

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

4 & 5 Victoria – Chapter 26

An Act for consolidating and amending the Laws in this Province relative to Malicious Injuries to Property. 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 Malicious Injuries to 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 whosoever shall unlawfully and maliciously set fire to any dwelling house, any person being therein, shall be guilty of felony, and being convicted thereof shall suffer death.

III. And be it enacted, that whosoever shall unlawfully and maliciously set fire to any Church, Chapel or Meeting House for the exercise of any mode or form of religious worship whatever, or shall unlawfully and maliciously set fire to any house, stable, coach-house, out-house, Warehouse, Office, shop, mill, malt-house, hop-oast, 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, 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.

IV. And be it enacted, that if any person shall unlawfully and maliciously cut, break or destroy, or damage with intent to destroy, or to render useless, any goods or article of silk, woollen, linen or cotton, or of anyone or more of those materials, mixed with each other or mixed with any other material, or any frame-work-knitted piece, stocking, hose or lace, respectively, being in the loom or frame, or on any machine or engine, or on the rack or tenters, or in any stage, process, or progress of manufacture; or shall unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy or to render useless, any warp or shute of silk, woollen, linen, or cotton, or of any one or more of those materials mixed with each other, or mixed with any other material, or any loom, frame, machine, engine, rack, tackle, or implement, whether fixed or moveable, prepared for or employed in carding, spinning, throwing, weaving, fulling, shearing, or otherwise manufacturing or preparing any such goods or articles: or shall by force enter into any house, shop, building, or place, with intent to commit any of the offences aforesaid, 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 less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

V. And be it enacted, that if any person shall unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy or to render useless, any threshing machine, or any machine or engine, whether fixed or moveable, prepared for or employed in any manufacture whatsoever, (except the manufacture of silk, woollen, linen, or cotton goods, or goods of any one or more of those materials mixed with each other, or mixed with any other material, or any framework-knitted piece, stocking, hose or lace,) 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 less than seven years, or in any other prison or place of confinement for any term not exceeding two years.

VI. And be it enacted, that if any persons, riotously and tumultuously assembled together to the disturbance of the public peace, shall unlawfully and with force demolish, pull down, or destroy, or begin to demolish, pull down, or destroy any church, chapel, or meeting house, for the exercise of any mode or form of religious worship, or any house, stable, coach-house, out-house, warehouse, office, shop, mill, malt-house, hop-oast, barn or granary, or any building or erection used in carrying on any trade or manufacture, or any branch thereof, or any machinery, whether fixed or moveable, prepared for or employed in any manufacture, or in any branch thereof, 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 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.

VII. And be it enacted, that whosoever shall unlawfully and maliciously set fire to, cast away, or in any wise destroy any ship or vessel, either with intent to murder any person, or whereby the life of any person shall be endangered, shall be guilty of felony, and being convicted thereof shall suffer death.

VIII. And be it enacted, that whosoever shall unlawfully exhibit any false light or signal, with intent to bring any ship or vessel into danger, or shall unlawfully and maliciously do any thing to the immediate loss or destruction of any ship or vessel in distress, shall be guilty of felony, and being convicted thereof shall suffer death.

IX. And be it enacted, that whosoever shall unlawfully and maliciously set fire to, or in any wise destroy any ship or vessel, whether the same be completed or in an unfinished state, or shall unlawfully and maliciously set fire to, cast away, or in any wise destroy any ship or vessel, with intent thereby to prejudice any owner or part owner of such Ship or Vessel, or of any goods on board the same, or any person that hath underwritten or shall underwrite any policy of insurance upon such Ship or Vessel, or on the freight thereof, or upon any goods on board the same, 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 other term not less than seven years, or to be imprisoned in any other prison or place of confinement for any time not exceeding two years.

X. And be it enacted, that whosoever shall by force prevent or impede any person endeavouring to save his life from any ship or vessel which shall be in distress, or wrecked, stranded, or cast on shore, (whether he shall be on board or shall have quitted the same) 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.

XI. And be it enacted, that whosoever shall unlawfully and maliciously destroy any part of any ship or vessel which shall be in distress, or wrecked, stranded, or cast on shore, or any goods, merchandise, or article of any kind belonging to such ship or vessel, 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 less than seven years, or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years.

XII. And be it enacted, that if any person shall unlawfully and maliciously break down or cut down any sea bank or sea wall, or the bank or wall of any river, canal or marsh, whereby any land shall be overflowed or damaged, or shall be in danger of being so, or shall unlawfully and maliciously throw down, level or otherwise destroy any lock, sluice, flood-gate, or other work on any navigable river or canal, every such offender shall be guilty of felony, and being convicted thereof, shall be imprisoned for any term not exceeding four years; and if any person shall unlawfully and maliciously cut off, draw up or remove any piles, chalk, or other materials fixed in the ground and used for securing any sea bank or sea wall, or the bank or wall of any river, canal, or marsh, or shall unlawfully and maliciously open or draw up any flood-gate, or do any other injury or mischief to any navigable river or canal with intent, and so as thereby to obstruct or prevent the carrying on, completing, or maintaining the navigation thereof, every such offender shall be guilty of felony, and being convicted thereof shall be imprisoned for any term not exceeding two years.

XIII. And be it enacted, that if any person shall unlawfully and maliciously pull down, or in any wise destroy any public bridge, or do any injury with intent, and so as thereby to render such bridge or any part thereof dangerous or impassable, every such offender shall be guilty of felony, and being convicted thereof, shall be imprisoned for any term not exceeding four years.

XIV. And be it enacted, that if any person shall unlawfully and maliciously throw down, level, or otherwise destroy, in whole or in part, any turnpike gate, or any wall, chain, rail, post, bar, or other fence belonging to any turnpike gate, or set up or erected to prevent passengers passing by without paying any toll directed to be paid by any Act or Acts, Ordinance or Ordinances, relating thereto, in force in this Province, or any house, building or weighing engine erected for the better collection, ascertainment, or security of any such toll, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be punished accordingly.

XV. And be it enacted, that if any person shall unlawfully and maliciously break down or otherwise destroy, the dam of any fish pond, or of any water which shall be private property, or in which there shall be any private right of fishery, with intent thereby to take or destroy any of the fish in such pond or water or so as thereby to cause the loss or destruction of any of the fish, or shall unlawfully and maliciously put any lime or other noxious material in any such pond or water, with intent thereby to destroy any of the fish therein, or shall unlawfully and maliciously break down or otherwise destroy the dam of any mill pond, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be punished accordingly.

XVI. And be it enacted, that if any person shall unlawfully and maliciously kill, maim or wound any cattle, 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 less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years.

XVII. And be it enacted, that whosoever shall unlawfully or maliciously set fire to any stack of corn, grain, pulse, peat, coals, charcoal, or wood, or any steer of wood, 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.

XVIII. And be it enacted, that if any person shall unlawfully and maliciously cut or otherwise destroy any hop-binds, growing on poles in any plantation of hops, every such offender shall be guilty of felony, and being convicted thereof, shall be imprisoned for any term not exceeding four years.

XIX. And be it enacted, that if any person shall unlawfully and maliciously cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any tree, sapling, or shrub, or any underwood, respectively growing in any park, pleasure-ground, garden, orchard, or avenue, or in any ground adjoining or belonging to any dwelling house, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be punished accordingly; and if any person shall unlawfully and maliciously cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any tree, sapling, or shrub, or any underwood respectively, growing elsewhere than in any of the situations hereinbefore mentioned, every such offender (in case the amount of the injury done shall exceed the sum of one pound,) shall be guilty of a misdemeanor, and being convicted thereof, shall be punished accordingly.

XX. And be it enacted, that if any person shall unlawfully and maliciously cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any tree, sapling, or shrub, or any underwood, wheresoever the same may be respectively growing, the injury done being to the amount of one shilling at the least, every such offender, being convicted thereof, before a Justice

of the Peace, shall forfeit and pay, over and above the amount of the injury done, such sum of money not exceeding one pound as to the Justice shall seem meet.

XXI. And be it enacted, that if any person shall unlawfully and maliciously destroy, or damage with intent to destroy any 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 amount of the injury done, such sum of money not exceeding two pounds as to the Justice shall seem meet.

XXII. And be it enacted, that if any person shall unlawfully and maliciously destroy, or damage with intent to destroy, 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 amount of the injury done, such sum of money not exceeding twenty shillings, as to the Justice shall seem meet.

XXIII. And be it enacted, that if any person shall unlawfully and maliciously cut, break, throw down, or in anywise destroy any fence of any description whatsoever, or any wall, stile, or gate, or any part thereof respectively, every such offender, being convicted, before a Justice of the Peace, shall forfeit and pay, over and above the amount of the injury done, such sum of money not exceeding one pound, as to the Justice shall seem meet.

XXIV. And be it enacted, that if any person shall wilfully or maliciously commit any damage or injury, or spoil to or upon any real or personal property whatsoever, either of a public or private nature, for which no remedy or punishment is hereinbefore provided, every such person being convicted thereof, before a Justice of the Peace, shall forfeit and pay such sum of money as shall appear to the Justice to be a reasonable compensation for the damage, injury or spoil so committed, not exceeding the sum of five pounds; which sum of money shall, in case of private property, be paid to the party aggrieved, except where such party shall have been examined in proof of the offence; and in such case, or in the case of property of a public nature, or wherein any public right is concerned, the money shall be applied in such manner as every penalty imposed by a Justice of the Peace under this Act, is hereinafter directed to be applied: Provided always, that nothing herein contained shall extend to any case where the party trespassing acted under a fair and reasonable supposition that he had a right to do the act complained of.

XV. And be it enacted, that every punishment and forfeiture by this Act imposed on any person maliciously committing any offence, whether the same be punishable upon indictment, or upon summary conviction, shall equally apply and be enforced, whether the offence be committed from malice conceived against the owner of the property in respect of which it shall be committed or otherwise.

XXVI. 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 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.

XXVII. And be it enacted, that where any person shall be convicted of any indictable offence 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.

XXVIII. And for the more effectual apprehension of all offenders against this Act; Be it enacted, that any person found committing any offence against this Act, whether the same be punishable upon indictment or upon summary conviction, may be immediately apprehended, without a warrant, by any Peace Officer or the owner of the property injured, or his servant or any person authorized by him, and forthwith taken before some neighbouring Justice of the Peace, to be dealt with according to law..

XXIX. And be it enacted, that the prosecution for 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, and also the evidence of any inhabitant of the District, County or place in which the offence shall have been committed, notwithstanding any forfeiture or penalty incurred by the offence may be payable to any public fund of such District, County or place.

XXX. 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 such summons, and if he shall not appear accordingly, (then upon proof of the due service of the summons upon such person, by delivering the same to him 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 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 where otherwise specially directed) issue such warrant; and the Justice before whom the person charged shall appear or be brought, shall proceed to hear and determine the case.

XXXI. And be it enacted: that where any offence is by this Act punishable on summary conviction, any person who shall aid, abet, counsel, or procure the commission of such offence, shall, on conviction before a Justice of the Peace, be liable for every such offence of aiding, abetting,

counselling, or procuring, to the same forfeiture and punishment to which a person guilty of such offence as a principal offender is by this Act made liable.

XXXII. 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 the amount of any injury done, (such amount to be assessed in each case by the convicting Justice) 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; and every sum which shall be imposed as a penalty by any Justice of the Peace, whether in addition to such amount or otherwise, shall be paid to the convicting Justice: 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 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 together with all penalties, shall be applied in the same manner as any penalty is by law directed to be applied.

XXXIII. And be it enacted, that in every case of a summary conviction under this Act, where the sum which shall be forfeited for the amount of the injury done, or which shall be imposed as a penalty by the Justice, shall not be paid, either immediately after the conviction, or within such period as the Justice shall, at the time of conviction, appoint, it shall be lawful for the convicting Justice, (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, 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 four calendar months where the amount with costs shall exceed five pounds, and not exceed ten pounds; and for any term not exceeding six calendar months where the amount with costs shall exceed ten pounds; the commitment to be determinable in each of the cases aforesaid upon the payment of the amount and costs.

XXXIV. Provided always, and be it enacted, that where any person shall be summarily convicted before a Justice of the Peace of any offence against this Act, and it shall be a first conviction, it shall be lawful for the Justice, if he 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 the Justice.

XXXV. And be it enacted, that it shall be lawful for the Queens Majesty, or for the Governor, Lieutenant Governor or Person administering the Government of this Province for the time being, 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.

XXXVI. 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, 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.

XXXVII. And be it enacted, that the Justice 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 may require, videlicet:—

“Be it remembered that on the _____ day of _____ in the year of our Lord _____ at _____ in the District (or City, &c. _____ as the case may be) A. O. is convicted before me J. P. one of Her Majesty’s Justices of the Peace for the said District (or City, &c.) 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 I the said J. P. 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,) I adjudge the said A. O. for his said offence to forfeit and pay _____ (here slate the penalty actually imposed, or stale the penalty and also the amount of the injury done as the case may be,) and also to pay the sum of _____ for costs, and in default of immediate payment of the said 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 sums shall be sooner paid; (or, and I order that the said sums shall be paid by the said A. O. on or before the _____ day of _____) and I direct that the said sum of _____ (i.e. the penalty only) shall be paid to me the convicting Justice, and that the said sum of _____ (i.e. the sum for 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 I order that the said sum of _____ for costs, shall be paid to _____ (the complainant.)
Given under my hand and seal the day and year first above mentioned.

XXXVIII. And be it enacted, that in all cases where the sum adjudged to be paid on 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, Inferior 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 a 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 upon such notice 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, shall order and adjudge the offender to be punished according to the conviction; and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing such judgment.

XXXIX. 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, or Inferior 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 shown.

XL. 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 or Inferior District 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, shall certify his approbation of the action, and of the verdict obtained thereupon.

XLI. 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.

XLII. 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 into 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.