another crime not pleadable.

XVII. And be it enacted, that no plea setting forth any Attainder shall be pleaded in bar of any Indictment, unless the Attainder be for the same offence as that charged in the Indictment.

Jury shall not inquire of prisoner's lands, &c., nor whether he fled.

XVIII. And be it enacted, that where any person shall be in-<sup>15</sup>dicted for Treason or Felony, the Jury impanelled to try such person shall not be charged to inquire concerning his lands, tenements or goods, nor whether he fled for such Treason or Felony.

Benefit of Clergy abolished.

XIX. And be it enacted, that benefit of Clergy with respect to persons convicted of Felony shall be abolished; but that nothing<sup>20</sup> herein contained shall prevent the joinder in any Indictment of any counts which might have been joined before the passing of this Act.

What Felonies only shall be capital.

XX. And be it enacted, that no person convicted of Felony shall suffer Death, unless it be for some Felony which was ex-<sup>25</sup>cluded from the benefit of Clergy by the Law in force in that part of this Province in which the trial shall be before the commencement of this Act, or which shall be made punishable with death by some Act passed after that day.\*

\* See sect. 24. as to punishment for Felonies for which no other punishment is specially provided.

XXI. And whereas it is expedient to prevent all doubts respecting the civil rights of persons convicted of Felonies not capital, who have undergone the punishment to which they were adjudged; be it therefore enacted, that where any offender had been or shall be convicted of any Felony not punishable with death, and hath endured or shall endure the punishment to which such offender hath been or shall be adjudged for the same, the punishment so endured hath and shall have the like effects and consequences as a pardon under the Great Seal as to the Felony whereof the offender was so convicted; Provided always, that nothing herein contained, nor the enduring of such punishment, shall prevent or mitigate any punishment to which the offender might otherwise be lawfully sentenced, on a subsequent conviction for any other Felony.

Every punishment for Felony after it has been endured shall have the effect of a pardon under the Great Seal.

XXII. And whereas there are certain Misdemeanors which render the parties convicted thereof incompetent witnesses, and it is expedient to restore the competency of such parties after they have undergone their punishment; be it therefore enacted, that where any offender hath been or shall be convicted of any such Misdemeanor (except Perjury or subornation of Perjury) and hath endured or shall endure the punishment to which such offender hath been or shall be adjudged for the same, such offender shall not, after the punishment so endured, be deemed to be by reason of such Misdemeanor, an incompetent witness in any Court or proceeding Civil or Criminal.

No misdemeanor (except perjury) shall render a party an incompetent witness after he has undergone the punishment.

XXIII. And be it enacted, that in all cases in which any person shall be charged with Felony, the Officers of the Court before which such person shall be tried, or any proceeding had with regard to such charge, and who shall render any official services in the matter of such charge, or in the course of such trial, to the person so charged with Felony, shall be paid their lawful Fees for all such services out of the Public Funds, in the same manner as other Fees due and payable to them in respect of official services, by them rendered to the Crown, in the conduct of public

Officers of Court to be paid fees from public funds.

prosecutions, are now paid, and no such Fees shall in any case be demanded of or payable by the person charged with such Felony.

**Felonies not capital, punishable under the Act relating thereto, otherwise under this Act.** XXIV. And be it enacted, that every person convicted of any Felony not punishable with death, shall be punished in the manner prescribed by the Statute or Statutes specially relating to such Felony; and that every person convicted of any Felony for which no punishment hath been or hereafter may be specially provided, shall be deemed to be punishable under this Act, and shall be liable, at the discretion of the Court, to be imprisoned at 10 hard labour in the Provincial Penitentiary for any term not less than seven years,\* or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

**Persons returning from transportation may be tried where found, &c.** XXV. And be it enacted, that if any person sentenced or ordered, or hereafter to be sentenced or ordered to be transported, 15 or who shall have agreed or shall agree to transport or banish himself or herself on certain conditions, either for life or for any number of years, shall be afterwards at large within any part of this Province, contrary to such sentence, order or agreement, without some lawful cause, before the expiration of his or her term of 20 transportation or banishment, every such offender shall be guilty of Felony, and shall be liable to be transported beyond the Seas, for his or her natural life, † and previously to transportation shall be imprisoned for any term not exceeding four years; ‡ and every such offender may be tried either in the District, County, or 25 Place where such offender shall be found at large, or in the District, County, or Place, in or at which such sentence, or order of transportation or banishment was passed or made.

**Allegation of sentence, &c., of transportation sufficient, without reference to indictment.** XXVI. And be it enacted, that in any Indictment or information against any offender for being at large in this Province con- 30 trary to the provisions of this Act, or of any other Act hereafter

\* But see 6 Vic. cap. 5. sec. 2. as to the shortest term of imprisonment in the Provincial Penitentiary under these Acts.

† But see 6 Vic. cap. 5. sec. 4. as to transportation.

‡ But see 6 Vic. cap. 5. sec. 2.

to be in force in this Province, it shall be sufficient to allege the sentence or order of transportation or banishment of such offender, without alleging any indictment, information, trial, conviction, judgment or other proceeding, or any pardon or intention of mercy, or signification thereof, of or against or in any manner relating to such offender.

XXVII. And be it enacted, that the Clerk of the Court or other Officer having the custody of the Records of the Court where any such sentence or order of transportation or banishment shall have been passed or made, or his Deputy, shall, at the request of any person on behalf of Her Majesty, make out and give a certificate in writing, signed by him, containing the effect and substance only (omitting the formal part) of any indictment, information, and conviction of such offender, and of the sentence or order for his or her transportation or banishment, (not taking for the same more than the sum of five shillings,) which certificate shall be sufficient evidence of the conviction and sentence or order for the transportation or banishment of such offender; and every such certificate shall be received in evidence upon proof of the signature of the person signing the same.

Certificate of the sentence, by the Clerk of the Court, sufficient evidence, &c.

XXVIII. And be it enacted, that where any person shall be convicted of any offence punishable under this Act, for which imprisonment may be awarded, it shall be lawful for the Court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour in the Common Gaol, or House of Correction, and also to direct that the offender shall be kept in solitary confinement for any portion or portions of the term of such imprisonment or of such imprisonment with hard labour, not exceeding one month at any one time, and not exceeding three months in any one year, as to the Court in its discretion, shall seem meet.\*

The Court may order hard labor or solitary confinement as part of the sentence of imprisonment.

XXIX. And be it enacted, that whenever sentence shall be passed for Felony on a person already imprisoned under sentence

If a person under sentence for another crime is con-

\* But see 6 Vic. cap. 5. sec. 2. if the imprisonment be for more than two years.

victed of Felony the Court may pass a second sentence to commence after the expiration of the first.

for another crime, it shall be lawful for the Court to award imprisonment for the subsequent offence, to commence at the expiration of the imprisonment to which such person shall have been previously sentenced; and where such person shall be already under sentence of imprisonment, the Court may award such sentence for the subsequent offence to commence at the expiration of the imprisonment to which such person shall have been previously sentenced, although the aggregate term of imprisonment may exceed the term for which such punishment could be otherwise awarded.

10

Punishment for a subsequent offence.

XXX. And whereas it is expedient to provide for the more exemplary punishment of offenders who commit Felony after a previous conviction for Felony, whether such conviction shall have taken place before or after the commencement of this Act; Be it therefore enacted, that if any person shall be convicted of any Felony not punishable with death, committed after a previous conviction for Felony, such person shall on such subsequent conviction be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years,\* or to be imprisoned in any other prison or place of confinement for any term not exceeding two years; and in any indictment for any such Felony committed after a previous conviction for Felony, it shall be sufficient to state that the offender was at a certain time and place convicted of Felony, without otherwise describing the previous Felony; and a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for the previous Felony, purporting to be signed by the Clerk of the Court or other Officer having the custody of the Records of the Court where the offender was first convicted, or by the Deputy of such Clerk or Officer, (for which certificate a fee of five shillings and no more, shall be demanded or taken,) shall, upon proof of the identity of the person of the offender be sufficient evidence of the first conviction, without proof of the signature or official character of the

\* But see 6 Vic. cap. 5. sec. 2.

person appearing to have signed the same; and if any such Clerk, Officer, or Deputy shall utter any false certificate of any indictment and conviction for a previous Felony, or of any sentence or order of transportation or banishment, or if any person, 5 other than such Clerk, Officer, or Deputy, shall sign any such certificate as such Clerk, Officer, or Deputy, or shall utter any such certificate with a false or counterfeit signature thereto, every such offender shall be guilty of Felony, and being lawfully convicted thereof, shall be liable, at the discretion of the Court, to 10 be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years, or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years.

XXXI. And whereas it is expedient to abolish the punish- 15 ment of the Pillory; Be it therefore enacted, that from and after the commencement of this Act, judgment shall not be given and awarded against any person or persons convicted of any offence, that such person or persons do stand in or upon the Pillory, any Law, Statute or Usage to the contrary notwithstanding: Provided 20 that nothing herein contained shall extend or be construed to extend in any manner to change, alter or affect any punishment whatever which may now be by Law inflicted in respect of any offence, excepting only the punishment of the Pillory.

Punishment  
of the Pillory  
abolished.

XXXII. And be it enacted, that from and after the commence- 25 ment of this Act, it shall not be necessary that any Report should be made to the Governor, Lieutenant Governor or Person administering the Government, in the case of any prisoner convicted before any Court and now under sentence of Death, or who may be hereafter convicted before any Court and sentenced to the like 30 punishment, previously to such sentence being carried into execution; any Law, Usage, or Custom to the contrary notwithstanding.

No Report to  
be made to the  
Governor of  
the case of any  
capital convict.

XXXIII. And be it enacted, that whenever any offender shall 35 hereafter be convicted before any Court of Criminal Judicature, The Court may abstain

from pronouncing judgment on persons convicted of crimes liable to the punishment of death; and order the same to be entered of record.

of any crime for which such offender shall be liable to the punishment of Death, and the Court shall be of opinion that, under the particular circumstances of the case, such offender is a fit and proper object to be recommended for the Royal Mercy, it shall and may be lawful for such Court, if it shall think fit so to do, to direct the proper Officer, then being present in the Court, to require and ask, (whereupon such Officer shall require and ask) whether such offender hath or knoweth any thing to say why Judgment of Death should not be recorded against such offender, and in case such offender shall not allege any matter or thing sufficient in Law to arrest or bar such Judgment, the Court shall and may, and is hereby authorized to abstain from pronouncing Judgment of Death upon such offender, and instead of pronouncing such Judgment to order the same to be entered of Record, and thereupon such proper Officer as aforesaid shall and may and is hereby authorised to enter Judgment of Death on Record against such offender in the usual and accustomed form, and in such and the same manner as is now used, and as if Judgment of Death had actually been pronounced in open Court against such offender by the Court.

Such record to have the same effect as if pronounced.

XXXIV. And be it enacted, that a Record of every such Judgment so entered, as aforesaid, shall have the like effect to all intents and be followed by all the same consequences as if such judgment had actually been pronounced in open Court.

Court to direct execution in certain cases.

XXXV. And be it enacted, that whenever any offender shall hereafter be convicted before any Court of Criminal Judicature, of any offence for which such offender shall be liable to and shall receive Sentence of Death, and the Court shall be of opinion that under the circumstances of the case, the Judgment of the Law ought to be carried into effect; it shall be lawful for the said Court, and such Court is hereby required to order and direct execution to be done on such offender in the same manner as any Court is impowered to order and direct execution by the Law as it stood before the passing of this Act.

XXXVI. Provided always, and be it enacted, that nothing in this Act contained shall affect Her Majesty's Royal Prerogative of Mercy. Not to affect the Royal Prerogative.

XXXVII. And for the more effectual prosecution of accessories before the fact to Felony, Be it enacted, that if any person shall counsel, procure or command any other person to commit any Felony, whether the same be a Felony at Common Law, or by virtue of any Statute or Statutes made or to be made, the person so counselling, procuring, or commanding shall be deemed guilty of Felony, and may be indicted and convicted as an accessory before the fact to the principal Felony, either together with the principal Felon, or after the conviction of the principal Felon; or may be indicted for and convicted of a substantive Felony, whether the principal Felon shall or shall not have been previously convicted, or shall or shall not be amenable to Justice, and may be punished in the same manner as any accessory before the fact to the same Felony, if convicted as an accessory, may be punished; and the offence of the person so counselling, procuring, or commanding, howsoever indicted, may be inquired of, tried, determined, and punished by any Court which shall have jurisdiction to try the principal Felon, in the same manner as if such offence had been committed at the same place as the principal Felony, although such offence may have been committed either on the High Seas or at any place on Land, whether within Her Majesty's Deminions or without; and in case the principal Felony shall have been committed within the body of any District or County, and the offence of counselling, procuring, or commanding, shall have been committed within the body of any other District or County, the last mentioned offence may be enquired of, tried, determined, and punished in either of such Districts or Counties: Provided always, that no person who shall be once duly tried for any such offence, whether as an accessory before the fact, or as for a substantive Felony, shall be liable to be again indicted or tried for the same offence.

Accessory before the fact may be tried as such, or as a substantive felony, by any Court which has jurisdiction to try the principal felon, although the offence be committed on the seas or abroad.

If the offence be committed in different districts and counties, accessory may be tried in either.

Accessory after the fact may be tried by any Court which has jurisdiction to try the principal felon.

**XXXVIII.** And for the more effectual prosecution of accessories after the fact of Felony, Be it enacted, that if any person shall become an accessory after the fact to any Felony, whether the same be a Felony at Common Law, or by virtue of any Statute or Statutes made or to be made, the offence of such person may be inquired of, tried, determined, and punished by any Court which shall have jurisdiction to try the principal Felon, in the same manner as if the act by reason whereof such person shall have become an accessory had been committed at the same place as the principal Felony, although such act may have been committed either on the High Seas, or at any place on Land, whether within Her Majesty's Dominions or without;\* and in case the principal Felony shall have been committed within the body of any District or County, and the act by reason whereof any person shall have become accessory shall have been committed within the body of any other District or County, the offence of such accessory may be enquired of, tried, determined and punished in either of such Districts or Counties: Provided always, that no person who shall be once duly tried for any offence of being an accessory shall be liable to be again indicted or tried for the same offence.

Accessory may be prosecuted after conviction of the principal, though the principal be not attainted.

**XXXIX.** And in order that all accessories may be convicted and punished in cases where the principal Felon is not attainted, Be it enacted, that if any principal offender shall be in anywise convicted of any Felony, it shall be lawful to proceed against any accessory either before or after the fact, in the same manner as if such principal Felon had been attainted thereof, notwithstanding such principal Felon shall die, or be pardoned, or otherwise delivered before attainder; and every such accessory shall suffer the same punishment, if such accessory be in anywise convicted, as such accessory should have suffered if the principal had been attainted.

Offences committed on the boundaries of Territories, or parts of America not within the United States.

\* See Imperial Act, 43 Geo. III. cap. 138, as to offences committed in the Indian Territories, or parts of America not within the United States.

XL. And for the more effectual prosecution of offences committed near the Boundaries of Districts or of Counties, or partly in one District or County and partly in another, Be it enacted, that where any Felony or Misdemeanor shall be committed on the boundary or boundaries of two or more Districts or Counties, or within the distance of five hundred yards of any such boundary or boundaries, or shall be begun in one District or County and completed in another, every such Felony or Misdemeanor may be dealt with, inquired of, tried, determined, and punished in any of the said Districts or Counties, in the same manner as if it had been actually and wholly committed therein.

Offences committed on the boundaries of districts and counties may be tried in either.

XLI. And for the more effectual prosecution of offences committed during journies from place to place, Be it enacted, that where any Felony or Misdemeanor shall be committed on any person, or on or in respect of any property, in or upon any coach, waggon, cart or other carriage, whatever, employed in any journey, or shall be committed on any person, or on or in respect of any property, on board any vessel whatever employed in any voyage or journey upon any navigable river, canal, or inland navigation, such Felony or Misdemeanor may be dealt with, inquired of, tried, determined, and punished in any District or County through any part whereof such coach, waggon, cart, carriage, or vessel shall have passed in the course of the journey or voyage, during which such Felony or Misdemeanor shall have been committed, in the same manner as if it had been actually committed in such District or County; and in all cases where the side, centre or other part of any highway, or the side, bank, centre or other part of any such river, canal, or navigation, shall constitute the boundary of any two Districts or Counties, such Felony or Misdemeanor may be dealt with, inquired of, tried, determined, and punished in either of such Districts or Counties, through or adjoining to or by the boundary of any part whereof such coach, waggon, cart, carriage, or vessel, shall have passed in the course of the journey or voyage, during which such Felony or Misdemeanor shall have been committed, in the same manner as if it had been actually committed in such District or County.

Offences committed during a journey or voyage, may be tried in any county or district through which the coach, &c., passed.

When sides, &c., of highway constitute boundary, offender may be tried in either district or county.

In Indictments for offences committed on the property of partners, it may be laid in any one partner by name, and others.

**XLII.** And in order to remove the difficulty of stating the names of all the owners of property, in the case of partners and other joint owners, Be it enacted, that in any Indictment or Information for any Felony or Misdemeanor, wherein it shall be requisite to state the ownership of any property whatsoever, whether real or personal, which shall belong to or be in the possession of more than one person, whether such persons be partners in trade, joint tenants, parceners or tenants in common, it shall be sufficient to name one of such persons, and to state such property to belong to the persons so named and another or others, as the case may be ; and whenever in any Indictment or Information for any Felony or Misdemeanor, it shall be necessary to mention for any purpose whatsoever, any partners, joint tenants, parceners or tenants in common, it shall be sufficient to describe them in the manner aforesaid ; and this provision shall be construed to extend to all joint-stock companies and trustees.

In Indictments for Felonies, &c. relating to Churches, Bridges or public buildings, property need not be stated as being in any person.

**XLIII.** And be it enacted, that in any Indictment or Information for any Felony or Misdemeanor committed in, upon, or with respect to any Church, Chapel or Place of Religious Worship, or to any Bridge, Court, Court-house, Gaol, House of Correction, Penitentiary, Infirmary, Asylum, or other public building, or any Canal, Lock, Drain or Sewer erected or maintained in whole or in part at the expense of the Province, or of any division or sub-division thereof, or on or with respect to any Materials, Goods or Chattels, whatsoever, provided for or at the expense of the Province, or of any division or sub-division thereof, to be used for making, altering or repairing any Bridge or Highway, or any Court or other such building, Canal, Lock, Drain or Sewer, as aforesaid, or to be used in or with any such Court or other building, Canal, Lock, Drain or Sewer, it shall not be necessary to state such Church, Chapel or Place of Religious Worship, or such Bridge, Court, Court-house, Gaol, House of Correction, Penitentiary, Infirmary, Asylum, or other building, or such Canal, Lock, Drain or Sewer, or any such Materials, Goods, or Chattels to be the property of any person.

XLIV. And with respect to property under Turnpike <sup>Property of</sup> Trusts ; Be it enacted that in any Indictment or Information for <sup>Turnpike</sup> any Felony or Misdemeanor, committed on or with respect to <sup>Trusts may be</sup> any house, building, gate, machine, lamp, board, stone, post, <sup>laid in Trus-</sup> fence or other thing erected or provided, in pursuance of any Act <sup>tects, &c.</sup> in force in this Province, for making any Turnpike Road, or of any conveniences or appurtenances thereunto respectively belonging, or any materials, tools or implements provided for making, altering or repairing any such Road, it shall be sufficient to state  
 5 any such property to belong to the Trustees or Commissioners of  
 10 such Road, and it shall not be necessary to specify the names of any such Trustees or Commissioners.

XLV. And for preventing abuses from dilatory pleas, Be it <sup>Indictments</sup> enacted, that no Indictment or Information shall be abated by <sup>not to abate by</sup> dilatory plea of <sup>dilatory plea of</sup> misnomer, &c.  
 15 reason of any dilatory plea of misnomer, or of want of addition, or of wrong addition of any party offering such plea, if the Court shall be satisfied, by affidavit or otherwise, of the truth of such plea ; but in such case the Court shall forthwith cause the In-  
dictment or Information to be amended according to the truth,  
 20 and shall call upon such party to plead thereto, and shall proceed  
as if no such dilatory plea had been pleaded.

XLVI. And in order that the punishment of offenders may be <sup>What defects</sup> less frequently intercepted in consequence of technical niceties ; <sup>shall not viti-</sup>  
 Be it enacted, that no Judgment upon any Indictment or Infor- <sup>ate an indict-</sup>  
 25 mation for any Felony or Misdemeanor, whether after verdict <sup>ment after ver-</sup> or outlawry, or by confession, default or otherwise, shall be <sup>dict or other-</sup> stayed or reversed for want of the averment of any matter unnec- <sup>wise.</sup> necessary to be proved, nor for the omission of the words, "as appears by the record," or of the words "with force and arms,"  
 30 or of the words, "against the peace," nor for the insertion of the words "against the form of the Statute," instead of the words, "against the form of the Statutes," or *vice versa*, nor for that any person or persons mentioned in the Indictment or Information is or are designated by a name of office or other descriptive ap-

pellation, instead of his, her or their proper name or names, nor for omitting to state the time at which the offence was committed, in any case where time is not of the essence of the offence, nor for stating the time imperfectly, nor for stating the offence to have been committed on a day subsequent to the finding of the Indictment, or exhibiting the Information, or on an impossible day, or on a day that never happened, nor for a want of a proper or perfect venue, where the Court shall appear by the Indictment or Information to have had jurisdiction over the offence.

Certain formal defects not to stay or reverse judgment after verdict.

XLVII. And be it enacted, that no Judgment after verdict upon any Indictment or Information for any Felony or Misdemeanor, shall be stayed or reversed for want of a similitur, nor by reason that the Jury process has been awarded to a wrong Officer upon an insufficient suggestion, nor for any misnomer or misdescription of the Officer returning such process, or of any of the Jurors, nor because any person has served upon the Jury who has not been returned as a Juror by the Sheriff or other Officer; and that where the offence charged shall be an offence theretofore created by any Statute, or subjected to a greater degree of punishment, or excluded from the benefit of Clergy, by any Statute, the Indictment or Information shall after verdict be held sufficient if it describe the offence in the words of the Statute creating the offence, or prescribing the punishment, or excluding the offender from the benefit of Clergy.

Effect of a free or conditional pardon of a convict.

XLVIII. And be it declared and enacted, that where the Queen's Majesty, or the Governor, Lieutenant Governor, or Person administering the Government of this Province for the time being, shall be pleased to extend the Royal Mercy to any offender convicted of any Felony, punishable with death or otherwise, and by warrant under the Royal Sign Manual countersigned by one of the Principal Secretaries of State, or by warrant under the hand and seal at arms of such Governor, Lieutenant Governor, or Person administering the Government as aforesaid, shall grant to such offender either a free or a conditional pardon, the discharge

of such offender out of custody, in case of a free pardon, and the performance of the condition in the case of a conditional pardon, shall have the effect of a pardon under the Great Seal for such offender, as to the Felony for which such pardon shall have been  
 5 granted: Provided always, that no free pardon, or any such discharge in consequence thereof, nor any conditional pardon, nor the performance of the condition thereof, in any of the cases aforesaid, shall prevent or mitigate the punishment to which the offender might otherwise be lawfully sentenced, on a subsequent  
 10 conviction for any Felony committed after the granting of any such pardon.

XLIX. And whereas the practice of indiscriminately estreating recognizances for the appearance of persons to prosecute or give  
 evidence, or to answer for a common assault, or in the other cases  
 15 hereinafter specified, has been found in many instances productive of hardship to persons who have entered into such recognizances; Be it therefore enacted, that in every case where any person bound by recognizance for his or her appearance, (or for whose appearance any other person shall be so bound) to prosecute or give evidence in any case of Felony or Misdemeanor, or  
 20 to answer for any common assault, or to articles of the peace, shall therein make default, the officer of the Court by whom the estreats are made out, shall, and such Officer is hereby required to prepare a list in writing, specifying the name of every person so making  
 25 default, and the nature of the offence in respect of which every such person, or his or her surety was so bound, together with the residence, trade, profession, or calling of every such person and surety, and shall in such list distinguish the principals from the sureties, and shall state the cause, if known, why each such person  
 30 has not appeared, and whether by reason of the non-appearance of such person, the ends of Justice have been defeated or delayed; and every such Officer shall, and such Officer is hereby required, before any such recognizance shall be estreated, to lay such list, if at a Court of Oyer and Terminer or Gaol Delivery in  
 35 any District or County, or at any of Her Majesty's Superior

Recognizances in certain cases not to be estreated without a Judge's order.

Courts of Record in this Province, before one of the Justices of those Courts, respectively, or if at a Session of the Peace, before two of the Justices of the Peace, who shall have attended such Courts, who are respectively authorized and required to examine such list, and to make such order touching the estreating or putting in process any such recognizance as shall appear to them, respectively, to be just ; and it shall not be lawful for the Officer of any Court to estreat or put in process any such recognizance without the written order of the Justice or Justices of the Peace before whom respectively such list shall have been laid. 10

Rule for the interpretation of this and all criminal Acts.

L. And be it enacted, that wherever in this Act or in any other Act relating to any offence, whether punishable upon Indictment or summary conviction, in describing or referring to the offence or the subject matter on or with respect to which it shall be committed, or the offender or the party affected or intended to be affected by the offence, any word or words have been or shall be used or employed importing the singular number or the masculine gender only, every such Act shall be understood to include several matters of the same kind, as well as one matter, and several persons as well as one person, and females as well as males, and bodies corporate as well as individuals, unless it be otherwise specially provided, or there be something in the subject or context repugnant to such construction ; and wherever any forfeiture or penalty is or shall be made payable to a party aggrieved, it shall be payable to a body corporate in every case where such a body shall be the party aggrieved. 15 20

All Acts repugnant to this Act repealed.

LI. And be it enacted, that all Acts or parts of Acts or provisions of Law in force in this Province, or any part thereof, immediately before the time when this Act shall come into force, which shall be inconsistent with or contradictory to this Act, or which make any provision in any matter provided for by this Act, other than such as is hereby made in such matter, shall from and after the time when this Act shall come into force, be and they are hereby repealed, except in so far as may relate to any 30

offence committed before the commencement of this Act, which shall be dealt with\* and punished as if this Act had not been passed.

LII. And be it enacted that the period of imprisonment in the <sup>From what period the imprisonment is to be reckoned.</sup> Provincial Penitentiary, in pursuance of any sentence passed under this Act or under any other Act relating to the punishment of offences by confinement and imprisonment in the Provincial Penitentiary, shall be held to commence from the period of passing such sentence, whether the convict upon whom such sentence shall be passed shall be removed to the said Provincial Penitentiary forthwith, or be detained in custody in any other prison or place of confinement, previously to such removal.

LIII. And be it enacted, that this Act shall commence and take effect from and after the first day of January one thousand <sup>Commencement of this Act.</sup> eight hundred and forty-two.

#### CAP. XXV.

An Act for consolidating and amending the Laws in this Province, relative to Larceny and other Offences connected therewith.

[18th September, 1841.]

**W**HEREAS it is expedient to amend and consolidate the <sup>Preamble.</sup> provisions contained in various Statutes now in force in this Province, relative to Larceny and other offences of stealing, and to Burglary, Robbery, and threats for the purpose of Robbery or of Extortion, and to Embezzlement, False Pretences and the Receipt of stolen property; Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled

\* But see the foregoing provisions of the Act, as to incidents and matters with regard to which such provisions may be consistent with this exception.

by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, intituled *An Act to Re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted, by the authority of the same, that this Act shall commence from and after the first day of January, one thousand eight hundred and forty-two.

Commence-  
ment of Act.

Distinction  
between  
Grand & Petty  
Larceny abo-  
lished; all Lar-  
ceny shall be  
considered as  
Grand Lar-  
ceny.

II. And be it enacted, that the distinction between Grand Larceny and Petty Larceny shall be abolished; and every Larceny, whatever be the value of the property stolen, shall be deemed to be of the same nature, and shall be subject to the same incidents in all respects, as Grand Larceny was before the commencement of this Act; and every Court whose power as to the trial of Larceny was, before the commencement of this Act, limited to Petty Larceny, shall have power to try every case of Larceny, the punishment of which cannot exceed the punishment hereinafter mentioned for simple Larceny, and also to try all accessories to such Larceny.

Punishments  
for simple Lar-  
ceny, or felony  
punishable as  
such.

III. And be it enacted, that every person convicted of Simple Larceny, or of any felony hereby made punishable like Simple Larceny, shall (except in the cases hereinafter otherwise provided for) be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years,\* or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

For all offen-  
ces under this  
Act, hard la-  
bour or solitary  
confinement  
may be added  
to imprison-  
ment.

IV. And with regard to the place and mode of imprisonment for all indictable offences punishable under this Act;—Be it enacted, that where any person shall be convicted of any felony or misdemeanor punishable under this Act, for which imprisonment may be awarded, it shall be lawful for the Court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour, in the Common Gaol, or House of Correction, and also to

\* But see 6 Vic. c. 5.

direct that the offender shall be kept in solitary confinement for any portion or portions of such imprisonment, or of such imprisonment with hard labour, not exceeding one month at any one time, and not exceeding three months in any one year, as to the

<sup>5</sup> Court in its discretion shall seem meet.

V. And be it enacted, that if any person shall steal any tally, order, or other security whatsoever, entitling or evidencing the title of any person or body corporate to any share or interest in any Public Stock or Fund, whether of this Province or of the <sup>10</sup> United Kingdom of Great Britain and Ireland, or of any British Colony, or of any Foreign State or Colony, or in any fund of any body corporate, company or society, or to any deposit in any Savings Bank, or shall steal any debenture, deed, bond, bill, note, warrant, order, or other security whatsoever, for money or for <sup>5</sup> payment of monies, whether of this Province or of Great Britain, or of any British Colony, or of any Foreign State or Colony, or shall steal any warrant or order for the delivery or transfer of any goods or valuable thing, every such offender shall be deemed guilty of felony, of the same nature and in the same degree, and <sup>10</sup> punishable in the same manner, as if he had stolen any chattel of like value with the share, interest, or deposit to which the security so stolen may relate, or with the money due on the security so stolen or secured thereby and remaining unsatisfied, or with the value of the goods or other valuable thing mentioned in the war- <sup>5</sup> rant or order; and each of the several documents hereinbefore enumerated, shall, throughout this Act, be deemed for every pur- <sup>10</sup> pose to be included under, and denoted by, the words "valuable security."

Stealing public or private securities for money, or warrants for goods, &c. shall be felony punishable according to the circumstances, as stealing goods.

Rule of interpretation.

VI. And be it enacted, that whosoever shall rob any person, <sup>10</sup> and at the time of or immediately before or immediately after such robbery, shall stab, cut, or wound any person, shall be guilty of Felony, and being convicted thereof shall suffer death.

Punishment of robbery attended with cutting, &c.

VII. And be it enacted, that whosoever shall, being armed with any offensive weapon or instrument, rob, or assault with in- <sup>10</sup> violence.

Of robbery attended with violence.

tent to rob any person, or shall, together with one or more person or persons, rob or assault with intent to rob any person, or shall rob any person, and at the time of or immediately before or immediately after such robbery, shall beat, strike, or use any other personal violence to any person, shall be guilty of Felony, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years,\* or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years. 10

Punishment for obtaining property by threat of accusing of unnatural crimes. VIII. And be it enacted, that whosoever shall accuse or threaten to accuse any person of the abominable crime of Buggerry, committed either with mankind or with beast, or of any assault with intent to commit the said abominable crime, or of any attempt to endeavour to commit the said abominable crime, 15 or of making or offering any solicitation, persuasion, promise or threat to any person whereby to move or induce such person to commit or permit the said abominable crime, with a view or intent in any of the cases aforesaid, to extort or gain from such person, and shall by intimidating such person, by such accusati-20 on or threat, extort or gain from such person any property, shall be guilty of Felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years,\* or to be imprisoned in 25 any other Prison or place of confinement for any term not exceeding two years.

Punishment for stealing from the person. IX. And be it enacted, that whosoever shall rob any person, or shall steal any chattel, money, or valuable security from the person of another, shall be liable, at the discretion of the Court, 30 to be imprisoned at hard labour in the Provincial Penitentiary for any term not exceeding fourteen years nor less than seven years,\* or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years.

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\* But see 6 Vic. c. 5.

X. And be it enacted, that whosoever shall assault any person, with intent to rob, shall be guilty of Felony, and being convicted thereof shall (save and except in cases where a greater punishment is provided by this Act,) be liable to be imprisoned for any term not exceeding three years.\*

Punishment  
for assault with  
intent to rob.

XI. And be it enacted, that whosoever shall, with menaces or by force, demand any Chattel, Money, or Valuable Security, of any person with intent to steal the same, shall be guilty of Felony, and being convicted thereof, shall be liable to be imprisoned for any term not exceeding three years.\*

Attempting  
to obtain pro-  
perty by me-  
nace.

XII. And be it enacted, that if any person shall knowingly send or deliver any letter or writing, demanding of any person with menaces, and without any reasonable or probable cause, any chattel, money, or valuable security; or if any person shall accuse or threaten to accuse, or shall knowingly send or deliver any letter or writing, accusing or threatening to accuse any person of any crime punishable by law with Death, or Transportation, or of any assault with intent to commit any Rape, or of any attempt or endeavour to commit Rape, with a view or intent to extort or gain from such person any chattel, money or valuable security, every such offender shall be guilty of Felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour at the Provincial Penitentiary for any term not less than seven years,\* or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years.

Sending let-  
ter containing  
menacing de-  
mands, to ex-  
tort money, &c.

XIII. And be it enacted, that if any person shall break and enter any Church or Chapel, and steal therein any chattel, or having stolen any chattel, money, or valuable security in any Church or Chapel shall break out of the same, every such offender being convicted thereof, shall be liable to be imprisoned at hard labour at the Provincial Penitentiary for any term not less

Sacrilegous when  
Capital.

\* But see 6 Vic. c. 5.

than seven years,\* or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years.

Burglars using violence to suffer death.

XIV. And be it enacted, that whosoever shall burglariously break and enter into any Dwelling House, and shall assault with intent to murder any person being therein, or shall stab, cut, <sup>5</sup> wound, beat or strike any such person, shall be guilty of Felony, and being convicted thereof shall suffer death.

Punishment of Burglars.

XV. And be it enacted, that whosoever shall be convicted of the crime of Burglary shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than <sup>10</sup> seven years,\* or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years.

When breaking into a house considered burglary.

XVI. Provided always, and be it enacted, that so far as the same is essential to the offence of Burglary, the night shall be <sup>15</sup> considered and is hereby declared to commence at nine of the clock in the evening of each day and to conclude at six of the clock in the morning of the next succeeding day : And it is hereby declared that if any person shall enter the dwelling house of another with intent to commit Felony, or being in such dwelling <sup>20</sup> house shall commit any Felony, and shall in either case break out of the said dwelling house, in the night time, such person shall be deemed guilty of Burglary.

Burglary.

Stealing in a dwelling house with menaces.

XVII. And be it enacted, that whosoever shall steal any chattel, money or valuable security in any dwelling house, and shall <sup>25</sup> by any menace or threat put any one, being therein, in bodily fear, shall be guilty of Felony, and being convicted thereof, shall be liable to be imprisoned at hard labour in the Provincial Penitentiary for any term not exceeding fourteen years nor less than seven years,\* or to be imprisoned in any other Prison or place of <sup>30</sup> confinement for any term not exceeding two years.

\* But see 6 Vic. c. 5.

XVIII. Provided always, and be it enacted, that no building, although within the same curtilage with the dwelling house, and occupied therewith, shall be deemed to be part of such dwelling house for the purpose of Burglary, or for any of the purposes aforesaid, unless there shall be a communication between such building and dwelling house, either immediate, or by means of a covered and inclosed passage leading from the one to the other.

What buildings only are part of a house for Capital purpose.

XIX. And be it enacted, that if any person shall break and enter any building, and steal therein any chattel, money, or valuable security, such building being within the curtilage of a dwelling house, and occupied therewith, but not being part thereof, according to the provision hereinbefore mentioned, every such offender, being convicted thereof, (either upon an indictment for the same offence, or upon an indictment for burglary, house breaking, or stealing to the value of five pounds sterling, in a dwelling house, containing a separate count for such offence,) shall be liable to be imprisoned at hard labour in the Provincial Penitentiary for any term not exceeding fourteen years, nor less than seven years,\* or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years.

Robbery in any building within the same curtilage as the house, but not privileged as part of the house.

XX. And be it enacted, that if any person shall break and enter any Shop, Warehouse, or Counting House, and steal therein any chattel, money or valuable security, every such offender, being convicted thereof, shall be liable to any of the punishments which the Court may award as hereinbefore last mentioned.

Robbery in a shop, warehouse, &c.

XXI. And be it enacted, that if any person shall steal any Goods or Merchandize in any vessel, barge, or boat of any description whatsoever, in any port of entry or discharge, or upon any navigable river or canal, or in any creek belonging to or communicating with any such port, river or canal, or shall steal any goods or merchandize from any dock, wharf or quay, adjacent to any such port, river, canal or creek, every such offender,

Stealing goods from a vessel in a port, river, or canal, &c.

\* But see 6 Vic. c. 5.

being convicted thereof, shall be liable to any of the punishments which the Court may award as hereinbefore last mentioned.

Punishment  
for wrecking.

XXII. And be it enacted, that whosoever shall plunder or steal any part of any ship or vessel which shall be in distress, or wrecked, stranded or cast on shore, or any goods, merchandize, or articles of any kind belonging to such ship or vessel, and be convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not exceeding fourteen years, nor less than seven years,\* or to be imprisoned in any other Prison, or place of confinement for any term not exceeding two years. 5 10

Persons in  
possession of  
shipwrecked  
goods, not giving  
a satisfactory  
account shall pay a  
penalty.

XXIII. And be it enacted, that if any Goods, Merchandize, or articles of any kind, belonging to any ship or vessel in distress, or wrecked, stranded, or cast on shore, as aforesaid, shall by virtue of a search warrant, to be granted as hereinafter mentioned, be found in the possession of any person, or on the premises of any person with his knowledge, and such person, being carried before a Justice of the Peace, shall not satisfy the Justice that he came lawfully by the same, then the same shall, by order of the Justice, be forthwith delivered over to, or for the use of the rightful owner thereof; and the offender, on conviction of such offence before the Justice, shall forfeit and pay such sum of money, not exceeding twenty pounds, as to the Justice shall seem meet. 15 20

If any person  
offer ship-  
wrecked goods  
for sale, the  
goods may be  
seized, &c.

XXIV. And be it enacted, that if any person shall offer or expose for sale any Goods, Merchandize or articles whatsoever, which shall have been unlawfully taken, or reasonably suspected so to have been, from any ship or vessel in distress, or wrecked, stranded, or cast on shore as aforesaid, in every such case any person to whom the same shall be offered for sale, or any officer of the Customs, or Peace Officer, may lawfully seize the same, and shall with all convenient speed carry the same, or give notice 25 30

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\* But see 6 Vic. c. 5.

of such seizure, to some Justice of the Peace ; and if the person who shall have offered or exposed the same for sale, being duly summoned by such Justice, shall not appear and satisfy the Justice that he came lawfully by such goods, merchandize or articles, then the same shall, by order of the Justice, be forthwith delivered over to, or for the use of the rightful owner thereof, upon payment of a reasonable reward, (to be ascertained by the Justice,) to the person who seized the same ; and the offender, on conviction of such offence by the Justice, shall forfeit and pay such sum of money not exceeding twenty pounds, as to the Justice shall seem meet.

XXV. And be it enacted, that if any person shall steal, or shall for any fraudulent purpose take from its place of deposit for the time being, or from any person having the lawful custody thereof, or shall unlawfully and maliciously obliterate, injure, or destroy any record, writ, return, panel, process, interrogatory, deposition, affidavit, rule, order or warrant of attorney, or any original document whatsoever, of or belonging to any Court of Justice, or relating to any matter, civil or criminal, begun, depending or terminated in any such Court, or any bill, answer, interrogatory, deposition, affidavit, order or decree, or any original document whatsoever, of or belonging to any Court, or relating to any cause or matter begun, depending, or terminated in any such Court, or any notarial minute, or the original of any other authentic act, every such offender shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary, for any term not exceeding fourteen years, nor less than seven years,\* or to be imprisoned in any other prison or place of confinement for any term not exceeding two years, or to suffer such other punishment by fine or imprisonment, or by both, as the Court shall award ; and it shall not in any indictment for such offence be necessary to allege that the article,

The stealing &c. of records and other proceedings of Courts of Justice, &c.

\* But see 6 Vic. c. 5.

in respect of which the offence is committed, is the property of any person, or that the same is of any value.

The stealing  
&c. of Wills.

XXVI. And be it enacted, that if any person shall, either during the life of the testator or testatrix, or after his or her death, steal, or for any fraudulent purpose destroy or conceal, any will, 5  
codicil or other testamentary instrument, whether the same shall relate to real or personal estate, or to both, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable to any of the punishments which the Court may award, as hereinbefore last mentioned; and it shall not in any 10  
indictment for such offence be necessary to allege that such will, codicil, or other instrument, is the property of any person, or that the same is of any value.

The stealing  
of writings re-  
lative to real  
estates.

XXVII. And be it enacted, that if any person shall steal any original paper or parchment, written or printed, or partly written 15  
and partly printed, being evidence of the title, or of any part of the title to any real estate, every such offender shall be deemed guilty of a misdemeanor, and being convicted thereof, shall be liable to any of the punishments which the Court may award, as hereinbefore last mentioned; and in any indictment for such 20  
offence, it shall be sufficient to allege the thing stolen to be evidence of the title, or of part of the title, of the person or of some one of the persons having a present interest, whether legal or equitable, in the real estate to which the same relates, and to mention such real estate or some part thereof; and it shall not 25  
be necessary to allege the thing stolen to be of any value.

These provi-  
sions as to  
wills and writ-  
tings shall not  
lessen any oth-  
er remedy.

XXVIII. Provided always, and be it enacted, that nothing in this Act contained relating to either of the misdemeanors afore-  
said, nor any proceeding, conviction or judgment, to be had or  
taken thereupon, shall prevent, lessen or impeach any remedy at 30  
law or equity, which any party aggrieved by any such offence,  
might or would have had if this Act had not been passed; but  
Conviction shall not be evi-  
dence in actions nevertheless the conviction of such offender shall not be received

in evidence in any action at law or suit in equity against him ; against offender.  
 and no person shall be liable to be convicted of either of the misdemeanors aforesaid, by any evidence whatever, in respect of Offender shall not be convicted by evidence disclosed by himself.  
 any act done by him, if he shall at any time previously to his disclosed by himself.  
 being indicted for such offence, have disclosed such act, on oath,  
 in consequence of any compulsory process of any Court of Law  
 or Equity in any action, suit or proceeding which shall have  
 been *bona fide* instituted by any party aggrieved, or if he shall  
 have disclosed the same in any examination or deposition before  
 any Commissioners of Bankrupt.

XXIX. And be it enacted, that if any person shall steal any Stealing Horses, Cows, Sheep, &c.  
 horse, mare, gelding, colt or filly, or any bull, cow, ox, heifer or  
 calf, or any ram, ewe, sheep or lamb, or shall wilfully kill any  
 of such cattle with intent to steal the carcase or skin, or any part  
 of the cattle so killed, every such offender shall be guilty of Felony,  
 and being convicted thereof, shall be liable, at the discretion  
 of the Court, to be imprisoned at hard labour in the Provincial  
 Penitentiary for any term not exceeding fourteen years nor less  
 than seven years,\* or to be imprisoned in any other Prison or  
 place of confinement for any term not exceeding two years.

XXX. And be it enacted, that if any person shall steal any Stealing Dogs, or stealing Beasts or Birds ordinarily kept in confinement, and not the subjects of larceny.  
 dog, or shall steal any beast or bird ordinarily kept in a state of  
 confinement, not being the subject of Larceny at common law,  
 every such offender, being convicted thereof before a Justice of  
 the Peace, shall for every such offence forfeit and pay, over and  
 above the value of the dog, beast, or bird, such sum of money  
 not exceeding five pounds, as to the Justice shall seem meet.

XXXI. And be it enacted, that if any person shall steal, or Stealing trees, shrubs, &c. wheresoever growing, &c.  
 shall cut, break, root up, or otherwise destroy or damage with  
 intent to steal, the whole or any part of any tree, sapling or shrub,  
 or any underwood, wheresoever the same may be respectively  
 growing, the stealing of such article or articles, or the injury

\* But see 6 Vic. c. 5.

done, being to the amount of a shilling at the least, every such offender being convicted before a Justice of the Peace, shall for every such offence forfeit and pay over and above the value of the article or articles stolen, or the amount of the injury done, such a sum of money, not exceeding five pounds, as to the Justice 5 shall seem meet.

Stealing, &c.  
any live or  
dead fence,  
wooden fence,  
stile or gate.

XXXII. And be it enacted, that if any person shall steal, or shall cut, break, or throw down with intent to steal, any part of any live or dead fence, or any wooden post, pale, or rail, set up or used as a fence, or any stile or gate, or any part thereof, res-<sup>10</sup>pectively, every such offender, being convicted before a Justice of the Peace, shall for every such offence forfeit and pay, over and above the value of the article or articles so stolen, or the amount of the injury done, such sum of money not exceeding five pounds, as to the Justice shall seem meet. <sup>15</sup>

Suspected  
persons in pos-  
session of  
wood, &c. not  
satisfactorily  
accounting for  
it.

XXXIII. And be it enacted, that if the whole or any part of any tree, sapling or shrub, or any underwood, or any part of any live or dead fence, or any post, pale, rail, stile, or gate, or any part thereof, being of the value of two shillings at the least, shall, by virtue of a search warrant, to be granted as hereinafter mentioned, <sup>20</sup>be found in the possession of any person, or on the premises of any person with his knowledge, and such person, being carried before a Justice of the Peace, shall not satisfy the Justice that he came lawfully by the same, he shall on conviction by the Justice, forfeit and pay, over and above the value of the article or articles so <sup>25</sup>found, any sum not exceeding two pounds.

Stealing, &c.  
of any vegeta-  
ble production  
in a garden,  
&c. punishable  
on summary  
conviction.

XXXIV. And be it enacted, that if any person shall steal, or shall destroy, or damage with intent to steal any tree, sapling, shrub, bush, plant, root, fruit, or vegetable production growing in any garden, orchard, nursery-ground, hot-house, green-house, or <sup>30</sup>conservatory, every such offender, being convicted thereof before a Justice of the Peace, shall forfeit and pay, over and above the value of the article or articles so stolen, or the amount of the injury done, such sum of money, not exceeding five pounds, as to the

Justice shall seem meet; and if any person so convicted shall afterwards commit any of the said offences, such offender shall be deemed guilty of felony, and being convicted thereof shall be liable to be punished in the same manner as in the case of Simple Larceny.

5 XXXV. And be it enacted, that if any person shall steal, or shall destroy or damage with intent to steal, any cultivated root or plant used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or for or in the course of any manufac-  
 10 ture, and growing in any land open or enclosed, not being a garden, orchard or nursery-ground, every such offender, being convicted thereof before a Justice of the Peace, shall forfeit and pay over and above the value of the article or articles so stolen, or the amount of the injury done, such sum of money, not exceeding twenty shillings, as to the Justice shall seem meet, and in default  
 15 of payment thereof, together with the costs, if ordered, shall be committed to the House of Correction for any term not exceeding one calendar month, unless payment be sooner made.

Stealing, &c. vegetable productions not growing in gardens, &c.

XXXVI. And be it enacted, that if any person shall steal or rip, cut or break with intent to steal, any glass or wood-work be-  
 20 longing to any building whatsoever, or any lead, iron, copper, brass, or other metal, or any utensil or fixture, whether made of metal or other material, respectively, fixed in or to any building whatsoever, or any thing made of metal fixed in any land, being private property, or for a fence to any dwelling house, garden of  
 25 area, or in any square, street, or other place, dedicated to public use or ornament, every such offender shall be guilty of Felony, and being convicted thereof, shall be liable to be punished in the same manner as in the case of simple Larceny; and in case of any such thing fixed in any square, street, or other like place it  
 30 shall not be necessary to allege the same to be the property of any person.

Stealing glass, woodwork or fixtures of any kind from buildings, and metal fixtures from grounds.

XXXVII. And for the punishment of depredations committed by tenants and lodgers; Be it enacted, that if any person shall steal any chattel or fixture let to be used by him or her, in or

Tenants and lodgers stealing any property

from houses or apartments let to them.

with any house or with any house or lodging, whether the contract shall have been entered into by him or her, or by her husband, or by any person on behalf of him or her, or her husband, every such offender shall be guilty of Felony, and being convicted thereof, shall be liable to be punished in the same manner as in the case of Simple Larceny; and in every such case of stealing any chattel, it shall be lawful to prefer an indictment in the common form as for Larceny, and in every such case of stealing any fixture, to prefer an indictment in the same form as if the offender were not a tenant or lodger, and in either case to lay the property in the owner or person letting to hire.

Clerks and servants stealing property of their masters.

XXXVIII. And for the punishment of depredations committed by Clerks and Servants in cases not punishable capitally; Be it enacted, that if any Clerk or Servant shall steal any chattel, money, or valuable security belonging to or in the possession or power of his master, every such offender, being convicted thereof, shall be liable at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not exceeding fourteen years, nor less than seven years,\* or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years.

Clerks or servants receiving any money, &c. on their Master's account, and embezzling it, shall be deemed to have feloniously stolen it.

XXXIX. And for the punishment of embezzlements committed by Clerks and Servants; Be it declared and enacted, that if any Clerk or Servant, or any person employed for the purpose or in the capacity of a Clerk or Servant, shall by virtue of such employment receive or take into his possession any chattel, money or valuable security for, or in the name or on the account of his Master, and shall fraudulently embezzle the same or any part thereof, every such offender shall be deemed to have feloniously stolen the same from his Master, although such chattel, money or security was not received into the possession of such Master otherwise than by the actual possession of his Clerk, Servant or other person so employed; and every such offender being con-

\* But see 6 Vic. c. 5.

victed thereof, shall be liable, at the discretion of the Court, to any of the punishments which the Court may award as hereinbefore last mentioned.

XL. And for preventing the difficulties that have been experienced in the prosecution of the last mentioned offenders ; Be it enacted, that it shall be lawful to charge in the indictment and proceed against the offender for any number of distinct acts of embezzlement, not exceeding three, which may have been committed by him against the same Master within the space of six calendar months from the first to the last of such acts ; and in every such indictment, except where the offence shall relate to any chattel, it shall be sufficient to allege the embezzlement to be of money, without specifying any particular coin or valuable security ; and such allegation, so far as regards the description of the property, shall be sustained if the offender shall be proved to have embezzled any amount, although the particular species of coin or valuable security of which such amount was composed shall not be proved ; or, if he shall be proved to have embezzled any piece of coin or valuable security, or any portion of the value thereof, although such piece of coin or valuable security may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same, and such part shall have been returned accordingly.

Distinct acts of embezzlement may be charged in same indictment.

As to allegation and proof of property embezzled.

XLI. And for the punishment of embezzlements committed by agents entrusted with property, Be it enacted, that if any money or security for the payment of money shall be intrusted to any banker, merchant, broker, attorney or other agent, with any direction in writing to apply such money or any part thereof, or the proceeds or any part of the proceeds of such security, for any purpose specified in such direction, and he shall in violation of good faith, and contrary to the purpose so specified, in any wise convert to his own use or benefit such money, security or proceeds, or any part thereof, respectively, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be

Agents embezzling money intrusted to them to be applied to any special purposes ;

Or embezzling any goods or valuable security entrusted to them for safe custody, or for any special purpose, guilty of a misdemeanor.

liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary, for any term not less than seven years,\* or imprisoned in any other Prison or place of confinement for any term not exceeding two years, or to suffer such other punishment by fine or imprisonment, or by both, as the Court shall award; and if any chattel or valuable security, or any power of attorney for the sale or transfer of any share or interest in any public stock or fund, whether of this Province or of the United Kingdom of *Great Britain* and *Ireland*, or of *Great Britain* or of *Ireland*, or of any British Colony or Foreign State or Colony, or in any fund of any body corporate, company or society, shall be intrusted to any banker, merchant, broker, attorney, or other agent for safe custody, or for any special purpose without any authority to sell, negociate, transfer or pledge, and he shall in violation of good faith, and contrary to the object or purpose for which such chattel, security or power of attorney shall have been entrusted to him, sell, negotiate, transfer, pledge or in any manner convert to his own use or benefit such chattel or security, or the proceeds of the same or any part thereof, or the share or interest in the stock or fund to which such power of attorney shall relate or any part thereof, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable at the discretion of the Court, to any of the punishments which the Court may award as hereinbefore last mentioned.

Not to affect trustees or mortgagees.

Nor bankers &c. receiving money due on securities.

**XLII.** Provided always, and be it enacted, that nothing hereinbefore contained relating to agents, shall affect any trustee in or under any instrument whatever, or any mortgagee of any property real or personal in respect of any act done by such trustee or mortgagee in relation to the property comprised in or affected by any such trust or mortgage; nor shall restrain any banker, merchant, broker, attorney or other agent from receiving any money which shall be or become actually due and payable upon or by virtue of any valuable security according to the tenor and

\* But see 6 Vic. c. 5.

effect thereof, in such manner as he might have done if this Act had not been passed, nor from selling, transferring or otherwise disposing of any securities or effects in his possession, upon which he shall have any lien, claim or demand, entitling him by law so to do; unless such sale, transfer or other disposal shall extend to a greater number or part of such securities or effects, than shall be requisite for satisfying such lien, claim or demand.

Or disposing of securities on which they have a lien.

XLIII. And be it enacted, that if any factor or agent, intrusted for the purpose of sale with any goods or merchandize, or intrusted with any bill of lading, warehouse-keeper's or wharfinger's certificate or warrant or order for delivery of goods or merchandize, shall for his own benefit and in violation of good faith, deposit or pledge any such goods or merchandize, or any of the said documents as a security for any money, or negotiable instrument borrowed or received by such factor or agent, at or before the time of making such deposit or pledge, or intended to be thereafter borrowed or received, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years,\* or imprisoned in any other Prison or place of confinement, for any term not exceeding two years, or to suffer such other punishment by fine or imprisonment, or by both, as the Court shall award; but no such factor or agent shall be liable to any prosecution for depositing or pledging any such goods or merchandize, or any of the said documents, in case the same shall not be made a security for or subject to the payment of any greater sum of money than the amount which at the time of such deposit or pledge was justly due and owing to such factor or agent from his principal, together with the amount of any bill or bills of exchange drawn by or on account of such principal, and accepted by such factor or agent.

Factors pledging for their own use any goods, or documents relating to goods entrusted to them for the purpose of sale, guilty of a misdemeanor.

Not to extend to cases where the pledge does not exceed the amount of their lien.

XLIV. Provided always, and be it enacted, that nothing in

\* But see 6 Vic. c. 5.

These provisions as to agents shall not lessen any remedy which the party aggrieved now has.

this Act contained, nor any preceding conviction or judgment to be had or taken thereupon against any banker, merchant, broker, factor, attorney or other agent as aforesaid, shall prevent, lessen or impeach any remedy at law or in equity, which any party aggrieved by such offence might or would have had if this Act had not been passed; but, nevertheless, the conviction of any such offender shall not be received in evidence in any action at law or suit in equity against him; and no banker, merchant, broker, factor, attorney or other agent as aforesaid, shall be liable to be convicted by any evidence whatever as an offender against this Act, in respect of any act done by him, if he shall at any time previously to his being indicted for such offence, have disclosed such act on oath, in consequence of any compulsory process of any Court of law or equity in any action, suit or proceeding which shall have been *bona fide* instituted by any party aggrieved, or if he shall have disclosed the same in any examination or deposition before any Commissioners of Bankrupt.

Obtaining money under false pretences, a misdemeanor.

XLV. And whereas a failure of justice frequently arises from the subtle distinction between Larceny and Fraud; for remedy thereof, be it enacted, that if any person shall, by any false pretence, obtain from any other person any chattel, money or valuable security, with intent to cheat or defraud any person of the same, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not exceeding fourteen years, nor less than seven years,\* or imprisoned in any other prison or place of confinement for any term not exceeding two years, or to suffer such other punishment, by fine or imprisonment, or by both, as the Court shall award: Provided always, that if upon the trial of any person indicted for such misdemeanor, it shall be proved that he obtained the property in question in any such manner as to amount in law to Larceny, he shall not by reason thereof be enti-

No acquittal on the ground that the case proved amounts to larceny.

\* But see 6 Vic. c. 5.

ttled to be acquitted of such misdemeanor; and no such indictment shall be removeable by *certiorari*; and no person tried for such misdemeanor shall be liable to be afterwards prosecuted for Larceny upon the same facts.

5 XLVI. And with regard to receivers of stolen property, Be it enacted, that if any person shall receive any chattel, money, valuable security, or other property whatsoever, the stealing or taking whereof shall amount to a Felony, either at common law or by virtue of this Act, such person knowing the same to have  
 10 been feloniously stolen or taken, every such receiver shall be guilty of Felony, and may be indicted and convicted either as an accessory after the fact, or for a substantive Felony, and in the latter case, whether the principal Felon shall or shall not have been previously convicted, or shall or shall not be amenable to  
 15 justice; and every such receiver howsoever convicted, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not exceeding fourteen years, nor less than seven years,\* or imprisoned in any other Prison or place of confinement for any term not exceeding  
 20 two years: Provided always, that no person howsoever tried for receiving as aforesaid, shall be liable to be prosecuted a second time for the same offence.

Where the original offence is felony, the receiver of stolen property may be tried either as an accessory after the fact, or for a substantive felony.

XLVII. And be it enacted, that if any person shall receive any chattel, money, valuable security, or other property whatsoever, the stealing, taking, obtaining or converting whereof is  
 25 made an indictable Misdemeanor by this Act, such person knowing the same to have been unlawfully stolen, taken, obtained or converted, every such receiver shall be guilty of a Misdemeanor, or may be indicted and convicted thereof, whether the person  
 30 guilty of the principal Misdemeanor shall or shall not have been previously convicted thereof, or shall or shall not be amenable to justice; and every such receiver shall on conviction, be liable, at the discretion of the Court, to be imprisoned at hard labour in

Where the original offence is a misdemeanor or, receivers may be prosecuted for a misdemeanor.

\* But see 6 V. c. 5.

the Provincial Penitentiary for any other term not less than seven years,\* or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years.

All receivers may be tried where the property is found in their possession, as well as where the receiving takes place.

XLVIII. And be it enacted, that if any person shall receive any chattel, money, valuable security, or other property whatsoever, knowing the same to have been feloniously or unlawfully stolen, taken, obtained or converted, every such person whether charged as an accessory after the fact to the Felony, or with a substantive Felony, or with a Misdemeanor only, may be dealt with, tried and punished in any District, County or place in which he shall have or shall have had any such property in his possession, or in any District, County or place in which the party guilty of the principal Felony or Misdemeanor may by law be tried, in the same manner as such receiver may be dealt with, indicted, tried and punished in the District, County or place where he actually received such property.

The owner of stolen property prosecuting thief or receiver to conviction shall have restitution of his property.

Exception.

XLIX. And to encourage the prosecution of offenders, be it enacted, that if any person guilty of any such Felony or Misdemeanor as aforesaid, in stealing, taking, obtaining or converting, or in knowingly receiving any chattel, money, valuable security, or other property whatsoever, shall be indicted for any offence by or on the behalf of the owner of the property, or his heir, curator, executor or administrator, and convicted thereof, in such case the property shall be restored to the owner or his representative ; and the Court before whom any such person shall be so convicted, shall have power to award from time to time writs of restitution for the same property, or to order the restitution thereof in a summary manner : Provided always, that if it shall appear, before any award or order made, that any valuable security shall have been *bona fide* paid or discharged by some person or body corporate liable to the payment thereof, or being a negotiable instrument, shall have been *bona fide* taken or received by transfer or delivery by some person or body corporate, for a just and

\* But see 6 V. c. 5.

valuable consideration without any notice or without any reasonable cause to suspect that the same had by any Felony or Misdemeanor been stolen, taken, obtained or converted as aforesaid, in such case the Court shall not award or order the restitution of such security.

L. And be it enacted, that every person who shall corruptly take any money or reward, directly or indirectly, under pretence or on account of helping any person to any chattel, money, valuable security, or other property whatsoever, which shall by any Felony or Misdemeanor have been stolen, taken, obtained or converted as aforesaid, shall, (unless he cause the offender to be apprehended and brought to trial for the same,) be guilty of Felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years,\* or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years.

Taking a reward for helping to the recovery of stolen property without bringing the offender to trial.

LI. And be it enacted, that if any person shall publicly advertise a reward for the return of any property whatsoever, which shall have been stolen or lost, and shall in such advertisement use any words purporting that no question will be asked, or shall make use of any words in any public advertisement, purporting that a reward will be given or paid for any property which shall have been stolen or lost, without seizing or making any inquiry after the person producing such property, or shall promise or offer in any such public advertisement to return to any pawnbroker or other person who may have bought or advanced money by way of a loan upon any property stolen or lost, the money so paid or advanced, or any other sum of money or reward for the return of such property, or if any person shall print or publish any such advertisement in any of the above cases, every such person shall forfeit the sum of twenty pounds for every such offence, to any person who will sue for the same, by action of debt to be recovered with full costs of suit.

Advertising a reward for the return of stolen property without inquiry.

\* But see 6 V. c. 5

Receivers of property, where the original offence is punishable on summary conviction.

LII. And be it enacted, that where the stealing or taking of any property whatsoever is by this Act punishable on summary conviction, either for every offence, or for the first and second offence only, or for the first offence only, any person who shall receive any such property, knowing the same to be unlawfully come by, shall on conviction thereof before a Justice of the Peace, be liable for every first, second or subsequent offence of receiving, to the same forfeiture and punishment to which a person guilty of a first, second or subsequent offence of stealing or taking such property is by this Act made liable. 5 10

Principals in the second degree, and accessories.

LIII. And be it enacted, that in the case of every Felony punishable under this Act, every principal in the second degree, and every accessory before the fact, shall be punishable with death or otherwise, in the same manner as the principal in the first degree is by this Act punishable; and every accessory after the fact to any Felony punishable under this Act, (except only a receiver of stolen property,) shall on conviction be liable to be imprisoned for any term not exceeding two years; and every person who shall aid, abet, counsel or procure the commission of any Misdemeanor punishable under this Act, shall be liable to be indicted and punished as a principal offender. 15 20

Abettors in misdemeanors.

LIV. And be it enacted, that if any person shall aid, abet, counsel, or procure the commission of any offence which is by this Act punishable on summary conviction, either for every time of its commission or for the first and second time only, or for the first time only, every such person shall, on conviction before a Justice or Justices of the Peace, be liable for every first, second or subsequent offence of aiding, abetting, counselling, or procuring, to the same forfeiture and punishment to which a person guilty of a first, second or subsequent offence as a principal offender is by this Act made liable. 25 30

Abettors in offences punishable on summary conviction.

A person in the act of committing any offence may be

LV. And for the more effectual apprehension and discovery of all offenders punishable under this Act; Be it enacted, that any person found committing any offence punishable either upon

indictment or upon summary conviction by virtue of this Act, may be immediately apprehended without a warrant, by any Peace Officer, or by the owner of the property on or with respect to which the offence shall be committed, or by the servant of or  
 5 any person authorized by such owner, and forthwith taken before some neighbouring Justice of the Peace, to be dealt with according to law ; and if any credible witness shall prove upon oath, before a Justice of the Peace, that there is reasonable cause to suspect that any property whatsoever, on or with respect to  
 10 which any such offence shall have been committed, is in any dwelling-house, out-house, garden, yard, croft, or other place or places, the Justice may grant a warrant to search such dwelling-house, out-house, garden, yard, croft or other place or places, for such property, as in the case of stolen goods ; and any person to  
 15 whom any property shall be offered to be sold, pawned or delivered, if he shall have reasonable cause to suspect that any such offence has been committed on or with respect to such property, is hereby authorized, and if in his power is required to apprehend and forthwith to carry before a Justice of the Peace, the party  
 20 offering the same, together with such property, to be dealt with according to Law.

A Justice, upon good ground of suspicion proved on oath, may grant a search warrant.

Any person to whom stolen property is offered, may seize the party offering.

LVI. And be it enacted, that the prosecution of every offence punishable on summary conviction under this Act, shall be commenced within three calendar months after the commission of the  
 25 offence and not otherwise ; and the evidence of the party aggrieved shall be admitted in proof of the offence.

Limitation as to summary proceedings.

LVII. And for the more effectual prosecution of all offences punishable on summary conviction under this Act, Be it enacted, that where any person shall be charged, on the oath of a credible  
 30 witness, before any Justice of the Peace, with any such offence, the Justice may summon the person charged to appear at a time and place to be named in the summons ; and if he shall not appear accordingly, then (upon proof of the due service of the summons upon such person by delivering the same to him personally,

Mode of compelling the appearance of persons punishable on summary conviction.

or by leaving the same at his usual place of abode) the Justice may either proceed to hear and determine the case *ex parte*, or issue his warrant for apprehending such person and bringing him before himself, or some other Justice or Justices of the Peace; or the Justice before whom the charge shall be made, may (if <sup>5</sup> he shall so think fit,) without any previous summons (unless when otherwise specially directed) issue such a warrant; and the Justice or Justices before whom the person charged shall appear or be brought, shall proceed to hear and determine the case. 10

Application of forfeitures and penalties on summary convictions.

LVIII. And with regard to the application of all forfeitures and penalties upon summary convictions under this Act; Be it enacted, that every sum of money which shall be forfeited for, or as the value of any property stolen or taken, or for or as the amount of any injury done (such value or amount to be assessed <sup>15</sup> in each case by the convicting Justice or Justices) shall be paid to the party aggrieved, if known, except where such party shall have been examined in proof of the offence, and in that case, or where the party aggrieved is unknown, such sum shall be applied <sup>20</sup> in the same manner as a penalty: Provided always, that where several persons shall join in the commission of the same offence, and shall, upon conviction thereof, each be adjudged to forfeit a sum equivalent to the value of the property, or to the amount of the injury done, in every such case no further sum shall be paid <sup>25</sup> to the party aggrieved than that which shall be forfeited by one of such offenders only, and the corresponding sum or sums, forfeited by the other offender or offenders shall be applied in the same manner as any penalty imposed by a Justice of the Peace is hereinbefore directed to be applied.

Proviso.

If a person summarily convicted shall not pay, &c. the Justice may commit him.

LIX. And be it enacted, that in every case of a summary con- <sup>30</sup> viction under this Act, where the sum which shall be forfeited for the value of the property stolen or taken, or for the amount of the injury done, or which shall be imposed as a penalty by any Justice or Justices, together with the costs, if awarded, (which

costs such Justice or Justices is and are hereby authorized to award, if he or they shall think fit, in any case of a summary conviction under this Act) shall not be paid either immediately after the conviction, or within such period as the Justice or Justices shall at the time of the conviction appoint, which he or they is and are hereby authorized to appoint, it shall be lawful for the convicting Justice or Justices (unless where otherwise specially directed,) to commit the offender to the Common Gaol or House of Correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, according to the discretion of the Justice or Justices, for any term not exceeding two calendar months, where the amount of the sum forfeited, or of the penalty imposed, or of both, as the case may be, together with the costs, shall not exceed five pounds; and for any term not exceeding six calendar months, where the amount with costs shall exceed five pounds, and shall not exceed ten pounds; the commitment to be determinable in each of the cases aforesaid, upon payment of the amount and costs.

Scale of imprisonment.

LX. Provided always, and be it enacted, that where any person shall be summarily convicted, before a Justice or Justices of the Peace, of any offence against this Act, and it shall be a first conviction, it shall be lawful for the Justice or Justices, if he or they shall so think fit, to discharge the offender from his conviction upon his making such satisfaction to the party aggrieved, for damages and costs, or either of them, as shall be ascertained by such Justice or Justices.

Justice may discharge the offender in certain cases.

LXI. And be it enacted, that it shall be lawful for the Queen's Majesty, and for the Governor, Lieutenant Governor, or Person administering the Government of this Province, to extend the Royal Mercy to any person imprisoned by virtue of this Act, although he shall be imprisoned for non-payment of money to some party other than the Crown.

Pardon for non-payment of money.

LXII. And be it enacted, that in case any person convicted of

A summary conviction shall be a bar to any other proceeding for the same offence.

any offence punishable upon summary conviction by virtue of this Act, shall have paid the sum adjudged to be paid, together with costs, if awarded, under such conviction, or shall have received a remission thereof from the Crown, or shall have suffered the imprisonment awarded for non-payment thereof or the imprisonment adjudged in the first instance, or shall have been discharged from his conviction in the manner aforesaid, in every such case he shall be released from all further or other proceedings for the same cause. 5

Form of conviction.

LXIII. And be it enacted, that the Justice or Justices before whom any person shall be convicted of any offence against this Act, may cause the conviction to be drawn up in the following form of words, or in any other form of words to the same effect, as the case shall require, *videlicet* :—“ Be it remembered, that on the \_\_\_\_\_ day of \_\_\_\_\_ in the year 15 \_\_\_\_\_ of our Lord \_\_\_\_\_ at \_\_\_\_\_

in the District of \_\_\_\_\_ (*as the case may be*) A. O. is convicted before me, J. P. one of Her Majesty’s Justices (*or before us J. P. and S. L. Justices*) of the Peace for the said District, for that he, the said A. O. did (*specify the offence and the time and place when and where the same was committed as the case may be, and on a second conviction state the first conviction*) and I, the said J. P. (*or, we the said J. P. and S. L.*) adjudge the said A. O. for his said offence to be imprisoned in the \_\_\_\_\_ (*or, to be imprisoned in the* 25

and there kept to hard labour) for the space of \_\_\_\_\_ (*or, to forfeit and pay here state the penalty actually imposed, or state the penalty and also the value of the articles stolen, embezzled or taken, or the amount of the injury done, as the case may be*) and (*in any case where costs shall be awarded*) also to pay the sum of \_\_\_\_\_ for costs, and in default of immediate payment of the said sum (*or sums,*) to be imprisoned in the \_\_\_\_\_ or to be imprisoned in the \_\_\_\_\_ and there kept to hard

labour, for the space of \_\_\_\_\_ unless the said  
 sum (or sums) shall be sooner paid (or, and I or we) order  
 that the said sum (or sums) shall be paid by the said A. O. on  
 or before the \_\_\_\_\_ day of \_\_\_\_\_  
 5 that the said sum of \_\_\_\_\_ (*i. e. the penalty  
 only*) shall be paid to me (or us, *the convicting Justice or  
 Justices,*) and that the sum of \_\_\_\_\_  
 (*i. e. the value of the articles stolen, or the amount of the in-  
 jury done*) shall be paid to C. D. (*the party aggrieved, unless  
 10 he is unknown or has been examined in proof of the offence,  
 in which case state that fact, and dispose of the whole like the  
 penalty as before*) and (*if the Justice or Justices shall think  
 proper to award the complainant his costs*) I (or we) order that  
 the said sum of \_\_\_\_\_ for costs shall be paid to C.  
 15 D. (*the complainant*). Given under my hand and seal, (or our  
 hands and seals) the day and year first above mentioned.”

LXIV. And be it enacted, that in all cases where by this Act  
 two or more Justices of the Peace are authorised and required to  
 hear and determine any complaint, one Justice shall be compe-  
 20 tent to receive the original information or complaint, and to issue  
 the summons or warrant requiring the parties to appear before  
 two or more Justices of the Peace ; and after examination upon  
 oath into the merits of the said complaint, and the adjudication  
 thereupon by any such two Justices being made, all and every  
 25 the subsequent proceedings to enforce obedience thereto, or  
 otherwise, whether respecting the penalty, fine, imprisonment,  
 costs, or other matter or thing relating to the offence, may be en-  
 forced by either of the said Justices, or by any other Justice of  
 the Peace for the same District, County, City, Town or Place,  
 30 in such and the like manner as if done by the same two Justices  
 who so heard and adjudged the said complaint ; and where the  
 original complaint or information shall be made to any Justice or  
 Justices of the Peace, different from the Justice or Justices before  
 whom the same shall be heard and determined, the form of con-  
 viction shall be made conformable and according to the fact.

One Justice  
 may receive  
 original infor-  
 mation, &c.  
 where two or  
 more Justices  
 are empowered  
 to hear and de-  
 termine.

Appeal.

LXV. And be it enacted, that in all cases where the sum adjudged to be paid upon any summary conviction, shall exceed five pounds, or the imprisonment adjudged shall exceed one calendar month, or the conviction shall take place before one Justice only, any person who shall think himself aggrieved by any such conviction, may appeal to the next Court of General or Quarter Sessions, which shall be holden not less than twelve days after the day of such conviction, for the District, County or Place wherein the cause of complaint shall have arisen : Provided that such person shall give to the complainant a notice in writing of 10 such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at the least before such Sessions ; and shall also either remain in custody until the Sessions, or enter into recognizance with two sufficient sureties before a Justice of the Peace, conditioned personally to 15 appear at the said Sessions, and to try such appeal, and to abide the judgment of the Court thereupon, and to pay such costs as shall be by the Court awarded ; and on such being given, and such recognizance being entered into, the Justice before whom the same shall be entered into, shall liberate such person, if in 20 custody ; and the Court at such Sessions shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs to either party, as to the Court shall seem meet ; and in case of the dismissal of the appeal or the affirmance of the conviction, the Court shall order and adjudge the 25 offender to be punished according to the conviction, and to pay such costs, if any, as shall be awarded, and shall, if necessary, issue process for enforcing such Judgment.

Proviso.

Convictions  
to be returned  
to Quarter Ses-  
sions.

LXVI. And be it enacted, that every Justice of the Peace before whom any person shall be convicted of any offence against 30 this Act, shall transmit the conviction to the next Court of General or Quarter Sessions, which shall be holden for the District, County or Place wherein the offence shall have been committed, there to be kept by the proper Officer among the Records of the Court ; and upon any indictment or information against any per- 35

son for a subsequent offence, a copy of such conviction, certified by the proper Officer of the Court, or proved to be a true copy, shall be sufficient evidence to prove a conviction for the former offence, and the conviction shall be presumed to have been unappealed against, until the contrary be shewn.

How far evidence in future cases.

LXVII. And for the protection of persons acting in the execution of this Act; Be it enacted, that all actions and prosecutions to be commenced against any person for any thing done in pursuance of this Act, shall be laid and tried in the District, County, or Place where the fact was committed, and shall be commenced within six calendar months after the fact committed, and not otherwise; and notice in writing of such action and of the cause thereof, shall be given to the defendant, one calendar month at least before the commencement of the action; and in any such action the defendant may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon; and no plaintiff shall recover in any such action, if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into Court after such action brought by or on behalf of the defendant; and if a verdict shall pass for the defendant, or the plaintiff shall become non-suit, or discontinue any such action, after issue joined, or if upon demurrer or otherwise, judgment shall be given against the plaintiff, the defendant shall recover his full costs as between attorney and client, and have the like remedy for the same as any defendant hath by law in other cases; and though a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the Judge, before whom the trial shall be had shall certify his approbation of the action and of the verdict obtained thereupon.

Venue in proceedings against persons acting under this Act

Notice of action.

General issue &c.

LXVIII. And be it enacted, that if any person having stolen or otherwise unlawfully taken any chattel, money, valuable security, or other property whatsoever, the stealing or unlawfully

This Act to extend to offences committed out of this

Province in taking whereof is made punishable by indictment by any of the provisions of this Act, in any part of Her Majesty's dominions, shall afterwards have the same property in his possession in any part of this Province, he may be dealt with, indicted, tried and punished for such offence under this Act, in that part of this Province where he shall so have such property, in the same manner as if he had actually stolen or unlawfully taken it in that part; and if any person in any part of this Province shall receive or have any chattel, money, valuable security, or other property whatsoever, which shall have been stolen or otherwise unlawfully taken in any other part of Her Majesty's dominions, such person knowing the said property to have been stolen or otherwise unlawfully taken, he may be dealt with, indicted, tried and punished for such offence in that part of this Province where he shall so receive or have the stolen property, in the same manner as if it had been originally stolen or unlawfully taken in that part of this Province as aforesaid.

All sums to be  
currency.

**LXIX.** And be it enacted, that all fines, forfeitures and penalties imposed by this Act, and all sums expressed as the value of any goods, chattels or other property herein mentioned, shall be deemed and taken to be current money of this Province.

All Acts re-  
pugnant to this  
Act repealed.

**LXX.** And be it enacted, that all Acts or parts of Acts or provisions of Law in force in this Province, or any part thereof immediately before the time when this Act shall come in force, which shall be inconsistent with or contradictory to this Act, or which make any provision in any matter provided for by this Act, other than such as is hereby made in such matter, shall, from and after the time when this Act shall come into force, be and they are hereby repealed, except in so far as may relate to any offence committed before the said time, which shall be dealt with and punished as if this Act had not been passed.\*

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\* But see 4 & 5 Vic. c. 24. as to the administration of the Law erected by this Act.

## C A P. XXVI.

An Act for consolidating and amending the Laws in this Province relative to Malicious Injuries to Property.

[18th September, 1841.]

Preamble.

**W**HEREAS it is expedient to amend and consolidate the provisions contained in various Statutes now in force in this Province relative to Malicious Injuries to Property ; Be it therefore enacted by the Queen's most Excellent Majesty by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, intituled *An Act to Re-unite the Provinces of Upper and Lower Canada and for the Government of Canada* ; and it is hereby enacted by the authority of the same, that this Act shall commence from and after the first day of January one thousand eight hundred and forty-two.

Commencement of this Act.

II. And be it enacted, that whosoever shall unlawfully and maliciously set fire to any dwelling house, any person being therein, shall be guilty of Felony, and being convicted thereof shall suffer death.

Setting fire to a dwelling house, &c.

III. And be it enacted, that whosoever shall unlawfully and maliciously set fire to any Church, Chapel or Meeting House for the exercise of any mode or form of religious worship whatever, or shall unlawfully and maliciously set fire to any House, Stable, Coach-House, Out-house, Warehouse, Office, Shop, Mill, Malt-House, Hop-Oast, Barn or Granary, or to any building or erection used in carrying on any trade or manufacture, or any branch thereof, whether the same or any of them, respectively, shall then be in the possession of the offender, or in the possession of any other person, shall be guilty of Felony, and being convicted thereof, shall be liable, at the discretion of the Court to be im-

Setting fire to a church or chapel, house, warehouse, &c.

prisoned at hard labour in the Provincial Penitentiary for the term of his natural life or for any term not less than seven years,\* or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years.

IV. And be it enacted, that if any person shall unlawfully and maliciously cut, break or destroy, or damage with intent to destroy, or to render useless, any Goods or Article of Silk, Woollen, Linen or Cotton, or of any one or more of those materials mixed with each other or mixed with any other material, or any Frame-work-knitted Piece, Stocking, Hose or Lace, respectively, being in the Loom or Frame, or on any Machine or Engine, or on the Rack or Tenters, or in any stage, process or progress of manufacture; or shall unlawfully and maliciously cut, break or destroy or damage with intent to destroy or to render useless, any Warp or Shute of Silk, Woollen, Linen or Cotton, or of any one or more of those materials mixed with each other, or mixed with any other material, or any Loom, Frame, Machine, Engine, Rack, Tackle or Implement, whether fixed or moveable, prepared for or employed in carding, spinning, throwing, weaving, fulling, shearing, or otherwise manufacturing or preparing any such goods or articles: or shall by force enter into any House, Shop, Building or Place, with intent to commit any of the offences aforesaid, every such offender shall be guilty of Felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years,\* or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

V. And be it enacted, that if any person shall unlawfully and maliciously cut, break or destroy, or damage with intent to destroy or to render useless, any Threshing Machine, or any Machine or Engine, whether fixed or moveable, prepared for or employed in any manufacture whatsoever, (except the manufacture of Silk, Woollen, Linen, or Cotton Goods, or goods of any

\* But see 6 Vic. c. 5.

one or more of those materials mixed with each other, or mixed with any other material, or any Frame-work Knitted Piece, Stocking, Hose or Lace,) every such offender shall be guilty of Felony, and being convicted thereof, shall be liable at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years,\* or in any other Prison or place of confinement for any term not exceeding two years.

10 VI. And be it enacted, that if any persons, riotously and tumultuously assembled together to the disturbance of the public peace, shall unlawfully and with force demolish, pull down, or destroy, or begin to demolish, pull down or destroy any Church, Chapel, or Meeting House, for the exercise of any mode or form of religious worship, or any House, Stable, Coach-House, Out-House, Warehouse, Office, Shop, Mill, Malt-House, Hop-Oast, Barn or Granary, or any building or erection used in carrying on any trade or manufacture, or any branch thereof, or any machinery, whether fixed or moveable, prepared for or employed in any manufacture, or in any branch thereof, every such offender shall be guilty of  
 15  
 20 Felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years,\* or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years.

Riotously demolishing, &c. a church, chapel, house, or certain buildings, or any machinery used in any manufacture.

25 VII. And be it enacted, that whosoever shall unlawfully and maliciously set fire to, cast away, or in any wise destroy any Ship or Vessel, either with intent to murder any person, or whereby the life of any person shall be endangered, shall be guilty of Felony, and being convicted thereof, shall suffer death.

Setting fire to ships or vessels with intent to commit murder

30 VIII. And be it enacted, that whosoever shall unlawfully exhibit any false light or signal, with intent to bring any Ship or Vessel into danger, or shall unlawfully and maliciously do any

Hanging out false lights to cause shipwreck.

\* But see 6 V. c. 5

thing to the immediate loss or destruction of any Ship or Vessel in distress, shall be guilty of Felony, and being convicted thereof, shall suffer death.

Setting fire to ships or vessels with intent to destroy the same.

**IX.** And be it enacted, that whosoever shall unlawfully and maliciously set fire to, or in any wise destroy any Ship or Vessel, 5 whether the same be completed or in an unfinished state, or shall unlawfully and maliciously set fire to, cast away, or in any wise destroy any Ship or Vessel, with intent thereby to prejudice any Owner or Part-Owner of such Ship or Vessel, or of any goods on board the same, or any person that hath underwritten or shall 10 underwrite any policy of insurance upon such Ship or Vessel, or on the freight thereof, or upon any goods on board the same, shall be guilty of Felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural 15 life, or for any other term not less than seven years,\* or to be imprisoned in any other Prison or place of confinement for any time not exceeding two years.

Impeding any person endeavouring to save life from any ship wrecked, &c.

**X.** And be it enacted, that whosoever shall by force prevent or impede any person endeavouring to save his life from any Ship 20 or Vessel which shall be in distress or wrecked, stranded, or cast on shore, (whether he shall be on board or shall have quitted the same) shall be guilty of Felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his 25 natural life, or for any term not less than seven years,\* or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years.

Destroying wrecks or any articles belonging thereto.

**XI.** And be it enacted, that whosoever shall unlawfully and maliciously destroy any part of any Ship or Vessel which shall be 30 in distress, or wrecked, stranded or cast on shore, or any Goods, Merchandize or Article of any kind belonging to such Ship or

\* But see 6 Vic. c. 5.

Vessel, shall be guilty of Felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years,\* or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

XII. And be it enacted, that if any person shall unlawfully and maliciously break down or cut down any Sea Bank or Sea Wall, or the Bank or Wall of any River, Canal or Marsh, whereby any land shall be overflowed or damaged, or shall be in danger of being so, or shall unlawfully and maliciously throw down, level or otherwise destroy any Lock, Sluice, Flood-Gate or other work on any navigable River or Canal, every such offender shall be guilty of Felony, and being convicted thereof, shall be imprisoned for any term not exceeding four years; † and if any person shall unlawfully and maliciously cut off, draw up or remove any Piles, Chalk or other materials fixed in the ground and used for securing any Sea-Bank or Sea-Wall, or the Bank or Wall of any River, Canal or Marsh, or shall unlawfully and maliciously open or draw up any Flood-Gate, or do any other injury or mischief to any navigable River or Canal with intent, and so as thereby to obstruct or prevent the carrying on, completing, or maintaining the navigation thereof, every such offender shall be guilty of Felony, and being convicted thereof, shall be imprisoned for any term not exceeding two years.

Destroying any sea bank &c. or works on any river or canal, Felony.

Removing the piles of any sea-bank, &c. or doing any damage to obstruct the navigation of a river or canal.

XIII. And be it enacted, that if any person shall unlawfully and maliciously pull down, or in any wise destroy any public Bridge, or do any injury with intent, and so as thereby to render such Bridge or any part thereof dangerous or impassable, every such offender shall be guilty of Felony, and being convicted thereof, shall be imprisoned for any term not exceeding four years.\*

Injury to a public bridge.

XIV. And be it enacted, that if any person shall unlawfully and maliciously throw down, level, or otherwise destroy, in

Destroying a turnpike gate, toll house, &c.,

\* But see 6 V. c. 5.

† See 6 Vic. c. 5, s. 3.

whole or in part, any Turnpike Gate, or any Wall, Chain, Rail, Post, Bar or other Fence belonging to any Turnpike Gate, or set up or erected to prevent passengers passing by without paying any Toll directed to be paid by any Act, or Acts, Ordinance or Ordinances, relating thereto, in force in this Province, or any House, Building or Weighing Engine erected for the better collection, ascertainment, or security of any such Toll, every such offender shall be guilty of a Misdemeanor, and being convicted thereof, shall be punished accordingly.

Breaking down the dam of a fishery, &c. or mill dam.

XV. And be it enacted, that if any person shall unlawfully and maliciously break down or otherwise destroy, the Dam of any Fish Pond, or of any Water which shall be private property, or in which there shall be any private right of Fishery with intent thereby to take or destroy any of the Fish in such Pond or Water or so as thereby to cause the loss or destruction of any of the Fish, or shall unlawfully and maliciously put any lime or other noxious material in any such Pond or Water, with intent thereby to destroy any of the Fish therein, or shall unlawfully and maliciously break down or otherwise destroy the Dam of any Mill Pond, every such offender shall be guilty of a Misdemeanor, and being convicted thereof, shall be punished accordingly.

Killing or maiming cattle.

XVI. And be it enacted, that if any person shall unlawfully and maliciously kill, maim or wound any Cattle, every such offender shall be guilty of Felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years,\* or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years.

Setting fire to agricultural produce.

XVII. And be it enacted, that whosoever shall unlawfully and maliciously set fire to any Stack of Corn, Grain, Pulse, Peat, Coals, Charcoal, or Wood, or any Steer of Wood, shall be guilty of Felony.

\* But see 6 V. c. 5.

ny, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years,\* or to be imprisoned in any other Prison or  
 5 place of confinement for any term not exceeding two years.

XVIII. And be it enacted, that if any person shall unlawfully and maliciously cut or otherwise destroy any Hop-Binds, growing on poles in any plantation of Hops, every such offender shall be guilty of Felony, and being convicted thereof, shall be imprisoned  
 10 for any term not exceeding four years. †

Destroying hop-binds.

XIX. And be it enacted, that if any person shall unlawfully and maliciously cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any Tree, Sapling or Shrub, or any Underwood, respectively growing in any Park, Pleasure-  
 15 Ground, Garden, Orchard or Avenue, or in any ground adjoining or belonging to any Dwelling House, every such offender shall be guilty of a Misdemeanor, and being convicted thereof, shall be punished accordingly; and if any person shall unlawfully and maliciously cut, break, bark, root up, or otherwise destroy or  
 20 damage the whole or any part of any Tree, Sapling or Shrub or any Underwood, respectively, growing elsewhere than in any of the situations hereinbefore mentioned, every such offender (in case the amount of the injury done shall exceed the sum of one pound) shall be guilty of a Misdemeanor, and being convicted thereof,  
 25 shall be punished accordingly.

Destroying or damaging trees, shrub &c. growing in certain situations.

The like as to trees, &c. growing elsewhere if the damage exceed one pound.

XX. And be it enacted, that if any person shall unlawfully and maliciously cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any Tree, Sapling or Shrub, or any Underwood, wheresoever the same may be respectively  
 30 growing, the injury done being to the amount of one shilling at the least, every such offender, being convicted thereof, before a Justice of the Peace, shall forfeit and pay, over and above the

Destroying or damaging trees, shrubs or underwood, &c. wheresoever growing to the amount of damage punishable on summary conviction.

\* But see 6 Vic. c. 5.

† See 6 Vic. c. 5, s. 3.

amount of the injury done, such sum of money not exceeding one pound as to the Justice shall seem meet.

Destroying  
any fruit or ve-  
getable pro-  
duction in a  
garden, &c.

XXI. And be it enacted, that if any person shall unlawfully and maliciously destroy, or damage with intent to destroy any Plant, Root, Fruit or Vegetable Production, growing in any Garden, Orchard, Nursery Ground, Hot-House, Green-House or Conservatory, every such offender being convicted thereof before a Justice of the Peace, shall forfeit and pay, over and above the amount of the injury done, such sum of money not exceeding two pounds as to the Justice shall seem meet. 10

Destroying  
&c. vegetable  
production not  
growing in  
gardens.

XXII. And be it enacted, that if any person shall unlawfully and maliciously destroy, or damage with intent to destroy, any cultivated Root or Plant used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or for or in the course of any manufacture, and growing in any land, open or enclosed, 15 not being a garden, orchard or nursery ground, every such offender being convicted thereof, before a Justice of the Peace, shall forfeit and pay, over and above the amount of the injury done, such sum of money not exceeding twenty shillings, as to the Justice shall seem meet. 20

Destroying  
&c. any fence,  
wall, stile or  
gate.

XXIII. And be it enacted, that if any person shall unlawfully and maliciously cut, break, throw down, or in anywise destroy any Fence of any description whatsoever, or any Wall, Stile, or Gate, or any part thereof respectively, every such offender, being convicted before a Justice of the Peace, shall forfeit and pay, 25 over and above the amount of the injury done, such sum of money not exceeding one pound as to the Justice shall seem meet.

Persons com-  
mitting da-  
mage to pro-  
perty in any  
case not pre-  
viously provid-  
ed for, may be

XXIV. And be it enacted, that if any person shall wilfully or maliciously commit any damage or injury, or spoil to or upon 30 any real or personal property whatsoever, either of a public or private nature, for which no remedy or punishment is hereinbefore provided, every such person being convicted thereof, before

a Justice of the Peace, shall forfeit and pay such sum of money as shall appear to the Justice to be a reasonable compensation for the damage, injury or spoil so committed, not exceeding the sum of five pounds; which sum of money shall, in case of private property, be paid to the party aggrieved, except where such party shall have been examined in proof of the offence; and in such case, or in the case of property of a public nature, or wherein any public right is concerned, the money shall be applied in such manner as every penalty imposed by a Justice of the Peace under this Act, is hereinafter directed to be applied: Provided always, that nothing herein contained shall extend to any case where the party trespassing acted under a fair and reasonable supposition that he had a right to do the act complained of.

compelled by a Justice to pay compensation not exceeding £5.

Proviso.

XXV. And be it enacted, that every punishment and forfeiture by this Act imposed on any person maliciously committing any offence, whether the same be punishable upon indictment, or upon summary conviction, shall equally apply and be enforced, whether the offence be committed from malice conceived against the owner of the property in respect of which it shall be committed or otherwise.

Malice at the owner not essential to any offence under this Act.

XXVI. And be it enacted, that in the case of every Felony punishable under this Act, every principal in the second degree, and every accessory before the fact, shall be punishable with death or otherwise, in the same manner as the principal in the first degree is by this Act punishable; and every accessory after the fact to any Felony punishable under this Act, shall, on conviction, be liable to be imprisoned for any term not exceeding two years, and every person who shall aid, abet, counsel or procure the commission of any Misdemeanor, punishable under this Act, shall be liable to be indicted and punished as a principal offender.

Principals in the second degree and accessories.

Abettors in misdemeanors.

XXVII. And be it enacted, that where any person shall be

The Court may, for all offences within this Act, order hard labour or solitary confinement.

convicted of any indictable offence punishable under this Act, for which imprisonment may be awarded, it shall be lawful for the Court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour, in the Common Gaol or House of Correction; and also to direct that the offender shall be kept in solitary confinement for any portion or portions of such imprisonment, or of such imprisonment with hard labour, not exceeding one month at any one time, and not exceeding three months in any one year; as to the Court in its discretion shall seem meet.

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Persons in the act of committing any offence may be apprehended without a warrant.

XXVIII. And for the more effectual apprehension of all offenders against this Act; Be it enacted, that any person found committing any offence against this Act, whether the same be punishable upon indictment or upon summary conviction, may be immediately apprehended, without a warrant, by any Peace Officer or the owner of the property injured, or his servant or any person authorized by him, and forthwith taken before some neighbouring Justice of the Peace, to be dealt with according to law.

15

Limitation as to summary proceedings.

XXIX. And be it enacted, that the prosecution for every offence punishable on summary conviction under this Act, shall be commenced within three calendar months after the commission of the offence, and not otherwise; and the evidence of the party aggrieved shall be admitted in proof of the offence, and also the evidence of any inhabitant of the District, County or Place in which the offence shall have been committed, notwithstanding any forfeiture or penalty incurred by the offence may be payable to any public fund of such District, County or Place.

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Competency of witnesses.

Mode of compelling the appearance of persons punishable on summary conviction.

XXX. And for the more effectual prosecution of all offences punishable on summary conviction under this Act; Be it enacted, that where any person shall be charged on the oath of a credible witness, before any Justice of the Peace, with any such offence, the Justice may summon the person charged to appear at

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a time and place to be named in such summons, and if he shall not appear accordingly, then (upon proof of the due service of the summons upon such person, by delivering the same to him personally, or by leaving the same at his usual place of abode) the Justice may either proceed to hear and determine the case *ex parte*, or issue his warrant for apprehending such person, and bringing him before himself or some other Justice of the Peace; or the Justice before whom the charge shall be made, may, if he shall so think fit, without any previous summons, (unless where otherwise specially directed) issue such warrant; and the Justice before whom the person charged shall appear or be brought, shall proceed to hear and determine the case.

XXXI. And be it enacted, that where any offence is by this Act punishable on summary conviction, any person who shall aid, abet, counsel, or procure the commission of such offence, shall, on conviction before a Justice of the Peace, be liable for every such offence of aiding, abetting, counselling, or procuring, to the same forfeiture and punishment to which a person guilty of such offence as a principal offender is by this Act made liable.

Abettors in offences punishable on summary conviction.

XXXII. And with regard to the application of all forfeitures and penalties upon summary convictions under this Act; Be it enacted, that every sum of money which shall be forfeited for the amount of any injury done, (such amount to be assessed in each case by the convicting Justice) shall be paid to the party aggrieved, if known, except where such party shall have been examined in proof of the offence; and in that case, or where the party aggrieved is unknown, such sum shall be applied in the same manner as a penalty; and every sum which shall be imposed as a penalty by any Justice of the Peace, whether in addition to such amount or otherwise, shall be paid to the convicting Justice: Provided always, that where several persons shall join in the commission of the same offence, and shall, upon conviction thereof, each be adjudged to forfeit a sum equivalent to the amount of the injury done, in every such case no further

Application of forfeitures and penalties upon summary convictions.

Proviso.

sum shall be paid to the party aggrieved than that which shall be forfeited by one of such offenders only, and the corresponding sum or sums forfeited by the other offender or offenders, together with all penalties, shall be applied in the same manner as any penalty is by law directed to be applied.

5

If a person summarily convicted shall not pay &c. the Justice may commit him.

XXXIII. And be it enacted, that in every case of a summary conviction under this Act, where the sum which shall be forfeited for the amount of the injury done, or which shall be imposed as a penalty by the Justice, shall not be paid, either immediately after the conviction, or within such period as the Justice shall, at the time of conviction, appoint, it shall be lawful for the convicting Justice, (unless where otherwise specially directed) to commit the offender to the Common Gaol or House of Correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, according to the discretion of the Justice, for any term not exceeding two calendar months, where the amount of the sum forfeited or of the penalty imposed, or of both (as the case may be) together with the costs, shall not exceed five pounds; and for any term not exceeding four calendar months where the amount with costs shall exceed five pounds, and not exceed ten pounds; and for any term not exceeding six calendar months where the amount with costs shall exceed ten pounds; the commitment to be determinable in each of the cases aforesaid upon the payment of the amount and costs.

Scale of imprisonment.

The Justice may discharge the offender in certain cases.

XXXIV. Provided always, and be it enacted, that where any person shall be summarily convicted before a Justice of the Peace of any offence against this Act, and it shall be a first conviction, it shall be lawful for the Justice, if he shall so think fit, to discharge the offender from his conviction, upon his making such satisfaction to the party aggrieved for damages and costs, or either of them, as shall be ascertained by the Justice.

Pardon for non-payment of money.

XXXV. And be it enacted, that it shall be lawful for the Queen's Majesty, or for the Governor, Lieutenant Governor or Person administering the Government of this Province for the

time being, to extend the Royal Mercy to any person imprisoned by virtue of this Act, although he shall be imprisoned for non-payment of money to some party other than the Crown.

XXXVI. And be it enacted, that in case any person convicted A summary conviction shall be a bar to any other proceeding for the same cause.  
 5 of any offence punishable upon summary conviction by virtue of this Act, shall have paid the sum adjudged to be paid together with costs, under such conviction, or shall have received a remission thereof from the Crown, or shall have suffered the imprisonment awarded for non-payment thereof, or the imprisonment  
 10 adjudged in the first instance, or shall have been discharged from his conviction in the manner aforesaid, in every such case he shall be released from all further or other proceedings for the same cause.

XXXVII. And be it enacted, that the Justice before whom Form of conviction.  
 15 any person shall be convicted of any offence against this Act, may cause the conviction to be drawn up in the following form of words or in any other form of words to the same effect, as the case may require, *videlicet* :—

“ Be it remembered that on the \_\_\_\_\_ day of \_\_\_\_\_  
 20 \_\_\_\_\_ in the year of our Lord \_\_\_\_\_  
 at \_\_\_\_\_ in the District (or City, &c.)  
*as the case may be*) A. O. is convicted before me  
 J. P. one of Her Majesty’s Justices of the Peace for the said  
 District (or City &c.) for that he the said A. O. did (*specify*  
 25 *the offence, and the time and place when and where the same was committed, as the case may be*) and I the said J. P. ad-  
 judge the said A. O. for his said offence to be imprisoned in the  
 (or to be imprisoned in the  
 and there kept to hard labour), for the space of  
 30 (or, I adjudge the said A. O. for his said offence to forfeit and  
 pay \_\_\_\_\_ (*here state the penalty actually imposed, or state the penalty and also the amount of the injury done, as the case may be,*) and also to pay the sum of \_\_\_\_\_  
 for costs, and in default of immediate pay-

ment of the said sums, to be imprisoned in the  
 (or, to be imprisoned in the and there kept  
 to hard labour) for the space of unless the  
 said sums shall be sooner paid; (or, and I order that the said  
 sums shall be paid by the said A. O. on or before the 5  
 day of and I direct that the  
 said sum of (*i. e. the penalty only*) shall  
 be paid to me the convicting Justice, and that the said sum of  
 (*i. e. the sum for the amount of the*  
*injury done*) shall be paid to C. D. (*the party aggrieved,* 10  
*unless he is unknown, or has been examined in proof of the*  
*offence, in which case state that fact and dispose of the whole*  
*like the penalty as before*); and I order that the said sum of  
 for costs, shall be paid to  
 (*the complainant.*) 15

Given under my hand and seal the day and year first above  
 mentioned.”

Appeal.

XXXVIII. And be it enacted, that in all cases where the sum  
 adjudged to be paid on any summary conviction shall exceed five  
 pounds, or the imprisonment adjudged shall exceed one calendar 20  
 month, or the conviction shall take place before one Justice only,  
 any person who shall think himself aggrieved by any such con-  
 viction, may appeal to the next Court of General or Quarter  
 Sessions, which shall be holden not less than twelve days after  
 the day of such conviction for the District, Inferior District, 25  
 County or Place wherein the cause of complaint shall have  
 arisen; provided that such person shall give to the complainant  
 a notice in writing of such appeal, and of the cause and matter  
 thereof within three days after such conviction, and seven clear  
 days at the least before such Sessions, and shall also either remain 30  
 in custody until the Sessions, or enter into a recognizance, with  
 two sufficient sureties before a Justice of the Peace, conditioned  
 personally to appear at the said Sessions, and to try such appeal  
 and to abide the judgment of the Court thereupon, and to pay

such costs as shall be by the Court awarded ; and upon such notice being given, and such recognizance being entered into, the Justice before whom the same shall be entered into, shall liberate such person if in custody ; and the Court at such Sessions shall hear and determine the matter of the appeal, and shall make such order therein with or without costs to either party, as to the Court shall seem meet ; and in case of the dismissal of the appeal or the affirmance of the conviction, shall order and adjudge the offender to be punished according to the conviction ; and to pay such costs as shall be awarded, and shall, if necessary issue process for enforcing such judgment.

XXXIX. And be it enacted, that every Justice of the Peace, before whom any person shall be convicted of any offence against this Act, shall transmit the conviction to the next Court of General or Quarter Sessions which shall be holden for the District or Inferior District, County or Place, wherein the offence shall have been committed, there to be kept by the proper Officer among the records of the Court ; and upon any indictment or information against any person for a subsequent offence, a copy of such conviction, certified by the proper Officer of the Court, or proved to be a true copy, shall be sufficient evidence to prove a conviction for the former offence, and the conviction shall be presumed to have been unappealed against until the contrary be shown.

Convictions to be returned to the Quarter Sessions.

How far evidence in future cases.

XL. And for the protection of persons acting in the execution of this Act ; be it enacted, that all actions and prosecutions to be commenced against any person for any thing done in pursuance of this Act, shall be laid and tried in the District or Inferior District where the fact was committed, and shall be commenced within six calendar months after the fact committed, and not otherwise ; and notice, in writing, of such action, and of the cause thereof shall be given to the defendant one calendar month at least before the commencement of the action ; and in any such action the defendant may plead the general issue, and give this

Limitation of time, and Venue in proceedings under this Act.

Notice of action.

General issue.

Act and the special matter in evidence at any trial to be had thereupon; and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into Court after such action brought by or on behalf of the defendant; and if a verdict shall pass for the defendant, or the plaintiff shall become non-suit, or discontinue any such action after issue joined, or if, upon demurrer or otherwise, judgment shall be given against the plaintiff, the defendant shall recover his full costs as between Attorney and Client, and have the like remedy for the same, as any defendant hath by Law in other cases; and though a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the Judge before whom the trial shall be, shall certify his approbation of the action, and of the verdict obtained thereupon.

Fines, &c. to be in current money.

**XXI.** And be it enacted, that all fines, forfeitures and penalties imposed by this Act, and all sums expressed as the value of any Goods, Chattels, or other Property herein mentioned, shall be deemed and taken to be current money of this Province. 20

Repealing clause.

**XLII.** And be it enacted, that all Acts or parts of Acts, or Provisions of Law in force in this Province or any part thereof, immediately before the time when this Act shall come into force, which shall be inconsistent with or contradictory to this Act, or which make any provision in any matter provided for by this Act, other than such as is hereby made in such matter, shall from and after the time when this Act shall come into force, be, and they are hereby repealed, except in so far as may relate to any offence committed before the said time, which shall be dealt with and punished as if this Act had not been passed. 30

Proviso.

## C A P. XXVII.

An Act for consolidating and amending the Statutes in this Province relative to offences against the person.

[18th September, 1841.]

**W**HEREAS it is expedient to amend and consolidate the provisions contained in various Statutes now in force in this Province, relative to offences against the person ; Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, intituled *An Act to Re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, that this Act shall commence and take effect from and after the first day of January, one thousand eight hundred and forty-two.

Preamble.

II. And be it enacted, that every offence, which before the commencement of this Act would have amounted to Petit Treason, shall be deemed to be Murder only, and no greater offence ; and all persons guilty in respect thereof, whether as principals or as accessories, shall be dealt with, indicted, tried, and punished as principals and accessories in Murder.

Commencement of this Act.  
Petit Treason to be treated in all respects as Murder.

III. And be it enacted, that every person convicted of Murder, or of being an accessory before the fact to Murder, shall suffer death as a Felon ; and every accessory after the fact to Murder, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years,\* or to be

Punishment of principals and accessories in Murder.

\* But see 6 V. c. 5.

imprisoned in any other prison or place of confinement for any term not exceeding two years.

Sentence in  
case of Mur-  
der.

IV. And be it enacted, that from and after the passing of this Act, sentence of Death may be pronounced after convictions for Murder, in the same manner, and the Court before which the 5 conviction may be had shall have the same power in all respects as after convictions for other capital offences.

Prison re-  
gulations as to  
Murderers un-  
der sentence.

V. And be it enacted, that every person convicted of Murder, shall, after judgment, be confined in some safe place within the Prison, apart from all other prisoners, and shall be fed with 10 bread and water only, and with no other food or liquor, except in case of receiving the Sacrament, or in case of any sickness or wound, in which case the Surgeon of the Prison may order other necessaries to be administered; and no person but the Gaoler and his Servants, and the Chaplain and Surgeon of the Prison, 15 shall have access to any such Convict, without the permission, in writing, of the Court or Judge before whom such Convict shall have been tried, or of the Sheriff or his Deputy.

Provision for  
the trial of  
Murder and  
Manslaughter  
where the  
death, or the  
cause of death  
only, happens  
in this Pro-  
vince.

VI. And be it enacted, that where any person, being feloniously stricken, poisoned, or otherwise hurt upon the sea, or at 20 any place out of this Province, shall die of such stroke, poisoning, or hurt, in this Province, or being feloniously stricken, poisoned, or otherwise hurt at any place in this Province, shall die of such stroke, poisoning, or hurt, upon the sea, or at any place out of this Province, every offence committed in respect of any such 25 case, whether the same shall amount to the offence of Murder or of Manslaughter, or of being accessory before the fact to Murder, or after the fact to Murder, or Manslaughter, may be dealt with, enquired of, tried, determined, and punished in the District, County, or Place in this Province, in which such death, stroke, 30 poisoning, or hurt shall happen, in the same manner, in all respects, as if such offence had been wholly committed in such District. County or Place.

VII. And be it enacted, that every person convicted of Manslaughter, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years,\* or to be imprisoned in any other prison or place of confinement for any term not exceeding two years, or to pay such fine as the Court shall award.

Punishment  
of Manslaughter.

VIII. Provided always, and be it enacted, that no punishment or forfeiture shall be incurred by any person who shall kill another by misfortune or in his own defence, or in any other manner without Felony.

As to Homicide not felonious.

IX. And be it enacted, that whosoever shall administer or cause to be taken by any person, any Poison or other destructive thing, or shall stab, cut or wound any person, or shall by any means whatsoever cause to any person any bodily injury, dangerous to life, with intent, in any of the cases aforesaid, to commit Murder, shall be guilty of Felony, and being convicted thereof shall suffer death.

Punishment  
for administering  
Poison, &c.  
with intent to  
commit murder.

X. And be it enacted, that whosoever shall attempt to administer to any person any Poison or other destructive thing, or shall shoot at any person, or shall by drawing a trigger or in any other manner, attempt to discharge any kind of loaded arms at any person, or shall attempt to drown, suffocate, or strangle any person, with intent in any of the cases aforesaid to commit the crime of murder, shall, although no bodily injury shall be effected, be guilty of Felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years,\* or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years.

Punishment  
for offences  
with intent to  
commit Murder  
though no  
injury effected.

XI. And be it enacted, that whosoever unlawfully and mali-  
\_\_\_\_\_ Punishment  
for cutting and

\* But see 6 Vic. c. 5.

maiming with  
intent to dis-  
figure.

ciously shall shoot at any person, or shall, by drawing a trigger or in any other manner, attempt to discharge any kind of loaded arms at any person, or shall stab, cut or wound any person, with intent in any of the cases aforesaid to maim, disfigure, or disable such person, or to do some other grievous bodily harm to such person, or with intent to resist or prevent the lawful apprehension or detainer of any person, shall be guilty of Felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years,\* or to be imprisoned in any other prison or place of confinement for any term not exceeding two years,

Punishment  
for sending ex-  
plosive sub-  
stances or  
throwing des-  
tructive matter  
with intent to  
do bodily harm.

XII. And be it enacted, that whosoever shall unlawfully and maliciously send or deliver to, or cause to be taken, or received by any person, any Explosive Substance, or any other dangerous or noxious thing, or shall cast or throw upon or otherwise apply to any person, any Corrosive Fluid, or other destructive matter, with intent in any of the cases aforesaid, to burn, maim, disfigure, or disable any person, or to do some other grievous bodily harm to any person, and whereby in any of the cases aforesaid any person shall be burnt, maimed, disfigured or disabled, or receive some other grievous bodily harm, shall be guilty of Felony, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years,\* or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

Punishment  
for trying to  
procure Abor-  
tion.

XIII. And be it enacted, that whosoever, with intent to procure the Miscarriage of any woman, shall unlawfully administer to her, or cause to be taken by her, any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, shall be guilty of Felony,

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\* But see 6 V. c. 5.

and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years,\* or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

XIV. And be it enacted, that if any woman shall be delivered of a child, and shall, by secret burying or otherwise disposing of the dead body of the said child, endeavour to conceal the birth thereof, every such offender shall be guilty of a Misdemeanor, and being convicted thereof, shall be liable to be imprisoned for any term not exceeding two years ; and it shall not be necessary to prove whether the child died before, at, or after its birth : Provided always, that if any woman, tried for the murder of her child shall be acquitted thereof, it shall be lawful for the jury, by whose verdict she shall be acquitted, to find, in case it shall so appear in evidence, that she was delivered of a child, and that she did, by secret burying or otherwise disposing of the dead body of such child, endeavour to conceal the birth thereof, and thereupon the Court may pass such sentence as if she had been convicted upon an indictment for the concealment of the birth.

A woman secreting the dead body of her child, to conceal the fact of its birth, guilty of misdemeanor.

Proviso.

XV. And be it enacted, that every person convicted of the abominable crime of Buggery, committed either with mankind or with any animal, shall suffer death as a Felon.

Sodomy.

XVI. And be it enacted, that every person convicted of the crime of Rape, shall suffer death as a Felon.

Rape.

XVII. And be it enacted, that if any person shall unlawfully and carnally know and abuse any Girl under the age of ten years, every such offender shall be guilty of Felony, and being convicted thereof, shall suffer death as a Felon ; and if any person shall unlawfully and carnally know and abuse any Girl, being above the age of ten years and under the age of twelve

Carnal knowledge of a girl under 10 ; the like of a girl above 10 and below 12.

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\* But see 6 Vic. c. 5.

years, every such offender shall be guilty of a Misdemeanor, and being convicted thereof, shall be liable to be imprisoned for such term as the Court shall award.\*

What shall be sufficient proof of carnal knowledge in the four preceding cases.

XVIII. And whereas upon trials for the crime of Buggery, and of Rape, and of carnally abusing Girls under the respective 5  
ages hereinbefore mentioned, offenders frequently escape by reason of the difficulty of the proof which has been required of the completion of those several crimes ; for remedy thereof, be it enacted, that it shall not be necessary, in any of those cases, to prove the actual emission of seed in order to constitute a 10  
carnal knowledge, but that the carnal knowledge shall be deemed complete upon proof of penetration only.

Forcible Abduction of a Woman on account of her fortune with intent to marry her, &c.

XIX. And be it enacted, that where any woman shall have any interest, whether legal or equitable, present or future, absolute, conditional, or contingent, in any real or personal estate, or 15  
shall be an heiress presumptive or next of kin to any one having such interest, if any person shall, from motives of lucre, take away or detain such woman against her will, with intent to marry or defile her, or to cause her to be married or defiled by any other person, every such offender and every person counsel- 20  
ling, aiding or abetting such offender, shall be guilty of Felony, and being convicted thereof, shall be liable to be imprisoned at hard labour in the Provincial Penitentiary, for any term not less than seven years,† or to be imprisoned in any other prison or place of confinement for any term not exceeding two years. 25

Unlawful Abduction of a Girl from her parents or guardians.

XX. And be it enacted, that if any person shall unlawfully take, or cause to be taken, any unmarried girl, being under the age of sixteen years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her, every such offender shall be guilty of a 30  
Misdemeanor, and being convicted thereof, shall be liable to

\* See 6 V. c. 5. s. 3. in cases where the term awarded exceeds two years.

† But see 6 V. c. 5.

suffer such punishment, by fine or imprisonment,\* or by both, as the Court shall award.

XXI. And be it enacted, that if any person shall maliciously, ChildStealing.  
 either by force or fraud, lead or take away, or decoy, or  
 5 entice away or detain, any child under the age of ten years,  
 with intent to deprive the parent or parents, or any other person  
 having the lawful care or charge of such child, of the possession  
 of such child, or with intent to steal any article upon or about  
 the person of such child, to whomsoever such article may  
 10 belong; or if any person shall, with any such intent as aforesaid,  
 receive or harbour any such child, knowing the same to have  
 been, by force or fraud, led, taken, decoyed, enticed away or  
 detained as hereinbefore mentioned; every such offender, and  
 every person counselling, aiding or abetting such offender, shall  
 15 be guilty of Felony, and being convicted thereof, shall be liable  
 to be imprisoned at hard labour in the Provincial Penitentiary for  
 any term not less than seven years,† or to be imprisoned in any  
 other Prison or place of confinement, for any term not exceed-  
 ing two years: Provided always, that no person who shall have  
 20 claimed to be the father of an illegitimate child, or to have any  
 right to the possession of such child, shall be liable to be  
 prosecuted by virtue hereof, on account of his getting possession  
 of such child, or taking such child out of the possession of the  
 mother, or any other person having the lawful charge thereof.

Not to extend  
to fathers tak-  
ing their illegi-  
timate chil-  
dren.

25 XXII. And be it enacted, that if any person, being married,  
 shall marry any other person during the life of the former  
 husband or wife, whether the second marriage shall have taken  
 place in this Province or elsewhere, every such offender, and  
 every person counselling, aiding or abetting such offender shall  
 30 be guilty of Felony, and being convicted thereof, shall be liable  
 to be imprisoned at hard labour in the Provincial Penitentiary  
 for any term not less than seven years,† or to be imprisoned in

Bigamy.

\* See 6 V. c. 5. s. 3. in cases where the term awarded exceeds two years.

† But see 6 V. c.

any other Prison or place of confinement for any term not exceeding two years; and any such offence may be dealt with, enquired of, tried, determined, and punished in the District or County where the offender shall be apprehended or be in custody, as if the offence had been actually committed in that District or County: Provided always, that nothing herein contained shall extend to any second marriage contracted out of this Province, by any other than a Subject of Her Majesty, resident in this Province, and leaving the same with intent to commit the offence, or to any person marrying a second time, whose husband or wife shall have been continually absent from such person for the space of seven years then last past, and shall not have been known by such person to be living within that time; or shall extend to any person, who, at the time of such second marriage, shall have been divorced from the bond of the first marriage; or to any person, whose former marriage shall have been declared void by the sentence of any Court of competent jurisdiction.

Arresting a  
Clergyman  
during divine  
service.

XXIII. And be it enacted, that if any person shall arrest any Clergyman or Minister of the Gospel, upon any civil process, while he shall be performing divine service, or shall, with the knowledge of such person, be going to perform the same, or returning from the performance thereof, every such offender shall be guilty of a Misdemeanor; and being convicted thereof, shall suffer such punishment, by fine or imprisonment,\* or by both, as the Court shall award.

Punishment  
for assaults on  
Officers, &c.  
for their endeavours  
to save  
shipwrecked  
property.

XXIV. And be it enacted, that if any person shall assault and strike or wound any Magistrate, Officer, or other person whatsoever, lawfully authorized, on account of the exercise of his duty in or concerning the preservation of any vessel in distress, or of any vessel, goods, or effects wrecked, stranded, or cast on shore, or lying under water, every such offender, being convicted thereof, shall be liable to be imprisoned at hard labour

\* See 6 V. c. 5. s. 3. in cases where the term awarded exceeds two years.

in the Provincial Penitentiary for any term not less than seven years,\* or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years.

XXV. And be it enacted, that where any person shall be charged with and convicted of any of the following offences as Misdemeanors; that is to say: of any assault with intent to commit Felony; of any assault upon any Peace Officer or Revenue Officer in the due execution of his duty, or upon any person acting in aid of such officer; of any assault upon any person with intent to resist or prevent the lawful apprehension or detainer of the party so assaulting, or of any other person, for any offence for which he or they may be liable by law to be apprehended or detained; or of any assault committed in pursuance of any conspiracy to raise the rate of wages: in any such case, the Court may sentence the offender to be imprisoned for any term not exceeding two years, and may also (if it shall so think fit) fine the offender, and require him to find sureties for keeping the peace. †

XXVI. And be it enacted, that if any person shall, unlawfully and with force, hinder any Seaman from working at or exercising his lawful trade, business or occupation, or shall beat, wound, or use any other violence to him, with intent to deter or hinder him from working at or exercising the same; or if any person shall beat, wound, or use any other violence to any person, with intent to deter or hinder him from selling or buying any wheat or other grain, flour, meal or malt, in any market or other place, or shall beat, wound, or use any other violence to any person having the care or charge of any wheat or other grain, flour, meal, or malt, whilst on its way to or from any city, market-town, or other place, with intent to stop the conveyance of the same, every such offender may be convicted thereof before two Justices of the Peace, and imprisoned and kept to hard labour in the

\* But see 6 V. c. 5.

† But see 6 Vic. c. 5. s. 5. as to assaults with intent to Rape or Buggery.

Proviso.

Common Gaol or House of Correction, for any term not exceeding three calendar months: Provided always, that no person, who shall be punished for any such offence, by virtue of this provision, shall be punished for the same offence by virtue of any other law whatsoever.

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Persons committing any common assault or battery may be compelled by a Magistrate to pay a fine and costs not exceeding £5.

XXVII. And whereas it is expedient that a summary power of punishing persons for common assaults and batteries should be provided under the limitations hereinafter mentioned; Be it therefore enacted, that where any person shall unlawfully assault or beat any other person, it shall be lawful for any Justice of the Peace, upon complaint of the party aggrieved, praying him to proceed summarily under this Act to hear and determine such offence;\* and the offender, upon conviction thereof before him, shall forfeit and pay such fine as shall appear to him to be meet, not exceeding together with costs (if ordered) the sum of Five pounds, which fine shall be paid to the Treasurer of the Municipal District or Place, in which the offence shall have been committed, and make part of the funds of such District, or if the conviction be had in any place not within any Municipal District, then such fine shall be paid over to such Officer, and be applicable to such purposes as other fines and penalties by law are; and the evidence of any inhabitant of the Municipal District shall be admitted in proof of the offence, notwithstanding such application of the fine incurred thereby; and if such fine as shall be awarded by the said Justice, together with the costs (if ordered) shall not be paid, either immediately after the conviction, or within such period as the said Justice shall at the time of the conviction appoint, it shall be lawful for him to commit the offender to the Common Gaol or House of Correction, there to be imprisoned for any term not exceeding two calendar months, unless such fine and costs be sooner paid; but if the Justice, upon the hearing of any such case of assault or battery shall deem the offence not to be proved, or shall find the

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Application of the fine.

Commitment on non-payment.

\* But see the Election Act 6 V. c. 1. as to assaults within a certain distance of the Poll during Elections.

assault or battery to have been justified, or so trifling as not to merit any punishment, and shall accordingly dismiss the complaint, he shall forthwith make out a certificate under his hand, stating the fact of such dismissal, and shall <sup>5</sup> deliver such certificate to the party against whom the complaint was preferred; and if such\* costs shall not be paid immediately upon dismissal, or within such period as such Justice shall, at the time of such dismissal, appoint, it shall be lawful for him to issue his warrant to levy the amount of such costs within a certain <sup>10</sup> time to be in the said warrant expressed, and in case no distress sufficient to satisfy the amount of such warrant shall be so found, to commit the party by whom such costs shall be so ordered to be paid, as aforesaid, to the Common Gaol of the District, County or Division, where such offence shall be alleged <sup>15</sup> to have been committed, there to imprisoned for any term not exceeding ten days, unless such costs shall be sooner paid.

If the Magistrate dismisses the complaint, he shall make out a certificate to that effect.

XXVIII. And be it enacted, that if any person against whom any such complaint shall have been preferred for any common assault or battery, shall have obtained such certificate as aforesaid, or having been convicted shall have paid the whole amount <sup>20</sup> adjudged to be paid under such conviction, or shall have suffered the imprisonment awarded for non-payment thereof, in every such case he shall be released from all further or other proceedings, civil or criminal, for the same cause.

Such certificate or conviction shall be a bar to any other proceedings.

<sup>25</sup> XXIX. And be it enacted, that when any person shall be summarily convicted before a Justice of the Peace of any offence against this Act, it shall be lawful for such Justice, if he shall so think fit, to discharge the offender from his conviction upon his making such satisfaction to the party aggrieved for damages <sup>30</sup> and costs, or either of them, as shall be ascertained by the said Justice.

Magistrate may discharge offender on his satisfying aggrieved party.

XXX. Provided always, and be it enacted, that in case the <sup>Where Felony intended Ma-</sup>

\* Sic.

gistrate not to  
adjudicate, but  
refer the case  
to the Tribu-  
nals.

Justice shall find the Assault and Battery complained of to have been accompanied by any attempt to commit Felony, or shall be of opinion that the same is, from any other circumstancea, fit subject for a prosecution by indictment, he shall abstain from any adjudication thereupon, and shall deal with the case in all respects in the same manner as he would have done before the passing of this Act : Provided also, that nothing herein contained shall authorize any Justice of the Peace to hear and determine any case of Assault or Battery, in which any question shall arise as to the title to any lands, tenements or hereditaments, or any interest therein or accruing therefrom, or as to any bankruptcy or insolvency, or any execution under the process of any Court of Justice.

Punishment  
for disturbing  
Divine Service.

XXXI. And be it enacted, that if any person shall wilfully disturb, interrupt, or disquiet any assemblage of persons met for religious worship, by profane discourse, by rude, or indecent behaviour, or by making a noise, either within the place of worship, or so near it as to disturb the order or solemnity of the meeting, such person shall, upon conviction thereof before any Justice of the Peace, on the oath of one or more credible witness or witnesses, forfeit and pay such a sum of money, not exceeding Five pounds, as the said Justice shall think fit.

Fines, how  
levied.

XXXII. And be it enacted, that in default of payment of any fine imposed under the authority of this Act, on a summary conviction before any Justice of the Peace, together with the costs attending the same, within the period specified for the payment thereof at the time of conviction, by the Justice before whom such conviction may have taken place, it shall and may be lawful for such Justice, to issue his warrant directed to any Constable to levy the amount of such fine and costs within a certain time to be in the said warrant specified, and in case no distress sufficient to satisfy the amount shall be found, it shall and may be lawful for him to commit the offender to the Common Gaol of the District wherein the offence was committed, for any term not

exceeding one month, unless the fine and costs shall be sooner paid.

XXXIII. And be it enacted, that any person who shall think himself aggrieved by any summary conviction or decision under this Act, as aforesaid, may appeal to the next Court of General or Quarter Sessions, which shall be holden not less than twelve days after the day of such conviction or decision for the District wherein the cause of complaint shall have arisen : Provided always, that such person shall give to the other party, a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction or decision, and seven days at the least before such Sessions, and shall also either remain in custody until the Sessions, or enter into a recognizance with two sufficient sureties before a Justice of the Peace, conditioned personally to appear at the said Sessions, and to try such appeal, and to abide the judgment of the Court thereupon, and to pay such costs as shall be by the Court awarded ; and upon such notice being given, and such recognizance being entered into, the Justice before whom the same shall be entered into, shall liberate such person, if in custody, and the Court at such Sessions, shall hear and determine the matter of the appeal, and shall make such order therein with or without costs to either party, as to the Court shall seem meet ; and in case of the dismissal of the appeal, or the affirmance of the conviction, shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing such judgment.

Appeal against convictions to Quarter Sessions.

XXXIV. And be it enacted, that whenever an appeal shall be made from the decision of any Justice under this Act as aforesaid, the Court of General or Quarter Sessions shall have power to empanel a Jury to try the matter on which such decision may have been made, and the Court, on the finding of such Jury, under oath, shall thereupon give such judgment as the circumstances of the case may require : Provided always, that such Court

Appeals triable by Jury.

shall not in any case adjudge the payment of a fine exceeding five pounds in addition to the costs, or to\* order the imprisonment of the person so convicted, for any period not\* exceeding one month ; and all fines imposed and recovered by the judgment of such Court, shall be applied and disposed of in the same manner <sup>5</sup> as other fines recovered under the provisions of this Act.

Punishment  
of Accessories.

XXXV. And be it enacted, that in the case of every Felony punishable under this Act, every Principal in the second degree, and every Accessory before the fact, shall be punishable with death or otherwise, in the same manner as the Principal in the first <sup>10</sup> degree is by this Act punishable ; and every Accessory after the fact to any Felony punishable under this Act, shall, on conviction, be liable to be imprisoned for any term not exceeding two years.

Offences pu-  
nishable by im-  
prisonment.

XXXVI. And be it enacted, that when any person shall be <sup>15</sup> convicted of any offence punishable under this Act, for which imprisonment may be awarded, it shall be lawful for the Court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour, in the Common Gaol or House of Correction, and also to direct that the offender shall be kept in solitary con- <sup>20</sup> finement for any portion or portions of such imprisonment, or of such imprisonment with hard labour, not exceeding one month at any one time, and not exceeding three months in any one year, as to the Court in its discretion shall seem meet.

Jury may ac-  
quit of Felony  
and convict of  
Assault, in cer-  
tain cases.

XXXVIII. And be it enacted, that on the trial of any person <sup>25</sup> for any of the offences hereinbefore mentioned, or for any Felony whatever, where the crime charged shall include an Assault against the person, it shall be lawful for the Jury to acquit of the Felony and to find a verdict of guilty of Assault, against the person indicted, if the evidence shall warrant such finding ; and <sup>30</sup> when such verdict shall be found, the Court shall have power to

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\* Sic.

imprison the person so found guilty of an Assault, for any term not exceeding three years.\*

XXXVIII. Provided always, and be it enacted, that nothing herein contained shall alter or affect any of the laws relating to the Government of Her Majesty's Land or Naval Forces. Not to affect the laws relating to the Forces.

XXXIX. And be it enacted, that it shall be lawful for the Queen's Majesty, and for the Governor, Lieutenant Governor or Person administering the Government of this Province, to extend the Royal Mercy to any person imprisoned by virtue of this Act, although he shall be imprisoned for non-payment of money to some party other than the Crown. Persons imprisoned may be pardoned.

XL. And for the more effectual prosecution of offences punishable upon summary conviction by virtue of this Act; Be it enacted, that where any person shall be charged on the oath of a credible witness, before any Justice of the Peace, with any such offence, the Justice may summon the person charged, to appear at a time and place to be named in such summons, and if he shall not appear accordingly, then (upon proof of the due service of the summons upon such person, by delivering the same to him) the Justice may either proceed to hear and determine the case *ex parte*, or may issue his warrant for apprehending such person and bringing him before himself or some other Justice of the Peace, or the Justice before whom the charge shall be made may (if he shall so think fit) issue such warrant in the first instance, without any previous summons. Provisions as to offences against this Act punishable on summary conviction.

XLI. Provided always, and be it enacted, that the prosecution for every offence punishable on summary conviction by virtue of this Act, shall be commenced within three calendar months after the commission of the offence, and not otherwise. Time for summary proceedings.

XLII. And be it enacted, that the Justice before whom any person shall be summarily convicted of any offence against this Form of conviction.

\* See 6 V. c. 5. if the imprisonment exceed two years.



relates to the crime of High Treason, or to any branch of the <sup>Treason or the</sup> Public Revenue. <sup>Revenue.</sup>

XLIV. And be it enacted, that all Acts, or parts of Acts, <sup>All Acts re-</sup> or provisions of Law in force in this Province, or any part thereof, <sup>pugnant to this</sup> <sup>Act repealed.</sup> 5 immediately before the time when this Act shall come into force, which shall be inconsistent with, or contradictory to this Act, or which make any provision in any matter provided for by this Act, other than such as is hereby made in such matter, shall from and after the time when this Act shall come into force, be and they 10 are hereby repealed, except in so far as may relate to any offence committed before the said time, which shall be dealt with, and punished, as if this Act had not been passed.

6TH VICTORIA.

C A P. V.

An Act for better proportioning the punishment to the offence, in certain cases, and for other purposes therein mentioned.

[12th October, 1842.]

**W**HEREAS it is expedient to enable the Courts, before <sup>Preamble.</sup> whom offenders may be convicted in certain cases, better 15 to proportion the punishment of such offenders to the guilt of the offence ; Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council, and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the 20 authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, intituled *An Act to Re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, that so much of a certain Act passed in the 25 Session held in the fourth and fifth years of Her Majesty's <sup>4 & 5 Vic.</sup> <sup>c. 24, cited.</sup>

Reign, and intituled *An Act for improving the administration of Criminal Justice in this Province*, or of a certain other Act passed in the same Session, and intituled *An Act for consolidating and amending the Laws in this Province, relative to Larceny and other offences connected therewith*, or of a certain other Act passed in the same Session, and intituled *An Act for consolidating and amending the Laws in this Province, relative to malicious injuries to property*, or of a certain other Act passed in the same Session, and intituled *An Act for consolidating and amending the Statutes in this Province, relative to offences against the person*, or of any other Act or Law, as shall be repugnant to or inconsistent with the enactments of this Act, shall be and is hereby repealed.

4 & 5 Vic. c. 25, cited.

4 & 5 Vic. c. 26, cited.

4 & 5 Vic. c. 27, cited.

Provisions inconsistent with this Act repealed.

Cases in which offenders may be committed to the Provincial Penitentiary for any term not less than three years.

II. And be it enacted, that for each and every offence for which by any of the Acts hereinabove cited, the offender is liable on conviction to be punished by imprisonment in the Provincial Penitentiary, but may, instead thereof and in the discretion of the Court, be punished by imprisonment in any other Prison or place of confinement for any term not exceeding two years, the offender may, if convicted after the passing of this Act, be punished in the discretion of the Court, by imprisonment in the Provincial Penitentiary for any term not less than three years and not exceeding the longest term for which such offender might have been so imprisoned if this Act had not been passed, or by imprisonment in any other Prison or place of confinement for any term not exceeding two years, in the manner prescribed by such Act; Provided always, that nothing in this Act shall prevent such offender from being punished by imprisonment in the Provincial Penitentiary for life, if he might have been so punished if this Act had not been passed.

Other cases in which offenders may be so committed.

III. And be it enacted, that for each and every offence, for which by any of the said Acts, the offender may on conviction be punished by imprisonment for such term as the Court shall award, or for any term exceeding two years, such imprisonment,

if awarded for a longer term than two years, shall be in the Provincial Penitentiary.

IV. And be it enacted, that for each and every offence for which by any of the said Acts or by any other Act or Law, the offender might, if this Act had not been passed, have been punished by transportation beyond Seas, such offender may, if convicted after the passing of this Act, be punished by imprisonment in the Provincial Penitentiary for any term for which he might have been transported beyond Seas if this Act had not been passed, or by imprisonment for life, if without this Act he might have been punished by transportation for life.

Instead of being punished by transportation, offenders may be imprisoned for a like term in the Penitentiary.

V. And whereas it is necessary to determine the punishment to be inflicted upon certain offenders, not provided for by the said before recited Act, intituled *An Act for consolidating and amending the Statutes in this Province, relating to offences against the person*, be it enacted that where any person shall be charged with and convicted of any Assault, with intent to commit Rape, or of any Assault with intent to commit the abominable crime of Buggery, either with mankind or with any animal, the Court in any such case may sentence the offender to be imprisoned at hard labour in the Provincial Penitentiary for any term not exceeding three years, or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years,

Assault with intent to commit Rape or abominable crimes, how punished.



*Clerk of the Peace Office*  
*Godwin*

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*Clerk of the Peace Office*  
*Godwin*