



ANNO SEXTO

VICTORIÆ REGINÆ.

No. 4.

By His Excellency GEORGE GREY, Esquire, Governor and Commander-in-Chief of Her Majesty's Province of South Australia and its Dependencies, and Vice-Admiral of the same, by and with the advice and consent of the Legislative Council.

An Act for the regulation of Gaols, Prisons, and Houses of Correction in South Australia.

WHEREAS the laws now in force in England for regulating gaols and houses of correction, and for the classification, government, and instruction of the prisoners confined therein are not applicable to this Province: And whereas an Act of the Governor and Council of South Australia was passed in the fourth year of Her Majesty's reign, "To legalize a new Common Gaol for the Province," the record of which was lost by fire in the Governor's offices, and it is necessary to make further provision for the regulation of gaols, prisons, and houses of correction in the said Province and its Dependencies, and for other purposes relating thereto. Preamble.

Be it therefore Enacted by His Excellency George Grey, Esquire, Governor and Commander-in-Chief of Her Majesty's Province of South Australia and its Dependencies, and Vice-Admiral of the same, by and with the advice and consent of the Legislative Council thereof, That from and after the passing of this Act, the before recited Act shall be and the same is hereby repealed, except as to all matters done or arising prior to the passing hereof. Repeal of Act of fourth Victoria, to legalize a new common gaol for the Province.

II. And be it further Enacted, That the said laws now in force in England for regulating gaols and houses of correction, and for the classification, government, and instruction of the prisoners confined therein, shall not be construed to apply to the said Province or its Dependencies What shall be the public gaols, prisons, and houses of correction of the Province.

Dependencies, and that from and after the passing and publication of this Act, all the houses, buildings, enclosures, or places, now used, occupied, and supported by the Government of the said Province, as public gaols, prisons, or houses of correction, and which are specified in the Schedule to this Act annexed marked A, shall be, and are hereby declared to be respectively, the public gaols, prisons, and houses of correction, belonging to the said Province of South Australia and its Dependencies respectively, and 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.

Governor may, by Proclamation, appoint places to be used as public gaols, &c.

III. And be it Enacted, That all buildings, erections, houses, and premises, which shall hereafter be erected, built, purchased, enlarged, or maintained at the public expense as and for public gaols, prisons, and houses of correction, within the said Province and its Dependencies, and which shall by Proclamation to be from time to time published in the *Government Gazette*, by order of the Governor for the time being of the said Province, be declared and notified as such public gaols, prisons, or houses of correction, shall from and after the publication of such notification, be severally deemed and taken to be the public gaol, prison, or house of correction of the place or district where the same is or shall be situated within the said Province or its Dependencies respectively, and shall be subject to the several provisions hereinafter made for the regulation, management, care, and discipline of the public gaols, prisons, and houses of correction belonging to the said Province and its Dependencies, and of the prisoners confined within the same.

Sheriff to have control of all gaols, &c., and custody of all prisoners confined therein.

IV. And be it Enacted, That all the said public gaols, prisons, and houses of correction already established or used, and hereby declared to be the public gaols, prisons, and houses of correction in the said Province and its Dependencies, and also all other public gaols, prisons, or houses of correction, which, under the provisions of this Act shall hereafter be notified in manner aforesaid, to be and to be used as such within the said Province or its Dependencies respectively, shall be and are hereby declared to be, under the charge, care, and direction of the Sheriff of South Australia, subject, however, to the control of the Governor for the time being of the said Province, and that all prisoners committed for any crimes, offences, or misconduct, to such public gaols, prisons, and houses of correction respectively, shall be deemed to be in the custody of the said Sheriff: Provided that nothing in this Act contained shall be construed to repeal or vary an Act of the Governor and Council of the fifth year of Her Majesty's reign, "To regulate the Appointment and the Duties of the Sheriff of the Province of South Australia."

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Power of Judges to order imprisonment of offenders in any gaol or house of correction.

V. And be it declared and Enacted, That the Supreme Court of South Australia, and the several Judges thereof, shall have full power and authority to order and direct the imprisonment of any offender (whether with or without hard labor), to take effect in any particular

particular gaol or house of correction whatever, whether under the control of the Sheriff or any Deputy Sheriff or not.

VI. And be it Enacted, That all gaols, prisons, and houses of correction throughout the said Province 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 Governor of South Australia for the time being: Provided always, that it shall be lawful for the Supreme Court, to make all such rules and regulations for the management of all such gaols or buildings, as now are, or hereafter shall be appointed, or set apart, or used for the imprisonment of debtors, and to make such rules and regulations for the control of such debtors, therein respectively confined, as to the said Court shall seem meet.

All gaols, &c., shall be governed by regulations made by the Governor.

Proviso as to regulations for management of debtors' prisons.

VII. And be it Enacted, That unless where it is otherwise provided by this Act, or the Schedule annexed thereto, or where it shall be otherwise declared or appointed by the Governor, under the authority of this Act, every public gaol shall be, and be taken for all purposes, as being equally a house of correction, and also a prison for debtors, and also that every house of correction shall be taken to be a prison.

Gaols to be also houses of correction unless otherwise appointed.

VIII. And be it Enacted, That it shall and may be lawful for the said Governor to nominate and appoint some fit and proper person, being a Magistrate of the Province, to be the Visiting Justice of each gaol, prison, or house of correction within the said Province, and the said Visiting Justice to remove or displace and to appoint another or others in his stead, and every Visiting Justice so appointed shall be required to visit such gaol, prison, or house of correction 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 affect the power of any Judge of the Supreme Court to visit and examine any such gaol, house of correction, or prison, at any time how and when he may think fit.

Governor may appoint Visiting Justices: their duties: not to affect power of Judges: to visit gaols when and how they think fit.

IX. Provided also and be it Enacted, That it shall be lawful for any and every Justice of the Peace for the Province, as often as he may think fit, to enter and examine any gaol, prison, or house of correction within the said Province, and any gaoler, turnkey, or other person employed in any such gaol, prison, or house of correction, who shall refuse admittance to any such Justice of the Peace, or offer to him any hinderance or obstruction, shall on conviction of the same before any other two Justices, forfeit and pay the sum of Ten Pounds.

Any Justice may visit gaols, &c.: penalty on gaolers or others refusing admittance, &c.

X. And whereas persons convicted of offences are frequently sentenced to imprisonment without being sentenced to hard labor, be it Enacted, That it shall be lawful for the Sheriff or Visiting Justice of any gaol, prison, or house of correction, to order all such persons, except

Persons imprisoned, but not sentenced to hard labor, may be set to work by Sheriff or Visiting Justice, unless they have the means of supporting themselves.

except such prisoners as maintain themselves, to be set to some work or labor, the same being not severe: Provided that no such prisoner who has the means of maintaining himself shall have any claim to be supplied at the public expense.

Separate confinement
of prisoners.

XI. And be it Enacted, That in order to prevent the contamination arising from the association of prisoners, any prisoner may be, by order of the Sheriff or Visiting Justice, separately confined during the whole or any part of his or her imprisonment, and such separate imprisonment 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 the separate confinement of any prisoner which is not of such a size, and 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.

Penalty on persons
introducing or at-
tempting to introduce
spirituous or fermented
liquors into any prison.

XII. And be it Enacted, That if any person whomsoever shall carry, bring, or attempt, or endeavor to carry or bring into any prison to which the provisions of this Act shall extend, any spirituous or fermented liquor, it shall be lawful for the gaoler, keeper, turnkey, or any of their assistants, to apprehend, or cause to be apprehended, such offender, and to take him or her before a Justice of the Peace, who is hereby empowered and required to hear and determine such offence in a summary way, and if the said Justice shall lawfully convict such person of such offence, he shall forthwith commit such offender to some common gaol or house of correction, there to be kept in custody for any time not exceeding three months, without bail or mainprize; unless such offender shall immediately pay down such sum of money not exceeding Twenty Pounds, nor less than Ten Pounds, as the said Justice shall impose upon such offender, to be paid one moiety to the informer, and the other moiety to the Colonial Treasurer of South Australia, for the public uses of the said Province, and in support of the Government thereof.

Power of Visiting
Justices to punish
parties offending in
prison.

XIII. And be it Enacted, That the Visiting Justice 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 person confined in such gaol upon another, where no dangerous wound or bruise is given, profane cursing and swearing, any indecent behaviour and any irreverent behaviour at or during Divine Service or prayer, all which are hereby declared to be offences under this Act, if committed by any description of prisoners whatsoever, confined within any such gaol, prison, or house of correction, and the said Visiting Justice shall also hear and determine all complaints of idleness or negligence in work, or wilful mismanagement of work, which are also hereby declared to be offences under this Act, if committed by any prisoner under conviction for any crime, and if the party complained of shall be convicted of any of the offences aforesaid, it shall be lawful for the said
Visiting

Visiting Justice to sentence such party to be confined in a solitary cell on bread and water for any term not exceeding seven days.

XIV. And be it Enacted, That in case any prisoner under sentence for any crime shall be guilty of repeated offences against the rules of the prison, or shall be guilty of any greater offence than hereinbefore mentioned, upon complaint thereof to two or more Justices of the Peace, of whom the Visiting Justice may or may not be one, such Justices shall have power upon oath to inquire into and to determine the matter of such complaint and to order the offender on conviction to be punished by close confinement for any term not exceeding one calendar month, or by personal correction in case of prisoners convicted of felony or sentenced to hard labor.

Punishment for repeated offences or offences not mentioned in previous section.

XV. And be it Enacted, That if any person shall convey or cause to be conveyed into any prison or house of correction, 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 prison, or to any other person therein, for the use of any such prisoner, without the consent and privity of the keeper of such prison or house of correction, 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 attempt to escape, and if any person shall by any means whatsoever aid and assist any prisoner to escape from any prison or house of correction, 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 the escape of any prisoner.

XVI. And be it Enacted, That whenever it shall appear to the Governor for the time being of the said Province that it is necessary that the debtors or other prisoners or any of them confined in any public gaol, prison, or house of correction within the said Province or its Dependencies, should be removed therefrom in order that the same may be repaired, improved, enlarged, or rebuilt, on account of any contagious or infectious disease therein, or of the over-crowded state of such gaol, prison, or house of correction, or for any of the purposes of this Act, and due and sufficient notice thereof in writing shall by order of the said Governor be given to the Sheriff of the said Province, it shall be lawful for the said Sheriff to remove such debtors and other prisoners or any of them to such other gaol, prison, or house of correction, or other place of confinement within his jurisdiction, as the said Governor shall appoint, and consign them to, during the time such gaol, prison, or house of correction shall be repairing, improving, or rebuilding, or during the continuance of such contagious disease on account of which the said prisoners were removed or during such time as may be requisite for any purpose of this Act, and when such gaol, prison, or house of correction shall be made fit for the reception and safe keeping of such debtors and other prisoners, it shall be lawful

As to the removal of prisoners to allow of the repairs or enlargement of prisons or in consequence of infectious diseases.

As to the removal of prisoners in any place or district to newly-proclaimed gaol or prison for same.

lawful for the said Sheriff to remove back thereto all such prisoners as shall then be in his custody; and further, in case any newly-erected gaol or building previously used for other purposes shall, by Proclamation as aforesaid, be declared to be adapted and directed to be thenceforth appropriated and used as a public gaol, prison, or house of correction for any particular place or district, it shall be lawful for the said Sheriff on the day of the publication of such Proclamation, or at any time thereafter to remove all prisoners in his custody, in such place or district, to such gaol, prison, or house of correction according to the sentences of the respective prisoners.

As to the removal of prisoners in cases of contagious disease or other emergency where the order of the Governor cannot be previously obtained in reasonable time.

XVII. And be it Enacted, That whenever any contagious disease or other emergency shall render necessary the immediate removal of the prisoners or any of them, confined in any gaol, prison, or house of correction, and that, previous thereto, it shall be impossible to obtain for that purpose the order of the Governor of the said Province for the time being, it shall and may be lawful for the Visiting Justices or the Resident Magistrate of the district in which such gaol, prison, or house of correction shall be situate, and he is hereby empowered, to issue an order to the keeper of such gaol, prison, or house of correction to remove such prisoners or any of them to such other prison or place of confinement within his jurisdiction as shall be specified in such order: Provided always that every such removal shall be subject to all such restrictions as to its duration as are hereby required and directed in other similar cases of removal by order of the said Governor, and that every such order of the Visiting Justice or Resident Magistrate, together with the causes thereof shall be forthwith notified to the said Governor and also to the Sheriff of the said Province: Provided further that no such removal under this Act shall be deemed or taken to be an escape, and that nothing herein contained shall extend to discharge the Sheriff or other officer from being answerable for the actual escape of any prisoner in his custody.

As to the removal of prisoners from one gaol to another, or to hospital if necessary.

XVIII. And be it Enacted, That it shall be lawful for the Sheriff or the Deputy Sheriffs of any district or place in the Province respectively, to remove any prisoner whatever from any gaol under his or their control respectively to any other gaol being also under his or their control respectively, or in case of illness to any hospital or infirmary as occasion shall seem from time to time to require: Provided that no such removal shall actually take place without the leave of a Judge of the Supreme Court on application made to him for that purpose.

Recovery and application of the penalties, &c.

XIX. And be it Enacted, That all fines, forfeitures, and penalties imposed by this Act or which shall be imposed by virtue of any rule to be made in pursuance thereof, shall on conviction of the offender be levied by distress and sale of the offender's goods and chattels, by warrant under the hand and seal of the Justice or Justices before whom such conviction shall be had, and for want of sufficient distress, such offender shall be committed to the common gaol

gaol or house of correction for such term not exceeding six calendar months, as such Justice or Justices shall think proper, and all such fines, forfeitures, and penalties, the application whereof is not hereinbefore particularly directed, shall be paid to the Colonial Treasurer for the public uses of the Province and support of the Government thereof.

XX. And for the more easy and speedy conviction of offenders: Form of conviction.
Be it Enacted, That the Justice or Justices before whom any person shall be convicted of any offence against this Act shall and may cause the conviction to be drawn up in the following form of words, or in any other form of words, to the same effect which the case shall require, that is to say:

Be it remembered that on the _____ day of _____ in the year of our Lord 18 _____ A.B. is convicted before me C. D. Justice of the Peace for the Province of South Australia and its Dependencies, for that the said A. B. did (specify the offence and the time and place when and where the same was committed as the case shall be) and the said A. B. is for his said offence adjudged by me, the said Justice, to forfeit and pay the sum of _____ pounds or to be imprisoned in _____ for the space of _____ (as the case may be)

Given under my hand and seal the day and year first above written.

XXI. Provided always and be it Enacted, That if any person Appeal allowed. shall think himself or herself aggrieved by any conviction of any Justice in pursuance of this Act, such person may appeal to the Justices of the Peace at any nearest General or Quarter Sessions of the Peace within the Province, within four calendar months after the cause thereof shall have arisen, such appellant first giving or causing to be given to the Justice or Justices before whom the conviction shall have been had, and to the Clerk of the Peace of the district in which such conviction shall have been had, at least ten clear days' notice in writing of his or her intention to bring such appeal, and of the matter thereof, and within two days after such notice entering into recognizances before some Justice of the Peace of such district, with two sufficient sureties, conditioned to try such appeal, and abide the order of and to pay such costs as shall be awarded by the Justices at such sessions; and the Justices at such sessions, upon due proof of such notice having been given, and of the entering into such recognizances as aforesaid respectively, shall hear and finally determine the matter of such appeal in a summary way, and award such costs to the party appealing or appealed against (as the case may require), as they the said Justices shall think proper, and the determination of such sessions shall be final, binding, and conclusive, to all intents and purposes.

XXII. And be it Enacted, That no order made touching any of No certiorari. the matters in this Act contained, nor any conviction of any offender against

against this Act, shall be quashed for want of form, or be removed or removable by *certiorari*, or by any other writ or process whatsoever, into the Supreme Court of the Province, and that where any distress shall be made for any fine, forfeiture, penalty, or sum of money to be levied by virtue of this Act, the distress itself shall not be deemed unlawful, nor shall 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 any party be deemed a trespasser *ab initio* on account of any irregularity which shall be afterwards done by the party distraining, but the party aggrieved by such irregularity shall and may recover full satisfaction for the special damage (if any) in an action on the case, provided that no plaintiff shall recover in any action for such irregularity, as aforesaid, if tender of sufficient amends shall have been made by or on behalf of the parties distraining before such action brought.

As to actions against persons acting in pursuance of this Act.

XXIII. And be it Enacted, That if any suit or action shall be prosecuted against any person for anything done in pursuance of this Act, such person may plead the general issue, and give the special matter in evidence, at any trial to be had thereupon, and show that the same was done by authority of this Act, and if a verdict shall pass for the defendant, or the plaintiff shall become nonsuit, or discontinue his or her action after issue joined, or if upon demurrer or otherwise, judgment shall be given against the plaintiff, the defendant shall recover double costs, and have the like remedy for the same as any defendant hath by law in other cases, and although a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs given 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.

Application of the word Sheriff.

XXIV. And be it Enacted, That whenever the word "Sheriff" is used in this Act, or any other Act wherein the duties of Sheriff may be referred to, the same shall, in and for any district or place within the Province where a Deputy Sheriff shall be appointed, be taken to intend and be construed as applying to the Deputy Sheriff of and for those places respectively, so soon as any such officer shall be appointed for the same.

G. GREY,
Governor of South Australia.

*Passed the Legislative Council this fifth }
day of October, one thousand eight }
hundred and forty-two.*

A. M. MUNDY,
Clerk of Council.

SCHEDULE

SCHEDULE REFERRED TO.

A.

Adelaide	Gaol.
Port Lincoln	Gaol.