

Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1848. Fredericton, NB: John Simpson, Printer to the Queen's Most Excellent Majesty, 1848.

11 Victoria – Chapter 28

An Act in addition to the Acts relating to the Provincial Penitentiary. Passed 30th March 1848.

Whereas it has been found necessary to make further provision for the management and safe keeping of the prisoners confined in the Provincial Penitentiary;

I. Be it therefore enacted by the Lieutenant Governor, Legislative Council and Assembly, That it shall and may be lawful for the Sheriff of any County, or City and County, or any Deputy Sheriff, Constable or other Officer, by direction of such Sheriff, or of any Constable, to convey and take any offender sentenced to imprisonment in the Provincial Penitentiary, to the said Provincial Penitentiary, and then deliver such offender to the Keeper there, pursuant to the sentence passed upon such prisoner, without any further warrant, order or direction than the passing of such sentence by the Court before whom such offender shall be tried, and a copy of the sentence passed upon such offender from the Minutes of the Court before whom such offender shall be tried, certified by any Justice or by the Clerk or acting Clerk of such Court.

II. And be it enacted, That the Sheriff or Gaoler, and every person employed in the conveyance of any offender to the Provincial Penitentiary, there to be imprisoned, may in such manner as he shall think fit, carry and secure such offender in and through any County in this Province; and that all reasonable expenses which such Sheriff, Gaoler or other person shall incur in every such removal, if the conviction had been before any Court other than the Court of Oyer and Terminer and General Gaol Delivery, shall be paid by the County for which the Court in which the offender was convicted shall have been held, to be paid by the Treasurer of such County, such reasonable expenses being first allowed by order of the Justices of the Peace at their General Sessions or other Sessions of the Peace, who are hereby required to make such order as shall be just in that behalf; and if the conviction had been before the Court of Oyer and Terminer and General Gaol Delivery, the same shall be paid by the Province, and shall be drawn from the Treasury by Warrant under the hand and seal of the Lieutenant Governor or Administrator of the Government for the time being; the amount of such charges and expenses being first ascertained and settled by Her Majesty's Justices of the Peace of the proper County at their General Sessions, or at any Special Sessions of the Peace to be by them for that purpose holden, and duly audited by the Provincial Auditor.

III. And be it enacted, That after the delivery of any such offender as aforesaid, to the Keeper of the said Penitentiary, such Keeper or other person having the custody of criminals or convicts under his direction, shall during the term for which such criminals or convicts shall be ordered to remain in his custody, have the same power over such convicts as are incident to the office of a Sheriff or Gaoler, and in case of any abuse of such custody or other misbehaviour or negligence in the discharge of his office, shall be liable to the same punishment to which a Gaoler is now liable by Law.

IV. And be it enacted, That any criminal or convict who shall be ordered or sentenced to be imprisoned in the said Penitentiary, who at any time during the term of such confinement, shall break prison or escape, or who, while being conveyed to such Penitentiary, shall escape from the person or persons having the lawful custody of such convict, he or she so breaking prison, or escaping, shall be guilty of felony.

V. And be it enacted, That if any person shall rescue any convict or criminal who shall be ordered or sentenced to be imprisoned in the said Provincial Penitentiary either during the time of his or her conveyance to the said Penitentiary, or of his or her imprisonment therein, or if any person shall be aiding or assisting in any such rescue, every person so rescuing, aiding or assisting, shall be guilty of felony; and if any person having the custody of any such convict or criminal, or being employed as Keeper, Under Keeper, Assistant or Guard, shall knowingly and wilfully permit such convict to escape; and if any person shall by supplying arms, tools or instruments of disguise, or otherwise be in any manner aiding or assisting any such convict in any escape or prison breach, or in any attempt to make an escape, though no escape be actually made; or shall attempt to rescue any such convict or criminal, or be aiding or assisting in any such attempt, though no rescue be actually made; every person so permitting, attempting, aiding or assisting, shall be guilty of felony; and if any person having such custody, or being so employed by the person having such custody as aforesaid, shall negligently permit any such convict or criminal to escape, such person shall be guilty of a misdemeanor, and being lawfully convicted of the same, shall be liable to fine or imprisonment, or to both, at the discretion of the Court.

VI. And be it enacted, That if any person shall carry or bring, or attempt or endeavour, by throwing over the walls, or any other means to introduce into the said Provincial Penitentiary, any letters, tobacco, liquor, or other articles not allowed by the rules of the said Prison, it shall be lawful for any person to apprehend such offender and to carry him or her before any Justice of the Peace, who is hereby authorized to hear and determine such offence in a summary way; and if he shall lawfully convict such person of such offence, he shall forthwith commit such offender to the Provincial Penitentiary, there to be kept with hard labour for any time not exceeding one calendar month, without bail or mainprize, unless such offender shall immediately pay down such sum of money, not exceeding five pounds nor less than one pound, as such Justice shall impose, and such fine shall be paid to the Commissioners of the Provincial Penitentiary towards the expenses of the maintenance of said prison.

VII. And be it enacted, That every person confined in the Provincial Penitentiary or any other Prison, whose term of imprisonment would, according to his or her sentence, have expired on any Lord's Day, shall be entitled to his or her discharge from such Prison on the Saturday next preceding such Lord's Day; and every person having the custody of any such prisoner as aforesaid, is hereby authorized and required to discharge such prisoner on the Saturday next preceding any such Lord's Day.

VII. And be it enacted, That whenever by any Act of Assembly or Statute made or hereafter to be made, authority is given to confine or imprison any person in any House of Correction, or in any

Gaol with hard labour in this Province, or in the Provincial Penitentiary, such confinement may be adjudged to be or may be in the Provincial Penitentiary with hard labour.

IX. And to the intent that prosecutions for escape, breaches of the Penitentiary, and rescues, may be carried on with as little trouble and expense as possible; Be it further enacted, That any offender or criminal escaping, breaking the Penitentiary, or being rescued therefrom, or in going thereto, may be tried either in the jurisdiction where the offence was committed, or in that where he or she shall be apprehended and taken; and in case of any prosecution for any such escape, attempt to escape, breach of the Penitentiary, or rescue, either against the offender escaping or attempting to escape, or having broken the Penitentiary, or having been rescued, or against any other person or persons concerned therein, or aiding, abetting or assisting the same, the custody of such offender may be laid in the indictment as being in the Keeper of the Provincial Penitentiary; and a certificate given by the Clerk of the Court in which such offender shall have been convicted, shall together with due proof of the identity of the person, be sufficient evidence to the Court and Jury of the nature and fact of the conviction, and of the specific period of confinement to which such person was sentenced.

X. And be it enacted, That any person guilty of felony under this Act, and being convicted thereof, shall be liable to be imprisoned in the said Penitentiary for any term not exceeding seven years nor less than one year, as the Court shall award.

XI. And be it enacted, That so much of the ninth section of an Act made and passed in the fourth year of the Reign of Her present Majesty, intituled *An Act to establish a Provincial House of Correction*, as requires the visiting Commissioner to make a report in writing as specified in the said section, at every meeting of the Board of Commissioners, be and the same is hereby repealed; and in lieu thereof, be it enacted, that a report, as specified in the said ninth section of the said recited Act, shall be made by the visiting Commissioner to the Board of Commissioners at intervals of not more than three calendar months.

XII. And be it enacted, That the provisions of all Acts of the General Assembly, now made or hereafter to be made for protecting Justices of the Peace and Constables in the execution of their duty, shall extend to the Commissioners of the Provincial Penitentiary, and the Keeper and Officers thereof; and that every Under Keeper, Turnkey, or other person employed in the keeping of the prisoners in the said Provincial Penitentiary, shall, within the City and County of Saint John, in addition to any other power or authority he may have by Law, have, receive and enjoy all such powers, authorities, advantages and immunities as any Constable duly appointed enjoys within his Constablewick, by virtue of the Common and Statute Law, or any Act of Assembly in force in this Province.

XIII. And for the further protection of all persons acting in the execution of this Act, or of any Act made and passed in the fourth year of the Reign of Her present Majesty, intituled *An Act to establish a Provincial House of Correction*, or of an Act made and passed in the fifth year of the Reign of Her present Majesty, intituled *An Act to make further provision relative to the Provincial House of Correction, and to give it the name of 'The Provincial Penitentiary;'* Be it enacted, That all

actions and prosecutions to be commenced against any person for any thing done in pursuance of this Act, or the said recited Act, shall be laid and tried in the County, or City and County, where the fact was committed, and shall be commenced within three 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 said recited Acts, 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, certify his approbation of the action, and of the verdict obtained thereupon.

XIV. And be it enacted, That the Commissioners of the Provincial Penitentiary be and they are hereby authorized to contract and agree with sufficient workmen for the erection and completion of a third tier of Cells in the said Provincial Penitentiary, and for the completion of the Picket Fence now in the course of erection around the said Penitentiary, and that it shall and may be lawful for the Lieutenant Governor or Administrator of the Government for the time being, by and with the advice and consent of the Executive Council, to draw by Warrant upon the Treasury for a sum not exceeding seven hundred and fifty pounds, for the purpose of making the said erections.