



WESTERN AUSTRALIA.

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ANNO DECIMO NONO VICTORIÆ REGINÆ.

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No. VIII.

An Ordinance to substitute other punishment in lieu of Transportation.

WHEREAS a sentence of transportation passed in the colony of Western Australia can no longer be carried into effect, Preamble. by reason that there no longer exists any place beyond seas to which persons so sentenced can be lawfully conveyed, and it has therefore become expedient to substitute other punishment in lieu of transportation;—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,—

I. ANY person, who, if this Ordinance had not been passed, might be sentenced to transportation, shall not, after the passing Penal servitude substituted for transportation. hereof, portation.

hereof, be so sentenced ; but shall be liable, at the discretion of the Court, to be kept in penal servitude for such term as hereinafter mentioned.

II. THE terms of penal servitude to be awarded instead of the transportation to which any offender would have been liable if Terms of penal servitude, which may be awarded instead of the present terms of transportation. this Ordinance had not been passed, shall be as follows, (that is to say),—

Instead of transportation for seven years or for a term not exceeding seven years, penal servitude for the term of four years ;

Instead of transportation for any term exceeding seven years and not exceeding ten years, penal servitude for any term not less than four and not exceeding six years ;

Instead of transportation for any term exceeding ten years and not exceeding fifteen years, penal servitude for any term not less than six years and not exceeding eight years ;

Instead of transportation for any term exceeding fifteen years, penal servitude for any term not less than eight and not exceeding ten years ;

Instead of transportation for life, penal servitude for life.

And in every case where, at the discretion of the Court, one of any two or more of the terms of transportation hereinbefore mentioned might have been awarded, the Court shall have the like discretion to award one of the two or more terms of penal servitude hereinbefore mentioned in relation to such terms of transportation.

III. WHENEVER Her Majesty or His Excellency the Governor shall be pleased to extend mercy to any offender convicted of any offence, for which he may be liable to the punishment of death, upon condition of his being kept to penal servitude for any term of years or for life, such intention of mercy shall have the same effect, and shall be signified and executed in like manner, as in cases where the like mercy is extended upon condition of transportation ; an order for penal servitude being substituted for an order for transportation. Pardons on condition of penal servitude assimilated to pardons on condition of transportation.

IV. EVERY person who, under this Ordinance, shall be sentenced or ordered to be kept in penal servitude, may, during the

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term of such sentence or order, be confined in any such prison or place of confinement in any part of the said colony, in which persons under sentence of transportation may now by law be confined, or in any other prison in the said colony, as His Excellency the said Governor may from time to time direct; and such person may, during such term, be kept to hard labour and otherwise dealt with in all respects as persons under sentence of transportation may now by law be dealt with while so confined.

Persons under sentence or order of penal servitude, how to be dealt with.

V. THAT in the Convict Discipline Ordinances next hereinafter mentioned, (that is to say) the 14 Victoria, No. 6, the 16 Victoria, No. 18, and the 17 Victoria, No. 7, the word "convict," in addition to such meaning as is attached thereto in and by the said Ordinances respectively, shall be deemed and taken to mean and include any offender being in the said colony under an unexpired or unremitted sentence of penal servitude; and all and every the provisions of the said Ordinances, and such provisions of any other Ordinances as relate to offenders under sentence of transportation, shall be deemed to relate and shall or may be applied and enforced to and against offenders under sentence of penal servitude in like manner, to all intents and purposes, as against offenders under sentence of transportation.

All Ordinances concerning convicts under sentence of transportation made applicable to convicts sentenced to penal servitude.

VI. PROVIDED always, that nothing in this Ordinance contained shall in any manner affect Her Majesty's Royal prerogative of mercy, nor any prerogative of mercy vested in the Governor of the said Colony.

Queen's Prerogative of Mercy not to be affected hereby.

VII. PROVIDED also, that nothing herein contained shall interfere with or affect the authority or discretion of any Court in respect of any punishment which such court may now award or pass on any offender other than transportation; but where such other punishment may be awarded, at the discretion of the court, instead of transportation, or in addition thereto, the same may be awarded instead of, or (as the case may be) in addition to, the punishment substituted for transportation under this Ordinance.

Discretion of Courts as to alternative punishments not to be affected hereby.

A. E. KENNEDY,

GOVERNOR AND COMMANDER-IN-CHIEF.

*Passed the Legislative Council this }
9th day of June, 1856. }*

HENRY WAKEFORD,
Clerk of the Council.