

*Offenders' Punishment and Transportation.***No. XII.**

An Act for the punishment and transportation of OFFENDERS' PUNISHMENT AND TRANSPORTATION.
 Offenders in New South Wales. [12th May, 1830.]

WHEREAS it is expedient that the several Laws and Ordinances Preamble.
 of the Governor and Council relating to the punishment and transportation of offenders in New South Wales and its Dependencies should be revised and amended and that the same should be consolidated into one Act Be it therefore enacted by the Governor with the advice of the Legislative Council That if any person or persons being Convict offenders to be punished as herein provided.
 under sentence for any felony or transportable offence shall hereafter be convicted by due course of law in New South Wales of any offence which if the same were committed in England would subject the offender to be transported such person or persons shall be liable either to be transported to some penal settlement within the said Colony or its Dependencies or to be detained in the said Colony and kept to labor or assigned to servitude in like manner and subject to the like laws rules and regulations as transported offenders or to be kept to hard labor in chains on the roads or public works in any part of the said Colony (not being a penal settlement) at the discretion of the Court or Judge before whom such person or persons may be convicted of such subsequent felony and for such time as such Court or Judge shall order not exceeding the time for which any such offender may for such offence be transported by law Not to restrain the Court from awarding any other punishment to which such offenders may be liable.
 Provided always that nothing herein contained shall restrain or be construed to restrain the Judge or Court before whom any such offender or offenders shall be convicted from awarding any other punishment to which he she or they may be liable instead of the punishment authorized by this Law or Ordinance.

2. And whereas offenders frequently escape from justice by reason of the difficulty of proving a previous conviction for felony in places beyond the seas for remedy whereof be it further enacted That the production of the indent or instrument in writing or an exemplified extract of so much thereof as may be necessary for the purposes of this Act from the office of the Colonial Secretary purporting to contain the name offence and term of transportation of any offender transported to the said Colony and to have been received from some place beyond the seas shall at the trial of any such offender and upon proof that such indent or instrument in writing hath been kept in the said office and considered as an authentic instrument and that such offender arrived in the said Colony as a transport and hath been reputed to be and dealt with as the person in such indent or instrument mentioned be sufficient evidence for the purposes of this Law or Ordinance of the previous conviction of such offender and of the authenticity of such indent or instrument in writing as aforesaid And if any clerk or other person shall alter any indent or produce at any such trial as aforesaid any false or counterfeit indent or instrument in writing or extract thereof as aforesaid knowing the same to be false or counterfeit every such offender shall be guilty of felony and being lawfully convicted thereof shall be liable at the discretion of the Court to be transported for the term of seven years or to be imprisoned for any term not exceeding two years and to be once twice or thrice whipped (if the Court shall so think fit) in addition to such imprisonment.

3. And be it further enacted That if any person being under sentence for any felony or transportable offence shall be convicted by Defining punishments for convicts tried summarily.
 due

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due course of law in a summary way before any Court of any crime or misdemeanor cognizable by such Court such felon shall be liable to be transported and kept to labor for any time not exceeding three years or if a male to be kept to hard labor in chains on the roads or public works in any part of the said Colony (not being a penal settlement) for any time not less than six nor more than twelve months or to be once twice or thrice whipped by the infliction of any number of lashes not exceeding one hundred at any one time and if any such felon shall be convicted in a summary way as aforesaid of drunkenness disobedience of orders neglect of work absconding from the service of his or her master or employer abusive language or other disorderly conduct such felon shall be liable if a male to be once twice or thrice whipped by the infliction of any number of lashes not exceeding fifty at any one time according to the nature and degree of the offence or to be kept in solitary confinement on bread and water or to be worked on the treadmill for any time not exceeding one calendar month or if a female to be committed to the third or penitentiary class of the Female Factory or to such other place as shall be duly appointed for the custody of female offenders and there kept to labor for any time not exceeding two years according to the nature and degree of her offence or in solitary confinement on bread and water for any time not exceeding one calendar month And in every case in which any such whipping or whippings shall be ordered as aforesaid it shall be the duty of the Chief or other Constable of such Court the same duly and sufficiently to inflict or cause to be inflicted upon pain of forfeiting Forty Shillings over and above any other punishment to which he may be liable for every neglect of such duty.

Term of enduring sentences under this law not to be concurrent with former sentences.

4. And be it further enacted That as often as any person or persons being under sentence for any felony or transportable offence shall be subsequently convicted of any felony or offence under this law and shall be adjudged and ordered to be punished in pursuance of this Law or Ordinance the term or time of enduring such subsequent sentence shall not be concurrent with such first sentence but shall be in addition to the same and every such offender or offenders shall be further detained until he she or they shall have served the full term and time of both sentences and so on as often as he she or they shall be convicted of any such offence as aforesaid and shall also be liable to be dealt with in all respects as transported felons.

Convicts wilfully disabling themselves to serve the time of their disability.

5. And whereas it frequently happens that persons under sentence of transportation or detention and servitude either wilfully disable themselves from working or designedly prevent or protract the cure of any disease or complaint which they have contracted in order to evade servitude Be it therefore further enacted That in case any person being under any such sentence as aforesaid shall wilfully disable himself or herself or shall designedly prevent or protract the cure of any disease or complaint which he or she may have contracted in order to evade servitude every such offender being summarily convicted of such offence before any one or more Justice or Justices of the Peace shall be liable to be further detained or assigned for such and the like time as such person shall have been absent at hospital or otherwise disabled from serving his or her master or employer and in every such case a certificate under the hand of the principal or other surgeon of the hospital or district who shall have the care of and attending upon such detained or assigned person that he or she had so wilfully disabled himself or herself or designedly prevented or protracted his or her cure of any such disease or complaint as aforesaid shall be deemed sufficient proof of such offence.

What shall be deemed proof.

Not to relate to free persons.

6. Provided always and be it further enacted and *declared* That nothing hereinbefore contained shall relate to free persons but that such

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such persons shall be dealt with as if so much of this Law or Ordinance had not passed.

7. And whereas it frequently happens that transported felons abscond and absent themselves from service and cannot be apprehended until the term of their transportation is expired Be it therefore enacted That as often as any person being under any sentence of transportation or detention either passed beyond the seas or in this Colony or any of its Dependencies shall abscond or absent himself or herself from the service of his or her master or employer every such person shall be liable to be tried in a summary manner by or before any Court or Tribunal authorized by law to take cognizance of offences committed by transported offenders although at the time of such trial such sentence may have expired and being lawfully convicted of such absconding shall be liable to be detained or assigned and kept to labor for such and the like time as such person absconded and was absent from the service of his or her master or employer and shall be subject and liable to all such and the like punishments and to be dealt with in all respects as persons absconding during any subsisting sentence are liable to by this Law or Ordinance.

Transports absconding to serve the time of their absence and to be punished though their sentence may have expired.

8. And be it further enacted That every sentence or order of transportation passed or made by due course of law upon any offender in New South Wales or its Dependencies shall subject such offender to be conveyed to such penal settlement or place within the said Colony at such time and in such manner as the Governor for the time-being shall direct and appoint and that every offender shall be detained and kept at such penal settlement until he shall have served such sentence or shall be removed therefrom by lawful authority and that every sentence or order passed or made for keeping such offender as aforesaid to labor upon the roads or other public works of the said Colony in pursuance of this Law or Ordinance shall subject such offender to be placed and kept to labor upon such roads or public works as the Governor for the time-being shall from time to time direct and appoint and such offender shall be detained and worked in the manner authorized by this Law or Ordinance upon such roads and public works until he shall have served such sentence or shall be removed from the same by lawful authority.

Offenders under sentence to be sent to such penal settlement and to such roads as the Governor shall direct.

9. And be it further enacted That it shall be lawful for the Governor by order in writing duly made for such purpose to cause any person or persons to be withdrawn from any penal settlement and to be removed to some other penal settlement within the said Colony for the residue of his her or their sentence of transportation to such first penal settlement and there kept to labor in like manner as if he she or they had been originally transported to such other penal settlement.

The Governor may remove offenders from one penal settlement to another.

10. And be it further enacted That all persons who shall have been or shall be transported or removed as aforesaid to any penal settlement within the said Colony shall be under the custody and management of a Commandant or Superintendent duly appointed for such purpose by the Governor for the time-being and every such Commandant or Superintendent shall have the same powers over such offenders as are incident to the office of a Sheriff or Gaoler And if any offender shall during such custody be guilty of misbehaviour or disorderly conduct such Commandant or Superintendent shall be authorized to inflict or cause to be inflicted such moderate punishment as shall be allowed by public proclamation or order to be made for such purpose by the Governor and such Commandant or Superintendent shall also during such custody see every offender fed and clothed according to a scale of diet and clothing fixed on and notified to such Commandant or Superintendent and shall keep such offenders to labor under such regulations directions and restrictions as by the Governor

Offenders at penal settlements to be under the management of the Commandant—

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If absent his duties to be performed by the officer in command.

Governor shall from time to time by public order be prescribed And in case of the absence of any such Commandant or Superintendent or of the vacancy of his office his duties and powers shall be exercised and discharged in all respects by the officer or person upon whom the command of such penal settlement shall devolve.

Commandants to act as Justices of the Peace.

11. And be it further enacted That it shall be lawful for every such Commandant or Superintendent at every such penal settlement as aforesaid and every officer or person upon whom the command of the same may devolve to act in every respect as a Justice of the Peace duly named and qualified as a Justice of the Peace in and for such penal settlement.

Offenders sentenced to the roads to be under the management of an overseer.

12. And be it further enacted That all persons who have been or shall be ordered to be kept to labor on the roads or other public works of the Colony shall be under the custody and management of an overseer who shall be appointed for such purpose by the Governor for the time-being And every such overseer shall see every such offender fed and clothed and kept to labor in like manner and under such regulations and restrictions as hereinbefore are directed with reference to persons transported to penal settlements within the said Colony.

Female offenders to be under the management of a matron.

13. And be it further enacted That every female offender who shall be committed to the Female Factory or other place appointed for the custody of female offenders shall be under the custody and management of a matron or superintendent to be appointed for such purpose by the Governor for the time-being And such matron or superintendent shall observe and follow such rules regulations and restrictions in respect of the care and keeping of such female offenders as shall be established by the Governor in manner as aforesaid.

Offenders escaping from penal settlements or the roads or from the Female Factory to serve the term of their absence and be punished.

14. And be it further enacted That if any offender who shall have been or who shall be transported or removed to any penal settlement or put to labor on the roads or other public works in the said Colony or committed to the Female Factory shall escape from such penal settlement or from such roads or public works or from such Female Factory or other place appointed for the custody of females respectively every such offender shall upon summary conviction before any one or more Justice or Justices of the Peace be liable if a male to be once twice or thrice whipped by the infliction of any number of lashes not exceeding one hundred at any one time and shall be forthwith transported to the place from which he escaped or some other penal settlement or if a female shall be returned to the place from which she escaped or such other place as aforesaid and kept in solitary confinement on bread and water for any time not exceeding one calendar month And every such offender shall be detained until he or she shall have served the full measure and term of all his or her sentences as well as of the time during which he or she shall have absconded and been absent Provided always that nothing herein contained shall be construed to exempt any such offender so escaping from any other punishment to which he or she may be liable by law.

Proviso.

What shall be deemed an escape or absconding.

15. And be it further enacted That twenty-four hours absence from any such penal settlement or roads or other public works or such Factory or other place as aforesaid or from private service without due leave first had and obtained for such purpose shall be deemed an escape or absconding within the meaning of this Law or Ordinance and shall render such person so absent liable to the penalties thereof And if any master employer superintendent or overseer shall fail or neglect to report to the Principal Superintendent of Convicts or to the nearest Magistrate the absenting or absconding of any such person from his or her service or superintendence within three days after such escape or absconding as aforesaid such master employer superintendent

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or overseer shall for every such failure or neglect forfeit and pay a sum of not less than Ten Pounds nor more than Twenty Pounds to be recovered in a summary way before one or more Justice or Justices of the Peace one moiety of such fine to be for the use of the King and the other moiety to the person or persons informing or suing for the same.

Employers or superintendents not reporting the escape of prisoners to be fined.

16. And be it further enacted That if any person shall harbour or conceal any person under sentence for any felony or transportable offence who may be illegally at large or shall seduce or incite any such person to abscond or absent himself or herself from the service of his or her master or employer every such person so offending shall forfeit and pay for every such offence a penalty or sum of not less than Five Pounds nor more than Twenty Pounds to be recovered in a summary way before any two or more Justices of the Peace one moiety to be appropriated to the King and the other moiety to the person who may first inform or sue for the same or if such offender shall be a convict he shall be liable if a male to be once twice or thrice whipped by the infliction of not more than fifty lashes at any one time or to be worked upon the tread-mill for any time not exceeding one calendar month or if a female to be confined in the third or penitentiary class of the Female Factory for any term not exceeding three calendar months.

Penalties for persons harbouring convicts illegally at large or inciting them to abscond.

17. And be it further enacted That it shall not be lawful for any person being under sentence for any felony or transportable offence to carry or have in his possession any fire-arms or other weapon of a violent nature except with the leave and consent in writing of his master employer or overseer and for the protection of his or her property and in every such consent as aforesaid the place time and occasion in and for which such arms or other weapons are intended to be used shall be truly and specifically stated and if such person as aforesaid shall hold a ticket of leave or other partial or temporary remission of sentence with the like consent in writing of a Justice of the Peace of the district in which he may reside such last-mentioned consent to remain in force for three calendar months and no longer And if any such person shall be found with any fire-arms or other such weapon as aforesaid in his possession contrary to this Law or Ordinance and without being able to prove that the same was not intended to be used for an unlawful purpose every such person shall be guilty of felony and being thereof lawfully convicted shall be transported to some penal settlement for the term of his natural life.

Convicts shall not carry arms without permission.

Penalty.

18. And whereas robbers and housebreakers are greatly encouraged to commit felonies by persons who make it their business to receive harbour and conceal such offenders and their spoil Be it therefore enacted That if any person or persons shall receive or buy any goods or chattels that shall have been feloniously stolen by means of force or putting in bodily fear from the person or the dwelling-house of another person knowing the same to have been so stolen shall be transported to some penal settlement for the term of his her or their natural life or if any such person or persons shall receive harbour or conceal any such robber or housebreaker knowing him to be so shall be taken to be an accessory or accessories to such felony or felonies and being thereof lawfully convicted shall suffer death.

Penalty for receiving the spoil of robbers and housebreakers and for harbouring them.

19. And whereas it frequently happens that transported felons are confined in the gaol in the town of Sydney under sentence or order of transportation or detention for some purpose and it is expedient that such persons shall be employed in irons in the repair of the streets or other public works in or about the said town Be it therefore enacted That it shall be lawful for the Governor by order in writing directed to the Sheriff of the said Colony from time to time to order

Felons in the gaol of Sydney may be employed in the repair of the streets.

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order and require all such persons as aforesaid to be placed under the superintendence and direction of the Director of Public Works or other person in such order mentioned and to be employed in the repairing of the said streets or other public works in or about the said town in such manner as the said Superintendent shall direct and until such persons shall be disposed of according to law Provided always that no prisoner under sentence or order of transportation for life or for harbouring or concealing robbers or housebreakers or for receiving stolen goods shall be liable to be so employed as aforesaid and that all persons who shall be so employed under the superintendence of such Director or other person as aforesaid shall be regularly returned and secured in the said gaol at or before sun-set every night during such time as such persons shall be so employed.

Persons transported to any place in New South Wales or its Dependencies to be subject to all regulations in force.

Indemnifying officers &c. for any thing done in pursuance of such regulations or of the Act in Council 10 Geo. IV. No. 1.

20. And be it further enacted That all persons who have heretofore been transported or sent to any place in New South Wales or the Dependencies thereof respectively or under and in pursuance or in execution of any sentence or order of any Court or competent authority in New South Wales shall henceforth be subject and liable to such laws rules and regulations as are or shall be in force in New South Wales or the Dependencies thereof with respect to convicts hereafter transported to any such place as aforesaid And all officers Justices of the Peace and other persons whatsoever shall be and they are hereby absolutely indemnified of from and against all indictments informations suits actions and demands whatsoever which shall or may be brought or maintained against them or any of them in New South Wales and the Dependencies thereof for or in respect of any act matter or thing by them or any of them done or performed in enforcing against such persons so transported or sent to any place in New South Wales or any of the Dependencies thereof respectively any of the said laws rules and regulations or for or in respect of any order act matter or thing made done or executed at any time before the passing of this Law or Ordinance in pursuance of or in conformity with the powers and authorities in them or any of them vested by a Law or Ordinance of the Governor and Council made in the tenth year of the reign of His present Majesty intituled "*An Act to provide for the holding of General or Quarter Sessions and for continuing the summary Jurisdiction of Justices of the Peace in and for the Territory of New South Wales and the Dependencies thereof until further provision shall be made for the same*" and it shall and may be lawful for the defendant or defendants in any such indictments informations suits or actions to plead the general issue and to give this Act and the special matter in evidence upon the trial of any such issue and if a verdict shall be given for any such defendant or defendants in any such indictments informations suits or actions such defendant or defendants shall thereupon be entitled to enter up judgment with double costs of suit.

Continuance of Act.

21. And be it further enacted That this Law or Ordinance shall be and continue in force for four years from the passing and publication thereof.