

*Laws of His Majesty's Province of Upper-Canada in North America.* York: Titus G. Simons, Printer to the King's Most Excellent Majesty, 1800.

40 George III – Chapter 1

**"An Act for making more effectual provision for the government of the province of Quebec in North America, and to make further provision for the government of the said province,"**

and by the authority of the same, That the Criminal Law of England, as it stood on the seventeenth day of September, in the year of our Lord one thousand seven hundred and ninety-two, shall be, and the same is hereby declared to be the Criminal Law of this Province.

II. Provided nevertheless, That nothing herein contained shall be taken or construed to vary, repeal, or in any manner to affect any Ordinance of the rate Province of Quebec, which may have been made since the said fourteenth year of his Majesty's reign.

III. And whereas the punishment of burning in the hand, when any person is convicted of felony within the Benefit of Clergy, is often disregarded and ineffectual, and sometimes may fix a lasting mark of disgrace and infamy on offenders, who might otherwise become good subjects and profitable members of the community, Be it therefore enacted by the authority aforesaid, That from and after the passing of this act, when any person shall be lawfully convicted of any felony within the benefit of Clergy, for which he or she is liable by law to be burned or marked in the hand, it shall and may be lawful for the Court before which any person shall be so convicted, or any Court holden for the same place with the like authority, if such Court shall think fit, instead of such burning or marking, to impose upon such offender such a moderate pecuniary Fine as to the Court in its discretion shall seem meet; or otherwise it shall be lawful, instead of such burning or marking, in any of the cases aforesaid, except in the case of Manslaughter, to order and adjudge, that such offender shall be once, or oftener, but not more than three times, either publicly or privately Whipt; such private whipping to be inflated in the presence of not less than two persons besides the offender and the officer who inflicts the same; and in case of female offenders, in the presence of females only; and such fine or whipping so imposed or inflicted instead of such burning or marking, shall have the like effects and consequences to the party on whom the same, or either shall be so imposed or inflicted, with respect to the discharge from the same or other felonies, or any restitution to his or her estates, capacities and credits, as if he or she had been burned or marked as aforesaid.

IV. Provided always, and be it further enacted by the authority aforesaid, That nothing in this act contained, shall abridge, or deprive any Court of the powers now veiled in it by law, of detaining and keeping in prison, for any time not exceeding one year, or of committing to the house of correction, or public work-house, to be kept to hard labor, for any time not exceeding one year, or of committing to the house of correcting, or public work-house, to be kept to hard labor, for any time not exceeding one year, or of committing to the house of

correcting, for any time not less than six months, or exceeding two years, any such offender as aforesaid; but that such offender may, if such court shall think fit, after such burning or marking, or after such whipping, or fine, as shall by virtue of this present act be inflicted or imposed instead thereof, be so detained or committed, and with such accumulated punishment, in case of escape from such house of correction or work-house, as if this act had never been made.

V. And whereas so much of the said criminal law of England, as relates to the transportation of certain offenders to places beyond the seas is either inapplicable to this province, or cannot be carried into execution without great and manifest inconvenience, Be it enacted by the authority aforesaid, That when any person shall be convicted of any crime, for which he, or she, shall be liable by law to be transported, the court before which such person shall be so convicted, or any court holden for the same place with the like authority, instead of the sentence of transportation, shall order and adjudge, that such person be banished from this province, for and during same number of years, or term for which he or she would be liable by law to be transported, and do remove him, or herself therefrom within a space of time to be then fixed and declared by the court, and which shall, in no instance, be less than two days nor more than eight, including the day on which such sentence of banishment shall be passed.

VI. And be it further enacted by the authority aforesaid, That if any person on whom such sentence of banishment shall have been passed as aforesaid, or to whom his Majesty his heirs or successors, shall hereafter be graciously pleased to extend the Royal mercy upon condition of his, or her, leaving the province for any term of years, or for life, shall be found at large in any part thereof, without some lawful cause, after the time within which he, or she, shall have been so banished, or shall have so conferred to leave the province, and before the expiration of the term for which he, or she, shall have been so banished, or shall have so consented to leave the same, every such offender being thereof lawfully convicted, shall suffer death as in cases of felony without benefit of Clergy; and such offender may be tried either before Justices of assize, oyer and terminer or goal delivery, for the District, County or place where such offender shall be apprehended and taken, or where he, or she, may have received such sentence of banishment; and the Clerk of the Crown, Clerk of the peace or other officer, having the custody of the records where such sentence of banishment shall have been pronounced, or the Register of the province in the case of such conditional pardon as aforesaid, shall at the request of any person on his Majesty's behalf, and without fee or reward, make out and give a certificate in writing signed by him the said Clerk of the Crown, Clerk of the peace or other officer, or by the said Register, respectively, containing the effect and substance, omitting the formal part of every indictment and conviction of such offender, and of the sentence of banishment, or of such conditional pardon respectively, to the Justices of assize, oyer and terminer and goal delivery, where such offender shall be indicted, which certificate shall be sufficient proof of such conviction and sentence of banishment, or of such conditional pardon respectively.

VII. Provided nevertheless, That nothing herein contained shall be construed in any manner to restrain, or prevent his Majesty, his heirs or successors, to grant an absolute and unconditional pardon to such offender, and to allow of his, or her return to this province.