

WESTERN AUSTRALIA

ANNO SEXTO DECIMO

VICTORIÆ REGINÆ

No. 18

An Ordinance to make further provision for the due Custody and Discipline of Offenders transported to Western Australia and Offenders sentenced therein to Transportation. *[Assented to 19th April, 1853.]*

WHEREAS it is expedient to make further provision for the due custody and discipline within this Colony of such offenders as now or hereafter may by law be transported thereto, and also of certain other offenders sentenced in this Colony, and for that purpose to amend the Ordinance No. 6, 1850: 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, anything in the said recited Ordinance notwithstanding:—

Preamble
See 17 Vic., No. 5

1. That the word 'convict,' wherever used in this Ordinance or in any Act or Ordinance now or hereafter to be in force in this Colony, shall (unless the nature of the provisions or the context of the Act or Ordinance exclude such construction) be deemed and taken to mean any offender being in this Colony under an unexpired or unremitted sentence or order of transportation, whether such sentence shall have been passed in this Colony or elsewhere, and also any offender being in this Colony, and whose sentence shall have been commuted to transportation or have been remitted on condition of transportation, and whose term of transportation may be unexpired or unremitted.

Word 'convict
defined

2. That it shall be lawful for any Court of General or Quarter Sessions, and for any one or more Justice or Justices of the Peace of the said Colony, to take cognizance in a summary way of all indictable 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 crimes and misdemeanours respectively to punish either by such and the same punishment or modes of punishment as any person not a convict would be liable to if lawfully convicted of the same crime or misdemeanour, or by imprisonment with hard labour, in or without irons, on any of the roads or public works of the said Colony for any term not exceeding three years; or (in case of a male offender) by whipping, not exceeding one hundred lashes; and it shall be lawful for any such Court, Justice or Justices to award such punishment by whipping in addition to any sentence of imprisonment with hard labour; provided that no single Justice shall proceed to inflict any corporal punishment by whipping, or to cause any convict sentenced by any single Justice under this

How indictable
crimes and mis-
demeanours not
punishable with
death may be
tried and
punished

Convicts

Ordinance to be worked in irons, until the sentence shall be approved by His Excellency the Governor.

How convict, under sentence of transportation for life, may be punished upon conviction for any crime for which such convict may be liable to be again transported

3. And whereas the trial and punishment of convicts already under sentence or order of transportation for life for any felony or crime for which they may by any law, now or hereafter to be in force, be liable to be again transported, is likely to prove of no practical effect: Be it enacted, that when any such convict as last aforesaid shall have been convicted, under the second section of this Ordinance, of any such felony or crime as last aforesaid, it shall be lawful for the Court of General or Quarter Sessions by which and for the Justices or Justice by whom such convict shall be so convicted to sentence such convict to imprisonment with hard labour, in or without irons, on any of the roads or public works of the said Colony for any period not less than three years nor more than five years, as such Court, Justices or Justice shall, according to the nature of the offence and the circumstances of the case, think proper. And (in case of a male offender) it shall be lawful for any such Court, Justices or Justice in its, their or his discretion to award punishment by whipping, not exceeding one hundred lashes, in addition to any such sentence of imprisonment with hard labour.

Form of proceedings, &c.

4. That in all proceedings under the second section of this Ordinance the charge against any convict, with the entry or minute of the proceedings thereon, shall be in the form or to the effect of the form contained in the Schedule to this Ordinance, marked A, and a copy of such particulars shall in every instance be forwarded, as soon as reasonably may be, to the Colonial Secretary.

How convict who shall forcibly oppose, &c., any lawfully constituted authority may be punished

5. That any convict who shall forcibly, or with violence, or in a turbulent manner oppose or resist any lawfully constituted authority, or who shall excite any other person to be guilty of such opposition or resistance, or who shall in any manner unlawfully excite or knowingly occasion or assist in any riot or tumultuary proceeding, or who shall unlawfully break out of any place of confinement, although the same may not be a legally constituted gaol or house of correction, shall be deemed guilty of a misdemeanour.

Verbal or written order, in certain cases, to have effect of writ of *habeas corpus*

6. That it shall be lawful for the Commissioner of the Civil Court of Western Australia and for the Chairman or Deputy Chairman of every Court of General or Quarter Sessions, by any verbal or written order to the Sheriff or his Deputy, or by any order in writing addressed to any Superintendent, Gaoler or other person in whose charge or custody such persons may be, to cause any person under imprisonment, whether for debt, felony or other cause, to be brought up in order to his being examined as a witness in any case or matter, civil or criminal, depending before such Commissioner or Court, and after his evidence shall have been given such Sheriff or Deputy, Superintendent, or Gaoler, or other person, shall cause such prisoner to be removed and again imprisoned; the non-issue of a writ of *Habeas Corpus* in any such case notwithstanding.

How person to be proved to be a convict

7. That after the passing of this Ordinance, in every case whatsoever (whether under this Ordinance or otherwise) wherein a question shall arise or be made whether a person is or was at any particular time a convict within the meaning of this Ordinance, it shall be suffi-

Convicts

cient for the party on whom the affirmative shall lie to allege and prove that such person is or at the time in question was a person in fact ordinarily dealt with as or generally deemed and reputed to be such convict; the non-production of any evidence required by the third and fourth sections of the said Ordinance No. 6, in any such case notwithstanding: Provided that such proof shall be received as *prima facie* proof only, and that the effect thereof may be rebutted by any certificate or instrument under the hand of some competent person in that behalf, or by any other mode of proof to the satisfaction of the Court or sitting Justices or Justice, as the case may be, showing that such reputed convict never had in fact been a convict, or that the term or terms of transportation or other sentence of such convict, and every extension thereof, if any, had at the time in question expired or been remitted: Provided also that every person who shall under any provision of this Ordinance be complained of or charged before any such Court of Sessions, Justices or Justice as aforesaid as a convict, shall be deemed and taken to be in fact a convict within the meaning of this Ordinance, and amenable to such summary jurisdiction as aforesaid, without proof thereof, unless he shall in the first instance, and before pleading, actually insist that he is not so amenable.

8. That every convict who shall unlawfully depart or absent himself from the service of his master or other employer or who shall depart or absent himself from his appointed residence or place of punishment, confinement, custody or labour, or from the service of the Government of this Colony, with intent in any such case to escape from the Colony, or with intent in any such case to remain absent more than twenty-four hours, or with intent in any such case to prevent his lawful apprehension, or who shall, with whatsoever intent, be unlawfully absent for more than twenty-four hours from the service of his master or other employer, or from his appointed residence or place of punishment, confinement, custody or labour or from the service of the Government, shall be deemed and taken to be an absconded convict, and shall be deemed to be guilty of a misdemeanour.

Absconded convict

9. That it shall and may be lawful for any Justice of the Peace having credible information that any such absconded convict, or any convict unlawfully at large, is harboured or concealed in any particular house, tenement, or place, or in some one of several houses, tenements, or places, to grant a search warrant to any one or more constable or constables, authorising him or them to search any such house, or number of houses or tenements, or places named or specified in such warrant, for such absconded convict; and it shall be lawful for any such constable or constables, in virtue of such warrant, by day and by night, to demand admittance into every such dwelling-house, tenement, or other place, for the purpose of executing the same, and in case of neglect or refusal to comply therewith, it shall be lawful for such constable to break and enter any such dwelling-house, tenement, or place, as aforesaid, and to apprehend every person whom such constable shall have reasonable cause for suspecting and believing to be an absconded convict, or a convict unlawfully at large, and also to apprehend all persons found in and about any such dwelling-house, tenement, or place, and whom such constable shall have reasonable grounds for

Search warrants for absconded convict

Convicts

suspecting and believing to harbour and conceal any such absconded offender as aforesaid; and all persons so found and apprehended shall by such constable be taken as soon as reasonably practicable before a Justice of the Peace for examination, and to be further dealt with according to law.

Aiding and abetting the escape, or intended escape, of a convict, a misdemeanour

10. That any person who shall convey, or cause to be conveyed into any penal settlement or place of confinement appointed under the 5th section of the said Ordinance, No. 6, any mask, visor or other disguise, or any instrument or arms, provisions or things, proper to facilitate the escape of any convict, or who the same shall deliver, or cause to be delivered to, or received by, any convict confined in such settlement or place, or to any other person whomsoever, for the use of any such convict, or who shall write, send or convey, or cause to be written, sent or conveyed, to any such convict, either directly or indirectly, any letter or other communication, message or information, with a view to suggesting or assisting the escape of such convict, and any person on whose person or in whose possession or custody any such mask, visor or other disguise, or any such instrument or arms, provisions or things, or any such letter or other communication shall be found, with intent to aid and assist any such convict to escape (and whether the person in whose possession the same shall be so found be the convict or one of the number of convicts whose escape the same were intended to aid and assist or otherwise,) shall be guilty of the misdemeanour of aiding and abetting the escape, or intended escape from the Colony of a convict; and shall, if a free person, upon conviction of such offence, in the manner provided by the 17th section of the said Ordinance, No. 6, be punishable accordingly; and if a convict, may be tried and punished under the second section of this Ordinance.

How holder of a ticket-of-leave violating any of the rules and regulations, may be punished

11. That any convict holding a ticket-of-leave, and convicted under the 30th section of the said Ordinance, No. 6, may be punished as in said section mentioned, or, at the discretion of the convicting Justice or Justices, may be committed by the warrant of such Justice or Justices to the nearest penal settlement or place of confinement for convicts, for any time not exceeding three years, or may be punished by a fine not exceeding five pounds, to be recovered by stoppage of wages payable by the Government to such convict, or otherwise, if necessary, according to the provisions of an Ordinance, No. 5, 1850, with respect to fines imposed thereunder.

Warrant of commitment to penal settlement

12. That all convicts sent to any penal settlement or place of confinement for convicts, under warrant of commitment by any Court, Justices or Justice, shall be received, confined and kept to hard labour or otherwise, according to the exigencies of such warrant; and such warrant shall be a sufficient authority to the Superintendent, Overseer, or other person in charge of such penal settlement or place of confinement, and to all other persons acting under them, for receiving, confining, and keeping therein such convicts so sent as aforesaid accordingly.

Sections F and H

13. That sections F and H of 'The Shortening Ordinance, 1853,' be incorporated with this Ordinance.

Portion of Ordinance No. 6, 1850, repealed

14. That Section 2 and such other portions of the said Ordinance, No. 6, as are at variance with or contradictory to this Ordinance are

Convicts

hereby repealed, and also that all other portions of the said Ordinance and this Ordinance shall be taken and construed together as one Ordinance to all intents and purposes whatsoever.

CHARLES FITZGERALD,
GOVERNOR AND COMMANDER-IN-CHIEF.

SCHEDULE

A

See sec. 4

M.N., per (ship in which he arrived), No. Perth (or as the case may require).
sentence of transportation for years (or life, or in case these particulars are (police number), under
not known, M.N., a convict) is charged upon the complaint of A.B., with (state
shortly in substance the offence or misconduct complained of), to which said charge
(the same being read to the said M.N.) he says that he is (guilty or not guilty)
(state the decision, whether guilty or not guilty).

Sentenced to (state sentence).

Remarks (add any remarks which the case may appear to call for).

Dated at the day of 18 .

C.D.,

Chairman of the Court of General or Quarter Sessions of the Peace (as the case
may be) held at the day and year aforesaid.

or

E.F. and G.H.,
Justices of the Peace;

or

J.K.,
Justice of the Peace
(as the case may be).
