

Laws of His Majesty's Province of Upper Canada, passed in the year 1833. York: Robert Stanton, 1833.

3 William IV – Chapter 4

An Act to reduce the number of cases in which Capital Punishment may be inflicted; to provide other punishment for offences which shall no longer be Capital after the passing of this Act; to abolish the privilege called benefit of Clergy; and to make other alterations in certain Criminal Proceedings, before and after conviction. Passed 13th February, 1833.

Whereas it is fit that it should be plainly declared in the Statutes of this Province, for what crimes offenders shall be liable to be punished with death: And whereas it does not seem to be indispensable, for the security and well being of society, that the punishment of death should be inflicted in any other cases than those hereinafter mentioned.—Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled "*An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, entitled '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 if a person do compass or imagine the Death of our Lord the King, or if a person do levy War against our Lord the King, in this Province, or be adherent to the King's enemies in this Province, giving to them aid and comfort, in this Province, or elsewhere, and thereof be provably attainted of open deed by people of his condition, such person so attainted shall be deemed guilty of Treason, and shall suffer Death.

II. And be it further enacted by the authority aforesaid, That every person convicted of Murder, or of being an accessory before the fact to Murder, shall suffer Death as a Felon.

III. And be it further enacted by the authority aforesaid, That every offence which, before the passing of this Act, would have amounted to Petit Treason, shall be deemed to be Murder only, and no greater or other offence; and all persons guilty in respect thereof, whether as principals or accessories, shall be dealt with, indicted, tried, and punished as principals and accessories in Murder.

IV. And be it further enacted by the authority aforesaid, That if any person or persons whatsoever shall by force set at liberty or rescue, or attempt to rescue, or set at liberty, any person out of prison, who shall be committed for, or found guilty of Murder; or rescue, or attempt to rescue, any person convicted of Murder going to execution, or during execution, every person so offending shall be deemed, taken and adjudged to be guilty of Felony, and shall suffer Death.

V. And be it further enacted by the authority aforesaid, That every person convicted of the crime of Rape, shall suffer Death as a Felon.

VI. And be it further enacted by the authority aforesaid, That if any person shall unlawfully 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.

VII. And be it further enacted by the authority aforesaid, That every person convicted of the abominable crime of Buggery, committed either with mankind or with any animal, shall suffer Death as a Felon.

VIII. And be it further enacted by the authority aforesaid, That if any person shall Rob any other person of any Chattel, Money, or valuable Security; or shall Rob any person carrying or conveying, or having charge of His Majesty's Mail, in any part of this Province, of any letter or letters, packet or packets, bag or mail of letters, every such offender, being convicted thereof, shall suffer Death as a Felon: and such offences shall and may be inquired of, tried and determined, either in the District in which the offence shall be committed, or in which the offender shall or may be apprehended.

IX. And be it further enacted by the authority aforesaid, That every person convicted of Burglary, shall suffer Death as a Felon.

X. Provided always, And be it further enacted by the authority aforesaid, That no Building, although within the same curtilage with the Dwelling-house, and occupied therewith, shall be deemed to be part of such Dwelling-house, for the purpose of Burglary, unless there shall be a communication between such Building and Dwelling-house, either immediate, or by means of a covered and enclosed passage leading from the one to the other.

XI. And be it further enacted by the authority aforesaid, That if any person shall unlawfully and maliciously set fire to any Church or Chapel, or to any Building commonly used for Religious Worship, or to any House, Stable, Coach-house, Out-house, Ware-house, Office, Shop, Mill, Malt-house, Barn or Granary, or to any Building or erection used in carrying on any trade or manufacture, or any branch thereof, whether the same, or any of them respectively, shall then be in the possession of the offender, or in the possession of any other person, with intent thereby to injure or defraud any person, or any Body Corporate, or Company of persons, every such offender shall be guilty of Felony, and being convicted thereof, shall suffer Death as a Felon.

XII. And be it further enacted by the authority aforesaid, That every person convicted of being an accessory before the fact to any of the offences made Capital by this Act, shall suffer Death as in cases of Felony.

XIII. And whereas, for the preventing and suppressing of Riots and Tumults, and for the more speedy and effectual punishing the offenders therein, An Act was passed in the Parliament of Great Britain, in the first year of the Reign of King George the First, entitled "*An Act for preventing Tumults and Riotous Assemblies, and for the more speedy and effectual punishing the Rioters,*" whereby it is among other things enacted, that "if any persons to the number of twelve, or more, being unlawfully, riotously, and tumultuously assembled together, to the disturbance of the Public

Peace, at any time after the last day of July, in the year of our Lord one thousand seven hundred and fifteen, and being required or commanded by any one or more Justice or Justices of the Peace, or by the Sheriff of the County, or his Under Sheriff, or by the Mayor, Bailiff or Bailiffs, or other Head Officer, or Justice of the Peace of any City, or Town Corporate, where such assembly shall be, by Proclamation, to be made in the King's name, in the form in the said Act directed, to disperse themselves and peaceably to depart to their habitations, or to their lawful business, shall, to the number of twelve or more, (notwithstanding such Proclamation made) unlawfully, riotously and tumultuously remain or continue together by the space of one hour after such command or request made by Proclamation, that then such continuing together to the number of twelve or more, after such command or request made by Proclamation, shall be adjudged Felony without benefit of Clergy, and the offenders therein shall be adjudged Felons, and shall suffer death as in case of Felony, without benefit of Clergy." And it is in the said Act further enacted, that the order and form of the Proclamation which shall be made by the authority of the said Act shall be as hereafter followeth, (that is to say):—That the Justice of the Peace, or other person authorised by the said Act to make the said Proclamation, shall, among the said Rioters, or as near to them as he can safely come, with a loud voice command, or cause to be commanded silence to be, while Proclamation is making; and after that, shall openly and with a loud voice, make, or cause to be made Proclamation in these words, or like in effect:—

"Our Sovereign Lord the King Chargeth and Commandeth all persons being assembled immediately to disperse themselves, and peaceably to depart to their habitations or to their lawful business, upon the pains contained in the Act made in the First year of King George, for preventing tumults and riotous assemblies.—God save the King."

And every such Justice, and Justices of the Peace, Sheriff, Under Sheriff, Mayor, Bailiff, and other Head Officer aforesaid, within the limits of their respective Jurisdictions, are by the said Act authorized, empowered, and required, on notice or knowledge of any such unlawful riotous and tumultuous assembly, to resort to the place where such unlawful, riotous and tumultuous assemblies shall be, of persons to the number of twelve or more, and there to make, or cause to be made, Proclamation in manner aforesaid." And it is in the said Act further enacted, that "if such persons so unlawfully, riotously and tumultuously assembled, or twelve or more of them, after Proclamation made in manner aforesaid, shall continue together, and not disperse themselves within one hour, that then it shall and may be lawful to and for every Justice of the Peace, Sheriff, or Under Sheriff of the County where such assemblies shall be, and also to and for every High and Petty Constable, and other Peace Officer within such County, and also to and for every Mayor, Justice of the Peace, Sheriff, Bailiff, and other Head Officer, High or Petty Constable, and other Peace Officer of any City or Town Corporate, where such assembly shall be, and to and for such other person and persons as shall be commanded, to be assisting unto any such Justice of the Peace, Sheriff or Under Sheriff, Mayor, Bailiff, or other Head Officer aforesaid, (who are thereby authorized and empowered to command all His Majesty's Subjects of age and ability, to be assisting to them therein) to seize and apprehend, and they are thereby required to seize and apprehend, such persons so unlawfully, riotously, and tumultuously continuing together, after Proclamation made as aforesaid, and forthwith to carry the persons so apprehended before one or more of His Majesty's Justices of the Peace of the County or place where such persons shall be

so apprehended, in order to their being proceeded against for such their offences according to Law; and that if the persons so unlawfully, riotously, and tumultuously assembled, or any of them, shall happen to be killed, maimed or hurt, in the dispersing, seizing or apprehending, or endeavouring to disperse, seize or apprehend them, by reason of their resisting the persons so dispersing, seizing or apprehending, or endeavouring to disperse, seize or apprehend them, that then every such Justice of the Peace, Sheriff, Under Sheriff, Mayor, Bailiff, Head Office, High or Petty Constable, or other Peace Officer, and all and singular, persons being aiding and assisting to them, or any of them, shall be free, discharged and indemnified, as well against the King's Majesty, His Heirs and Sussessors, as against all and every other person and persons, of, for, or concerninig the killing, maiming, or hurting of any such person or persons, so unlawfully, riotously, and tumultuously assembled, that shall happen to be so killed, maimed, or hurt as aforesaid." And it is in the said Act further enacted, that "if any persons unlawfully, riotously, and tumultuously assembled together, to the disturbance of the Public Peace, shall unlawfully, and with force, demolish or pull down, or begin to demolish or pull down, any Church, Chapel, or any Building for Religious Worship, certified and Registered according to the Statute made in the first year of the Reign of the late King William and Queen Mary, entitled "*An Act for exempting their Majesty's Protestant Subjects dissenting from the Church of England from the Penalties of certain Laws;*" or any Dwelling-house, Barn, Stable, or other Out-house, that then every such demolishing or pulling down, or begining to demolish or pull down, shall be adjudged Felony, without benefit of Clergy, and the offenders therein shall be adjudged Felons, and shall suffer Death as in case of Felony, without benefit of Clergy." And it is in the said Act further enacted, that "if any person or persons do, or shall with force and arms, wilfully and knowingly oppose, obstruct, or in any manner wilfully and knowingly let, hinder or hurt, any person or persons that shall begin to proclaim, or go to proclaim, according to the Proclamation thereby directed to be made, whereby such Proclamation shall not be made, that then every such opposing, obstructing, letting, hindering, or hurting such person or persons so beginning or going to make such Proclamation, as aforesaid, shall be adjudged Felony without benefit of Clergy, and the offenders therein shall be adjudged Felons, and shall suffer Death as in case of Felony, without benefit of Clergy; and that also every such person or persons so being unlawfully, riotously and tumultuously assembled, to the number of twelve as aforesaid, or more, to whom Proclamation should or ought to have been made, if the same had not been hindered, as aforesaid, shall likewise, in case they, or any of them to the number of twelve or more, shall continue together, and not disperse themselves within one hour after such let or hindrance so made, having knowledge of such let or hindrance so made, shall be adjudged Felons, and shall suffer death as in case of Felony, without benefit of Clergy." And it is in the said Act further enacted, that " no person or persons shall be prosecuted by virtue of the said Act, for any offence or offences committed contrary to the same, unless such prosecution be commenced within twelve months after the offence committed:" Be it enacted, by and with the authority aforesaid, That nothing in this Act contained shall affect or be construed to affect, or in any manner to repeal or vary any of the provisions in the said Act contained, but the same shall continue and remain, as if this Act had not been passed.—Provided nevertheless, and it is hereby enacted by the authority aforesaid, That the provisions in the fourth clause of the same Act shall apply and extend to all Churches or Chapels, or Places for Religious Worship in this Province, notwithstanding the same, or any of them, shall not be certified or registered, as provided in the said Act.

XIV. And whereas by a certain Act of the Parliament of Great Britain, passed in the twelfth year of the Reign of King George the Third, entitled "*An Act for the better securing and preserving His Majesty's Dock Yards, Magazines, Ships, Amunition and Stores,*" it is enacted, That "if any person or persons shall within the Realm, or in any of the Islands, Countries, Forts or Places thereunto belonging, wilfully and maliciously, set on fire, or burn, or otherwise destroy, or cause to be set on fire or burnt, or otherwise destroyed, or aid, procure, abet or assist in the setting on fire, or burning, or otherwise destroying, of any of His Majesty's Ships or Vessels of War, whether the said Ships or Vessels of War be on float or building, or begun to be built, in any of His Majesty's Dock Yards, or building or repairing by contract in any private yard, for the use of His Majesty, or any of His Majesty's Arsenals, Magazines, Dock Yards, Rope Yards, Victualling Offices, or any of the buildings erected therein or belonging thereto, or any timber or materials there placed, for building, repairing or fitting out of Ships or Vessels, or any of His Majesty's Military, Naval, or Victualing Stores, or other Ammunition of War, or any place or places where any such Military, Naval or Victualing Stores, or other Ammunition of War is, are, or shall be kept, placed or deposited, that then the person or persons guilty of any such offence being thereof convicted, in due form of Law, shall be adjudged guilty of Felony, and shall suffer death, as in cases of Felony, without benefit of Clergy." And whereas also, by a certain other Act of the Parliament of Great Britain, passed in the Second and Third Years of the Reign of Queen Anne, entitled "*An Act for punishing Mutiny, Desertion, and false Musters, and for better paying of the Army and Quarters, and for satisfying divers Arrears, and for a further continuance of the powers of the five Commissioners for the examining and determining the Accounts of the Army,*" it is enacted, That "if any Officer or Soldier in Her Majesty's Army, shall either upon land out of England, or upon the sea, hold correspondence with any rebel, or enemy of Her Majesty, or give them advice or intelligence, either by letters, messages, signs or tokens, or any manner of way whatsoever, or shall treat with such rebels or enemies, or enter into any condition with them without Her Majesty's Licence, or Licence of the General, Lieutenant General or Chief Commander, then every such person so offending shall be deemed and adjudged to be guilty of High Treason, and suffer such pains and penalties as in case of High Treason." Be it therefore enacted, That nothing in this Act contained shall be construed or taken to affect, in any manner, the provisions of the above in part recited Acts, or either of them.

XV. And be it further enacted by the authority aforesaid, That so much of an Act of the Parliament of this Province, passed in the Thirty- Sixth Year of the Reign of King George the Third, entitled "*An Act for the better regulation of certain Coins current in this Province.*" — And of an Act passed in the Parliament of this Province, in the Thirty-Eighth Year of the Reign of King George the Third, entitled "*An Act to establish on a permanent footing the boundary lines of the different Townships of this Province.*" And of an Act passed in the Parliament of this Province, in the Fortieth Year of the Reign of King George the Third, entitled "*An Act for the further introduction of the Criminal Law of England in this Province, and for the more effectual punishment of certain offenders,*" and of the several Acts of the Parliament of this Province, passed for authorising the issuing of Government Debentures, as provides that any offence in any of those Statutes respectively mentioned, shall be punishable with death, shall be, and the same is hereby repealed; and that such offences shall continue to be of the degree of Felony, and the persons convicted thereof shall be liable to the

punishments, or any of them, which are by this Act provided in respect to Felonies generally, which are not punishable with death.

XVI. And be it further enacted by the authority aforesaid, That if any person shall be indicted for any offence made Capital by this, or any other Statute made or to be made, such person shall be liable to the same punishment, whether he, or she shall be convicted by verdict or confession, or shall be outlawed, upon indictment; and this as well in the case of Accessories as of Principals.

XVII. And be it further enacted by the authority aforesaid, That if any person being arraigned upon any indictment for Treason or Felony, shall plead thereto a plea of "Not Guilty," he shall by such plea without any further form be deemed to have put himself upon the Country for trial—and that if any person being arraigned upon any indictment for Treason or Felony, shall stand mute of malice, or will not answer directly to the indictment, in every such case it shall be lawful for the Court, if it shall so think fit, to order the proper officer to enter a plea of "Not Guilty," on behalf of such person, and the plea so entered, shall have the same force and effect, as if such person had actually pleaded the same.

XVIII. And be it further enacted by the authority aforesaid, That if any person indicted for any Treason or Felony, shall challenge peremptorily a greater number of the men returned to be of the Jury than such person is entitled by Law so to challenge, in any of the said cases, every preremptory challenge beyond the number allowed by Law, in any of the said cases, shall be entirely void; and the trial of such person shall proceed as if no such challenge had been made.

XIX. And whereas in certain cases of High Treason, as the Law now stands, the sentence or judgment required by Law to be pronounced or awarded against any persons convicted or adjudged guilty of the said crime, in such cases, is, that they should be drawn on a hurdle to the place of execution, and there be hanged by the neck, but not until they are dead, but that they should be taken down again, and that when they are yet alive their bowels should be taken out, and burnt before their faces; and that afterwards their heads should be severed from their bodies, and their bodies divided into four quarters, and their heads and quarters to be at the King's disposal: And whereas it is expedient in the said cases of High Treason to alter the sentence or judgment now required by Law—Be it therefore enacted by the authority aforesaid, That in all cases of High Treason in which, as the Law now stands, the sentence or judgment ordained by Law is as aforesaid, the sentence or judgment to be pronounced or awarded from and after the passing of this Act against any person convicted or adjudged guilty shall be, that such person shall be drawn on a hurdle to the place of execution, and be there hanged by the neck until such person be dead—and that afterwards the body of such person shall be dissected and anatomized.

XX. And be it further enacted by the authority aforesaid, That whenever any person shall be convicted of Murder and executed therefor, the body of such murderer shall be delivered by the Sheriff, or his Deputy, and his Officers, to a Surgeon, for the purpose of being dissected and anatomized.

XXI. And be it further enacted by the authority aforesaid, That sentence shall be pronounced in open Court immediately after the conviction of such Murderer, and before the Court shall proceed to any other business, unless the Court shall see reasonable cause for postponing the same; in which sentence shall be expressed, not only the usual judgment of death, but also the time appointed for the execution thereof, and the mark of infamy hereby directed for such offenders; in order to impress a just horror in the mind of the offender, and on the minds of such as shall be present of the heinous crime of murder.

XXII. Provided always, And be it enacted by the authority aforesaid, That after such sentence pronounced as aforesaid, in case there shall appear reasonable cause, it shall and may be lawful to and for such Judge or Justice, before whom such criminal shall have been so tried, to stay the execution of the sentence, at the discretion of such Judge or Justice, regard being always had to the true intent and purpose of this Act. Provided also, That it shall be in the power of any such Judge or Justice to appoint the body of any such criminal to be dissected and anatomized.

XXIII. And be it further enacted by the authority aforesaid, That from and after such conviction, and judgment given thereupon, the Gaoler or Keeper to whom such criminal shall be delivered for safe custody, shall confine such prisoner to some cell or other proper and safe place within the prison, separate and apart from the other prisoners; and that no person or persons whatsoever, except the Gaoler or Keeper, or his Servants shall have access to any such prisoner, without licence being first obtained for that purpose, under the hand of such Judge or Justice before whom such offender shall have been tried, or under the hand of the Sheriff, his Deputy or Under Sheriff: Provided always, That in case any such Judge or Justice shall see cause to respite the execution of such offender so condemned as aforesaid, such Judge or Justice may relax or release any or all of the restraints, or regulations hereinbefore or hereinafter directed to be observed by the Gaoler or Keeper of the Prison where such prisoner shall be confined, by any licence in writing, signed by such Judge or Justice for that purpose, for and during the time of such stay of execution, any thing hereinbefore contained to the contrary thereof notwithstanding.

XXIV. And be it further enacted by the authority aforesaid, That after sentence passed, as aforesaid, and until the execution thereof, such offender shall be fed with bread and water only, except in case of any violent sickness, or wound, in which case some known Physician, Surgeon or Apothecary may be admitted by the Gaoler or Keeper of the said Prison, to administer necessaries, the Christian and Surname of such Physician, Surgeon or Apothecary, and his place of abode being first entered in the books of such Prison or Gaol, there to remain; and, in case such Gaoler or Prison Keeper shall offend against, or neglect to put in execution, any of the directions or regulations hereby enacted to be observed, such Gaoler or Prison Keeper shall for such offence forfeit his office, and be imprisoned for a time not exceeding three months, upon conviction thereof, by indictment.

XXV. And be it further enacted by the authority aforesaid, That from and after the passing of this Act, benefit of Clergy in this Province shall be abolished, and that the same need not in any case be prayed, and shall not in any case be allowed, any Law, Statute or Usage to the contrary notwithstanding; and that in all cases of crimes made punishable by this Act with death, the effect

of such provision shall be the same as in the case of any offence which, before the passing of this Act, was made punishable with death without benefit of Clergy; and that all persons who may hereafter be duly convicted of any offence not specified in this Act, and which before the passing thereof was punishable in this Province with death, with or without benefit of Clergy, shall be liable to be banished, or to be transported beyond the seas for life, or for such term not less than seven years, as the Court before which such person shall be convicted shall adjudge, or shall be liable, in case such Court shall think fit, to be imprisoned only, or imprisoned and kept to hard labour, or in solitary confinement in the Common Gaol, or in any Penitentiary, or House of Correction, that may be provided for such purposes, for any term not exceeding fourteen years, except persons convicted of returning from transportation or from banishment, with respect to whom the term of imprisonment, with or without hard labour, or by solitary confinement, may, if the Court shall think fit, be extended to the term of his or her natural life: and that in case of Manslaughter, the offender shall be liable to be fined or imprisoned, or both, in the discretion of the Court, Provided that such imprisonment shall not exceed twelve calendar months: And provided, that the offence of Manslaughter shall be punishable by such fine and imprisonment only, and not by all or any of the other descriptions of punishment in this clause before mentioned.

XXVI. And be it further enacted by the authority aforesaid, That if any person shall be convicted, after the passing of this Act, of Forgery, or of uttering any forged deed, will, instrument, note, bill or writing, or of falsely personating any person or persons, which forgery, or which uttering, or which false personating was, before the passing of this Act, punishable with death in this Province, the Court before which such person shall be convicted may, if they shall think fit, adjudge such person (unless in case of a female) to be set in the Pillory, once or oftener, or to be once or oftener publicly or privately whipped, at such time or times, and at such place or places as they may direct, which punishment shall either be in addition to any other punishment which the Court, according to Law, may award, or otherwise, as may to them appear proper.