



By Authority.

An Act for consolidating and amending the Laws relative to Larceny and other offences connected therewith.

Passed 25th March 1831.

WHEREAS various Statutes heretofore in force in England, and deemed to be in force and acted upon in this Province, relative to Larceny and other offences connected therewith, are, by an Act of the present session of the General Assembly for improving the Administration of Justice in Criminal Cases, declared to be repealed and of no force and effect in this Province, and various Acts of Assembly relating to the same offences are also repealed by the same Act, and the same Act is to commence and take effect on the first day of October in the present Year; and it is expedient that the provisions relating to the same offences should be amended and consolidated into this Act, to take effect at the same time with the said recited Act:

I. Be it therefore enacted by the President, Council, and Assembly, That this Act shall commence on the said first day of October in the present Year, except as to offences committed before or upon the last day of September, which shall be dealt with and punished as if this Act had not been passed.

II. And be it enacted, That the distinction between Grand Larceny and Petty Larceny, whatever be the value of 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 person convicted of Larceny shall be liable to the punishment prescribed for felony in the said recited Act of the present Session for improving the Administration of Justice in Criminal Cases: Provided always, that in Cases where by this or any other Act or Statute Jurisdiction is given to a Magistrate or Magistrates to try in a Summary way any Larceny or other offence connected therewith, it shall be lawful for such Magistrate or Magistrates to award such punishment only as they are expressly authorized and empowered to do.

III. And be it enacted, That if any person shall steal any certificate, 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 the United Kingdom or of Great Britain or of Ireland, or of this or any other British Province, or of any Foreign State, 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 money, whether of the United Kingdom, or of Great Britain or of Ireland, or of this or any other British Province, or of any Foreign State, 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 herein before enumerated shall throughout this Act be deemed for every purpose to be included under and denoted by the words "Valuable Security."

IV. And be it enacted, That if any person shall rob any other person of any chattel, money or valuable security, every such offender, being convicted thereof, shall suffer death as a Felon; and if any person shall with menaces or by force demand any such property of any other person with intent to steal the same, or shall assault any other person with intent to rob him, every such offender shall be guilty of Felony, and being convicted thereof, shall be liable to the punishment prescribed for Felony in the said recited Act for improving the administration of Justice in criminal cases.

V. And be it declared and enacted, That if any person shall accuse or threaten to accuse any other person of any infamous crime, as hereinafter defined, with a view or intent to extort or gain from him, and shall by intimidating him by such accusation or threat extort or gain from him, any chattel, money or valuable security, every such offender shall be guilty of robbery, and shall be indicted and punished accordingly.

VI. 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, imprisonment with hard labour, or pillory, or of any assault with intent to commit any rape, or of any attempt or endeavour to commit any rape, or of any infamous crime, as hereinafter defined, 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 con-

victed thereof shall be liable to be punished in the manner prescribed for felony in the abovementioned Act for improving the administration of Justice in Criminal Cases.

VII. And for defining what shall be an infamous crime within the meaning of this Act; Be it enacted, That the abominable crime of Buggery, committed either with mankind or with beast, and every assault with intent to commit the said abominable crime, and every attempt or endeavour to commit the said abominable crime, and every solicitation, persuasion, promise or threat offered or made to any person, whereby to move or induce such person to commit or permit the said abominable crime, shall be deemed to be an infamous crime within the meaning of this Act.

VIII. And be it enacted, That every person convicted of Burglary shall suffer death as a Felon: 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.

IX. 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, 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 one to the other.

X. And be it enacted, That if any person, in the night time, shall break and enter any building, being within the curtilage of a dwelling-house and occupied therewith, but not being part thereof according to the provision herein before mentioned, or any public office, or other public building, or any shop, warehouse, counting house, bank, office or other building, used or occupied for carrying on any trade or business, such public office, public building, shop, warehouse, counting house, bank, office or other building, not being a dwelling-house, for the purpose of Burglary, with intent in any such case to commit Felony, every such offender shall be guilty of Felony, and being convicted thereof, shall be liable to the punishment prescribed for Felony in the said recited Act for improving the administration of Justice in criminal cases.

XI. 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 record, 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 of equity, or relating to any cause or matter begun, depending, or terminated in any such court, 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; the imprisonment to be either with or without hard labour as the Court shall think fit, and in no case to exceed the term of two years; 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.

XII. 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 suffer such punishment as is herein before 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.

XIII. And be it enacted, That if any person shall steal any paper or parchment, written or printed, or partly written and partly printed, being evidence of the title of or 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 suffer such punishment as is herein before 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 relate, 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.

XIV. 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 in 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.

XV. And be it enacted, That if any person shall wilfully kill any horse, mare, gelding, colt or filly, or any bull, cow, ox, heifer or calf, or any ram, ewe, sheep or lamb, 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 to be punished in the manner prescribed for Felony in the above mentioned Act for improving the administration of Justice in criminal cases.

XVI. 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 to be punished in the manner herein before last mentioned.

XVII. 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.

XVIII. 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 to suffer such punishment by fine or imprisonment, or both, as the Court shall award; the imprisonment to be either with or without hard labour as the Court shall see fit, and not to exceed the term of two years; 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 person tried for such misdemeanor shall be liable to be afterwards prosecuted for larceny upon the same facts.

XIX. 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 any Court that has power to try the principal Felon, may also try the receiver, howsoever indicted; and every such receiver, howsoever convicted, shall be liable to be punished in the manner prescribed for Felony in the said Act for improving the administration of Justice in criminal cases: Provided always, that no person, howsoever tried for receiving as aforesaid, shall be liable to be prosecuted a second time for the same offence.

XX. 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 an indictable misdemeanor by this Act, such person knowing the same to have been unlawfully stolen, taken, obtained, or converted, every such receiver shall be guilty of a misdemeanor, and 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 to be punished in the manner pro-

vided for the person guilty of the principal misdemeanor.

XXI. 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, indicted, tried, and punished in any County or place in which he shall have or shall have had any such property in his possession, or in any 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 County or place where he actually received such property.

XXII. 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 such offence, by or on the behalf of the owner of the property, or his 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 said property, or to order the restitution thereof in a summary manner; and the court may in like manner, if it shall see fit, order the restitution of property, in cases where the party so indicted as aforesaid may not be convicted, if it shall clearly appear that the property had been stolen, or taken or obtained from the owner by felony, or misdemeanor as aforesaid: 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.

XXIII. And be it enacted, That every person who shall corruptly take any money or reward, directly or indirectly, under pretence or upon 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 to be punished in the manner prescribed for felony in the said Act for improving the administration of criminal Justice.

XXIV. 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 punished by fine or imprisonment, or both, as the Court shall award; such imprisonment to be either with or without hard labour as the Court shall see fit, and not to exceed the term of 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.

XXV. 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 under this Act, may be immediately apprehended without a warrant by any Peace Officer, or by the owner of the property upon or with respect to which the offence shall be committed, or by his servant or any person authorised by him, and forthwith taken before a 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, a reasonable cause to suspect that any person has in his possession or on his premises any property whatsoever, or with respect to which any such offence shall have been committed, the Justice may grant a warrant to search 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.

XXVI. 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 county 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 nonsuit, 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.

XXVII. And be it enacted, That the Court of General Sessions of the Peace shall have power to deal with, try, and determine any Larceny, or any accessories thereto, or any offence of receiving stolen goods, in which the value of the property on or with respect to which the offence shall be committed shall not exceed the sum of five pounds: Provided always, that the said Court of General Sessions of the Peace, in any case of difficulty, in which a party may be indicted before such Court for any offence under this Act triable by such Court, whether it be a Felony or a misdemeanor, either before or after the party has pleaded, may cause the indictment to be handed over by the Clerk of the Peace to the next Supreme Court, or Court of Oyer and Terminer held in the County, to be therein dealt with, tried, and determined, and shall in such case bind by recognizance all witnesses to appear before such Supreme Court, or Court of Oyer and Terminer and Gaol delivery, and give evidence upon the trial of such indictment; and if it be a case of misdemeanor, and the party indicted can find good and sufficient bail, shall also take bail from such party to appear in such Supreme Court or Court of Oyer and Terminer and Gaol delivery, and plead or take his trial upon such indictment as the case may be; and if it be a case of Felony the said Court of General Sessions of the Peace may, if it so think fit, admit the party indicted to bail, upon his giving good and sufficient bail in like manner to appear and plead, or take his trial upon such indictment, as the case may be, in such Supreme Court or Court of Oyer and Terminer and Gaol delivery.

XXVIII. And be it enacted, That any person charged with any Larceny, or any offence of receiving stolen goods, wherein the value of the property stolen shall not exceed forty shillings, may be admitted to bail by any Justice of the Peace before whom such person may be so charged; and in case of any such offender being committed to prison and not giving sufficient bail for his appearance at the next General Sessions of the Peace for the County where the offence may be triable, within forty-eight hours after such commitment, it shall and may be lawful for any three Justices of the Peace of the County where the offender may be committed, or, if in the City of Saint John, for the Mayor, Recorder and Aldermen, or any three of them (the Mayor and Recorder always being one) forthwith to hear and determine such offence, and on conviction either by confession or on the testimony of one or more credible witness or witnesses, the said Magistrates are hereby authorised and empowered to punish the offender by imprisonment, with or without hard labour, as they in their discretion may think fit, for any term not exceeding six months, or else by whipping the said whipping not exceed thirty-nine Stripes.



FESTIVAL Of Saint George.

THOSE Members of the Fredericton Society of Saint George, who intend to join the dinner on the 23d instant, are requested, to send their names with the names of their guests to the Secretary on or before Tuesday the 12th instant.

G. F. S. BERTON Secretary.

Fredericton, 2d April, 1831.

THE ROYAL GAZETTE.

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