



WESTERN AUSTRALIA.

ANNO DECIMO QUARTO

VICTORIÆ REGINÆ

No. VI.

An Ordinance to provide for the due Custody and Discipline of Offenders Transported to Western Australia; and of Offenders sentenced therein to Transportation.

WHEREAS by an Order in Council bearing date at Buckingham Palace, the 1st day of May, 1849, Her Majesty, in pursuance and exercise of the powers vested in Her Majesty by a certain Act of Parliament therein recited, and by and with the advice of Her Privy Council, did order that upon and from the First day of June in the said year, Her Majesty's Settlements in Western Australia should be places to which Felons and other offenders in the United Kingdom, there being, or thereafter to be under sentence or Order of Transportation or Banishment, should be conveyed under the provisions of the said recited Act. And whereas,
it

Term "Convict" defined.

it is expedient to provide for the due custody and discipline within this Colony, of such Offenders as may be transported thereto, under the authority of the said recited Order in Council, and also such Offenders as may be sentenced in this Colony to Transportation therefrom : Be it therefore enacted by His Excellency the Governor of Western Australia and its Dependancies, by and with the advice and consent of the Legislative Council thereof, that the word "Convict" shall (unless the nature of the provision or the context of the Ordinance excludes such construction) be deemed and taken throughout this Ordinance to mean any Offender being in this Colony under an unexpired and unremitted Sentence or Order of Transportation, whether such sentence shall have been passed in this Colony or elsewhere.

How crimes and misdemeanours not punishable with death may be tried and punished.

II. AND be it enacted, that it shall be lawful for any Court of General or Quarter Sessions, and for any two or more Justices of the Peace of the said Colony, to take cognizance in a summary way of all crimes and misdemeanours, not punishable with death, committed by any Convict, either within the limits of this Colony, or on board of any ship or vessel during the voyage hereto, and the same to punish, if such Court or Justices shall see fit, by transportation or by hard labour, in or without irons, on any of the roads or public works of the said Colony, for any time not exceeding three years ; or (in case of a male offender) by whipping not exceeding Fifty lashes ; and it shall be lawful for any such Court or Justices to award such punishment by whipping in addition to any sentence of hard labour. Provided, that such Court or Justices shall transmit a report of every sentence by them respectively imposed, under the authority of this Ordinance, together with a brief statement of the offence leading thereto, as soon as reasonably may be after the passing thereof, to the Colonial Secretary. Provided also, that no such Justices in Petty Sessions shall exercise any such power, authorities, or jurisdiction as aforesaid, in any case where any Court of General or Quarter Sessions, or superior Court of Criminal Jurisdiction shall be appointed to be held within one week after the complaint shall be preferred against any such offender, at any place not more than Twenty miles distant from the place at which the offence shall be charged to have been committed.

Certified copy of "official list" to be transmitted to Chairman and Resident Magistrates.

III. AND be it enacted, that the official list transmitted with any Convicts transported to this Colony, purporting to contain the names, offences, sentences, and personal descriptions, of any such offender or offenders, shall be deposited and kept in the office of the Comptroller

Comptroller General, and a copy thereof, certified to be a true copy under the hand and seal of the said Comptroller General, shall be by him transmitted to the Colonial Secretary, by whom an abstract thereof, certified under his hand to be a true abstract, shall be transmitted to the Resident Magistrate, Police Magistrate, or Chairman of the Bench of Magistrates of every district of the said Colony; and with respect to offenders sentenced in this Colony to Transportation therefrom, or whose sentences may have been commuted to Transportation, a list certified to be a true list under the hand and official seal of the Colonial Secretary, shall be likewise by him transmitted to the said Magistrates or Chairman as aforesaid.

IV. AND be it enacted, that as often as any question shall arise in any Court, or before any Justice of the Peace in the said Colony, whether any person is a Convict, the production of such certified abstract or list as aforesaid, together with evidence to the satisfaction of such Court, or of the Jury, or of such Justice respectively, of the identity of such person with any individual named in such certified abstract or list, shall be received and admitted as sufficient evidence that such person, touching whom such question shall arise, is or has been a Convict transported for the term or time set opposite in the said certified abstract or list to the name of the individual with whom such person shall have been so identified.

How identity is to be proved

V. AND be it enacted, that it shall be lawful for the said Governor, with the advice of his Executive Council, to appoint by proclamation in the Government Gazette, any one or more Penal settlement, or Penal settlements, or place places of confinement on the mainland, or on any of the adjacent islands of this Colony, for the reception and detention of Convicts at hard labour during the terms or unexpired residue of the terms of their respective sentences or orders of Transportation.

Governor may appoint places of penal settlement or confinement within the Colony.

VI. AND be it enacted, that every such Penal settlement or place of confinement shall be under the management of a Superintendent, to be appointed by Her Majesty, or by the Governor, and by an Overseer to be appointed in like manner if deemed necessary, and every such superintendent shall have the same powers as are incident to the office of Sheriff or visiting Justice of a gaol, and every such Overseer shall have the same powers as are incident to the office of Gaoler; and that every road gang or working party shall be under the management of an Overseer appointed by the Governor; and that it shall be lawful for the Governor, with the advice

Appointment of superintending officers. Powers of same.

advice of the Executive Council, to make and publish, and from time to time to rescind or vary, rules and regulations for the general treatment, employment, and safe custody of all offenders detained at any such settlement or place of confinement, or in any such road gang or working party.

VII. AND be it enacted, that any person who shall wilfully or designedly enter or visit any such settlement or place of confinement as aforesaid, or hold intercourse with any of the convicts thereat or therein, without the previous permission of the Governor, or some person duly authorised to give such permission, shall on a first conviction thereof in a summary manner, before any one or more Justice or Justices of the Peace, forfeit and pay a sum not exceeding Ten pounds; and in default of payment thereof, shall be imprisoned with or without hard labour, for any term not exceeding three calendar months; and any person so offending, after a previous summary conviction of such person for such offence, shall be deemed to be guilty of a misdemeanour, and being thereof convicted before any Court of General or Quarter Sessions, shall be subject to a fine not exceeding twenty-five pounds, or imprisonment not exceeding twelve calendar months.

VIII. AND be it enacted, that any person who shall knowingly supply any spirits, wine, or fermented liquors without the permission of the Superintendent or other lawful authority, or unless so supplied by a duly authorised person for medical purposes, to any Convict not having a ticket-of-leave, shall on summary conviction thereof, before any one or more Justice or Justices of the Peace, forfeit and pay any sum not exceeding Fifty pounds.

IX. AND be it enacted, that it shall be lawful for the Governor to withdraw any Convict from any such settlement or place of confinement, and to employ him on the roads or other public works, and to remove an offender from one such settlement or place of confinement to any other such settlement or place of confinement, or from one part of the said Colony to any other part of the same, as occasion may require.

X. AND be it enacted, that any Convict who shall be summarily convicted before any one or more Justice or Justices of the Peace, of having absconded from such penal settlement or from a road gang, or public work, or any appointed place of employment or confinement in any part of the said colony, shall be sent to the nearest

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nearest settlement, road gang, public work, or other appointed place of employment or confinement, and shall be detained until he shall have served the full term of his unexpired sentence or sentences, as well as of the time during which he shall have been absent by escape; and if a male, shall or may, at the discretion of the convicting Justice or Justices, be punished by whipping, not exceeding one hundred lashes; and every such offender shall be liable to be apprehended and punished in manner aforesaid, for any such escape at any time after as well as before the termination of his sentence of transportation.

XI. AND be it enacted, that any person reasonably suspected of being a Convict unlawfully at large, may be apprehended without warrant by any constable, police officer, or other person, and taken before a Justice of the Peace, who may detain such suspected person, unless he can prove to the satisfaction of such Justice that he is not such Convict.

XII. AND be it enacted, that any convict who shall wilfully disable himself from working on roads or other public works, or shall designedly prevent or protract the cure of any disease, in order to evade labour, shall, on summary conviction thereof before any one or more Justice or Justices of the Peace, on the certificate of the attendant Surgeon certifying such offence, be, at the discretion of the convicting Justice or Justices, punishable with whipping, not exceeding one hundred lashes, and shall be compelled to serve for such further time as he shall have been absent at hospital or otherwise disabled.

XIII. AND be it enacted, that any free person who shall knowingly harbour any convict, who shall be illegally at large, shall, on summary conviction for such offence before any two or more Justices of the Peace, forfeit and pay any sum not exceeding Fifty Pounds; and in default of payment thereof, shall be imprisoned for any term not exceeding six calendar months, with or without hard labour; and if the person guilty of such offence be himself a Convict on ticket-of-leave, he shall on summary conviction before one or more Justice or Justices of the Peace, be punished with whipping not exceeding one hundred lashes, or, at the discretion of the convicting Justice or Justices, with hard labour, in or out of irons, on the roads or other public works of the said Colony, for any time not exceeding twelve calendar months.

XIV.

Convict found on board of ship with intent to escape or without authority.

XIV. AND be enacted, that any Convict who shall be found on board of any ship or vessel about to leave the colony with intent to escape therefrom, shall be deemed to be guilty of a misdemeanor, and on conviction thereof before any Court of Quarter Sessions, shall be transported for any term not less than seven years, nor more than fourteen years; and any such Convict found on board any ship or vessel in any port or harbor of the said colony, without lawful authority, shall on summary conviction, before any one or more Justice or Justices of the Peace, be liable to be kept to hard labour, in irons, on the roads, or other public works of the said colony, for any term not exceeding twelve calendar months.

How punishable.

Taking Convict on board ship about to sail.

XV. AND be it enacted, that any boatman or other person knowingly or without lawful authority taking any Convict on board of a ship about to sail from the Colony aforesaid, shall on summary conviction for such offence, before any two or more Justices of the Peace, forfeit and pay any sum not exceeding fifty pounds; and in default of payment thereof, shall be imprisoned for any term not exceeding six calendar months; and if such boatman or other person be himself a transported convict on ticket-of-leave, he shall be liable on summary conviction of such offence before any one or more Justice or Justices of the Peace, to be sentenced to hard labour, with or without irons, on the roads or public works, for any term not exceeding two years, or to whipping not exceeding one hundred lashes.

Punishment.

Master, &c., of a vessel failing to give notice of or to deliver up Convict.

XVI. AND be it enacted, that any master or other person in charge of a ship or vessel who shall know that a convict is concealed on board, and shall fail to give immediate notice thereof to the nearest magistrate or constable, and to deliver up such convict into the charge of a constable, or shall offer any obstruction to a constable searching such ship or vessel for any such convict suspected to be therein, shall be deemed to be guilty of aiding and abetting in the intended escape of such Convict.

Guilty of adding and abetting escape.

Offence of aiding and abetting escape.

XVII. AND be it enacted, that any person guilty of aiding and abetting the escape or intended escape from the colony of a Convict, shall be deemed guilty of a misdemeanour, and on conviction thereof before a Court of General or Quarter Sessions, shall be liable to a fine not exceeding five hundred pounds, or to imprisonment not exceeding two years, or to both, at the discretion of the Court.

Punishment.

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XVIII. AND be it enacted, that any person knowingly purchasing, bartering or receiving any article supplied by Government from any convict, shall on summary conviction before any two or more Justices of the Peace of such offence, forfeit and pay any sum not exceeding Ten Pounds, and in default of payment thereof, shall be imprisoned, with or without hard labour, for any term not exceeding three calendar months, or at the discretion of the convicting Justice or Justices, shall in the first instance be so imprisoned, and, for a second offence, shall forfeit and pay any sum not exceeding Twenty Pounds, and be imprisoned with hard labour for any time not exceeding Twelve calendar months, and at the discretion of the convicting Justice or Justices, in case the offender be a male under eighteen years of age, be additionally punished with whipping not exceeding Fifty lashes.

Purchasing Government property from Convicts.

Punishment.

XIX. AND be it enacted, that all foreign letters from, and all inland and foreign letters to a convict, detained at any penal settlement, or elsewhere, in the service of the Crown in the said colony, shall be free of any colonial postage. Provided that all such letters from any such convict to any person in parts beyond the sea, shall be transmitted open, under cover, to the Colonial-Secretary, the Comptroller-General, or the Resident Magistrate of the Port from which the same shall be intended to be despatched beyond sea; and the said Secretary, Comptroller, or Magistrate, shall superscribe the same with his signature, and cause the same to be forwarded through the post.

Letters of Convicts how dealt with.

XX. AND be it enacted, that transportation to this colony under the said Order in Council, or other lawful authority, and every sentence of transportation passed in this colony, and every order of the said Governor for transportation in lieu of capital punishment, shall subject the offender to be conveyed to such penal settlement or other place of confinement within this colony, or to be kept to hard labour on such road or public work, or otherwise in the service of the Crown, as the said Governor shall at his discretion direct and appoint, and every sentence to labour on the roads or public works shall subject the offender to be placed on such road or work within this colony as the said Governor shall appoint.

Offenders when sentenced are to be conveyed and placed where and how the Governor may appoint.

XXI. AND be it enacted, that the term of any sentence passed in this colony on any convict, shall be in addition to and not concurrent.

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not concurrent with any former sentence passed on the same offender, who shall be detained until he shall have served the full term and time of all such sentences, and so on as often he shall be convicted, and shall also be liable during such detention to be dealt with in all respects as a Convict.

Governor to grant tickets-of-leave. XXII. AND be it enacted, that it shall be lawful for the said Governor to authorise the issue of a "ticket-of-leave" or written permission by the Comptroller General to any Convict to employ himself within the said colony for his own benefit, subject to the due observance by such Convict of all such rules and regulations as are next hereinafter mentioned.

Rules and regulations for holding tickets-of-leave. XXIII. AND be it enacted, that it shall be lawful for the said Governor, with the advice of the Executive Council of the said colony, from time to time, to make and publish by notice in the *Government Gazette*, and from time to time to rescind and alter by like notice, rules and regulations, not being repugnant to any enactment herein contained, as to time and place of muster, district of residence, change of dsitrick, and generally for securing a due supervision of and over the holders of such "tickets-of-leave" as aforesaid.

XXIV. AND be it enacted, that all summary remedies provided under the authority of any local Ordinance of this colony, for the recovery of wages or damages, or for securing any civil rights therein, shall extend and be applied to all cases in which any holders of such tickets as aforesaid shall be concerned.

Governor may revoke tickets-of-leave. XXV. AND be it enacted, that it shall be lawful for the said Governor to revoke any such "ticket-of-leave" on account of any conviction of the holder thereof duly reported to him, as hereinafter provided, or for any such immoral or disorderly conduct as, though not amounting to an offence cognizable under the summary jurisdiction hereinbefore established, may yet seem to justify or require such a measure of severity.

How the holder of a revoked ticket is to be dealt with, XXVI. AND be it enacted, that on such revocation of any ticket as aforesaid, notice thereof shall be published in the *Government Gazette*; and in case the offender, whose ticket shall be so revoked, shall not at the time of such revocation, be in custody in execution of any sentence of any competent court or authority,

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it shall be lawful for the Colonial Secretary, or the Comptroller-General, to issue a warrant or warrants for the apprehension of such offender, as a transported Convict illegally at large, and for the conveyance of such offender to such Gaol, Road-Gang or Public Work, as shall be appointed by the Governor in that behalf, there to be kept to hard labour for the then unexpired residue of his sentence of transportation, but in case such offender shall at the time of such revocation, be in custody in execution of any such sentence, as aforesaid, then it shall be lawful for the Colonial Secretary or the Comptroller-General to issue a detainer against such offender, and to lodge or cause the same to be lodged, with the Gaoler or Superintendent, or other person in whose charge and custody such offender shall then be, and by virtue of such detainer such offender shall be liable to be kept to hard labour in like manner, and for the like term as under any such warrant, in addition to and independently of, the sentence in execution whereof such offender shall be in custody at the time of issuing such detainer.

XXVII. AND be it enacted, that after any such revocation of ticket as aforesaid, it shall be lawful for the said Governor to grant a fresh ticket. Governor may grant fresh ticket.
to any such offender as aforesaid, a fresh ticket, on any grounds which shall seem to him meet and sufficient to warrant the same.

XXVIII. AND be enacted, that no licence to keep a public house or to retail spirituous or fermented liquors, shall be issued to any convict holding a ticket-of-leave; and if any such license shall at any time, either by inadvertence or otherwise, be issued to any such offender, such license shall be utterly null and void, so far as regards the holder of such license. No license to keep public house is to issued to ticket-of-leave holders.

XXIX. AND be it enacted, that it shall not be lawful for any convict, whether holding a ticket-of-leave or not, to carry or possess fire arms, without the previous written permission of the Colonial Secretary, or of the Comptroller-General, or of a Justice of the Peace of the district in which such offender may lawfully reside, and every such permission shall remain in force for any period therein-mentioned, not exceeding three calendar months; and any Justice of the Peace granting any such license, shall report the same, together with the place, duration, and occasion thereof, to the Colonial Secretary, by the first opportunity, by post or otherwise; and any offender found with firearms in his possession, contrary to this Ordinance, shall be deemed to be guilty of a misdemeanour, and being thereof summarily convicted before any one or more Justice or Justices
Justices

Justices of the Peace, shall be kept to hard labour, in or without irons, on the Roads or any Public Works for any time not exceeding Twelve calendar months.

Holder of ticket-of-leave violating any of the rules and regulations.

XXX. AND be it enacted, that any convict holding a ticket-of-leave who shall knowingly violate any of the Rules and Regulations made and issued by the authority of the Governor as aforesaid, for the time being in force relative to holders of "tickets-of-leave," shall be deemed to be guilty of a misdemeanour, and being thereof summarily convicted, before any one or more Justice or Justices of the Peace, shall be committed by the warrant of such Justice or Justices to the nearest Penal Settlement or place of confinement for Convicts, and shall thenceforth be subject to the ordinary discipline of Convicts in the service of the Crown for the then unexpired residue of his sentence or sentences or order or orders of Transportation.

Punishment.

Limitation of proceedings; recovery and appropriation of penalties.

XXXI. AND be it enacted, that all informations and proceedings in respect of any such offences against the provisions of this Ordinance, as are hereby made summarily triable before Justices of the Peace, and as are committed by a person not being a convict, shall be commenced within six calendar months after the offences respectively charged, shall have been committed, and shall be heard and determined, and the forfeitures and penalties in respect of the same shall be awarded, enforced, and appropriated in a summary manner before any two or more Justices of the Peace, according to the provisions of an Ordinance passed in the 14th year of the Reign of Her present Majesty, intituled "An Ordinance to facilitate the performance of the duties of Justices of the Peace out of Sessions within the colony of Western Australia, with respect to Summary Convictions and Orders."

Right of appeal in certain cases.

XXXII. AND be it enacted, that in all cases where, on any summary conviction under this Ordinance of any person not being a Convict, the sum adjudged to be paid shall exceed £5, or the imprisonment adjudged shall exceed one calendar month, any person who shall think himself aggrieved by such conviction, may appeal to the next Court of General or Quarter Sessions which shall be holden not less than twenty days after the day of such conviction, at Perth, in the said colony, unless such conviction shall take place within one hundred miles of Albany, in the said colony, in which case any appeal from such conviction, shall be to the next Court of General or Quarter Sessions holden not less than ten days after the day of such conviction, at Albany aforesaid. XXXIII.

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XXXIII. AND for the protection of persons acting under Limitation of actions, this Ordinance, be it enacted that all actions and prosecutions to ^{&c.} be commenced against any person for anything done in pursuance of this Ordinance, shall be commenced within two calendar months after the fact was 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 Ordinance 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, together with the costs up to that time; and if a verdict shall pass for the defendant, or the plaintiff become nonsuit or discontinue his action, 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.

XXXIV. AND be it enacted, that an Ordinance passed in the Ordinance repealed. 13th year of the reign of Her present Majesty, intituled "An Ordinance to provide for the due custody and discipline of Offenders transported to Western Australia, and of certain classes of offenders sentenced therein to transportation," shall be and the same is hereby repealed.

CHARLES FITZGERALD,
GOVERNOR AND COMMANDER-IN-CHIEF.

*Passed the Legislative Council, }
2nd day of December, 1850, }*

T. N. YULE,
Clerk to the Councils.