

*At the General Assembly of the Province of Nova Scotia, begun and holden at Halifax, on Monday, the Second Day of October, 1758, and in the 32<sup>nd</sup> year of His Majesty's Reign.*

32 George II – Chapter 13

**An Act relating to Treasons and Felonies.**

Be it enacted by His Excellency the Governor, Council, and Assembly, and by the authority of the same it is hereby enacted, that if any person or persons shall compass or imagine the death of the King, or shall levy war against him, or adhere to his enemies, or give them aid or comfort, or shall forge or counterfeit the Kings money, being gold or silver coin of England or of Great Britain, or shall counterfeit the Kings great seal or privy seal, or the seal of this Province, and shall thereof be duly convicted, the person or persons so offending are hereby declared, and shall be adjudged to be traitors, and shall suffer as in cases of high treason, and that all treasons declared by the Acts of Parliament of England or of Great Britain, shall be deemed and adjudged to be treason within this His Majesty's Province, and none other, and that such Acts of Parliament as direct the proceedings and evidence against, and trials of such traitors, shall have their full force and effect, and be observed as the rule in all trials for treason in this Province.

And be it further enacted, that if any person with malice prepense shall kill, or procure any other persons to kill, or shall on purpose and of malice forethought, and by lying in wait, unlawfully cut out or disable the tongue, put out an eye, slit the nose, cut off a note or lip, or cut off or disable any limb or member of any person, with intension to kill or to maim or disfigure any such person, the persons so offending, their counsellors, aiders and abettors, privy to the offence, shall be felons without benefit of clergy. Provided that no attainder of such felony, shall work corruption of blood, or forfeiture of dower, lands or goods of the offender.

And be it further enacted, that every person, who shall stab or thrust any person that hath not then any weapon drawn, or that hath not then, first stricken the party who shall so stab or thrust, so as the persons, so stabbed or thrust, shall thereof die within the space of six months, altho' it cannot be proved that the same was done of malice forethought, yet the party so offending and being thereof convicted, shall be excluded from the benefit of clergy.

Provided that this Act shall not extend to any persons, who shall kill any person in his own defence or by misfortune, or in any other manner than as aforesaid, nor shall extend to any persons who in keeping the peace, shall chance to commit manslaughter, so as the said manslaughter be not committed wittingly and of purpose, under pretext and colour of keeping the peace; nor shall extend to any person who, in chastising or correcting his child or servant, shall, besides his purpose, chance to commit manslaughter.

And be it further enacted, that if any woman be delivered of any issue of her body, male or female, which being born alive, should by the laws of the realm of England, be a bastard, and

that she endeavour privately, either by drowning or secret burying thereof, or any other way, either by herself, or the procuring of others, so to conceal the death thereof, as that it may not come to light whether it were born alive or not, but be concealed, the mother so offending shall suffer death as in case of murder, except such mother can make proof by one witness, that the child whose death was by her so intended to be concealed, was born dead.

And be it further enacted, that the detestable sin of buggery committed with mankind or beast, shall be adjudged felony, and such process therein be used as in cases of felony at common law, and the offender or offenders being convicted by verdict, confession or outlawry, shall suffer the pains of death, and loss of their goods, lands and tenements, as felons, and no person guilty of such offence shall be admitted to his clergy: And Justices of the Peace shall have power to inquire of the said offence as in other felonies, and if any person or persons, shall make an assault, with an intent to commit the sin of buggery, such offender or offenders, shall, on due conviction thereof, be adjudged to stand in the pillory, and may for further punishment, be fined, imprisoned, or be bound in sureties for his or their good behaviour, at the discretion of the court.

And be it further enacted, that if any person or persons shall, by force, and against the consent of any woman, or infant above the age of twelve years, have carnal knowledge of her body, every such offender or offenders shall, on due conviction of such ravishment, suffer as a felon, without benefit of clergy. Provided always that if complaint shall not be made of a ravishment within ten days afterwards, before one of His Majesty's Justices of the Peace or other magistrate, that then such fact shall be adjudged to have been committed by and with the consent of such woman or infant.

And be it further enacted, that if any person shall unlawfully have carnal knowledge of any female child under the age of twelve years, tho' with her consent, every such unlawful and carnal knowlegde shall be felony, and the offender being thereof duly convicted, shall suffer as a felon, without benefit of clergy. And every violent assault and battery committed on the body of such woman or infant, with intent to ravish, shall be punished by adjudging the offender or offenders, upon due conviction thereof, to stand in the pillory, and the judge or judges of the court, wherein he shall be so convicted, may for further punishment, fine and imprison, and require sureties for the good behaviour, at his or their discretion.

And be it further enacted, that if any person or persons shall by night break open and enter any dwelling house, shop or warehouse, or any vessel lying so near the land that it be adjudged within the county, with an intent to commit any felony, whether such felonious intent be executed or not, or shall rob any dwelling house in the day time, any person being therein, or break any dwelling house, shop or warehouse thereunto belonging, or therewith used, in the day time, and feloniously take away any money or goods of the value of five shillings therein being, altho' no person shall be within such dwelling house, shop, or warehouse, or shall rob any other, or feloniously take away any goods in any dwelling house, the owner or any other person, being therein and put in fear; or if any person or persons shall by night or by day, rob or by violence take money, or goods, from any person putting

him in fear, in any high ways, or in any streets or lanes of a town, or shall feloniously take money or goods from the person of any other, privily without his knowledge, each and every of the offenders aforesaid, their aiders and abettors, shall, upon due conviction, suffer as felons, without benefit of clergy.

And be it further enacted, that if any person or persons shall steal, or take by robbery, any bills of exchange, bonds, warrants, bills, or promissory notes for the payment of money, being the property of any other person, notwithstanding any of the said particulars are termed in law a chose in action, it shall be deemed felony of the same nature, and with or without the benefit of the clergy or of this Act; in the same manner as it would have been if the offender had stolen or taken by robbery, any other goods of the like value with the money due on such bills of exchange, bonds, warrants, bills, or notes, or secured thereby, and remaining unsatisfied, and shall suffer such punishment as if he, she or they, had stolen other goods of the like value. Provided that no attainder for any such offence, so made felony, shall work any corruption of blood, loss of dower, or disherison of Heirs.

And be it further enacted, that if any person or persons shall buy or receive any goods that shall be stolen, knowing the same to be stolen, he she, or they shall be deemed accessories to the felony after the fact, and that it shall be lawful to prosecute and punish persons buying or receiving stolen goods, knowing the same to be stolen, or that shall be accessory to such felony before or after the fact, as for a misdemeanor, to be punished by fine and imprisonment, altho' the principal felon be not before convicted of the said felony, which shall exempt the offender from being punished as accessory, if the principal shall be after convicted.

And be it further enacted, that if any person or persons shall take away with an intent to real, imbezil, or purloin, any goods, chattels, or furniture, which by agreement they are to use, or shall be let to them to use in his, her, or their lodging, such taking, imbeziling, or purloining, shall be adjudged to be larceny and felony.

And be it further enacted, that if any servant or servants shall go away with the caskets, jewels, money, goods or chattels, delivered to his, her or their keeping, by his, her or their master or mistress, with intent to real the same, and defraud his, her or their master or mistress thereof, contrary to the trust and confidence in them reposed, or being in service, without assent or commandment of his, her, or their master or mistress, shall imbezil or convert the same to his, or her use, with purpose to real the same, being of the value of forty shillings or above, every such offender or offenders shall, upon due conviction, suffer death as in cases of felony, without benefit of clergy.

Provided that any apprentice or apprentices, within the age of fifteen years, shall be intituled to the benefit of clergy, for the first offence.

And be it further enacted, that if any person or persons shall willfully and maliciously, burn, or cause to be burned, any dwelling house, barn, outhouse, or warehouse, of another, or any

publick building, or any hovel, cock, mow, rick, or stack of corn, straw, hay or wood, of another, all and every such person or persons so offending, and their aiders, abettors, and counsellors, shall, upon due conviction, suffer as felons, and be excluded from the benefit of clergy.

And be it further enacted, that whosoever shall maliciously shoot at any person or persons, in any dwelling house or other place, or shall knowingly send any letter without any name, or signed with a fictitious name, demanding from any person or persons, money or other valuable thing, such offender or offenders, being duly convicted thereof, shall suffer as felons, without benefit of clergy.

And be it further enacted, that whosoever shall feloniously take and carry away any money or goods, in any other manner than is herein before declared and provided for, or shall imbezel any of His Majesty's stores, or the untensils, furniture or cloathing, in any storehouse or hospital of His Majesty, if such offender or offenders shall be found guilty of such felonious taking or carrying away of such money, or goods, or of im-imbezilling any of His Majesty's stores, or the untensils, furniture or cloathing in any storehouse or hospital of His Majesty, as aforesaid, to the value of twenty shillings or more; Every such offence shall be larceny and felony, and if the value shall be found by verdict on trial to be less than twenty shillings, then such offence shall be punishable as petit larceny, by such publick whipping as the court, before whom such offender shall be convicted, shall direct, and it shall and may be lawful for such court to order the offender to make full restitution, and in default thereof to commit such offender to the house of correction, there to be put to hard labour, for a term not exceeding three months, as the judges, in their discretion, shall think fit.

And be it further enacted, that all monies, goods, chattels, merchandizes, or stores, found in possession of any burglar, housebreaker, robber, thief, or purloiner, shall be delivered by the Justice of Peace who shall take the examination of such offender, into the custody of the Provost Marshal or his deputy, or constable of the town where the offence shall be committed, who shall be answerable for the same until the offender be convicted; and the judge or judges of the court, wherein such offender shall be convicted, shall order the said money, goods or stores, to be restored to the lawful owners thereof; and where no owner shall appear to claim the same, they shall be adjudged to be forfeited; and in cases where the evidence shall not be sufficient to convict of a felonious intent, and the jury shall declare that the property of such money, goods, or stores, is in the prosecutor, it shall and may be lawful for the court to order such money, goods, or stores, to be delivered to such prosecutor; Provided nevertheless that such delivery shall not debar the party so acquitted, or any other person who may claim the same, from his or her action for the detainer of such money, goods or stores, so delivered to the prosecutor.

And be it further enacted, that notwithstanding the allowance of clergy, and burning in the hand of any principal offender, the accessaries to such offender shall be arraigned and tried in the same manner, as if such clergy had not been allowed.

And be it further enacted, that every person which once hath been admitted to the benefit of his clergy, being afterwards arraigned, shall not be admitted to the benefit of his clergy, and that every person convicted for man slaughter, shall be marked with an M, upon the brawn of the left thumb, and for any other felony, the person convicted shall be marked with a T, in the same place: These marks shall be made by the goalee in open court. And if any person convicted of any felony, for which he ought to have the benefit of his clergy, shall pray to have the benefit of this Act; he shall not be required to read, but without any reading shall be allowed to be, and punished as a clerk convict, which shall be as effectual and as advantageous to him as if he had read as a clerk, and after allowance of such clergy and burning in the hand, such person shall be enlarged and delivered out of prison, by the judge or judges of the court before whom such clergy shall be granted; Saving that such judge or judges may for the further correction of such periods to whom clergy shall be allowed, keep them in prison, or send them to the House of Correction, for such convenient time as the said judge or judges in their discretions, shall think fit, so as the same do not exceed one year's imprisonment, or to punish them by publick whipping. And that where a man, convicted of any felony, may demand the benefit of his clergy, a woman convicted for the like offence, upon her prayer to have the benefit of this Act, judgment of death shall not be given against her upon such conviction, or execution awarded upon any outlawry for such offence, but such woman shall suffer the same punishment as a man that has the benefit of his clergy allowed him in the like case, (that is to say) shall be burned in the hand, by the goaler in open court, and may, for further punishment, be kept in prison, or sent to the house of correction, for such time as the judges shall think fit, so as the same do not exceed one year, or be ordered to be publicity whipped, as the judge or judges, before whom such woman is convicted, shall, from the quality of the offence, think meet. And the clerk of the court or assises where such man or woman shall be convicted, shall, at the request of any in His Majesty's behalf, certify a transcript containing the tenor of every indictment and conviction of such man or woman, of his having the benefit of the clergy, or her having the benefit of this Act, and the addition of every such person, and the certainty of the felony and conviction, to the judge or judges of the court or assises where such man or woman shall be indicted; which certificate, being produced in court, shall be a sufficient proof that such man hath before had the benefit of his clergy, and that such woman hath had the benefit of this Act, in the same manner as if the record had been produced. And if any person or persons indicted of any offence, for which, by virtue of this Act, they are excluded from the benefit of clergy or of this Act, shall, if they stand mute or will not answer directly to the felony, or shall challenge peremptorily above twenty of the jury, or shall be outlawed thereupon, be ousted of the benefit of the clergy or of this Act, and judgment shall be pronounced and execution awarded, as if such person or persons had been convicted of such offence by verdict or confession.

And be it further enacted, that in all cases where the benefit of clergy or of this Act shall be allowed, if the prisoner shall not, upon his arraignment, answer directly according to law, or shall willfully hand mute, or shall peremptorily challenge above twenty jurors, or if any person be outlawed on any indictment for such felony, such person or persons shall be

proceeded against by the court, in the same manner as if he, she, or they had been convicted by confession or verdict.

Provided nevertheless, that no man who hath had the benefit of the clergy allowed him, nor any woman who hath had the benefit of this Act, shall have the benefit of clergy or of this Act, for any felony committed since his or her having had the benefit of clergy or of this Act as aforesaid, and that no person shall be allowed the benefit of clergy or of this Act, more than once, but shall for any felony by him or her committed after being allowed the benefit thereof, be utterly debarred from having the benefit of the same again. Provided also that if any man admitted to his clergy, or any woman admitted to the benefit of this Act, shall, before such his or her admission, have committed any offence, where upon clergy is not allowable by this Act, and not being thereof indicted and acquitted, convicted or attained, or pardoned, shall and may be indicted or appealed for the same, and put to answer as if no such admission to the benefit of clergy or of this Act had been.

And be it further enacted, that every person who shall be produced or appear as a witness on the behalf of the prisoner upon any trial for murder or felony, before he or she be admitted to give evidence, shall first take an oath to depose the truth, in such manner as the witnesses for the king are, by law, obliged to do; and if any witness be convicted or willful perjury in such evidence, he shall suffer all the penalties, forfeitures and disabilities which, by law, may be inflicted on persons convicted of willfull perjury.

And be it further enacted, that all indictments, process, pleadings, and trials, and the rules of evidence upon any trials for any felonies or misdemeanors, either by the common Law of England, or by virtue of this Act, shall be according to the usage, practice and laws of England, and that all convictions, attainders, judgements, and executions, for any felonies or misdemeanors, before the making of this Act, shall be good and valid in law, and the same are hereby ratified and confirmed; Serving to all and every person and persons, all such advantages in law, upon any judgment that may be depending in any Court of Record, at the time of making this Act, in the same manner as if this Act had not been made.