



ANNO TERLIO

VICTORIÆ REGINÆ.

*Enacted*  
No. 6.

*AN ACT for Raising and Organising a Police Force for the  
Province of South Australia.*

WHEREAS it is expedient and necessary to make provision for the maintenance of the public peace and good order within the Province of South Australia and to raise and organise a Police Force for that purpose:

BE IT THEREFORE ENACTED by His Excellency Lieutenant-Colonel GEORGE GAWLER Knight of the Royal Hanoverian Guelphic Order Governor and Commander-in-Chief of Her Majesty's Province of South Australia with the advice and consent of the Legislative Council thereof as follows: That it shall be lawful for the Governor of this Province for the time being from time to time by warrant under his hand to appoint a Commissioner or Commissioners of Police a Superintendent of Police and such other officers as he may deem expedient for the general superintendence of the Police Force and to execute such other duties as shall be hereinafter specified or as shall be from time to time directed by the Governor of this Province for the time being for the more efficient administration of the Police within the said Province under the authority of this or any other Act or ordinance in force within this Province and the said Superintendent and other officers from time to time to displace and remove and to appoint others in their place as to the said Governor shall seem fit.

II. And also that every person to be appointed a Superintendent or officer of Police shall before he shall begin to execute the duties of his office take the following oath before the Judge of the Supreme Court of the said Province or a Justice of the Peace who are hereby respectively required and authorised to administer such oath That is to say—I, A. B. do swear that I will faithfully impartially and honestly according to the best of my skill and knowledge execute all the powers and duties of a Superintendent

Oath to be taken  
by Superintendent  
and Officers of  
Police.

tendent or officer of Police under and by virtue of an Act passed in Council No. 6, 3rd Victoriae intituled "An Act for raising and organising a Police Force for the Province of South Australia."

III. And also that it shall and may be lawful for the Governor for the time being to make such rules regulations and orders as may seem fit or as occasion shall require for ensuring the proper discipline and efficiency of the said Police Force and the said rules regulations and orders to alter vary or annul from time to time as shall seem fit or necessary.

Superintendents  
and Officers to  
suppress riots, tu-  
mults, &c.

IV. And also that it shall be the duty of the said Superintendent and all public nuisances and offences against the law committed in any part of the Province where he or they shall be on duty.

Police for the  
Province to be ap-  
pointed.

V. And also that it shall be lawful for the Governor of this Province for the time being by and with the advice and consent of the Legislative Council to authorise the said Superintendent or officers from time to time to nominate a sufficient number of able men to be approved of by the Honorable the Colonial Secretary for the time being as a Police Force for the said Province who shall be sworn before any Justice of the Peace for this Province to act as Constables for preserving the peace and preventing robberies and other felonies and apprehending offenders in and throughout the said Province and the men so sworn shall enter into and subscribe articles of agreement with the Honorable the Colonial Secretary binding themselves to serve in the Police for such period and under such conditions and regulations as His Excellency the Governor in Council shall from time to time order and direct and shall obey all such lawful commands as they may from time to time receive from the said Superintendent or any of the said officers for conducting themselves in the execution of their office and in default of their performance of the articles of the said agreement and the conditions thereof or in case of disobedience of such lawful commands as aforesaid the person or persons so neglecting to fulfil the said agreement or being guilty of disobedience of orders as aforesaid shall be brought before any Justice or Justices of the Peace appointed by the Governor for the time being to act as a Commissioner or Commissioners of Police and being convicted of such neglect and disobedience shall for every such offence forfeit and pay a sum not less than five shillings nor exceeding twenty pounds and shall in addition to such fine or in default of payment thereof be liable to be imprisoned for not less than one week nor more than six calendar months in any common gaol or place of confinement within this Province.

VI. And also that any person employed in the said Police Force who shall take a bribe or any gratuity whatever for suffering a prisoner or offender against any of the laws in force within this Province to escape or for neglecting to execute any warrant or law process entrusted to him or to make any seizure or for in any way showing favor to a prisoner or offender of whatever kind or description shall upon summary conviction thereof before one or more Justice or Justices of the Peace be subject to a fine not exceeding fifty pounds or to imprisonment for any period not exceeding six months or to both fine and imprisonment in the discretion of the said Justice or Justices.

Powers of Police.

VII. And also that it shall be lawful for any man belonging to the said Police Force to apprehend any person whom he shall find drunk in the streets or public places of any city town or village or upon any highway or public road within the said Province where he the said Policeman shall be upon duty at any hour of the day or night and the same to convey before any Justice of the

the Peace to be dealt with according to law and to apprehend all loose idle drunken and disorderly persons whom he shall find between sunset and the hour of eight in the forenoon lying or loitering in any street yard highway or other place within any city town or village within the said Province where he shall be upon duty and not giving a satisfactory account of himself and to deliver any person so apprehended into the custody of the constable appointed under this Act who shall be in attendance at the nearest Police station in order that such person may be secured until he can be brought before a Justice of the Peace to be dealt with according to law or give bail for his appearance before a Justice of the Peace if the constable shall deem it prudent to take bail in the manner hereinafter mentioned.

VIII. And also that where any person found lying or loitering about as aforesaid or charged with any petty misdemeanour shall be brought without warrant of a Justice of the Peace into the custody of any constable appointed under this Act during his attendance in the night time at any Police station within the said Province or any city town or village therein it shall be lawful for such constable if he shall deem it prudent to take bail by recognizance with or without sureties as the said constable shall think fit without any fee or reward from such person on condition that such person shall appear for examination before a Justice of the Peace at some place to be specified in the recognizance at the hour of ten in the forenoon upon the day next after such recognizance shall be taken unless that day shall fall on a Sunday or Christmas Day or Good Friday and in that case on the like hour on the succeeding day and every recognizance so taken shall be of equal obligation on the party entering into the same and liable to the same proceedings for the estreating thereof as if the same had been taken before a Justice of the Peace and the constable shall enter into a book to be kept for that purpose in every Police station the name residence and occupation of the party and of his surety or sureties (if any) entering into such recognizance together with the condition thereof and the sums respectively acknowledged and shall lay the same before such Justice as shall be present at the time and place when and where the party is required to appear and if the party does not appear at the time and place required or within one hour after the Justice shall cause a record of such recognizance to be drawn up and signed by the constable and shall return the same to the next General Quarter Sessions of the Peace or Resident Magistrate of the District wherein the offence has been committed with a certificate at the back thereof signed by such Justice that the party has not complied with the obligation therein contained and the Clerk of the Peace or of the Resident Magistrate shall make the like estreats and schedules of every such recognizance as of recognizances forfeited in the Sessions of the Peace and if the party not appearing shall apply by any person on this behalf to postpone the hearing of the charge against him and the Justice shall consent thereto the Justice shall be at liberty to enlarge the recognizance to such further time as he shall appoint and when the matter shall be heard and determined either by the dismissal of the case or by binding the party over to answer the matter thereof at the Sessions or otherwise the recognizance for the appearance of the party before a Justice shall be discharged without fee or reward.

Constables attending at the Police station in the night may take bail by recognizance from persons brought before them for petty misdemeanour or such recognizance to be conditioned for the appearance of the parties before a Magistrate.

In default of appearance recognizance to be forfeited.

Time of hearing may be postponed.

IX. And also that if any person shall assault or resist any person belonging to the said Police Force in execution of his duty or shall aid or incite any person so to assault or resist every such offender being convicted thereof in a summary way before a Justice of the Peace shall for every such offence forfeit and pay a sum not less than five pounds nor exceeding ten pounds or shall in the discretion of such Justice be committed to take his or her trial before the Resident Magistrate of the district wherein the offence has been committed or at the next General Gaol Delivery.

Assault on Policemen.

X. And

Penalty on publicans harbouring policemen during the hours of duty.

X. And also that if any victualler or licensed publican or other person shall knowingly harbour or entertain any man belonging to the said Police Force or permit such man to abide or remain in his house shop room or other place during any part of the time appointed for his being on duty elsewhere or after the hours appointed for closing the said public-houses by the Act of Council No. 1, 2nd Victoriæ unless such constable shall have entered the said house for the *bona fide* execution of his duty and shall remain there so long only as shall be requisite in that behalf every such victualler licensed publican or other person being convicted thereof in a summary way before a Justice of the Peace shall for every such offence forfeit and pay a sum not exceeding five pounds.

Justices may compel the attendance of witnesses.

XI. And also that it shall and may be lawful to or for any Justice or Resident Magistrate as aforesaid to issue a summons under his hand to any person whomsoever to attend as a witness to give evidence upon oath or solemn affirmation before such Justice or Resident Magistrate touching any matter of fact contained in any information or complaint for any offence against this Act whether on the part of the prosecutor or informer or of the person complained of and which summons such Justice or Resident Magistrate as aforesaid is hereby required to issue if demanded and if such person summoned as aforesaid being within the limits of the said city or district for which the said Resident Magistrate has been appointed as aforesaid shall refuse or neglect to appear at such time and place to be for that purpose appointed without such excuse for his refusal or neglect as shall be approved of by such Justice or Resident Magistrate or appearing shall refuse to be examined on oath or solemn affirmation or to give evidence before such Justice or Resident Magistrate then and in every such case every such person shall forfeit for every such offence any sum not less than five pounds nor exceeding ten pounds and further be committed to prison until the same be paid or in the discretion of such Justice or Resident Magistrate until he or she shall give such evidence before such Justice or Resident Magistrate as shall be lawfully required of him or her.

Witnesses not appearing.

XII. And also that every Justice of the Peace or Resident Magistrate before whom any person or persons shall be convicted of any offence against this Act shall and may cause the conviction to be drawn up in the following words or in words to the same effect: That is to say—

Form of conviction.

Be it remembered that on this            day of            in the year of our Lord            A. B. is duly convicted before me            one of Her Majesty's Justices of the Peace of having [*here state the offence as the case may be*] contrary to the form of an Act in that case made and provided: And I [*or we as the case may be*] do declare and adjudge that the said A. B. hath forfeited for his [*or her as the case may be*] said offence the sum of            and also the sum of            for the costs charges and expences already incurred thereabout. Given under my hand and seal [*or our hands and seals as the case may be*] the day and year first above written.

No certiorari.

XIII. And also that no conviction order warrant or other matter made or purporting to be made by virtue of this Act shall be quashed for want of form or removed by *certiorari* or otherwise into the Supreme Court and no warrant of commitment shall be held void by reason of any defect therein provided that it be therein alleged that the party has been convicted and that there be a good and valid conviction to sustain the same and where any distress shall be made for levying any money by virtue of this Act the distress itself shall not be deemed unlawful nor the party making the same be deemed a trespasser on account of any defect or want of form in the summons conviction warrant of distress or other proceedings relating thereto nor shall the party distraining be deemed a trespasser *ab initio* no account

As to informality in warrant, &c.

account of any irregularity afterwards committed by him but the person aggrieved by such irregularity may recover full satisfaction for the special damage if any in an action upon the case.

XIV. And also for the protection of persons acting in the execution of this Act be it enacted that all actions and prosecutions to be commenced against any person for anything done in pursuance of this Act 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 Act 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 incurred up to that time and if a verdict shall pass for the defendant or the plaintiff become non-suited or discontinue any such action after issue joined 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 had shall certify his approbation of the action and of the verdict obtained thereupon.

As to proceedings  
against persons  
acting under this  
Act.

Notice of action

General issue.

XV. And also be it further enacted that all fines and penalties which may be recovered by virtue of this Act shall be given and paid one half to the informer or prosecutor if demanded and the residue to the use of Her Majesty Her Heirs and Successors for the public uses of this Province and for the support of the Government thereof.

Appropriation of  
Fines.

XVI. And also that where any person employed in the said Police Force shall be entitled to the whole or a moiety of any forfeiture penalty or seizure under this or any other act in force within this Province the amount or proceeds thereof shall go to a general fund to be distributed at the end of every year among the officers and men belonging to the said Police Force in such proportions and according to such regulations as the Governor for the time being shall appoint direct and determine and in default of appointing regulations or directions being made the said fine shall go to the person entitled to the same immediately upon the recovery thereof.

XVII. And also be it further enacted that this Act shall commence and take effect from and after the first of day of November next.

XVIII. And also that in this Act unless where otherwise required by the context the words "party" or "person" shall extend to males and females and all words in the singular shall extend to the plural number and all words of the masculine gender to the feminine.

GEORGE GAWLER,  
Governor of South Australia.

Passed the Council this eleventh  
day of October, 1839.

GEORGE HALL,  
Clerk of Council.