

WESTERN AUSTRALIA

ANNO SEPTIMO DECIMO

VICTORIÆ REGINÆ

No. 7

An Ordinance for the Suppression of Violent Crimes committed by Convicts illegally at large.

[Assented to 17th May, 1854.]

Preamble

WHEREAS since the Colony of Western Australia became a penal settlement, certain robberies of arms, provisions and other articles by force or intimidation have been committed therein by convicts illegally at large, and the lives of Officers of Justice and their assistants, while in the execution of their duty in endeavouring to apprehend such offenders, have been perilled by resistance with deadly weapons; and whereas it is expedient, as well for the peace and security of Her Majesty's free subjects resident within the said Colony as for the due protection of such Officers of Justice, that such offences should be prevented or suppressed by more stringent laws than now exist: Be it therefore enacted by His Excellency the Governor of Western Australia and its Dependencies, by and with the advice and consent of the Legislative Council thereof, that from and after the date at which this Ordinance shall come into operation, if any convict illegally at large 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 such person, every such offender shall be guilty of felony, and being thereof convicted shall suffer death.

Armed escaped convict

Entering house with intent

2. That if any convict illegally at large shall enter any dwelling-house or any building within the curtilage of a dwelling-house with intent to commit a felony therein, and shall beat, strike, bind, confine

Convicts

or use any serious personal violence so as to cause grievous bodily harm, to any person therein, every such offender shall be guilty of felony, and being thereof convicted shall suffer death.

Violence

3. That if any convict illegally at large, being armed with any offensive weapon or instrument, shall, by striking, beating, or other personal violence, assault with intent to rob any person, every such offender shall be guilty of felony, and being convicted thereof shall suffer death.

Armed escaped—
assault with in-
tent to rob

4. That if any convict illegally at large (or if any convict kept to labour in the service of Government, in or at any place appointed by the said Governor, or used, with his knowledge and sanction, as a place of confinement, or detainer, or hard labour for convicts) shall unlawfully and maliciously 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 do some grievous bodily harm to such person, or with intent to resist or prevent the lawful apprehension or detainer, or to effect the forcible escape of himself or of any other person, every such offender, and every person aiding or abetting such offender, shall be guilty of felony, and being convicted thereof shall suffer death.

Attempt to shoot
or wound

5. That if any convict illegally at large, and being armed with any description of firearms or with any weapon or instrument adapted for cutting or stabbing and capable of inflicting a dangerous incised or punctured wound, shall be required to surrender himself by any Justice of the Peace, policeman, constable or officer of a convict prison or depot or any free person acting under the direction or in aid of any such peace or other officer (whether such policeman, constable, officer or free person shall or shall not then have a magistrate's warrant for the apprehension of such convict), and such convict shall refuse or decline so to surrender himself, and still retaining such firearms, weapon or instrument, shall by threats or gestures give reasonable cause to believe that he is about to use such firearms, weapon or instrument for the purpose of preventing his apprehension, then and in any such case it shall be lawful for such Justice, policeman, constable or officer having first declared and notified his official character to such convict, or for any free person acting in aid as aforesaid, by the discharge of any loaded firearms or by the use of any weapon or instrument whatsoever to disable and overpower such convict, with a view to his apprehension, without bodily injury to his captor; and in case the death of such convict shall be thereby caused, the same shall be deemed an act of justifiable homicide; and every such Justice, policeman, constable, officer or free person acting in aid as aforesaid, shall be and is hereby indemnified and discharged from any indictment, penalty, action or other proceeding for so doing.

Armed escaped
convict, if re-
quired, must
throw down
weaponThreat or ges-
ture

May be shot

6. That if any convict shall, by force or flight, attempt to escape from any place appointed by the said Governor or used with his knowledge and sanction as a place of confinement or detainer for convicts or from any party of convicts employed in the service of Government on any road or public work, or from the custody or charge of any warder or other officer of the Convict Department, or from the custody of any policeman or constable, under a commitment for trial on a charge

Convict attempt-
ing to escape, if
called on to stay
on refusal may
be fired on

Convicts

Prevent escape of felony ; and if such convict being called upon by such warder or officer, or by any warder or other officer of such place of confinement, or of such working party as aforesaid, or by any military or other sentry then being on guard over such convicts, to stop and surrender himself, shall refuse or decline so to do, then and in any of the aforesaid cases, it shall be lawful for such warder, officer, policeman, constable or sentry, to fire upon or use any weapon or instrument against such convict for the purpose of preventing such escape ; and in case the death of such convict shall be thereby caused, the same shall be deemed an act of justifiable homicide ; and every such warder, officer, policeman, constable or sentry, shall be and is hereby indemnified and discharged from any indictment, penalty, action or other proceeding for so doing.

Aid to constable by all witnesses 7. That all Her Majesty's subjects, and others resident within the said Colony, being males, above the age of eighteen years and below the age of sixty years, and being free persons or convicts holding tickets-of-leave, and not being aborigines, may lawfully be called upon to aid and assist any Justice of the Peace, constable or police officer in the pursuit and capture of any convict illegally at large ; and every person who shall be so called upon to aid and assist, and shall refuse or neglect so to do without just and reasonable excuse shown to the satisfaction of any Justice or Justices of the Peace, before whom such person shall or may be charged with such refusal or neglect, shall forfeit and pay (over and above any other punishment to which such person shall be liable by law) any sum of money not exceeding ten pounds, to be awarded, recovered or enforced in a summary manner within one calendar month after the commission of such offence, before any one or more Justice or Justices of the Peace, according to the provisions of the Ordinance No. 5, of 1850 ; and every such fine when recovered shall be paid into the hands of the Colonial Treasurer to the use of Her Majesty, her heirs and successors, for the public uses of the said Colony, and the support of the Government thereof.

Terms used 8. That throughout this Ordinance the word 'convict' shall be deemed and construed to mean any offender being in the said Colony under an unexpired or unremitted sentence of transportation, whether such sentence shall have been passed in the said Colony or elsewhere ; and also any offender being in the said Colony whose sentence shall have been commuted to transportation for a term still unexpired or unremitted ; and that the words 'convict illegally at large' shall be deemed and construed to mean a convict (whether holding a ticket-of-leave or otherwise) escaped from any prison, depot or station of convicts employed in the service of Government on any road or public work or from any place appointed by the said Governor or used with his knowledge and sanction for the confinement or detention of convicts, or from the custody of any warder, policeman or constable.

Evidence 9. That on the trial, and on any previous examination before a Justice or Justices of the Peace, of any person charged with any offence against this Ordinance, the fact of such offender being a convict shall or may be proved *prima facie*, in like manner as is provided by the 7th section of the Ordinance No. 18 of 1853 ; and that evidence of any person having acted as a warder or other officer of the convict department, or as a sentry over a convict or convicts, at any particular time or place, shall be sufficient evidence of such person being a duly

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appointed warder, officer or sentry, at such time or place, unless sufficient proof shall be given to the contrary.

10. That judgment of death for any offence against this Ordinance may, instead of being pronounced, be recorded in like manner as is provided by the first section of an Act of Parliament passed in the fourth year of the reign of His late Majesty King George IV., intituled 'An Act for enabling Courts to abstain from pronouncing sentence of death in certain capital offences.' Death recorded

11. That in all cases in which sentence of death is recorded as aforesaid, it shall be lawful for His Excellency the Governor to commute such sentence to transportation for life or for any term not less than seven years, or to hard labour, in or without irons, on any of the roads or public works of the Colony for any term not exceeding seven years, and in addition to either of the aforesaid punishments, to award punishment by whipping not exceeding one hundred lashes. Transported

12. That this Ordinance shall commence and take effect from and immediately after the publication in the 'Government Gazette' of the said Colony, of a proclamation notifying Her Majesty's assent thereto. *Queen's assent
proclaimed May
31st, 1856*

CHARLES FITZGERALD,
GOVERNOR AND COMMANDER-IN-CHIEF.
