



ANNO QUINTO

VICTORIÆ REGINÆ.

No. 3.

AN ACT for regulating the Police Force of the Province of South Australia.

WHEREAS an Act of the Governor in Council 3rd Victoria No. 6 was passed for raising and organising a Police Force for the Province of South Australia and whereas Her Majesty having been pleased to disallow the said Act it becomes necessary to pass a new enactment providing for the same object on the most moderate scale and limited to the period requisite for receiving Her Majesty's sanction to the establishment proposed to be created—

BE IT THEREFORE ENACTED BY HIS EXCELLENCY GEORGE GREY Esquire 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 until Her Majesty's pleasure shall be known respecting the establishment to be sanctioned for the Police of this Province 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 or 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 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 Commissioners 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 Commissioner 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

Oath to be taken by Superintendent and officers of Police.

Province or a Justice of the Peace who are hereby respectively required and authorised to administer such oath That is to say—J. 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 Commissioner or officer of Police under and by virtue of an Act passed in Council No. 3 Fifth Victoria intituled "An Act for regulating the Police Force of 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.

Officers to suppress all riots, tumults, &c.

IV. And also that it shall be the duty of the said Commissioner and officers to suppress all tumults riots affrays or breaches of the peace 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 appointed.

V. And also that it shall be lawful for the Governor for the time being by and with the advice and consent of the Legislative Council to authorise the said Commissioner or officers from time to time to nominate a sufficient number of able men 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 have all such powers authorities privileges and advantages as any constable duly appointed now has or hereafter may have by virtue of any law or statute now made or hereafter to be made and shall obey all such lawful commands as they shall from time to time receive from the said Commissioner or other officer respectively for conducting themselves in the execution of their offices and such Commissioner or officer may at any time suspend or dismiss from his employment any such constable whom he shall think remiss or negligent in the execution of his duty or otherwise unfit for the same and when any such constable shall be so dismissed or cease to belong to the said force all powers and authorities vested in him as a constable under and by virtue of this Act shall immediately cease and determine to all intents and purposes whatsoever and the men so sworn shall enter into and subscribe articles of agreement with the said Commissioner 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 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 the orders as aforesaid may be brought before the said Commissioner or any two Justices of the Peace appointed by the Governor for the time being to act for such Commissioner or officer 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 any offender against any of the laws in force within this Province to escape

nd r for neglecting to execute any warrant or law process entrusted to him, or
ar o make any seizure or for in any way showing favor to a prisoner or
ny offender of whatever kind or description shall upon summary conviction
er hereof before one or more Justice or Justices of the Peace be subject to
3 fine not exceeding fifty pounds or to imprisonment for any period not
he exceeding six months or to both fine and imprisonment in the discretion
of the said Justice or Justices.

he VII. And also that it shall be lawful for any man belonging to the
fit said Police Force to apprehend any person whom he shall find drunk in
cy the streets or public places of any city town or village or upon any high-
er way or public road within the said Province at any hour of the day or
night and the same to convey before any Justice of the Peace to be dealt
with according to law and to apprehend all loose idle drunken and dis-
nd orderly persons whom he shall find between sunset and the hour of eight
all in the forenoon lying or loitering in any street yard or other place within
he any city town or village or upon any highway or public road within the
said Province and not giving a satisfactory account of himself and to
ng deliver any person so apprehended into the custody of the constable
ise appointed under this Act who shall be in attendance at the nearest Police
nt station in order that such person may be secured until he can be brought
be before a Justice of the Peace to be dealt with according to law or give bail
es for his appearance before a Justice of the Peace if the constable shall
nd deem it prudent to take bail in the manner hereinafter mentioned and
so every such offender shall on conviction before any Justice of the Peace
forfeit and pay for every such offence a sum not exceeding Two pounds.

Powers of Police.

ny VIII. And also that where any person found lying or loitering about as
aw foresaid or charged with any petty misdemeanor shall be brought without
ful warrant of a Justice of the Peace into the custody of any constable appointed
is- under this Act during his attendance in the night time at any Police station
u- within the said Province or any city town or village therein it shall be lawful
is- for such constable if he shall deem it prudent to take bail by recognizance
all or without sureties as the said constable shall think fit without any
for fee or reward from such person on condition that such person shall appear
to or examination before a Justice of the Peace at some place to be specified in
m- the recognizance at the hour of ten in the forenoon upon the day next after
ne such recognizance shall be taken unless that day shall fall on a Sunday or
ten Christmas Day or Good Friday and in that case on the like hour on the
ng 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
he the estreating thereof as if the same had been taken before a Justice of the
is- Peace and the constable shall enter into a book to be kept for that purpose
sc- 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
ny the condition thereof and the sums respectively acknowledged and shall lay
to the same before such Justice as shall be present at the time and place when
ca- and where the party is required to appear and if the party does not appear
an- at the time and place required or within one hour after the Justice shall cause
in- record of such recognizance to be drawn up and signed by the constable
be- and shall return the same to the next General Quarter Sessions of the Peace
th- for 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
as not complied with the obligation therein contained and the Clerk of the
th- Peace or of the Resident Magistrate shall make the like estreats and sche-
du- nules 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

Constables atten-
ding at the Police
station in the night
may take bail by
recognizance from
persons brought
before them for
petty misdemea-
nor such recogni-
zance to be con-
ditioned for the
appearance of the
parties before a
Magistrate.

In default of ap-
pearance recogni-
zance to be for-
feited.

Time of hearing may be postponed.

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.

Assault on Policemen.

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.

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 Victoriae 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.

Jurisdiction and procedure for offences.

XI. And also that all complaints of offences against this Act shall be heard and determined and all fines penalties and forfeitures may be recovered by summary procedure before such Justice or Justices or Resident Magistrate who shall have power in all cases to award costs if he shall think proper and such fines penalties and forfeitures with such costs if awarded may be levied by distress and sale and in default of payment and sufficient distress such Justice or Justices or Resident Magistrate may by warrant commit the offender to the common gaol of the province there to remain and be imprisoned either simply or to be kept to hard labor in solitary confinement or both in the discretion of such magistrate for any time not exceeding the time hereinafter mentioned that is to say not exceeding seven clear days where the whole sum to be levied or remaining unpaid together with the costs shall not exceed ten shillings for a term not exceeding fourteen clear days where the said sum and costs shall not exceed one pound for a term not exceeding one calendar month where the said sum and costs shall not exceed five pounds and for a term not exceeding three calendar months where the said sum and costs shall be of any greater amount unless the said sum to be levied together with the costs shall be sooner paid.

Justices may compel the attendance of witnesses.

XII. 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

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 in every such case every such person shall forfeit for every such offence any sum not 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.

XIII. 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—

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.

Form of conviction.

XIV. 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* on 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.

No certiorari.

XV. 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 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

As to proceedings against persons acting under this Act.

Notice of action.

General issue.

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.

Appropriation of Fines.

XVI. 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 third 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.

XVII. And also that where any person employed in the said Police Force shall be entitled to the whole or a proportion 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 nor 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.

XVIII. And also be it further enacted that this Act shall commence and take effect from and after the passing thereof.

XIX. 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 GREY,
Governor of South Australia.

Passed the Council this Thirteenth day of July One Thousand Eight Hundred and Forty one

A. M. MUNDY,
Clerk of Council.