

Provincial Statutes of Canada, passed in the year 1841. Kingston: Stewart Derbishire & George Desbarats, 1841.

4 & 5 Victoria – Chapter 25

An Act for consolidating and amending the Laws in this Province, relative to Larceny and other Offences connected therewith. 18th September, 1841.

Whereas it is expedient to amend and consolidate the provisions contained in various Statutes now in force in this Province, relative to Larceny and other offences of stealing, and to Burglary, Robbery, and threats for the purpose of Robbery or of Extortion, and to embezzlement, false pretences, and the receipt of stolen property; Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, intituled *An Act to Re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*; and it is hereby enacted by the authority of the same, that this Act shall commence from and after the first day of January, one thousand eight hundred and forty two.

II. And be it enacted, that the distinction between Grand Larceny and Petty Larceny shall be abolished; and every Larceny, whatever be the value of the property stolen, shall be deemed to be of the same nature, and shall be subject to the same incidents in all respects, as Grand Larceny was before the commencement of this Act; and every Court whose power as to the trial of Larceny was, before the commencement of this Act, limited to Petty Larceny, shall have power to try every case of Larceny, the punishment of which cannot exceed the punishment hereinafter mentioned for simple Larceny, and also to try all accessories to such Larceny.

III. And be it enacted, that every person convicted of Simple Larceny, or of any felony hereby made punishable like Simple Larceny, shall (except in the cases hereinafter otherwise provided for) be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

IV. And with regard to the place and mode of imprisonment for all indictable offences punishable under this Act;— Be it enacted, that where any person shall be convicted of any felony or misdemeanor punishable under this Act, for which imprisonment may be awarded, it shall be lawful for the Court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour, in the Common Gaol, or House of Correction, and also to direct that the offender shall be kept in solitary confinement for any portion or portions of such imprisonment, or of such imprisonment with hard labour, not exceeding one month at any one time, and not exceeding three months in any one year, as to the Court in its discretion shall seem meet.

V. And be it enacted, that if any person shall steal any tally, order, or other security whatsoever, entitling or evidencing the title of any person or body corporate to any share or interest in any

public stock or fund, whether of this Province or of the United Kingdom of Great Britain and Ireland, or of any British Colony, or of any Foreign State or Colony, or in any fund of any body corporate, company or society, or to any deposit in any Savings Bank, or shall steal any debenture, deed, bond, bill, note, warrant, order, or other security whatsoever, for money or for payment of monies, whether of this Province or of Great Britain, or of any British Colony, or of any Foreign State or Colony, or shall steal any warrant or order for the delivery or transfer of any goods or valuable thing, every such offender shall be deemed guilty of felony, of the same nature and in the same degree, and punishable in the same manner, as if he had stolen any chattel of like value with the share, interest, or deposit to which the security so stolen may relate, or with the money due on the security so stolen or secured thereby and remaining unsatisfied, or with the value of the goods or other valuable thing mentioned in the warrant or order; and each of the several documents hereinbefore enumerated, shall, throughout this Act, be deemed for every purpose to be included under, and denoted by, the words "valuable security."

VI. And be it enacted, that whosoever shall rob any person, and at the time of or immediately before or immediately after such robbery, shall stab, cut, or wound any person, shall be guilty of felony, and being convicted thereof shall suffer death.

VII. And be it enacted, that whosoever shall, being armed with any offensive weapon or instrument, rob, or assault with intent to rob any person, or shall, together with one or more person or persons, rob, or assault with intent to rob any person, or shall rob any person, and at the time of or immediately before or immediately after such robbery, shall beat, strike, or use any other personal violence to any person, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

VIII. And be it enacted, that whosoever shall accuse or threaten to accuse, any person of the abominable crime of buggery, committed either with mankind or with beast, or of any assault with intent to commit the said abominable crime, or of any attempt or endeavour to commit the said abominable crime, or of making or offering any solicitation, persuasion, promise or threat to any person whereby to move or induce such person to commit or permit the said abominable crime, with, a view or intent in any of the cases aforesaid, to extort or gain from such person, and shall by intimidating such person, by such accusation or threat, extort or gain from such person any property, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years, or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years.

IX. And be it enacted, that whosoever shall rob any person, or shall steal any chattel, money, or valuable security from the person of another, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not exceeding fourteen years nor less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

X. And be it enacted, that whosoever shall assault any person, with intent to rob, shall be guilty of felony, and being convicted thereof shall (save and except in cases where a greater punishment is provided by this Act,) be liable to be imprisoned for any term not exceeding three years.

XI. And be it enacted, that whosoever shall, with menaces or by force, demand any chattel, money, or valuable security, of any person with intent to steal the same, shall be guilty of felony, and being convicted thereof, shall be liable to be imprisoned for any term not exceeding three years.

XII. And be it enacted, that if any person shall knowingly send or deliver any letter or writing, demanding of any person with menaces, and without any reasonable or probable cause, any chattel, money, or valuable security; or if any person shall accuse or threaten to accuse, or shall knowingly send or deliver any letter or writing, accusing or threatening to accuse any person of any crime punishable by law with death, or transportation, or of any assault with intent to commit any rape, or of any attempt or endeavor to commit rape with a view or intent to extort or gain from such person any chattel, money or valuable security, every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour at the Provincial Penitentiary for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

XIII. And be it enacted, that if any person shall break and enter any Church or Chapel, and steal therein any chattel, or having stolen any chattel, money, or valuable security in any Church or Chapel shall break out of the same, every such offender being convicted thereof, shall be liable to be imprisoned at hard labour at the Provincial Penitentiary for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

XIV. And be it enacted, that whosoever shall burglariously break and enter into any dwelling house, and shall assault with intent to murder any person being therein, or shall stab, cut, wound, beat, or strike any such person, shall be guilty of felony, and being convicted thereof shall suffer death.

XV. And be it enacted, that whosoever shall be convicted of the crime of burglary shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for the term of his natural life, or for any term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

XVI. Provided always, and be it enacted, that so far as the same is essential to the offence of burglary, the night shall be considered and is hereby declared to commence at nine of the clock in the evening of each day, and to conclude at six of the clock in the morning of the next succeeding day: And it is hereby declared that if any person shall enter the dwelling house of another with intent to commit felony, or being in such dwelling house, shall commit any felony, and shall in

either case break out of the said dwelling house in the night time, such person shall be deemed guilty of burglary.

XVII. And be it enacted, that whosoever shall steal any chattel, money or valuable security in any dwelling house, and shall by any menace or threat put any one, being therein, in bodily fear, shall be guilty of felony, and being convicted thereof, shall be liable to be imprisoned at hard labour in the Provincial Penitentiary for any term not exceeding fourteen years nor less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

XVIII. Provided always, and be it enacted, 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, or for any of the purposes aforesaid, unless there shall be a communication between such building and dwelling house, either immediate, or by means of a covered and inclosed passage leading from the one to the other.

XIX. And be it enacted, that if any person, shall break and enter any building, and steal therein any chattel, money, or valuable security, such building being within the curtilage of a dwelling house, and occupied therewith, but not being part thereof, according to the provision hereinbefore mentioned, every such offender, being convicted thereof, (either upon an indictment for the same offence, or upon an indictment for burglary, house breaking, or stealing to the value of five pounds sterling, in a dwelling house, containing a separate count for such offence,) shall be liable to be imprisoned at hard labour in the Provincial Penitentiary for any term not exceeding fourteen years, nor less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

XX. And be it enacted, that if any person shall break and enter any shop, warehouse, or counting house, and steal therein any chattel, money or valuable security, every such offender, being convicted thereof, shall be liable to any of the punishments which the Court may award as hereinbefore last mentioned.

XXI. And be it enacted, that if any person shall steal any goods or merchandize in any vessel, barge, or boat of any description whatsoever, in any port of entry or discharge, or upon any navigable river or canal, or in any creek belonging to or communicating with any such port, river, or canal, or shall steal any goods or merchandize from any dock, wharf, or quay, adjacent to any such port, river, canal or creek, every such offender, being convicted thereof, shall be liable to any of the punishments which the Court may award as hereinbefore last mentioned.

XXII. And be it enacted, that whosoever shall plunder or steal any part of any ship or vessel which shall be in distress, or wrecked, stranded or cast on shore, or any goods, merchandize, or articles of any kind belonging to such ship or vessel, and be convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not exceeding fourteen years, nor less than seven years, or to be imprisoned in any other prison, or place of confinement for any term not exceeding two years.

XXIII. And be it enacted, that if any goods, merchandize, or articles of any kind, belonging to any ship or vessel in distress, or wrecked, stranded, or cast on shore, as aforesaid, shall, by virtue of a search-warrant, to be granted as hereinafter mentioned, be found in the possession of any person, or on the premises of any person with his knowledge, and such person, being carried before a Justice of the Peace, shall not satisfy the Justice that he came lawfully by the same, then the same shall, by order of the Justice, be forthwith delivered over to, or for the use of, the rightful owner thereof; and the offender, on conviction of such offence before the Justice, shall forfeit and pay such sum of money, not exceeding twenty pounds, as to the Justice shall seem meet.

XXIV. And be it enacted, that if any person shall offer or expose for sale any goods, merchandize, or articles whatsoever, which shall have been unlawfully taken, or reasonably suspected so to have been, from any ship or vessel in distress, or wrecked, stranded, or cast on shore as aforesaid, in every such case any person to whom the same shall be offered for sale, or any officer of the Customs, or Peace Officer, may lawfully seize the same, and shall with all convenient speed carry the same, or give notice of such seizure, to some Justice of the Peace; and if the person who shall have offered or exposed the same for sale, being duly summoned by such Justice, shall not appear and satisfy the Justice that he came lawfully by such goods, merchandize, or articles, then the same shall, by order of the Justice, be forthwith delivered over to, or for the use of the rightful owner thereof, upon payment of a reasonable reward, (to be ascertained by the Justice,) to the person who seized the same; and the offender, on conviction of such offence by the Justice, shall forfeit and pay such sum of money not exceeding twenty pounds, as to the Justice shall seem meet.

XXV. And be it enacted, that if any person shall steal, or shall for any fraudulent purpose take from its place of deposit for the time being, or from any person having the lawful custody thereof, or shall unlawfully and maliciously obliterate, injure, or destroy any record, writ, return, panel, process, interrogatory, deposition, affidavit, rule, order, or warrant of attorney, or any original document whatsoever, of or belonging to any Court of Justice, or relating to any matter, civil or criminal, begun, depending, or terminated in any such Court, or any bill, answer, interrogatory, deposition, affidavit, order, or decree, or any original document whatsoever, of or belonging to any Court, or relating to any cause, or matter begun, depending, or terminated in any such Court, or any notarial minute, or the original of any other authentic act, every such offender shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary, for any term not exceeding fourteen years, nor less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years, or to suffer such other punishment by fine or imprisonment, or by both, as the Court shall award; and it shall not in any indictment for such offence be necessary to allege that the article, in respect of which the offence is committed, is the property of any person, or that the same is of any value.

XXVI. And be it enacted, that if any person shall, either during the life of the testator or testatrix, or after his or her death, steal, or for any fraudulent purpose destroy or conceal, any will, codicil, or other testamentary instrument, whether the same shall relate to real or personal estate, or to

both, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable to any of the punishments which the Court may award, as hereinbefore last mentioned; and it shall not in any indictment for such offence be necessary to allege that such will, codicil, or other instrument, is the property of any person, or that the same is of any value.

XXVII. And be it enacted, that if any person shall steal any original paper or parchment, written or printed, or partly written and partly printed, being evidence of the title, or of any part of the title to any real estate, every such offender shall be deemed guilty of a misdemeanor, and, being convicted thereof, shall be liable to any of the punishments which the Court may award, as hereinbefore last mentioned; and in any indictment for such offence, it shall be sufficient to allege the thing stolen to be evidence of the title, or of part of the title, of the person or of some one of the persons having a present interest, whether legal or equitable, in the real estate to which the same relates, and to mention such real estate or some part thereof; and it shall not be necessary to allege the thing stolen to be of any value.

XXVIII. Provided always, and be it enacted, that nothing in this Act contained relating to either of the misdemeanors aforesaid, nor any proceeding, conviction, or judgment, to be had or taken thereupon, shall prevent, lessen or impeach any remedy at law or equity, which any party aggrieved by any such offence, might or would have had if this Act had not been passed; but nevertheless the conviction of any such offender shall not be received in evidence in any action at law or suit in equity against him; and no person shall be liable to be convicted of either of the misdemeanors aforesaid, by any evidence whatever, in respect of any act done by him, if he shall at any time previously to his being indicted for such offence, have disclosed such act, on oath, in consequence of any compulsory process of any Court of Law or Equity in any action, suit, or proceeding which shall have been *bona fide* instituted by any party aggrieved, or if he shall have disclosed the same in any examination or deposition before any Commissioners of Bankrupt.

XXIX. And be it enacted, that if any person shall steal any horse, mare, gelding, colt, or filly, or any bull, cow, ox, heifer, or calf, or any nun, ewe, sheep, or lamb, or shall wilfully kill any of such cattle with intent to steal the carcass, or skin, or any part of the cattle so killed, every such offender shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not exceeding fourteen years nor less than seven years, or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years.

XXX. And be it enacted, that if any person shall steal any dog, or shall steal any beast or bird ordinarily kept in a state of confinement, not being the subject of larceny at common law, every such offender, being convicted thereof before a Justice of the Peace, shall for every such offence forfeit and pay, over and above the value of the dog, beast, or bird, such sum of money not exceeding five pounds, as to the Justice shall seem meet.

XXXI. And be it enacted, that if any person shall steal, or shall cut, break, root up, or otherwise destroy or damage with intent to steal, the whole or any part of any tree, sapling, or shrub, or any underwood, wheresoever the same may be respectively growing, the stealing of such article or

articles, or the injury done, being to the amount of a shilling at the least, every such offender being convicted before a Justice of the Peace, shall for every such offence forfeit and pay over and above the value of the article or articles stolen, or the amount of the injury done, such a sum of money, not exceeding five pounds, as to the Justice shall seem meet.

XXXII. And be it enacted, that if any person shall steal, or shall cut, break, or throw down with intent to steal, any part of any live or dead fence, or any wooden post, pale, or rail, set up or used as a fence, or any stile or gate, or any part thereof, respectively, every such offender, being convicted before a Justice of the Peace, shall for every such offence forfeit and pay, over and above the value of the article or articles so stolen, or the amount of the injury done, such sum of money not exceeding five pounds, as to the Justice shall seem meet.

XXXIII. And be it enacted, that if the whole or any part of any tree, sapling, or shrub, or any underwood, or any part of any live or dead fence, or any post, pale, rail, stile, or gate, or any part thereof, being of the value of two shillings at the least, shall, by virtue of a search warrant, to be granted as hereinafter mentioned, be found in the possession of any person, or on the premise of any person with his knowledge, and such person, being carried before a Justice of the Peace, shall not satisfy the Justice that he came lawfully by the same, he shall on conviction by the Justice, forfeit and pay, over and above the value of the article or articles so found, any sum not exceeding two pounds.

XXXIV. And be it enacted, that if any person shall steal, or shall destroy, or damage with intent to steal any tree, sapling, shrub, bush, plant, root, fruit, or vegetable production growing in any garden, orchard, nursery-ground, hot-house, green-house, or conservatory, every such offender being convicted thereof before a Justice of the Peace, shall forfeit and pay, over and above the value of the article or articles so stolen, or the amount, of the injury done, such sum of money, not exceeding five pounds, as to the Justice shall seem meet; and if any person so convicted shall afterwards commit any of the said offences, such offender shall be deemed guilty of felony, and being convicted thereof shall be liable to be punished in the same manner as in the case of Simple Larceny.

XXXV. And be it enacted, that if any person shall steal, or shall destroy or damage, with intent to steal, any cultivated root or plant used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or for or in the course of any manufacture, and growing in any land open or enclosed, not being a garden, orchard or nursery-ground, every such offender, being convicted thereof before a Justice of the Peace, shall forfeit and pay, over and above the value of the article or articles so stolen, or the amount of the injury done, such sum of money, not exceeding twenty shillings, as to the Justice shall seem meet, and in default of payment thereof, together with the costs, if ordered, shall be committed to the House of Correction for any term not exceeding one calendar month, unless payment be sooner made.

XXXVI. And be it enacted, that if any person shall steal or rip, cut or break with intent to steal, any glass or wood-work belonging to any building whatsoever, or any lead, iron, copper, brass, or other metal, or any utensil or fixture, whether made of metal or other material, respectively, fixed

in or to any building whatsoever, or any thing made of metal fixed in any land, being private property, or for a fence to any dwelling house, garden or area, or in any square, street, or other place, dedicated to public use or ornament, every such offender shall be guilty of felony, and being convicted thereof, shall be liable to be punished in the same manner as in the case of simple Larceny; and in case of any such thing fixed in any square, street, or other like place it shall not be necessary to allege the same to be the property of any person.

XXXVII. And for the punishment of depredations committed by tenants and lodgers; Be it enacted, that if any person shall steal any chattel or fixture let to be used by him or her, in or with any house or with any house or lodging, whether the contract shall have been entered into by him or her, or by her husband, or by any person on behalf of him or her, or her husband, every such offender shall be guilty of felony, and being convicted thereof, shall be liable to be punished in the same manner as in the case of simple Larceny; and in every such case of stealing any chattel, it shall be lawful to prefer an indictment in the common form as for Larceny, and in every such case of stealing any fixture, to prefer an indictment in the same form as if the offender were not a tenant or lodger, and in either case to lay the property in the owner or person letting to hire.

XXXVIII. And for the punishment of depredations committed by clerks and servants in cases not punishable capitally; Be it enacted, that if any clerk or servant shall steal any chattel, money, or valuable security belonging to or in the possession or power of his master, every such offender, being convicted thereof, shall be liable at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not exceeding fourteen years, nor less than seven years, or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years.

XXXIX. And for the punishment of embezzlements committed by clerks and servants: Be it declared and enacted, that if any clerk or servant, or any person employed for the purpose or in the capacity of a clerk or servant, shall by virtue of such employment receive or take into his possession any chattel, money or valuable security for, or in the name or on the account of his master, and shall fraudulently embezzle the same or any part thereof, every such offender shall be deemed to have feloniously stolen the same from his master, although such chattel, money or security was not received into the possession of such master otherwise than by the actual possession of his clerk, servant or other person so employed; and every such offender being convicted thereof, shall be liable, at the discretion of the Court, to any of the punishments which the Court may award as hereinbefore last mentioned.

XL. And for preventing the difficulties that have been experienced in the prosecution of the last mentioned offenders; Be it enacted, that it shall be lawful to charge in the indictment and proceed against the offender for any number of distinct acts of embezzlement, not exceeding three, which may have been committed by him against the same master within the space of six calendar months from the first to the last of such acts; and in every such indictment, except where the offence shall relate to any chattel, it shall be sufficient to allege the embezzlement to be of money, without specifying any particular coin or valuable security; and such allegation, so far as regards the description of the property, shall be sustained if the offender shall be proved to have

embezzled any amount, although the particular species of coin or valuable security of which such amount was composed shall not be proved; or, if he shall be proved to have embezzled any piece of coin or valuable security, or any portion of the value thereof, although such piece of coin or valuable security may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same, and such part shall have been returned accordingly.

XLI. And for the punishment of embezzlements committed by agents entrusted with property, Be it enacted, that if any money or security for the payment of money shall be intrusted to any banker, merchant, broker, attorney or other agent, with any direction in writing to apply such money or any part thereof, or the proceeds or any part of the proceeds of such security, for any purpose specified in such direction, and he shall in violation of good faith, and contrary to the purpose so specified, in any wise convert to his own use or benefit such money, security or proceeds, or any part thereof, respectively, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary, for any term not less than seven years, or imprisoned in any other Prison or place of confinement for any term not exceeding two years, or to suffer such other punishment by fine or imprisonment, or by both, as the Court shall award; and if any chattel or valuable security, or any power of attorney for the sale or transfer of any share or interest in any public stock or fund, whether of this Province or of the United Kingdom of Great Britain and Ireland, or of Great Britain or of Ireland, or of any British Colony or Foreign State or Colony, or in any fund of any body corporate, company, or society, shall be intrusted to any banker, merchant, broker, attorney, or other agent for safe custody, or for any special purpose without any authority to sell, negotiate, transfer or pledge, and he shall in violation of good faith, and contrary to the object or purpose for which such chattel, security or power of attorney shall have been entrusted to him, sell, negotiate, transfer, pledge or in any manner convert to his own use or benefit such chattel or security, or the proceeds of the same or any part thereof, or the share or interest in the stock or fund to which such power of attorney shall relate or any part thereof, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable at the discretion of the Court, to any of the punishments which the Court may award as hereinbefore last mentioned.

XLII. Provided always, and be it enacted, that nothing hereinbefore contained relating to agents, shall affect any trustee in or under any instrument whatever, or any mortgagee of any properly real or personal in respect of any act done by such trustee or mortgagee in relation to the property comprised in or affected by any such trust or mortgage; nor shall restrain any banker, merchant, broker, attorney or other agent from receiving any money which shall be or become actually due and payable upon or by virtue of any valuable security according to the tenor and effect thereof, in such manner as he might have done if this Act had not been passed; nor from selling, transferring or otherwise disposing of any securities or effects in his possession, upon which he shall have any lien, claim or demand, entitling him by law so to do; unless such sale, transfer, or other disposal shall extend to a greater number or part of such securities or effects, than shall be requisite for satisfying such lien, claim or demand.

XLIII. And be it enacted, that if any factor or agent, intrusted for the purpose of sale with any goods or merchandize, or intrusted with any bill of lading, warehouse keeper's or wharfinger's certificate or warrant or order for delivery of goods or merchandize, shall for his own benefit and in violation of good faith, deposit or pledge any such goods or merchandize, or any of the said documents as a security for any money, or negotiable instrument borrowed or received by such factor or agent, at or before the time of making such deposit or pledge, or intended to be thereafter borrowed or received, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years, or imprisoned in any other Prison or place of confinement, for any term not exceeding two years, or to suffer other punishment by fine or imprisonment, or by both, as the Court shall award, but no such factor or agent shall be liable to any prosecution for depositing or pledging any such goods or merchandize, or any of the said documents, in case the same shall not be made a security for or subject to the payment of any greater sum of money than the amount which at the time of such deposit, or pledge was justly due and owing to such factor or agent from his principal, together with the amount of any bill or bills of exchange drawn by or on account of such principal, and accepted by such factor or agent.

XLIV. Provided always, and be it enacted, that nothing in this Act contained, nor any preceding conviction or judgment to be had or taken thereupon against any banker, merchant, broker, factor, attorney, or other agent as aforesaid, shall prevent, lessen or impeach any remedy at law or in equity, which any party aggrieved by such offence might or would have had if this Act had not been passed; but, nevertheless, the conviction of any such offender shall not be received in evidence in any action at law or suit in equity against him; and no banker, merchant, broker, factor, attorney, or other agent as aforesaid, shall be liable to be convicted by any evidence whatever as an offender against this Act, in respect of any act done by him, if he shall at any time previously to his being indicted for such offence, have disclosed such act on oath, in consequence of any compulsory process of any Court of law or equity in any action, suit or proceeding which shall have been *bona fide* instituted by any party aggrieved, or if he shall have disclosed the same in any examination or deposition before any commissioners of bankrupt.

XLV. And whereas a failure of justice frequently arises from the subtle distinction between larceny and fraud: for remedy thereof, be it enacted, that if any person shall, by any false pretence, obtain from any other person any chattel, money, or valuable security, with intent to cheat or defraud any person of the same, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not exceeding fourteen years, nor less than seven years, or imprisoned in any other prison or place of confinement for any term not exceeding two years, or to suffer such other punishment, by fine or imprisonment, or by both, as the Court shall award: Provided always, that if upon the trial of any person indicted for such misdemeanor, it shall be proved that he obtained the property in question in any such manner as to amount in law to larceny, he shall not by reason thereof be entitled to be acquitted of such misdemeanor; and no such Indictment shall be removeable by *certiorari*; and no person tried for such misdemeanor shall be liable to be afterwards prosecuted for larceny upon the same facts.

XLVI. And with regard to receivers of stolen property, Be it enacted, that if any person shall receive any chattel, money, valuable security, or other property whatsoever, the stealing or taking whereof shall amount to a felony, either at common law or by virtue of this Act, such person knowing the same to have been feloniously stolen or taken, every such receiver shall be guilty of felony, and may be indicted and convicted either as an accessory after the fact, or for a substantive felony, and in the latter case, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice; and every such receiver howsoever convicted, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not exceeding fourteen years, nor less than seven years, or imprisoned in any other prison or place of confinement for any term not exceeding two years: Provided always, that no person howsoever tried for receiving as aforesaid, shall be liable to be prosecuted a second time for the same offence.

XLVII. And be it enacted, that if any person shall receive any chattel, money, valuable security, or other property whatsoever, the stealing, taking, obtaining, or converting whereof is made ail indictable misdemeanor by this Act, such person knowing the same to have been unlawfully stolen, taken, obtained, or converted, even such receiver shall be guilty of a misdemeanor, or may be indicted and convicted thereof, whether the person guilty of the principal misdemeanor shall or shall not have been previously convicted thereof, or shall or shall not be amenable to justice; and every such receiver shall on conviction, be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any other term not less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

XLVIIII. And be it enacted, that if any person shall receive any chattel, money, valuable security, or other property whatsoever, knowing the same to have been feloniously or unlawfully stolen, taken, obtained or converted, every such person whether charged as an accessory after the fact to the felony, or with a substantive felony, or with a misdemeanor only, may be dealt with, tried, and punished in any District, County or place in which he shall have or shall have had any such property in his possession, or in any District, County, or place in which the party guilty of the principal felony or misdemeanor may by law be tried, in the same manner as such receiver may be dealt with, indicted, tried, and punished in the District, County, or place where he actually received such property.

XLIX. And to encourage the prosecution of offenders, be it enacted, that if any person guilty of any such felony or misdemeanor as aforesaid, in stealing, taking, obtaining, or converting, or in knowingly receiving any chattel, money, valuable security, or other property whatsoever, shall be indicted for any offence by or on the behalf of the owner of the property, or his heir, curator, executor, or administrator, and convicted thereof, in such case the property shall be restored to the owner or his representative; and the Court before whom any such person shall be so convicted, shall have power to award from time to time writs of restitution for the same property, or to order the restitution thereof in a summary manner: Provided always, that if it shall appear, before any award or order made, that any valuable security shall have been *bona fide*, paid or discharged by some person or body corporate liable to the payment thereof, or being a negotiable

instrument, shall have been *bona fide* taken or received by transfer or delivery by some person or body corporate, for a just and valuable consideration without any notice or without any reasonable cause to suspect that the same had by any felony or misdemeanor been stolen, taken, obtained, or converted as aforesaid, in such case the Court shall not award or order the restitution of such security.

L. And be it enacted, that every person who shall corruptly take any money or reward, directly or indirectly, under pretence or on account of helping any person to any chattel, money, valuable security, or other property whatsoever, which shall by any felony or misdemeanor have been stolen, taken, obtained, or converted, as aforesaid, shall, (unless he cause the offender to be apprehended and brought to trial for the same,) be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned at hard labour in the Provincial Penitentiary for any term not less than seven years, or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years.

LI. And be it enacted, that if any person shall publicly advertise a reward for the return of any property whatsoever, which shall have been stolen or lost, and shall in such advertisement use any words purporting that no question will be asked, or shall make use of any words in any public advertisement, purporting that a reward will be given or paid for any property which shall have been stolen or lost, without seizing or making any inquiry after the person producing such property, or shall promise or offer in any such public advertisement to return to any pawnbroker or other person who may have bought or advanced money by way of a loan upon any property stolen or lost, the money so paid or advanced, or any other sum of money or reward for the return of such property, or if any person shall print or publish any such advertisement in any of the above cases, every such person shall forfeit the sum of twenty pounds for every such offence, to any person who will sue for the same, by action of debt to be recovered with full costs of suit.

LII. And be it enacted, that where the stealing or taking of any property whatsoever is by this Act punishable on summary conviction, either for every offence, or for the first and second offence only, or for the first offence only, any person who shall receive any such property, knowing the same to be unlawfully come by, shall on conviction thereof before a Justice of the Peace, be liable for every first, second or subsequent offence of receiving, to the same forfeiture and punishment to which a person guilty of a first, second, or subsequent offence of stealing or taking such property is by this Act made liable.

LIII. And be it enacted, that in the case of every felony punishable under this Act, every principal in the second degree, and every accessory before the fact, shall be punishable with death or otherwise, in the same manner as the principal in the first degree is by this Act punishable; and every accessory after the fact to any felony punishable under this Act, (except only a receiver of stolen property,) shall on conviction be liable to be imprisoned for any term not exceeding two years; and every person who shall aid, abet, counsel or procure the commission of any misdemeanor punishable under this Act, shall be liable to be indicted and punished as a principal offender.

LIV. And be it enacted, that if any person shall aid, abet, counsel, or procure the commission of any offence which is by this Act punishable on summary conviction, either for every time of its commission or for the first and second time only, or for the first time only, every such person shall, on conviction before a Justice or Justices of the Peace, be liable for every first, second or subsequent offence of aiding, abetting, counselling, or procuring, to the same forfeiture and punishment to which a person guilty of a first, second or subsequent offence as a principal offender is by this Act made liable.

LV. And for the more effectual apprehension and discovery of all offenders punishable under this Act; Be it enacted, that any person found committing any offence punishable either upon indictment, or upon summary conviction, by virtue of this Act, may be immediately apprehended without a warrant, by any Peace Officer, or by the owner of the property on or with respect to which the offence shall be committed, or by the servant of any person authorized by such owner, and forthwith taken before some neighbouring Justice of the Peace, to be dealt with according to law: and if any credible witness shall prove upon oath, before a Justice of the Peace, that there is reasonable cause to suspect that any property whatsoever, on or with respect to which any such offence shall have been committed, is in any dwelling-house, out-house, garden, yard, croft, or other place or places, the Justice may grant a warrant to search such dwelling-house, out-house, garden, yard, croft or other place or places, for such property, as in the case of stolen goods; and any person to whom any property shall be offered to be sold, pawned, or delivered, if he shall have reasonable cause to suspect that any such offence has been committed, on or with respect to such property, is hereby authorized, and if in his power is required to apprehend and forthwith to carry before a Justice of the Peace, the party offering the same, together with such property, to be dealt with according to law.

LVI. And be it enacted, that the prosecution of every offence punishable on summary conviction under this Act, shall be commenced within three calendar months after the commission of the offence and not otherwise; and the evidence of the party aggrieved shall be admitted in proof of the offence.

LVII. And for the more effectual prosecution of all offences punishable on summary conviction under 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 at a time and place to be named in the 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 personally, or by leaving the same at his usual place of abode) the Justice may either proceed to hear and determine the case *ex parte*, or issue his warrant for apprehending such person and bringing him before himself, or some other Justice or Justices of the Peace; or the Justice before whom the charge shall be made, may (if he shall so think fit,) without any previous summons (unless when otherwise specially directed) issue such a warrant; and the Justice or Justices before whom the person charged shall appear or be brought, shall proceed to hear and determine the case.

LVIII. And with regard to the application of all forfeitures and penalties upon summary convictions under this Act; Be it enacted, that every sum of money which shall be forfeited for, or as the value of any property stolen or taken, or for or as the amount of any injury done (such value or amount to be assessed in each case by the convicting Justice or Justices) shall be paid to the party aggrieved, if known, except where such party shall have been examined in proof of the offence, and in that case, or where the party aggrieved is unknown, such sum shall be applied in the same manner as a penalty: Provided always, that where several persons shall join in the commission of the same offence, and shall, upon conviction thereof, each be adjudged to forfeit a sum equivalent to the value of the property, or to the amount of the injury done, in every such case no further sum shall be paid to the party aggrieved than that which shall be forfeited by one of such offenders only, and the corresponding sum or sums, forfeited by the other offender or offenders, shall be applied in the same manner as any penalty imposed by a Justice of the Peace is hereinbefore directed to be applied.

LIX. And be it enacted, that in every case of a summary conviction under this Act, where the sum which shall be forfeited for the value of the property stolen or taken, or for the amount of the injury done, or which shall be imposed as a penalty by any Justice or Justices, together with the costs, if awarded, (which costs such Justice or Justices is and are hereby authorized to award, if he or they shall think fit, in any case of a summary conviction under this Act) shall not be paid either immediately after the conviction, or within such period as the Justice or Justices shall at the time of the conviction appoint, which he or they is and are hereby authorized to appoint, it shall be lawful for the convicting Justice or Justices (unless where otherwise specially directed,) to commit the offender to the Common Gaol or House of Correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, according to the discretion of the Justice or Justices, for any term not exceeding two calendar months, where the amount of the sum forfeited, or of the penalty imposed, or of both, as the case may be, together with the costs, shall not exceed five pounds; and for any term not exceeding six calendar months, where the amount with costs shall exceed five pounds, and shall not exceed ten pounds; the commitment to be determinable in each of the cases aforesaid, upon payment of the amount and costs.

LX. Provided always, and be it enacted, that where any person shall be summarily convicted, before a Justice or Justices of the Peace, of any offence against this Act, and it shall be a first conviction, it shall be lawful for the Justice or Justices, if he or they shall so think fit, to discharge the offender from his conviction, upon his making such satisfaction to the party aggrieved, for damages and costs, or either of them, as shall be ascertained by such Justice or Justices.

LXI. And be it enacted, that it shall be lawful for the Queen's Majesty, and for the Governor, Lieutenant Governor, or Person Administering the Government of this Province, to extend the Royal Mercy to any person imprisoned by virtue of this Act, although he shall be imprisoned for non-payment of money to some party other than the Crown.

LXII. And be it enacted, that in case any person convicted of any offence punishable upon summary conviction by virtue of this Act, shall have paid the sum adjudged to be paid, together with costs, if awarded, under such conviction, or shall have received a remission thereof from the

Crown, or shall have suffered the imprisonment awarded for non-payment thereof, or the imprisonment adjudged in the first instance, or shall have been discharged from his conviction in the manner aforesaid, in every such case he shall be released from all further or other proceedings for the same cause.

LXIII. And be it enacted, that the Justice or Justices before whom any person shall be convicted of any offence against this Act, may cause the conviction to be drawn up in the following form of words, or in any other form of words to the same effect, as the case shall require, videlicet: "Be it remembered, that on the _____ day of _____ in the year of our Lord _____ at _____ in the District of _____ (as the case may be) A. O. is convicted before me, J. P. one of Her Majesty's Justices (or before us J. P. and S. L. Justices) of the Peace for the said District, for that he, the said A. O. did (specify the offence and the time and place when, and where the same was committed, as the case may be, and on a second conviction state the first conviction) and I, the said J. P. (or, we the said J. P. and S. L.) adjudge the said A. O. for his said offence to be imprisoned in the _____ (or, to be imprisoned in the _____ and there kept to hard labour) for the space of _____ (or, to forfeit and pay _____ here state the penalty actually imposed, or state the penalty and also the value of the articles stolen, embezzled or taken, or the amount of the injury done, as the case may be) and (in any case where costs shall be awarded) also to pay the sum of _____ for costs, and in default of immediate payment of the said sum (or sums,) to be imprisoned in the _____ or to be imprisoned in the _____ and there kept to hard labour, for the space of _____ unless the said sum (or sums, shall be sooner paid (or, and I or we) order that the said sum (or sums) shall be paid by the said A. O. on or before the _____ day of _____ that the said sum of _____ (i.e. the penalty only) shall be paid to me (or us the convicting Justice or Justices,) and that the sum of _____ (i.e. the value of the articles stolen, or the amount of the injury done) shall be paid to C. D. (the party aggrieved, unless he is unknown or has been examined in proof of the offence, in which case state that fact, and, dispose of the whole like the penalty as before) and (if the Justice or Justices shall think proper to award the complainant his costs) I (or we) order that the said sum of _____ for costs shall be paid to C. D. (the complainant). Given under my hand and seal, (or our hands and seals) the day and year first above mentioned."

LXIV. And be it enacted, that in all cases where by this Act two or more Justices of the Peace are authorised and required to hear and determine any complaint, one Justice shall be competent to receive the original information or complaint, and to issue the summons or warrant requiring the parties to appear before two or more Justices of the Peace; and after examination upon oath into the merits of the said complaint, and the adjudication thereupon by any such two Justices being made, all and every the subsequent proceedings to enforce obedience thereto, or otherwise, whether respecting the penalty, fine, imprisonment, costs, or other matter or thing relating to the offence, may be enforced by either of the said Justices, or by any other Justice of the Peace for the same District, County, City, Town or Place, in such and the like manner as if done by the same two Justices who so heard and adjudged the said complaint; and where the original complaint or information shall be made to any Justice or Justices of the Peace, different from the Justice or Justices before whom the same shall be heard and determined, the form of conviction shall be made conformable and according to the fact.

LXV. And be it enacted, that in all cases where the sum adjudged to be paid upon any summary conviction, shall exceed five pounds, or the imprisonment adjudged shall exceed one calendar month, or the conviction shall take place before one Justice only, any person who shall think himself aggrieved by any such conviction, may appeal to the next Court of General, or Quarter Sessions, which shall be holden not less than twelve days after the day of such conviction, for the District, County, or Place wherein the cause of complaint shall have arisen: Provided that such person shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at the least before such Sessions; and shall also either remain in custody until the Sessions, or enter into recognizance with two sufficient sureties before a Justice of the Peace, conditioned personally to appear at the said Sessions, and to try such appeal, and to abide the judgment of the Court thereupon, and to pay such costs as shall be by the Court awarded; and on such being given, and such recognizance being entered into, the Justice before whom the same shall be entered into, shall liberate such person, if in custody; and the Court at such Sessions shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs to either party, as to the Court shall seem meet; and in case of the dismissal of the appeal or the affirmance of the conviction, the Court shall order and adjudge the offender to be punished according to the conviction, and to pay such costs, if any, as shall be awarded, and shall, if necessary, issue process for enforcing such Judgment.

LXVI. And be it enacted, that every Justice of the Peace before whom any person shall be convicted of any offence against this Act, shall transmit the conviction to the next Court of General or Quarter Sessions, which shall be holden for the District, County or Place wherein the offence shall have been committed, there to be kept by the proper Officer among the Records of the Court; and upon any indictment or information against any person for a subsequent offence, a copy of such conviction, certified by the proper Officer of the Court, or proved to be a true copy, shall be sufficient evidence to prove a conviction for the former offence, and the conviction shall be presumed to have been unappealed against, until the contrary be shewn.

LXVII. And for the protection of persons acting in the execution of this Act; Be it enacted, that all actions and prosecutions to be commenced against any person for any thing done in pursuance of this Act, shall be laid and tried in the District, County, or Place where the fact was committed, and shall be commenced within six 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 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 had shall certify his approbation of the action and of the verdict obtained thereupon.

LXVIII. And be it enacted, that if any person having stolen or otherwise unlawfully taken any chattel, money, valuable security, or other property whatsoever, the stealing or unlawfully taking whereof is made punishable by indictment, by any of the provisions of this Act, in any part of Her Majesty's dominions, shall afterwards have the same property in his possession in any part of this Province, he may be dealt with, indicted, tried and punished for such offence under this Act, in that part of this Province where he shall so have such property, in the same manner as if he had actually stolen or unlawfully taken it in that part; and if any person in any part of this Province shall receive or have any chattel, money, valuable security, or other property whatsoever, which shall have been stolen or otherwise unlawfully taken in any other part of Her Majesty's dominions, such person knowing the said property to have been stolen or otherwise unlawfully taken, he may be dealt with, indicted, tried, and punished for such offence in that part of this Province where he shall so receive or have the stolen property, in the same manner as if it had been originally stolen or unlawfully taken in that part of this Province as aforesaid.

LXIX. And be it enacted, that all fines, forfeitures and penalties imposed by this Act, and all sums expressed as the value of any goods, chattels or other property herein mentioned, shall be deemed and taken to be current money of this Province.

LXX. And be it enacted, that all Acts or parts of Acts or provisions of Law in force in this Province, or any part thereof immediately before the time when this Act shall come in force, which shall be inconsistent with or contradictory to this Act, or which make any provision in any matter provided for by this Act other than such as is hereby made in such matter, shall, from and after the time when this Act shall come into force, be and they are hereby repealed, except in so far as may relate to any offence committed before the said time, which shall be dealt with and punished as if this Act had not been passed.