



WESTERN AUSTRALIA.

ANNO DUODECIMO

VICTORIÆ REGINÆ.

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No. XVIII.

**An Ordinance to provide for the Summary  
Trial and Punishment of Aboriginal Na-  
tive Offenders in certain cases.**

**W**HEREAS in the present condition of the colony of Western Preamble.  
Australia, it is expedient to provide for the summary trial  
and punishment of Aboriginal offenders in certain cases;—Be it  
therefore enacted, by His Excellency the Governor of Western  
Australia, by and with the advice and consent of the Legis-  
lative

relative Council thereof, that from and after the passing of this Ordinance it shall be lawful for any two or more Justices of the Peace not interested in the subject matter of the complaint, one of such Justices being in every case a guardian or sub-guardian of Natives, or the Resident Magistrate of the district, to inquire into and try, in a summary manner, any felony or misdemeanour (except as hereinafter excepted) which, before the passing of this Ordinance was exclusively triable by a jury, and with which any of the Aboriginal Race shall be charged before them : and if the person or persons so charged shall be proved to the satisfaction of such Justices to have committed such offence, or shall voluntarily confess the same, to sentence such person or persons to be imprisoned, with or without hard labour in any common gaol or other place lawfully appointed for the confinement of such offenders, for any term not exceeding six calendar months.

Felonies and misdemeanors, with certain exceptions, committed by Aborigines to be summarily triable by two Justices.

And punishable by imprisonment not exceeding six calendar months.

II. AND be it enacted, that it shall be lawful for the Justices before whom any male offended shall be convicted under this Ordinance to order and award, in addition to or in lieu of any, such imprisonment as aforesaid, that such offender be punished by whipping not exceeding two dozen lashes ;—Provided that such punishment inflicted in the presence of one of the convicting Justices, or of a guardian or subguardian of Natives.

Power to award whipping in addition to, or in substitution for imprisonment.

III. PROVIDED always and be it enacted, that no person or persons shall be tried under the summary jurisdiction hereby created for any of the offences next hereinafter named ;—(that is to sav) wilful murder, assault with intent to murder accompanied by some bodily injury dangerous to the life of the assailed, arson, where the life of any human being has been thereby endangered, and rape.

Exception of certain felonies from summary Jurisdiction.

IV. AND be it enacted that it shall be lawful for any Justice receiving any information of any offence hereby made summarily triable, or for the Justices inquiring into the matter of any such information if the circumstances of the case shall seem to him or them to require a more formal trial, or a more exemplary punishment, than can be had or imposed under this Ordinance, to decline to exercise the summary jurisdiction hereby created, and to remit the case for trial in ordinary course of Law.

Justices may decline summary jurisdiction, and remit for trial in ordinary course of law.

V. AND be it enacted, that as soon as possible after every conviction

1849.

12th Vict. No. 18.

tion under this Ordinance, one of the convicting justices shall transmit a record of such conviction, in the form hereinafter mentioned, to the Clerk of the Peace for the said colony, to be filed and kept by that officer among the records of his office, and shall likewise transmit to the Colonial Secretary a report of such conviction containing a brief abstract of the information, and of the evidence for and against the accused.

Record of conviction to be transmitted to Clerk of the Peace.

And abstract of case to be transmitted to Colonial Secretary.

VI. AND be it enacted, that a record of conviction in the form, or to the effect of the form in the Schedule to this Ordinance annexed, shall be good and effectual to all intents and purposes without setting forth the name of any witness, or the place where the offence was committed, and without setting forth any part of the evidence, or stating the facts or the offence in any more particular manner than shall be necessary to shew that the offence was one triable under this Ordinance, and no such conviction shall be quashed for mere matter of form or technical error in any name, date or title, or matter of description only, but in all cases regard shall be had alone to the substantial merits and justice of the case.

Prescribed form of record of conviction.

No conviction to be quashed for mere matter of form, technical error not affecting the merits of the case.

VII. AND be it enacted, that it shall be lawful for any one Justice to receive the original information upon oath of any credible person charging any Aboriginal Native or Natives with any offence hereby made summarily triable, and thereupon to issue a warrant for bringing the accused before any two or more Justices; and that the signature of any one of the convicting Justices to a warrant of commitment under this Ordinance shall be sufficient; and that no such warrant shall be held void by reason of any defect therein, provided it be therein alleged that the party committed has been convicted, and there be a good and valid conviction to sustain the same.

One Justice may receive original information.

Signature of one Justice to commitment, sufficient.

Commitment not to be void for formal error.

VIII. AND be it enacted, that so much of an Act passed in the seventh year of the Reign of Her present Majesty, intituled "an Act to regulate summary proceedings before Justices of the Peace," as relates to the summoning of witnesses, and to the fining of witnesses for nonattendance, and to the apprehension and detention of persons summoned to give evidence, and of persons keeping out of the way to avoid being so summoned, shall be deemed to apply to this Ordinance as if incorporated herewith.

Certain provisions of 7th Vict. No. 12 to apply hereunto.

IX. AND be it enacted, that it shall be lawful for the Governor, with

Power to Governor to appoint legal Prisons for purposes hereof, and proper officers.

And to direct employment of convicts sentenced to hard labour.

And to issue Prison regulations.

Breaking or otherwise escaping, or rescuing, from place of confinement appointed under this Ordinance, how punishable.

Lapse of time to bar summary prosecution only when it bars prosecution by indictment.

Governor empowered in certain cases to remit or mitigate sentences.

with the advice of the Executive Council, from time to time, by notice published in the Government Gazette, to appoint fitting places, at his discretion, for the occasional or ordinary confinement of Natives convicted under this Ordinance, and to rescind such appointments; and to appoint in like manner fitting persons to visit and inspect such places, and other such persons to have the custody and management of such Natives; and from time to time to order and direct, by instructions to be issued by the Colonial Secretary, upon what public works persons sentenced under this Ordinance to hard labour shall be employed, and for the purposes of such employment, or for sanitary purposes, to order the removal of such persons from any such place of confinement as aforesaid to any other such place or places; and, by the like instructions, from time to time, to frame and issue rules and orders for the internal management and general regulation of such places of confinement, and to rescind or vary such rules or orders.

X. AND be it enacted, that if any person imprisoned in any such place of confinement as aforesaid, shall break or otherwise escape therefrom, or if any person shall remove thereout, or aid and abet in the escape therefrom of any person imprisoned therein, every person so offending, being convicted thereof, shall be subject to the like punishment as if such breaking, rescue, or escape had been from and out of one of Her Majesty's common gaols.

XI. AND be it enacted, that no lapse of time from and after the commission of any offence hereby made summarily triable, shall be a bar to the exercise of the summary jurisdiction hereby created, further or otherwise than as such lapse of time would be a bar to the prosecution of such offence by indictment or information in any Court of Record.

XII. And be it enacted, that it shall be lawful for the Governor, with the advice of the Executive Council, to order and direct, by warrant under his hand, the immediate release, or otherwise to vary or mitigate the sentence, of any person convicted and imprisoned professedly under this Ordinance, if it shall appear to the said Governor and Council, on consideration of the report of such conviction, that the same is not supported by satisfactory evidence, or that the circumstances of the case warrant a remission or mitigation of punishment.

XIII.

1849.

12th Vict. No. 18.

XIII. AND be it enacted, that no Justice of the Peace, or any person acting under his authority and direction, shall be liable to answer at law, civilly or criminally, for any act done or professed to be done in pursuance of this Ordinance, unless it be alleged and proved that the act was done from wilful and corrupt motives. Justices not responsible in law for other than wilful or corrupt acts.

CHARLES FITZGERALD,  
GOVERNOR AND COMMANDER-IN-CHIEF.

*Passed the Council }  
9th May, 1849. }*

THOMAS N. YULE,  
Acting Clerk of the Council.

SCHEDULE

**SCHEDULE REFERRED TO.**

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FORM OF RECORD OF CONVICTION.

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*Western Australia* } Be it remembered that on the      day of  
                           *to wit.*            } 18      A. B. (convict's name) an Aboriginal  
 Native of (place or district) in the said colony was convicted before  
 us C. D. and E. F. (names of convicting Justices), two of Her Ma-  
 jesty's Justices of the Peace in and for the said colony, under the  
 authority of an Ordinance to provide for the summary trial and pun-  
 ishment of Aboriginal offenders in certain cases, upon information  
 laid on the      day of      before (name of Justice receiving  
 original information) by      of (name, residence, rank or calling  
 of informant), for that the said C. D. (convict's name) at (place or  
 district where offence was committed), in the said colony, on the  
                           day of      (here state briefly the offence sufficiently to  
 shew that it is a felony or misdemeanor triable under the annexed  
 Ordinance), whereupon we do, under the authority aforesaid, award,  
 order, and adjudge that the said (convict's name) be for his said  
 offence imprisoned (and "kept to hard labour") for the term of  
                           ("and be whipped before the expiration of the said term to  
 the extent of      lashes;" or, if whipping be the only punish-  
 ment awarded, "be for his said offence forthwith whipped, and be  
 thereafter immediately discharged").

Given under our hands and seals the      day of