



ANNO VICESIMO SEPTIMO ET VICESIMO OCTAVO

VICTORIÆ REGINÆ.

A.D. 1864.

No. 24.

An Act to repeal Act No. 18 of 1857-8, intituled "An Act to prevent the introduction into the Province of South Australia of Convicted Felons and other persons sentenced to Transportation for offences against the Laws," and to make other provision in lieu thereof.

[Reserved, 9th December, 1864.]

WHEREAS the Colony of Western Australia has been constituted a penal settlement for the safe keeping of convicted felons and other persons undergoing transportation for offences against the laws: And whereas many of the said convicted felons have been and are frequently permitted to pass from the said Colony to other Australian Colonies: And whereas it is essential for the preservation of peace and good order that a stop should be put to the landing or being in the Province of South Australia of convicted felons or other persons undergoing sentence of transportation for offences against the Laws, or whose sentence shall not have expired for a period of at least three years—Be it therefore Enacted, by the Governor-in-Chief of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said Province, in this present Parliament assembled, as follows:

Preamble.

1. Act No. 18 of 1857-8, intituled "An Act to prevent the introduction into the Province of South Australia of Convicted Felons and other persons sentenced to transportation for offences against the Laws," is hereby repealed, except so far as may be necessary for the recovery and application of any penalty under, or the punishment of any offence heretofore committed against the said Act; and provided

Repeal of Act No. 18 of 1857-8.

Convicts Prevention Act.—1864.

vided that no proceedings taken before this Act comes into operation shall be affected hereby.

Imprisonment of felons who enter the Province.

2. No convicted felon or other person undergoing sentence of transportation for any offence against the laws, nor any person who is or shall be under sentence in any British Colony or Possession, other than the said Province, for any capital or transportable offence, nor any person not at liberty, by reason of any conviction or sentence, to reside in any part of the United Kingdom of Great Britain and Ireland, shall land in any of the ports of the said Province, or come or be in any place within the limits of the said Province, under the penalty, on conviction thereof, before any two Justices of the Peace, or before any Local Court, if a male, of being imprisoned and kept to hard labor in one or other of the public gaols of the said Province for a period not exceeding three years, and, if a female, of being imprisoned, and kept to hard labor, in one or other of the public gaols of the said Province, for a period not exceeding two years, nor exceeding the unexpired term of his or her original sentence, after serving here, in addition, the above terms of three and two years respectively, or being conveyed as a prisoner, by the most safe and expeditious mode of conveyance, to the Colony or Possession to which he or she was transported, or in which he or she was convicted (as the case may be), there to be dealt with according to law.

Persons suspected of having been convicted of felony may be arrested.

3. Any Justice of the Peace, or any constable, at any time after this Act shall come into operation, having reasonable cause to suspect that any person has at any time been found guilty of any capital or transportable felony by a Court of competent jurisdiction in the United Kingdom of Great Britain and Ireland, or any British Possession other than the said Province, and has at any time after this Act shall have come into operation, come into the said Province, may, forthwith and without any warrant for such purpose, cause such suspected person to be apprehended and taken before any two Justices of the Peace, to be dealt with as hereinafter mentioned, such person not having been lawfully resident in the said Province at the time of, or previous to, the coming into operation of this Act: Provided that any Justice of the Peace may take bail for the appearance of such suspected person, before such Justices, in such sum and with or without such sureties as such Justice may deem expedient: Provided also that nothing in this Act contained shall apply or be deemed to apply to any person whose sentence or sentences, if more than one, shall have expired for a greater period than three years previous to his arrival in the said Province.

Punishment on suspected person being committed.

4. Any two Justices of the Peace, before whom any such suspected person shall have been brought, on proof that such person has come into the said Province contrary to the provisions of this Act, may convict him thereof, and at their discretion, either take bail that such person shall leave the Province within seven days after his conviction, or may cause such person to be conveyed in custody to the Colony

Convicts Prevention Act.—1864.

Colony or possession from whence he came, or may sentence such person, if a male, to be imprisoned, with hard labor, for any period not exceeding three years, or if a female, for any period not exceeding two years.

5. Any person sentenced as aforesaid, who shall remain in the said Province three calendar months after the termination of such sentence, shall be liable to be again similarly apprehended and sentenced, and so on, from time to time, as often as he shall so remain.

Additional punishment for convicted persons remaining after expiration of sentence.

6. The master of any steamer, ship, or vessel arriving at any port of or place in the said Province, from any port of or place in Western Australia, shall detain every passenger on board his ship or vessel, until the vessel shall have been thoroughly searched by the Water Police, and until he shall have obtained from the Collector, or other chief officer of Customs, at or nearest to the port of arrival, in respect of each passenger respectively, a certificate that the said master has proved, to the satisfaction of the said Collector, or other chief officer of Customs, that the passenger, in respect of whom such certificate is granted, is not a prisoner of the Crown, or runaway convict, or a convict coming under cover of any conditional pardon, ticket-of-leave, or indulgence of any kind, other than a free pardon, or remission of his or her sentence by Her Majesty, by reason of which he or she would be at liberty to reside in any part of the United Kingdom of Great Britain and Ireland; and further, in such last-mentioned case, or in case of any convict whose sentence has expired, that the date of such pardon or remission, or expiration of such sentence is, at least, three years previous to the date of such certificate; and any master who shall permit or suffer any passenger to land, previous to obtaining such certificate, shall be liable to a penalty of One Hundred Pounds for each passenger so landing.

No person coming from Western Australia to land without proof of being a free person.

7. Whoever shall convey, or bring, or cause to be conveyed, or brought, or assist in conveying or bringing into any part of the said Province, any convicted felon or other person undergoing sentence of transportation, imprisonment, or penal servitude, for any offence against the laws, who is or shall be under sentence in any British Colony or Possession, other than the said Province, or any person not at liberty, by reason of any conviction or sentence, to reside in any part of the United Kingdom of Great Britain and Ireland, or any person who has been convicted and whose sentence has not then expired for a greater period than three years, shall be guilty of a misdemeanor and be liable to a penalty for each such offence—as regards the master or other person commanding, navigating, or sailing any steamer, ship, vessel, or boat—of Five Hundred Pounds, or to imprisonment for a term not exceeding twelve calendar months; and as regards any steward, sailor, or other person belonging to such steamer, ship, vessel, or boat as aforesaid, to a penalty of One Hundred Pounds, or to imprisonment for six calendar months, or at the discretion of the said Court, or Justices respectively, to both fine and imprisonment, as herein provided:

Fine on master or other person bringing felons.

Convicts Prevention Act.—1864.

vided: Provided that if any person charged with an offence under this clause shall prove that he did not knowingly do the act charged against him, he shall not be liable to conviction therefor.

Definition of
"offender illegally at
large."

8. Any person who has been, or shall be transported for any offence against the law to any British Colony or Possession, or who is under sentence for any capital or transportable offence in any British Colony or possession, other than the said Province who shall hereafter come to the said Province, the full period of whose sentence, or the full term of whose transportation has not expired, or who has not received from Her Majesty a free pardon or remission of his or her sentence, by reason of which he or she would be at liberty to reside in any part of the United Kingdom of Great Britain and Ireland, at least three years previous to so coming to the said Province, shall, for the purposes and in the construction of this Act, be deemed to be an offender illegally at large; and the term "offender illegally at large," whenever it occurs in this Act, shall be taken to signify and denote such persons so transported who has not served such period or term, or received such pardon or remission as aforesaid.

Penalty for concealing
offenders.

9. Every person who shall harbor or conceal any offender illegally at large, for the purpose of evading the provisions of this Act, shall, on conviction thereof before any such Court as aforesaid, or before two Justices of the Peace, be liable to forfeit and pay for every such offence a sum of not exceeding One Hundred Pounds; and, in default of payment, to be imprisoned in any of Her Majesty's gaols in the said Province for any period not exceeding twelve calendar months.

Property of offenders
to be forfeited, and
whole or part applied
in conveying them
away.

10. All property found upon or in the possession of the person convicted of being an offender illegally at large shall be forfeited, and it shall be lawful for the said Local Court, or the convicting Justices to order the whole or a sufficient part thereof to be applied towards the expense of conveying such offender to the Colony or Possession to which he or she was transported, or in which he or she was convicted.

What deemed evi-
dence of a person
being a convict.

11. Proof on oath that any person was in any other British Colony or Possession than the said Province, known to be, or was commonly reputed and deemed to be a transported felon, or a convict under sentence for any capital or transportable offence, or the production of any paper purporting to be a *Government Gazette* published in any of the Australian Colonies, and containing the name of any person charged with offending against any of the provisions of this Act, described in such paper as a convicted prisoner of the Crown or transported felon shall, for the purposes of this Act, be taken as good *prima facie* evidence that such person was transported to such Colony or Possession, or convicted therein of a capital or transportable offence, as the case may be; and proof that such person was so known, deemed, or reputed, at any period within seven years, shall be taken

Convicts Prevention Act.—1864.

taken as good *prima facie* evidence that the full period of his or her sentence, or the full term for which he or she was transported, had not expired for a greater period than three years previous to his or her arrival in the said Province, and that such person had not received such pardon or remission as aforesaid, at a like period, unless the contrary be proved; and proof that any such person was apprehended in the said Province at any time after this Act shall have come into operation, not having a fixed and known place of residence, shall be deemed good *prima facie* evidence that such person arrived in the said Province after this Act shall have come into operation, unless the contrary be proved.

12. Any Justice of the Peace, having credible information on oath that any offender illegally at large is harbored in any dwelling-house, or tenement, or other place, within his jurisdiction, or having reasonable cause to suspect that any such person is on board any vessel, may grant a search warrant to any one or more constables to search for and apprehend such offender; and any person found and apprehended by virtue of such warrant, shall by such constable or constables, be forthwith taken before a Justice or Justices of the Peace, for examination, and to be further dealt with according to law.

Justices to issue search warrants to apprehend offenders.

13. Every summons, information, conviction, and warrant of commitment under the provisions of this Act shall be deemed valid, in which the offence charged or alleged in the same respectively shall be set forth in the words of this Act.

Summons to be deemed valid.

14. One moiety of all fines and penalties recovered under this Act shall be paid to the informer, and the remainder of all such fines and penalties, and all moneys and property forfeited and not specially appropriated, shall be applied to and go to Her Majesty, Her heirs, and successors, for the public uses of the said Province.

Disposal of penalties.

15. All proceedings for offences against this Act, or against the hereby repealed Act, No. 18 of 1857-8, whether committed before or after this Act shall have come into operation, shall be heard and determined in a summary way by any Special Magistrate or two Justices, under the provisions of an Ordinance of the Governor and Legislative Council of the said Province, No. 6 of 1850, "To facilitate the performance of the duties of Justices of the Peace out of Session, with respect to summary convictions and orders," or of any Act hereafter to be in force relating to the duties of Justices of the Peace with respect to summary convictions and orders; and all convictions and orders may be enforced as in the said Ordinance is mentioned.

Proceedings to be heard and determined under Ordinance No. 6 of 1850.

16. Any person may lay an information for any such offences.

Whom may lay information.

17. If any suit or action be brought against any Justice of the Peace, Constable, or other person, for any act or thing done in furtherance

Protection to officers.

Convicts Prevention Act.—1864.

furtherance of the provisions of this Act, the defendant in every such action may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon, and if the verdict shall be for the defendant, or if the plaintiff in any such action shall be nonsuited, or discontinue his action or suit, or if upon demurrer judgment shall be given against the plaintiff, the defendant shall have treble costs, and shall have the like remedy for the same as any other defendant hath in any other case to recover costs by law; and although a verdict shall be given for the plaintiff in any such action, he shall not be entitled to recover any costs against the defendant, unless the Judge before whom such action shall be tried shall certify at the trial and in open Court, under his hand on the back of the record, his approbation of the action and the verdict thereupon.

Appeal.

18. Any person who shall feel himself aggrieved by any conviction under this Act, or by any order for the forfeiture or sale of any property, or for the payment of any money for costs or otherwise, or any informant whose information may have been dismissed under this Act, may appeal to the Local Court of Adelaide of Full Jurisdiction, and the proceedings on such appeal shall be conducted in manner appointed by the said Ordinance, No 6 of 1850, for appeals to Local Courts; but the Local Court of Adelaide aforesaid may make such order as to payment of the costs of appeal as it shall think fit, although such costs may exceed Ten Pounds; and the execution of every such conviction, order, or adjudication so appealed from, and the forfeiture and sale of any property as aforesaid, and the payment of any money as aforesaid, may, at the discretion of the convicting Justices, be suspended, in case the person so appealing shall, with one or more sufficient surety or sureties before such Justices, enter into a recognizance in such sum as to such Justices shall seem fit, which recognizance such Justices are hereby authorized to take, conditioned to prosecute such appeal with effect, and to be forthcoming to abide the determination of such Local Court of Adelaide, and pay such costs as the said Court shall award, and such Court is hereby authorized finally to hear and determine the matter of such appeal.

Short title.

19. This Act may be cited as the "Convicts Prevention Act, 1864."

I hereby reserve this Act for the signification of the Queen's pleasure thereon.

D. DALY, Governor.