

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

4 & 5 Victoria – Chapter 27

An Act for consolidating and amending the Statutes in this Province relative to Offences against the person. 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 offences against the person; 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 and take effect from and after the first day of January, one thousand eight hundred and forty two.

II. And be it enacted, that every offence, which before the commencement of this Act, would have amounted to petit treason, shall be deemed to be murder only, and no greater offence; and all persons guilty in respect thereof, whether as principals or as accessories, shall be dealt with, indicted, tried, and punished as principals and accessories in murder.

III. And be it enacted, that every person convicted of murder, or of being an accessory before the fact to murder, shall suffer death as a felon; and every accessory after the fact to murder, 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 from and after the passing of this Act, sentence of death may be pronounced after convictions for murder, in the same manner, and the Court before which the conviction may be had shall have the same power in all respects as after convictions for other capital offences.

V. And be it enacted, that every person convicted of murder, shall, after judgment, be confined in some safe place within the prison, apart from all other prisoners, and shall be fed with bread and water only, and with no other food or liquor, except in case of receiving the sacrament, or in case of any sickness or wound, in which case the Surgeon of the Prison may order other necessaries to be administered; and no person but the gaoler and his servants, and the chaplain and surgeon of the Prison, shall have access to any such convict, without the permission, in writing, of the Court or Judge before whom such convict shall have been tried, or of the Sheriff or his Deputy.

VI. And be it enacted, that where any person, being feloniously stricken, poisoned, or otherwise hurt upon the sea, or at any place out of this Province, shall die of such stroke, poisoning, or hurt, in this Province, or being feloniously stricken, poisoned, or otherwise hurt at any place in this Province, shall die of such stroke, poisoning, or hurt, upon the sea, or at any place out of this Province, every offence committed in respect of any such case, whether the same shall amount to the offence of murder or of manslaughter, or of being accessory before the fact to murder, or after the fact to murder, or manslaughter, may be dealt with, enquired of, tried, determined, and punished in the District, County, or Place in this Province, in which such death, stroke, poisoning, or hurt shall happen, in the same manner, in all respects, as if such offence had been wholly committed in such District, County or Place.

VII. And be it enacted, that every person convicted of manslaughter, 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, or to pay such fine as the Court shall award.

VIII. Provided always, and be it enacted, that no punishment or forfeiture shall be incurred by any person who shall kill another by misfortune or in his own defence, or in any other manner without felony.

IX. And be it enacted, that whosoever shall administer or cause to be taken by any person, any poison or other destructive thing, or shall stab, cut or wound any person, or shall by any means whatsoever cause to any person any bodily injury, dangerous to life, with intent, in any of the cases aforesaid, to commit murder, shall be guilty of felony, and being convicted thereof shall suffer death.

X. And be it enacted, that whosoever shall attempt to administer to any person any poison or other destructive thing, or shall shoot at any person, or shall by drawing a trigger or in any other manner, attempt to discharge any kind of loaded arms at any person, or shall attempt to drown, suffocate, or strangle any person, with intent in any of the cases aforesaid to commit the crime of murder, shall, although no bodily injury shall be effected, 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 unlawfully and maliciously shall shoot at any person, or shall, by drawing a trigger, or in any other manner, attempt to discharge any kind of loaded arms at any person, or shall stab, cut or wound any person, with intent in any of the cases aforesaid to maim, disfigure, or disable such person, or to do some other grievous bodily harm to such person, or with intent to resist or prevent the lawful apprehension or detainer of 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.

XII. And be it enacted, that whosoever shall unlawfully and maliciously send or deliver to or cause to be taken, or received by any person, any explosive substance, or any other dangerous or noxious thing, or shall cast or throw upon or otherwise apply to any person, any corrosive fluid, or other destructive matter, with intent in any of the cases aforesaid, to burn, maim, disfigure, or disable any person, or to do some other grievous bodily harm to any person, and whereby in any of the cases aforesaid any person shall be burnt, maimed, disfigured or disabled, or receive some other grievous bodily harm, 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.

XIII. And be it enacted, that whosoever, with intent to procure the miscarriage of any woman, shall unlawfully administer to her, or cause, to be taken by her, any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, 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.

XIV. And be it enacted, that if any woman shall be delivered of a child, and shall, by secret burying or otherwise disposing of the dead body of the said child, endeavour to conceal the birth thereof, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable to be imprisoned for any term not exceeding two years; and it shall not be necessary to prove whether the child died before, at, or after its birth: Provided always, that if any woman, tried for the murder of her child shall be acquitted thereof, it shall be lawful for the jury, by whose verdict she shall be acquitted, to find, in case it shall so appear in evidence, that she was delivered of a child, and that she did, by secret burying or otherwise disposing of the dead body of such child, endeavour to conceal the birth thereof, and thereupon the Court may pass such sentence as if she had been convicted upon an indictment for the concealment of the birth.

XV. And be it enacted, that every person convicted of the abominable crime of Buggery, committed either with mankind or with any animal, shall suffer death as a felon.

XVI. And be it enacted, that every person convicted of the crime of rape, shall suffer death as a felon.

XVII. And be it enacted, that if any person shall unlawfully and 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; and if any person shall unlawfully and carnally know and abuse any girl, being above the age of ten years, and under the age of twelve years every such

offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable to be imprisoned for such term as the Court shall award.

XVIII. And whereas upon trials for the crime of buggery, and of rape, and of carnally abusing girls under the respective ages hereinbefore mentioned, offenders frequently escape by reason of the difficulty of the proof which has been required of the completion of those several crimes; for remedy thereof, be it enacted, that it shall not be necessary, in any of those cases, to prove the actual emission of seed in order to constitute a carnal knowledge, but that the carnal knowledge shall be deemed complete upon proof of penetration only.

XIX. And be it enacted, that where any woman shall have any interest, whether legal or equitable, present or future, absolute, conditional, or contingent, in any real or personal estate, or shall be an heiress presumptive or next of kin to any one having such interest, if any person shall, from motives of lucre, take away or detain such woman against her will, with intent to marry or defile her, or to cause her to be married or defiled by any other person, every such offender, and every person counselling, aiding or abetting such offender, 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 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 unlawfully take, or cause to be taken, any unmarried girl, being under the age of sixteen years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable to suffer such punishment, by fine or imprisonment, or by both, as the Court shall award.

XXI. And be it enacted, that if any person shall maliciously, either by force or fraud, lead or take away, or decoy, or entice away or detain, any child under the age of ten years, with intent to deprive the parent or parents, or any other person having the lawful care or charge of such child, of the possession of such child, or with intent to steal any article upon or about the person of such child, to whomsoever such article may belong; or if any person shall, with any such intent as aforesaid, receive or harbour any such child, knowing the same to have been, by force or fraud, led, taken, decoyed, enticed away or detained as hereinbefore mentioned; every such offender, and every person counselling, aiding or abetting such offender, 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 less than seven years, or to be imprisoned in any other prison or place of confinement, for any term not exceeding two years: Provided always, that no person who shall have claimed to be the father of an illegitimate child, or to have any right to the possession of such child, shall be liable to be prosecuted by virtue hereof, on account of his getting possession of such child, or taking such child out of the possession of the mother, or any other person having the lawful charge thereof.

XXII. And be it enacted, that if any person, being married, shall marry any other person during the life of the former husband or wife, whether the second marriage shall have taken place in this

Province or elsewhere, every such offender, and every person counselling, aiding, or abetting such offender, 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 less than seven years, or to be imprisoned in any other prison or place of confinement for any term not exceeding two years; and any such offence may be dealt with, enquired of, tried, determined, and punished in the District or County where the offender shall be apprehended or be in custody, as if the offence had been actually committed in that District or County: Provided always, that nothing herein contained shall extend to any second marriage contracted out of this Province by any other than a subject of Her Majesty, resident in this Province, and leaving the same with intent to commit the offence, or to any person marrying a second time, whose husband or wife shall have been continually absent from such person for the space of seven years then last past, and shall not have been known by such person to be living within that time; or shall extend to any person, who, at the time of such second marriage, shall have been divorced from the bond of the first marriage; or to any person, whose former marriage shall have been declared void by the sentence of any Court of competent jurisdiction.

XXIII. And be it enacted, that if any person shall arrest any Clergyman or Minister of the Gospel, upon any civil process, while he shall be performing divine service, or shall, with the knowledge of such person, be going to perform the same, or returning from the performance thereof, every such offender shall be guilty of a misdemeanor; and being convicted thereof, shall suffer such punishment, by fine or imprisonment, or by both, as the Court shall award.

XXIV. And be it enacted, that if any person shall assault and strike or wound any Magistrate, Officer, or other person whatsoever, lawfully authorized, on account of the exercise of his duty in or concerning the preservation of any vessel in distress, or of any vessel, goods, or effects wrecked, stranded, or cast on shore, or lying under water, every such offender, being convicted thereof, shall be liable 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.

XXV. And be it enacted, that where any person shall be charged with and convicted of any of the following offences as misdemeanors, that is to say, of any assault with intent to commit felony; of any assault upon any Peace Officer or Revenue Officer in the due execution of his duty, or upon any person acting in aid of such officer; of any assault upon any person with intent to resist or prevent the lawful apprehension or detainer of the party so assaulting, or of any other person, for any offence for which he or they may be liable by law to be apprehended or detained; or of any assault committed in pursuance of any conspiracy to raise the rate of wages: in any such case, the Court may sentence the offender to be imprisoned for any term not exceeding two years, and may also (if it shall so think fit) fine the offender, and require him to find sureties for keeping the peace.

XXVI. And be it enacted, that if any person shall, unlawfully and with force, hinder any seaman from working at or exercising his lawful trade, business or occupation, or shall beat, wound, or use any other violence to him, with intent to deter or hinder him from working at or exercising the

same; or if any person shall beat, wound, or use any other violence to any person, with intent to deter or hinder him from selling or buying any wheat or other grain, flour, meal or malt, in any market or other place, or shall beat, wound, or use any other violence to any person having the care or charge of any wheat or other grain, flour, meal, or malt, whilst on its way to or from any city, market-town, or other place, with intent to stop the conveyance of the same, every such offender may be convicted thereof before two Justices of the Peace, and imprisoned and kept to hard labour in the Common Gaol or House of Correction, for any term not exceeding three calendar months: Provided always, that no person, who shall be punished for any such offence, by virtue of this provision, shall be punished for the same offence by virtue of any other law whatsoever.

XXVII. And whereas it is expedient that a summary power of punishing persons for common assaults and batteries should be provided under the limitations hereinafter mentioned; Be it therefore enacted, that where any person shall unlawfully assault or beat any other person, it shall be lawful for any Justice of the Peace, upon complaint of the party aggrieved, praying him to proceed summarily under this Act to hear and determine such offence; and the offender, upon conviction thereof before him, shall forfeit and pay such fine as shall appear to him to be meet, not exceeding together with costs (if ordered) the sum of five pounds, which fine shall be paid to the Treasurer of the Municipal District, or place in which the offence shall have been committed, and make part of the funds of such District, or if the conviction be had in any place not within any Municipal District, then such fine shall be paid over to such Officer, and be applicable to such purposes as other fines and penalties by law are; and the evidence of any inhabitant of the Municipal District shall be admitted in proof of the offence, notwithstanding such application of the fine incurred thereby; and if such fine as shall be awarded by the said Justice, together with the costs (if ordered) shall not be paid, either immediately after the conviction, or within such period as the said Justice shall at the time of the conviction appoint, it shall be lawful for him to commit the offender to the Common Gaol or House of Correction, there to be imprisoned for any term not exceeding two calendar months, unless such fine and costs be sooner paid; but if the Justice, upon the hearing of any such case of assault or battery shall deem the offence not to be proved, or shall find the assault or battery to have been justified, or so trifling as not to merit any punishment, and shall accordingly dismiss the complaint, he shall forthwith make out a certificate under his hand, stating the fact of such dismissal, and shall deliver such certificate to the party against whom the complaint was preferred; and if such costs shall, not be paid immediately upon dismissal, or within such period as such Justice shall, at the time of such dismissal, appoint, it shall be lawful for him to issue his warrant to levy the amount of such costs within a certain time to be in the said warrant expressed, and in case no distress sufficient to satisfy the amount of such warrant, shall be so found, to commit the party by whom such costs shall be so ordered to be paid, as aforesaid, to the Common Gaol of the District, County or Division, where such offence shall be alleged to have been committed, there to be imprisoned for any term not exceeding ten days, unless such costs shall be sooner paid.

XXVIII. And be it enacted, that if any person against whom any such complaint shall have been preferred for any common assault or battery, shall have obtained such certificate as aforesaid, or having been convicted shall have paid the whole amount adjudged to be paid under such

conviction, or shall have suffered the imprisonment awarded for non-payment thereof, in every such case he shall be released from all further or other proceedings, civil or criminal, for the same cause.

XXIX. And be it enacted, that when any person shall be summarily convicted before a Justice of the Peace of any offence against this Act, it shall be lawful for such Justice, if he shall so think fit, to discharge the offender from his cot motion upon his making such satisfaction to the party aggrieved for damages and costs, or either of them, as shall be ascertained, by the said Justice.

XXX. Provided always, and be it enacted, that in case the Justice shall find the assaulter battery complained of to have been accompanied by any attempt to commit felony, or shall be of opinion that the same is, from any other circumstance a fit subject for a prosecution by indictment, he shall abstain from any adjudication thereupon, and shall deal with the case in all respects in the same manner as he would have done before the passing of this Act: Provided also, that nothing herein contained shall authorize any Justice of the Peace to hear and determine any case of assault or battery, in which any question shall arise as to the title to any lands, tenements or hereditaments, or any interest therein or accruing therefrom, or as to any bankruptcy or insolvency, or any execution under the process of any Court of Justice.

XXXI. And be it enacted, that if any person shall wilfully disturb, interrupt, or disquiet any assemblage of persons met for religious worship, by profane discourse, by rude, or indecent behaviour, or by making a noise, either within the place of worship, or so near it as to disturb the order, or solemnity of the meeting, such person shall, upon conviction thereof before any Justice of the Peace, on the oath of one, or more, credible witness, or witnesses, forfeit and pay such a sum of money, not exceeding five pounds, as the said Justice shall think fit.

XXXII. And be it enacted, that in default of payment of any fine imposed under the authority of this Act, on a summary conviction before any Justice of the Peace, together with the costs attending the same, within the period specified for the payment thereof, at the time of conviction by the Justice before whom such conviction may have taken place, it shall and may be lawful for such Justice, to issue his warrant directed to any constable to levy the amount of such fine and costs within a certain time to be in the said warrant specified, and in case no distress sufficient to satisfy the amount shall be found, it shall and may be lawful for him to commit the offender to the Common Gaol of the District wherein the offence was committed for any term, not exceeding one month, unless the fine and costs shall be sooner paid.

XXXIII. And be it enacted, that any person who shall think himself aggrieved by any summary conviction, or decision, under this Act as aforesaid, 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 or decision for the District wherein the cause of complaint shall have arisen: Provided always, that such person shall give to the other party a notice, in writing, of such appeal, and of the cause and matter thereof, within three days after such conviction or decision, and seven 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 cost, 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.

XXXIV. And be it enacted, that whenever an appeal shall be made from the decision of any Justice under this Act as aforesaid the Court of General or Quarter Sessions shall have power to empanel a Jury to try the matter on which such decision may have been made, and the Court, on the finding of such Jury, under oath, shall thereupon give such judgment as the circumstances of the case may require: Provided always, that such Court shall not in any case adjudge the payment of a fine exceeding five pounds in addition to the costs, or to order the imprisonment of the person so convicted, for any period not exceeding one month, and all fines imposed, and recovered, by the judgment of such Court, shall be applied and disposed of in the same manner as other fines recovered under the provisions of this Act.

XXXV. 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.

XXXVI. And be it enacted, that when any person shall be convicted of any 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.

XXXVII. And be it enacted, that on the trial of any person for any of the offences hereinbefore mentioned, or for any felony whatever, where the crime charged shall include an assault against the person, it shall be lawful for the Jury to acquit of the felony, and to find a verdict of guilty of assault, against the person indicted, if the evidence shall warrant such finding; and when such verdict shall be found, the Court shall have power to imprison the person so found guilty of an assault, for any term not exceeding three years.

XXXVIII. Provided always, and be it enacted, that nothing herein contained shall alter or affect any of the laws relating to the Government of Her Majesty's Land or Naval Forces.

XXXIX. 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.

XL. And for the more effectual prosecution of offences punishable upon summary conviction by virtue of 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) the Justice may either proceed to hear and determine the case *ex parte*, or may 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) issue such warrant in the first instance, without any previous summons.

XLI. Provided always, and be it enacted, that the prosecution for every offence punishable on summary conviction by virtue of this Act, shall be commenced within three calendar months after the commission of the offence, and not otherwise.

XLII. And be it enacted, that the Justice before whom any person shall be summarily 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; (that is to say,) "Be it remembered, that on the _____ day of _____ in the year of our Lord _____ at _____ in the County of _____ (or riding, division, district, city, &c. as the case may be,) A. O. is convicted before me, (naming the Justice,) one of Her Majesty's Justices of the Peace for the said County, (or riding, &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 Justice adjudge the said A. O. for his said offence, to be imprisoned in the _____ (or to be imprisoned in the _____ and there kept at hard labour) for the space of _____ (or I adjudge the said A. O. for his said offence, to forfeit and pay the sum of _____) (here state the amount of the fine imposed,) and also to pay the sum of _____ for costs; and in default of immediate payment of the said sums, to be imprisoned in the _____ for the space of _____ unless the said sums shall be sooner paid; (or, and I order that the said sum 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 amount of the fine,) shall be paid to _____ of _____ aforesaid, in which the said offence was committed, to be by him applied according to the directions of the Statute in that case made and provided; (or as the case may be:) and I order that the said sum of _____ for costs shall be paid to C. D. (the party aggrieved.) Given under my hand, the day and year first above mentioned."

XLIII. Provided always, and be it enacted, that nothing in this Act contained, shall affect or alter any Act, so far as it relates to the crime of High Treason, or to any branch of the Public Revenue.

XLIV. 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.