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No. 34.

1st Session, 6th Parliament, 21 Victoria, 1858.

BILL.

An Act to make better provision for the punishment of frauds committed by Trustees, Bankers and other persons entrusted with property.

Received and read, first time, Friday, 9th April, 1858.

Second reading, Tuesday, 13th April, 1858.

HON. MR. ATTY. GEN. MACDONALD,

TORONTO :

PRINTED BY JOHN LOVELL, YONGE STREET.

An Act to make better provision for the punishment of frauds committed by Trustees, Bankers and other persons intrusted with property.

WHEREAS it is expedient to make better provision for the punishment of frauds committed by trustees, bankers, and other persons intrusted with property ; Therefore Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

Preamble.

I. If any person being a trustee of any property for the benefit, either wholly or partially, of some other person, or for any public or charitable purpose, shall, with intent to defraud, convert or appropriate the same, or any part thereof, to or for his own use or purposes, or shall, with intent aforesaid, otherwise dispose of or destroy such property or any part thereof, he shall be guilty of a misdemeanor.

Trustees fraudulently disposing of property guilty of a misdemeanor.

II. If any person, being a banker, merchant, broker, attorney, or agent, and being intrusted for safe custody with the property of any other person, shall, with intent to defraud, sell, negotiate, transfer, pledge, or in any manner convert or appropriate to or for his own use such property, or any part thereof, he shall be guilty of a misdemeanor.

Bankers, &c., fraudulently selling, &c., property intrusted to their care guilty of misdemeanor.

III. If any person intrusted with any power of attorney for the sale or transfer of any property, shall fraudulently sell or transfer, or otherwise convert such property or any part thereof to his own use or benefit, he shall be guilty of a misdemeanor.

Persons under Powers of Attorney fraudulently selling property guilty of a misdemeanor.

IV. If any person, being a bailee of any property, shall fraudulently take or convert the same to his own use, or the use of any person other than the owner thereof, although he shall not break bulk, or otherwise determine the bailment, he shall be guilty of larceny.

Bailees fraudulently converting property to their own use guilty of larceny.

V. If any person, being a director, member, or public officer of any body corporate or public company, shall fraudulently take or apply, for his own use, any of the money or other property of such body corporate or public company, he shall be guilty of a misdemeanor.

Directors, &c., of any Body Corporate or Public Company fraudulently appropriating property,—

VI. If any person, being a director, public officer, or manager of any body corporate or public company, shall as such receive or possess himself of any of the money or other property of such body corporate or public company, otherwise than in payment of a just debt or demand, and shall, with intent to defraud, omit to make or to cause

Or keeping fraudulent accounts,—

or direct to be made, a full and true entry thereof in the books and accounts of such body corporate or public company, he shall be guilty of a misdemeanor.

Or wilfully destroying books, &c.—

VII. If any director, manager, public officer, or member of any body corporate or public company shall, with the intent to defraud, 5 destroy, alter, mutilate, or falsify any of the books, papers, writings or securities belonging to the body corporate or public company of which he is a director or manager, public officer or member, or make or concur in the making of any false entry, or any material omission in any book of account or other document, he shall be guilty of a mis- 10 demeanor.

Or publishing fraudulent statements,

VIII. If any director, manager, or public officer of any body corporate or public company shall make, circulate, or publish, or concur in making, circulating, or publishing, any written statement or account which he shall know to be false in any material particular, with intent 15 to deceive or defraud any member, shareholder, or creditor, of such body corporate or public Company, or with intent to induce any person to become a shareholder or partner therein, or to intrust or advance any money or property to such body corporate or public company, or to enter into any security for the benefit thereof, he shall be guilty of a 20 misdemeanor.

guilty of misdemeanor.

Persons receiving property fraudulently disposed of, knowing the same to have been so, guilty of a misdemeanor.

IX. If any person shall receive any chattel, money, or valuable security, which shall have been so fraudulently disposed of as to render the party disposing thereof guilty of a misdemeanor under any of the provisions of this Act, knowing the same to have been so 25 fraudulently disposed of, he shall be guilty of a misdemeanor, and may be indicted and convicted thereof, whether the party guilty of the principal misdemeanor shall or shall not have been previously convicted, or shall or shall not be amenable to justice.

Punishment for a misdemeanor, under this Act.

X. Every person found guilty of a misdemeanor under this Act, 30 shall be liable, at the discretion of the Court, to be imprisoned in the Provincial Penitentiary for any term not exceeding *three* years nor less than two years, or to suffer such other punishment, by imprisonment for any term less than two years and with or without hard labour, or by fine, as the Court shall award. 35

No person exempt from answering questions in any Court, but his answer evidence not admissible as evidence in prosecutions under this Act.

XI. Nothing in this Act contained shall enable or entitle any person to refuse to make a full and complete discovery by answer to any Bill in Equity, or to answer any question or interrogatory in any civil proceeding in any Court of Law or Equity, or in any Court of Bank- 40 ruptcy or Insolvency, now in existence or hereafter to be established in this Province; but no answer to any such bill, question or interrogatory shall be admissible in evidence against such person in any proceeding under this Act.

No remedy at law or in equity shall be affected.

XII. Nothing in this Act contained, nor any proceeding, conviction or judgment to be had or taken thereon against any person under this 45 Act, shall prevent, lessen or impeach any remedy at law or in equity which any party aggrieved by any offence against this Act might have had if this Act had not been passed: but no conviction of any such offender shall be received in evidence in any action at law or suit in

equity against him; and nothing in this Act contained shall affect or prejudice any agreement entered into or security given by any Trustee, having for its object the restoration or repayment of any trust property misappropriated.

Convictions shall not be received in evidence in civil suits.

- 5 XIII. No proceeding or prosecution for any offence included in the first section, but not included in any other section of this Act, shall be commenced without the sanction of Her Majesty's Attorney General, for Upper or for Lower Canada, as the case may be, or in case that office be vacant, of Her Majesty's Solicitor General for Upper or for
 10 Lower Canada, as the case may be; Provided, that when any civil proceeding shall have been taken against any person to whom the provisions of the said first section, but not of any other section of this Act may apply, no person who shall have taken such civil proceeding shall commence any prosecution under this Act without the sanction of the
 15 Court or Judge before whom such civil proceeding shall have been had or shall be pending.

Sanction of Attorney General requisite to certain prosecutions.

Or the sanction of a Judge in certain cases.

XIV. If upon the trial of any person under this Act it shall appear that the offence proved amounts to larceny, he shall not by reason thereof be entitled to be acquitted of a misdemeanor under this Act.

If offence amounts to larceny person not to be acquitted of a misdemeanor.

- 30 XV. No misdemeanor against this Act shall be prosecuted or tried at any Court of General or Quarter Sessions of the Peace.

Misdemeanors not triable at sessions.

- XVI. The word "Trustee" shall in this Act mean a Trustee on some express trust created by some deed, will, commission, letters patent, appointment to office, or instrument in writing, and shall also
 25 include the heir and personal representative of such Trustee, and also all executors and administrators, and all assignees in Bankruptcy and Insolvency under any Act of this Province now or hereafter to be in force; and in Lower Canada the word "Trustee" shall also include
 30 any person who is by law an "*Administrateur*," and the word "Trust" whatever is by law an "*administration*."

Interpretation of certain terms.

The expression "Court of Law" shall include any Court having civil jurisdiction in Lower Canada.

- The word "Property" shall include every description of real and personal property, goods, raw or other materials, money, debts and legacies,
 35 and all deeds and instruments relating to or evidencing the title or right to any property, or giving a right to recover or receive any money or goods, and such word "Property," shall also denote and include not only such real personal property as may have been the original subject of a Trust, but also any real or personal property into which the same
 40 may have been converted or exchanged, and the proceeds thereof respectively and anything acquired by such proceeds.