



WESTERN AUSTRALIA.

ANNO DUODECIMO

VICTORIÆ REGINÆ.

No. VII.

**An Ordinance for the Regulation of Gaols,
Prisons, and Houses of Correction in the
Colony of Western Australia, and for
other purposes relating thereto.**

WHEREAS it is expedient to make provision for the better re-
gulating of gaols, prisons, and houses of correction in the Preamble.
colony of Western Australia;—Be it therefore enacted, by His Excel-
lency the Governor of Western Australia, with the advice and consent
of

What Buildings, &c., to be deemed the public Gaols and Houses of Correction of the Colony. of the Legislative Council thereof, that all the houses, buildings, enclosures, and places now used, occupied and supported by the Government of the colony as public gaols or prisons at Perth, Fremantle, Rottnest, and Albany, shall be, and are hereby declared to be, and to have been, respectively, the legal public gaols and prisons belonging to the said colony, and, except the said prison of Rottnest, shall be subject to the several provisions hereinafter made for the regulation, management, care and discipline of the same, and of the prisoners therein respectively confined;—Provided always, that nothing in this Ordinance contained shall be deemed to repeal, wholly or in part, an Ordinance passed in a Session held in the fourth and fifth years of the reign of Her present Majesty, intituled “an Act to constitute the Island of Rottnest a legal prison.

This Ordinance not to be deemed to repeal any part of 4th & 5th Vict. No. 21.

Governor may by proclamation appoint places to be used as public Gaols.

II. AND be it enacted, that all buildings, erections, houses, and premises which shall hereafter be erected, purchased, enlarged and maintained at the public expense, and which shall, by Proclamation published in the Government Gazette, be declared and notified to be public gaols or prisons shall, from and after the publication of such notification, be severally deemed and taken to be the public gaol or prison of the place or district where the same is or shall be situated within the said colony, and shall be subject to the several provisions hereinafter made for the regulation, management, care and discipline of the public gaols and prisons belonging to the said colony, and of the prisoners confined within the same.

Sheriff to have control of all Gaols, and custody of all prisoners therein.

III. AND be it enacted, that all public gaols and prisons hereby declared to be such, or which shall hereafter be notified in manuer aforesaid, within the said colony or its dependencies, shall be, and are hereby declared to be, under the charge, care and direction of the Sheriff of Western Australia, subject however to the control of the Governor of the said colony; and that all prisoners committed for any crimes, offences, or misconduct to such public gaols and prisons shall be deemed to be in the custody of the Sheriff; and that all the keepers and under keepers of the said public gaols and prisons, and the assistants of such keepers and under keepers, and all other persons required and employed for the safety and care of the said public gaols and prisons, and of the prisoners confined therein, shall be nominated and appointed by the said Sheriff, subject to the approbation of the Governor.

IV.

1849.

12th Vict. No. 7.

IV. AND be it enacted, that unless it shall be otherwise declared or appointed by the said Governor in any proclamation to be made under authority of this Ordinance as aforesaid, every public gaol or prison shall be, and be taken, for all purposes, as equally a house of correction.

Gaols to be also Houses of Correction, unless otherwise appointed.

V. AND be it enacted, that all gaols and prisons throughout the said colony, shall be governed by such rules and regulations as shall from time to time be made for the good management of the same by the said Governor, with the advice of the executive council.

All Gaols to be governed by Regulations made by the Governor.

VI. AND be it enacted, that it shall and may be lawful for the said Governor to nominate and appoint some fit and proper person or persons, being a Magistrate or Magistrates of the said colony, to be the Visiting Justice or Justices of each gaol or prison, and the same to remove or displace and to appoint another or others in his or their stead; and every Visiting Justice so appointed shall be required to visit such gaol or prison at least once in every week, unless prevented by illness, or other sufficient cause, and shall from time to time make such reports to the Colonial Secretary as may be required by order of the said Governor;—Provided that nothing herein contained shall be taken to abridge or effect the power of any Judge of the Civil Court to visit and examine any such gaol or prison at any time when and how he may think fit.

Governor may appoint Visiting Justices.

Their duties.

Not to affect power of Judges to visit Gaols how and when they may think fit.

VII. PROVIDED also and be it enacted, that it shall be lawful for any and every Justice of the Peace for the said Colony, as often as he may think fit, to enter and examine any gaol or prison within the said Colony; and any gaoler, turnkey, or other person employed in any such gaol or prison, who shall refuse admittance to any such Justice of the peace, or offer to him any hindrance or obstruction, shall be guilty of a Misdemeanor.

Any Justice may visit Gaol.

Penalty on Gaolers or others refusing admittance.

VIII. AND whereas persons convicted of offences are sometimes sentenced to imprisonment without being sentenced to hard labour, be it enacted, that it shall be lawful for the Sheriff or Visiting Justice of any gaol or prison, to order all such persons, except such as maintain themselves, to be set to some work or labor, provided the same be not severe;—provided that no such prisoner who has the means of maintaining himself shall have any claim to be maintained at the public expense.

Convicted persons sentenced to imprisonment, but not to hard labor, may be set to work, unless they have means of maintaining themselves.

IX.

In what cases Prisoners committed for trial may be employed.

IX. and be it enacted, that it shall be lawful for the Sheriff or any Visiting Justice or Justices of any gaol or prison to authorise by an order in writing the employment of any prisoner therein committed for trial in any such work or labor as can conveniently be executed or done within such gaol or prison, provided that the consent of such prisoner to such order be previously freely given without threat or other compulsion; and that it shall be lawful for the keeper of such prison to employ such prisoner in such work or labor accordingly.

Convicts under sentence of transportation may be kept to hard labor.

X. AND be it enacted, that it shall be lawful to keep to hard labor every offender under sentence or order of transportation while he shall remain in any gaol or prison in the said colony, if his health shall permit, and if the Visiting Justice or Justices of such gaol shall give a written order to that effect; and the time during which any such offender shall continue in any gaol or prison as aforesaid, shall be taken and reckoned in discharge or part discharge of the term of his transportation or banishment.

Convicts whose sentence of transportation has been commuted to imprisonment and hard labor in the colony, to be treated as if originally so sentenced.

XI. AND be it enacted, that every person sentenced to transportation, who shall accept a pardon from the Governor on condition of imprisonment and hard labor within the said colony, shall be employed and otherwise treated in like manner as if such person had been originally sentenced to such imprisonment and labor; and a notification by the Colonial Secretary of such pardon to the keeper of the gaol or prison in which the person so pardoned shall be confined, shall be a sufficient warrant to such keeper for detaining and employing such person accordingly.

Hours of hard labor.

XII. AND be it enacted, that every prisoner sentenced to hard labor shall, unless prevented by sickness, be employed so many hours in every day, not exceeding ten, exclusive of time allowed for meals, as shall be directed by the rules and regulations to be made under this Ordinance, except on Sundays, Christmas Day, and Good Friday, and on any days appointed by public authority for fasting or thanksgiving.

Food of prisoners kept to work.

XIII. AND be it enacted, that every person maintained at the public expense, including prisoners committed for trial and consenting to work under the order of a Visiting Justice as aforesaid, shall be allowed a sufficient quantity of plain and wholesome food, to be fixed by

1849.

12th Vict. No. 7.

by the rules and regulations to be made under this Ordinance, regard being had to the nature of the labor required from such prisoners; and that prisoners under care of a surgeon shall be allowed such diet as he shall direct; and that scales and legal weights and measures shall be provided in every gaol or prison, open to the use of any prisoner, under such restrictions as shall be allowed by the rules and regulations aforesaid.

Diet of sick prisoners.

Scales and weights and measures to be provided and to be accessible to Prisoners.

XIV. AND be it enacted, that prisoners committed for trial shall be allowed such food as may be sufficient for the support of health, without being obliged to perform any kind of work or labor as the condition of such allowance; and shall be allowed to receive, at proper hours, any food, bedding, clothing or other necessaries, subject to strict examination, and otherwise under such limitations and restrictions as shall be prescribed by the rules and regulations to be made under this Ordinance.

Food of prisoners committed for trial.

Such Prisoners to be allowed to receive food, bedding and clothing, &c., under certain restrictions.

XV. AND be it enacted, that due provision shall be made, in the rules and regulations to be framed under this Ordinance, for the admission, at proper times, and under proper restrictions, of persons with whom prisoners committed for trial may wish to communicate, and also for the like admission of friends of convicted prisoners.

Admission of friends, &c., of Prisoners.

XVI. AND be it enacted, that as far as the circumstances of the said colony shall from time to time admit, provision shall be made in the said rules and regulations for the attendance of all prisoners at divine service on Sundays, or for the reading of prayers at stated periods by a visiting Chaplain, or the keeper or some other person; and for the admission at all reasonable hours of any Minister of Religion of any Sect, from whom any prisoner may wish and request to receive religious consolation and instruction; and also for the instruction of prisoners of both sexes in reading and writing.

Attendance at Divine Service.

Admission of Ministers of religion.

Secular instruction.

XVII. AND be it enacted, that in order to prevent the contamination arising from the association of prisoners, any prisoner may, by order of the Sheriff, or Visiting Justice, be separately confined during the whole or any part of his imprisonment; and such separate confinement shall not be deemed solitary confinement within the meaning of any Act forbidding the continuance of solitary confinement for more than a limited time;—Provided always that no cell shall be used for such separate confinement which is not of such a size, and

Separate confinement of prisoners.

so

so ventilated and lighted, that a prisoner may be confined therein without injury to health; and every prisoner so confined shall have the means of taking air and exercise at such times as shall be deemed necessary by the Surgeon.

Keeper not to put Prisoner in irons without visiting Justice's order; except in cases of urgent necessity.

XVIII. AND be it enacted, that no prisoner shall be put in irons by the keeper of any prison except in case of urgent and absolute necessity; and the particulars of every such case shall be forthwith entered in the keeper's journal, and notice thereof forthwith given to the Sheriff or one of the Visiting Justices; and the keeper shall not continue the use of irons on any prisoner longer than four days without an order in writing from a Visiting Justice, specifying the cause thereof; which order shall be preserved by the keeper as his warrant for the same.

Power of Visiting Justices summarily to investigate and punish offences of Prisoners.

XIX. AND be it enacted, that the Sheriff or the Visiting Justice or Justices shall have power to hear and determine all complaints touching any of the following offences, that is to say, disobedience of the rules of the prison; assaults by one prisoner upon another, where no dangerous wound or bruise is given; profane cursing or swearing, any indecent behaviour; and any irreverent behaviour during divine service or prayers; all which are hereby declared to be offences under this Ordinance if committed by any description of prisoners whatsoever; idleness or negligence in work or wilful mismanagement of it, which are also declared to be offences under this Ordinance, if committed by any prisoner under charge or conviction of any offence; and the said Justice or Justices may examine any persons touching such offences, and may summarily determine thereupon, and may punish all such offences by ordering any offender to close confinement in the refractory or solitary cell, in or without irons, and by keeping such offender on bread and water only, for any term not exceeding three days;—Provided that every complaint in respect of any of the said offences shall be made within fourteen days after commission thereof.

Punishment for repeated or more serious offences.

XX. AND be it enacted, that in case any prisoner under charge or conviction of any crime shall be guilty of any repeated offence against the rules of the prison, or shall be guilty of any greater offence than any offence hereinbefore made punishable by imprisonment with bread and water, the keeper shall forthwith report the same to the Visiting Justice or Justices, and any one such Justice, or any other

1849.

12th Vict. No. 7.

other Justice acting in and for the district or town in which such prison is situate, shall have power to enquire upon oath, and to determine in a summary manner concerning any such matter, and to order the offender to be punished by close confinement, in or without irons, for any time not exceeding one calendar month, and to be kept on bread and water for any portion of that time not exceeding seven days, or in case of male prisoners sentenced to hard labor by personal correction not exceeding three dozen lashes.

XXI. AND be it enacted, that if any person shall convey or cause to be conveyed into any gaol or prison, any mask, visor, or other disguise, or any instrument or arms proper to facilitate the escape of any prisoner, and the same shall deliver or cause to be delivered to any prisoner in such gaol or prison, or to any other person therein, for the use of such prisoner, without the consent of the keeper of such gaol or prison, every such person shall be deemed to have delivered such visor or disguise, instrument or arms, with intent to aid and assist such prisoner to escape, or in attempting to escape; and if any person shall by any means whatsoever aid and assist any prisoner to escape, or in attempting to escape, from any gaol or prison, every person so offending, whether an escape be actually made or not, shall be guilty of Felony, and, being convicted thereof, shall be transported beyond the seas for any term not exceeding fourteen years.

Punishment for conveying into any prison any disguise, instrument or arms, to assist or for otherwise assisting the escape of any Prisoners.

XXII. AND be it enacted, that if any prisoner who shall have effected his escape from any gaol or prison in the said colony, or from any road gang or working party, shall be knowingly harboured or concealed by any person with a view to prevent or impede the recapture of such prisoner, or to aid such prisoner in departing from the said colony, every person so harbouring or concealing shall be guilty of a misdemeanour.

Punishment for harbouring or concealing Prisoners who have escaped from a Gaol or road gang, &c.

XXIII. AND be it enacted, that male and female prisoners shall be kept as much as possible in separate buildings or parts of the prison, so as to prevent them from seeing, conversing, or holding intercourse with each other; and that female prisoners shall be attended by female officers or assistants where practicable.

Separation of male and female prisoners.

Females to attend on female prisoners.

XXIV. AND be it enacted, that all male prisoners sentenced to hard labor, may, by order of the Governor, notified by the Colonial Secretary,

Male convicts sentenced to hard labor may be worked on the roads by Governor's order.

Secretary, be set to work on the roads, or on any public work out of prison, and as to such of the said prisoners as have been convicted of Felony, or who shall have been detected in any attempt to escape, may be kept at such work in chains or otherwise secured, as may be deemed expedient.

Governor in certain cases may order removal of prisoners from one Prison to another.

XXV. AND be it enacted, that for the purpose of repairing, enlarging, or improving any gaol or prison in the said colony, or on account of any contagious or infectious disease therein, or of the overcrowded state thereof, or for the purpose of removal to any newly erected and proclaimed prison within the same district, or for the purpose of setting persons sentenced to hard labor upon any public work, or for the more convenient shipment of any person sentenced to transportation, it shall be lawful for the Sheriff, by any order of the Governor, to be notified in writing by the Colonial Secretary, to remove any person in prison within the said colony from the prison in which he is confined to any other prison within the said colony, there to be imprisoned for and during his term or then unexpired residue of his term of imprisonment, or until such repairs or improvements be effected, or during the continuance of such disease, or until such shipment, as the case may require: and when the purpose for which any such prisoner shall have been so removed shall have been answered, to remove such prisoner, if still lawfully subject to imprisonment, back to the prison from whence he came,

In cases of contagious disease or other emergency where Governor's order cannot previously be obtained, prisoners removal may be ordered by Visiting Justice, &c.

XXVI. AND be it enacted, that whenever any contagious or infectious disease, or other emergency, shall render necessary the immediate removal of the prisoners, or any of them, confined in any gaol or prison, and it shall be impossible to obtain for that purpose the previous order from the Governor, it shall be lawful for the Visiting Justice of such gaol or prison, or in his absence for the nearest Government Resident, or any two Justices of the Peace, and he and they are hereby respectively empowered to issue an order to the keeper of such gaol or prison to remove such prisoners, or any of them, to the nearest other prison or place of confinement, or to such place of security as shall be specified in such order, during the continuance of such disease or emergency;—Provided that every such order, together with the causes thereof, shall be forthwith notified to the Governor, and also to the Sheriff.

XXVII. AND be it enacted, that in case the Surgeon or Me-

dical Officer attendant on any prison shall certify his opinion in writing that it is necessary or expedient that any sick, diseased or wounded prisoner therein should be removed to any hospital or infirmary, it shall be lawful for the Governor by order, to be notified in writing by the Colonial Secretary, and for the Visiting Justice of any prison distant more than fifty miles from Perth, by order by him entered in the Visiting Justices' book, to direct the removal of such prisoner accordingly for such time as in such order shall be specified, and to cause such prisoner, if still lawfully subject to imprisonment, to be reconveyed to such prison as soon as he shall be declared by the Surgeon to be sufficiently convalescent.

Sick, &c., prisoners may be removed to Hospital on Surgeon's certificate.

XXVIII. AND be it enacted, that the keeper of every prison shall keep a journal, in which he shall record all punishment inflicted by his authority, or by that of the Visiting Justice, and the date and cause thereof, and all other occurrences of importance within the prison; and there shall also be kept in every prison a book to be called the Visiting Justices' book, in which shall be inserted every order, and the date of every visit, made by the Visiting Justice, and such remarks as may be thought necessary; and every such entry shall be signed by such Justice; and every keeper of a prison shall be responsible for the safe custody of such book, whole, unmutilated, and unaltered, and shall, at all times, when required so to do, produce such book to the Sheriff, and to the Visiting Justice, and to any Justice of the Peace for the town, place, or district wherein such prison shall be situate.

A Keeper's Journal and Visiting Justices' Book to be kept in every Prison.

XXIX. AND be it enacted, that upon the death of a prisoner notice thereof shall be given by the keeper forthwith to the Sheriff and Visiting Justice, and to the Coroner of the district, if any, and to the nearest relative of the deceased, where practicable; and that in case an Inquest shall be held on the body of any deceased prisoner, none of the prisoners confined in the prison in which the deceased died shall be a Juror on such Inquest.

Notice to be given of the death of a prisoner to Visiting Justice &c.

No prisoner to sit on an Inquest.

XXX. AND be it enacted, that every person confined in any prison whose term of imprisonment would, according to his sentence, have expired on any Lord's Day, shall be entitled to his discharge from prison on the Saturday next preceding such Lord's Day; and every

Where term of imprisonment expires on a Sunday, prisoner to be discharged on the preceding Saturday.

every keeper of a prison is hereby authorised and required to discharge any such prisoner accordingly.

Sentence of convicted Murderer need not direct Burial within precincts of a Prison.

XXXI. AND be it enacted, that it shall not be lawful for any Court, by which any person shall be sentenced to death for the crime of wilful murder, to direct that the body of such person shall be buried within the precincts of any prison,

Proceedings against persons acting under this Ordinance to be commenced within two months after fact committed.

XXXII. AND for the protection of persons acting in the execution of this Ordinance, be it enacted, that all actions and prosecutions to be commenced against any person for any thing 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 if 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.

Notice of action.

General issue.

Tender of amends.

Payment of money into Court.

If verdict for defendant &c., defendant to have full costs; Verdict for defendant not to carry costs without Judge's certificate.

CHARLES FITZGERALD,
GOVERNOR AND COMMANDER-IN-CHIEF.

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

THOMAS N. YULE,
Acting Clerk of the Councils.