

Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1829. Fredericton, NB: George K. Lugin, Printer to the King's Most Excellent Majesty, 1829.

9 & 10 George IV – Chapter 21

An Act to amend the Statute Law, relative to offences against the Person, and to provide for the more effectual punishment of such offences. Passed 10th February, 1829.

Whereas by an Act of the Parliament of the United Kingdom, passed in the ninth year of the Reign of His present Majesty, intituled, "An Act for consolidating and amending the Statutes in England relative to offences against the Person," various Statutes, the Titles of which are therein particularly specified, were thereby repealed, and other provisions made in lieu thereof: And whereas several of the said Statutes so lately repealed in England, have hitherto been considered in force, and acted upon in this Province; and it is deemed advisable that the operation of the same should also cease in this Province, and necessary provision made in lieu thereof by Act of Assembly:

I. Be it therefore enacted by the Lieutenant-Governor, Council and Assembly, That the Statutes or Acts of Parliament, or parts of Statutes or Acts of Parliament, so repealed in England by the said Statute or Act first mentioned, or such of them as are in force in this Province, be, and the same are hereby declared to be repealed and of no force or effect within the same; any Law, usage or custom, to the contrary notwithstanding; except nevertheless so far as any of the said Acts may repeal the whole or any part of any other Acts.

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 accessaries, shall be dealt with, indicted, tried, and punished as principals and accessaries in murder.

III. And be it further enacted, That every person convicted of murder, or of being an accessary before the fact to murder, shall suffer death as a Felon, and every accessary after the fact to murder, shall be liable to be punished by fine and imprisonment, or either such imprisonment to be with or without hard labour in the common Gaol or House of Correction at the discretion of the Court, for any term not exceeding four years.

IV. And be it enacted, That where any person being feloniously stricken, poisoned, or otherwise hurt upon the Sea, or at any place cut of this Province, shall die of such stroke, poisoning or hurt, in this Province, every offence committed in such case, whether the same shall amount to the offence of murder or manslaughter, or of being accessary before the fact to murder, or after the fact to murder or manslaughter, may be dealt with, inquired of, tried, determined, and punished in the County or City and County in which such death shall happen, in the same manner in all respects, as if such offence had been wholly committed in that County, or City and County.

V. And be it further enacted, That every person convicted of manslaughter, shall be liable to be imprisoned with or without hard labour, in the common Gaol or House of Correction, for any term not exceeding three years; or to pay such fine as the Court shall award, or to be both fined and imprisoned; if the Court should so award.

VI. 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.

VII. And be it further enacted, That if any person unlawfully and maliciously shall administer or attempt to administer to any Person, or shall cause to be taken by any Person, any poison or other destructive thing, or shall unlawfully and maliciously attempt to drown, suffocate, or strangle any Person, or shall unlawfully and maliciously shoot at any person or shall unlawfully or maliciously stab, cut, or wound any Person, with intent in any of the cases aforesaid, to murder such person, every such offender shall be guilty of Felony, and being convicted thereof, shall suffer death as a Felon.

VIII. And be it enacted, That if any person with intent to procure the miscarriage of any woman, then being quick with Child, unlawfully and maliciously shall administer to her, or cause to be taken by her, any poison, or other noxious thing, or shall use any instrument or other means whatever, with the like intent, every such offender, and every person, counselling, aiding or abetting such offender, shall be guilty of Felony, and being thereof convicted shall suffer death as a Felon; and if any person, with intent to procure the miscarriage of any woman not being, or not being proved to be, then quick with Child, unlawfully and maliciously shall administer to her, or cause to be taken by her, any medicine, or other thing; or shall use any instrument or other means whatever, with the like intent, every such offender, and every person counselling, aiding or abetting such offender, shall be guilty of Felony, and being convicted thereof, shall be liable to be imprisoned, with or without hard labour, in the Common Gaol or House of Correction, for any term not exceeding two years, and if a male, to be once, twice, or thrice publicly or privately whipped, (if the Court shall so think fit,) in addition to such imprisonment.

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

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

XI. And be it enacted, 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 years, every such person shall be guilty of a misdemeanor and being convicted thereof, shall be liable to be imprisoned with or without hard labour, for such term as the Court shall award.

XII. And whereas, upon trials for the crimes of Buggary and of Rape, and of carnally abusing Girls under the respective ages hereinbefore mentioned, offenders sometimes escape by reason of the difficulty of the proof which has been required of the completion of these 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 carnal knowledge but that the carnal knowledge shall be deemed complete upon the proof of penetration only.

XIII. 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, but 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 misdemeanor, and being convicted thereof, shall be liable to suffer such punishment, by fine or imprisonment, or by both as the Court shall award.

XIV. 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 shall be guilty of Felony, and being convicted thereof, shall be liable to be imprisoned with, or without hard labour, for any term not exceeding two years, and also fined, if the Court should so award; and any such offence may be dealt with, inquired of, tried, determined, and punished in the County where the offender shall be apprehended, or be in custody, as if the offence had been actually committed in that 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 His Majesty; or to any person marrying a second time, where 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.

XV. 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 two Justices of the Peace, upon complaint of the party aggrieved, to hear and determine such offence, and the offender, upon conviction thereof before them, shall forfeit and pay such fine as shall appear to them to be meet, not exceeding, together with costs, if ordered, the sum of five pounds, which fine shall be paid to the Overseers of the Poor, some or one of them of the City or Parish, in which the offence shall have been committed, to be by them applied to the support of the Poor of such City or Parish; and the evidence of any Inhabitants of the City or Parish, 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 Justices, together with the costs, if ordered, shall not be paid either immediately after the conviction, or within such period as the said Justices shall, at the time of the conviction, appoint, it shall be lawful for them to commit the offender to the Common Gaol or House of Correction, there to be imprisoned for any term, not exceeding one calendar month, unless such fine and costs be sooner paid; but if the Justices, upon the bearing of any such case of assault or battery, shall deem the offence not to be proved, or shall

find the assault or battery to have been justified, or so trifling as not to merit any punishment, and shall accordingly dismiss the complaint, they shall forthwith make out a Certificate under their hands, stating the fact of such dismissal, and shall deliver such Certificate to the party against whom the complaint was preferred.

XVI. 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 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.

XVII. Provided always, and be it enacted, That in case the Justices shall find the assault or 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 circumstance a fit subject for a prosecution by Indictment, they shall abstain from any adjudication thereupon, and shall deal with the case in all respects in the same manner as they would have done before the passing of this Act: Provided also, that nothing herein contained shall authorize any Justices 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 any execution under the process of any Court of Justice.

XVIII. And be it enacted, That every Accessary before or after the fact to any Felony punishable under this Act, for whom no punishment has been hereinbefore provided, shall be liable to be imprisoned with or without hard labour, in the Common Gaol or House of Correction, for any term not exceeding two years, or to pay such fine as the Court shall award; and every person who shall counsel, aid or abet the commission of any misdemeanor, punishable under this Act, shall be liable to be proceeded against, and punished as a principal offender.

XIX. 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 before any two Justices of the Peace, at 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 Justices may either proceed to hear and determine the case *ex parte*, or may issue their warrant for apprehending such person and bringing him before them, 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.

XX. 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 one calendar month after the commission of the offence, and not otherwise.

XXI. And be it enacted, That the Justices before whom any person shall be summarily confided of any offence against this Act, may cause the conviction to be drawn up in the following form of words, or any, other form of words to the same effect, as the case shall require; (that is to say;)

“ Be it remembered that on the _____ day of _____ in the year of our Lord _____ at _____ in the County of _____ A.B. was convicted before us, [naming the Justices,] two of His Majesty’s Justices of the Peace for the said County, [or City, and County as the case may be] for that he the said A. B. did, [specify the offence, and the time and place when and where the same was committed, as the case may be,] and we, the said Justices adjudge the said A. B. for his said offence, to forfeit and pay the sum of, [here state the amount of the fine imposed,] and also to pay the sum of _____ for costs; and in default of immediate payment of the said sums, to be imprisoned in the _____ for the space of _____ unless the said sums shall be sooner paid, [or, we order that the said sums shall be paid by the said A. B. on or before the _____ day of _____] and we direct that the said sum of [i.e. the amount of the fine] shall be paid to the Overseers of the Poor of _____ aforesaid, in which the said offence was committed, or some one of them, to be by them applied to the support of the Poor of the said _____ and we order that the said sum of _____ for costs, shall be paid to C. D. [the party aggrieved. Given under our hands the day and year first above mentioned.”

XXII. Provided always, and be it enacted, That nothing in this Act contained, shall affect or alter any Statute, or Act, now in force in this Province, so far as it relates to the crimes of High Treason or Burglary, or to any branch of the Revenue, or Customs, or for the prevention of Smuggling.

XXIII. Provided also, and be it enacted, That this Act shall not commence and take effect until the first day of July next; and that all offences committed before that day, shall be dealt with and punished as if this Act had not been passed.