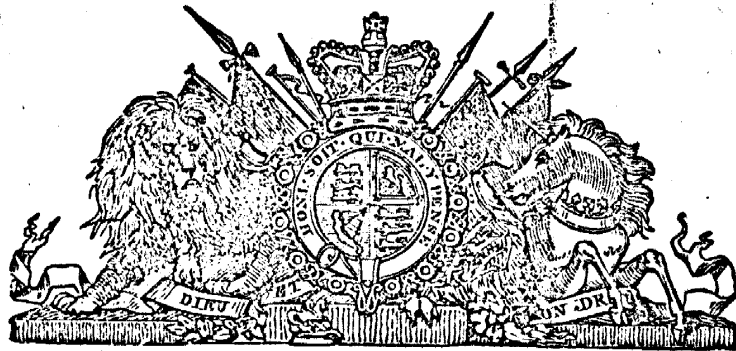


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ANNO SEPTIMO ET OCTAVO

VICTORIÆ REGINÆ.

No. 10.---1844.

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 ORDINANCE to make provision for the safe custody of, and prevention of offences by, Persons dangerously Insane, and for the care and maintenance of Persons of Unsound Mind.

WHEREAS it is expedient to make provision for the safe custody of, and prevention of crime being committed by persons insane: Preamble.

Be it Enacted by His Excellency the Governor of South Australia, with the advice and consent of the Legislative Council thereof, That if any person shall be discovered and apprehended in the Province of South Australia, under circumstances denoting a derangement of mind and a purpose of committing suicide, or some crime, for which, if committed, such person would be liable to be indicted, it shall be lawful for any two Justices of the Peace of South Australia, before whom such person may be brought, to call to their assistance any legally qualified medical practitioner; and if, upon view and examination of the said person so apprehended, and upon proof, on oath, by the said medical practitioner Justices to commit dangerous lunatics.
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to the effect that, in his opinion, such person is a dangerous lunatic, or a dangerous idiot, or, (in case such medical assistance cannot be obtained) on any other proof, the said Justices shall be satisfied that such person is a dangerous lunatic, or a dangerous idiot, then it shall be lawful for the said Justices, by warrant under their hands and seals, to commit such person to some gaol, house of correction, or public hospital, within the said Province, there to be kept in strict custody, until such person shall be discharged by the order of two Justices of the Peace, one whereof shall be one of the Justices who has signed such warrant, or a Judge of the Supreme Court of South Australia, or until such person shall be removed to some public Colonial Lunatic Asylum, by order of His Excellency the Governor as hereinafter provided: Provided always, that every such person, while so detained in such gaol, house of correction, or public hospital, shall have the liberty and privilege of seeing his friends and legal advisers at all reasonable times: Provided also, that this Ordinance or anything herein contained, shall not be construed to extend to restrain or prevent any relative or friend from taking such insane person, or dangerous idiot, under his own care and protection, if he shall enter into sufficient recognizance for the peaceable behaviour or safe custody of such dangerous lunatic or idiot, before two Justices of the Peace, or the Court of General Sessions of the Peace, or a Judge of the Supreme Court.

Governor may direct persons under sentence of imprisonment or transportation, to be removed to a lunatic asylum.

II. And be it Enacted, That it shall be lawful for the Governor of South Australia, if he shall so think fit, to direct, by warrant under his hand, that any person who may be detained in custody in any gaol, house of correction, or hospital, by virtue of any such warrant as aforesaid, or any person who may be in any prison or place of confinement, under any sentence of death, imprisonment, or transportation, or under any warrant, in default of surety to keep the peace, or to answer a criminal charge, or in consequence of any summary conviction or order by any Justice of the Peace, or under any other than civil process, and in respect of whom it shall be certified, by two legally qualified medical practitioners, that he is insane, shall be removed to such public Colonial Lunatic Asylum as the said Governor shall appoint: and every such person so removed shall remain under confinement in every such asylum to which such person may be removed, until it shall be duly certified to the said Governor, by two legally qualified medical practitioners, that such person has become of sound mind, whereupon the said Governor is hereby authorised and required, if such person shall remain subject to be continued in custody, to issue his warrant to the keeper, or other person having the care of any such asylum, directing that such person be remitted to the prison or other place
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of confinement from which he shall have been taken, or if the period of imprisonment or custody of such person shall have expired, or if such person shall not be under any sentence of imprisonment, that such person shall be discharged.

III. And be it Enacted, That if it shall be certified to the said Governor, by two legally qualified medical practitioners, that any person committed to prison for trial for any offence, is insane, or is an idiot, it shall be lawful for such Governor, if he shall think fit, by warrant under his hand, to order that such person shall be removed to such lunatic asylum as he shall appoint, unless in the mean time admitted to bail by some legal authority, until the Assizes, Sessions, or Commission, at which such person should be brought to trial, or indicted according to the due course of law and that such person shall then be remitted to the custody of the keeper or governor of the gaol, or other person in whose custody such person may have been, under the terms of the original committal, in order to his being indicted and tried for such offence, or otherwise disposed of according to law: Provided always, that every such person, while so detained in such lunatic asylum, shall have the same liberty and privilege of seeing his friends and legal advisers, at all reasonable times, which he would have had in the gaol or other prison, from which he may have been removed.

Governor may direct insane persons committed for trial, to be removed to a lunatic asylum.

IV. And be it Enacted, That in all cases where it shall be given in evidence, upon the trial of any person charged with any treason, murder, felony, or misdemeanour, that such person was insane at the time of the commission of such offence, and such person shall be acquitted, the jury shall be required to find specially whether such person was insane at the time of the commission of such offence, and to declare whether such person was acquitted by them on account of such insanity, and if they shall so find, the Court, before whom such trial shall be had, shall order such person to be kept in strict custody, in such gaol or place of confinement, and in such manner as to the Court shall seem fit, until the Governor's pleasure shall be known, and it shall thereupon be lawful for the Governor to give such order for the safe custody of such person, during his pleasure, in such place and in such manner as to the Governor shall seem fit.

Jury acquitting persons of offences on the ground of insanity, to declare whether such person was acquitted on account thereof.

V. And be it Enacted, That if it shall appear to any two legally qualified medical practitioners present at an examination of any person in custody after the passing of this Ordinance, that he is not an insane person, or a dangerous idiot, and that such person may be suffered to go at large with safety, it shall and may be lawful

Persons proved not to be insane may be liberated.

lawful for such medical practitioners, and they are hereby required, to give a certificate to that effect, signed by them, to the Visiting Justice, or in his absence to the keeper of the gaol or house of correction in which such person is in custody, who is hereby required to transmit the same forthwith to the Governor, who shall order the liberation of such person from custody, unless he be detained therein for some other cause by due process of law, or having been acquitted by a Jury on the ground of insanity, is confined during the pleasure of Her Majesty, or of the Governor.

Persons who are to be deemed medical practitioners.

VI. And be it Enacted, That no person shall, for the purposes of this Ordinance, be deemed a legally qualified medical practitioner, unless such person shall have obtained a certificate of his being a legally qualified medical practitioner according to the laws of the Province in force for the time being.

Visitors to be appointed.

VII. And be it Enacted, That it shall and may be lawful for the said Governor, to nominate and appoint some fit and proper person, or persons, not exceeding five in number, to be the visitors of each lunatic asylum, within the said Province, and the said visitors to remove or displace, and to appoint another, or others in his or their stead; and some one of such visitors so appointed shall be required to visit such lunatic asylum, 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 always, That in addition to the said five visitors, two others shall be annually appointed by the Legislative Council of South Australia.

Limitation of actions.

VIII. And be it Enacted, That no action shall lie against any magistrate, constable, gaoler, superintendent of lunatic asylum, visitor, or any person acting for, or under them, or any of them, for or on account of any act, matter, or thing whatsoever done, or to be done, or commanded by him, them, or any of them, in carrying the provisions of this Ordinance into effect, unless such action be commenced within three calendar months after the cause of action or complaint shall have arisen; and if any person shall be sued for any act, matter, or thing, which he shall have so done, or shall so do, in carrying the provisions of this Ordinance into effect he may plead the general issue, and give the special matter in evidence.

Indemnity for acts already done.

IX. And whereas divers insane persons have been and are now confined in Her Majesty's gaol at Adelaide; Be it Enacted, That all

all persons who have subjected themselves to any penalty, action, or indictment, by promoting, procuring, ordering, superintending, or by being in any way concerned in the care, charge, reception, or confinement of such insane persons, shall be, and are hereby indemnified, freed, and discharged, from all penalties, actions, indictments, and liabilities, incurred by reason of the confinement of such insane persons as aforesaid.

X. And be it Enacted, That in case any action, suit, bill of indictment, or information, shall, from and after the passing of this Ordinance, be brought, carried on, or prosecuted against any person hereby meant or intended to be indemnified, for or on account of any such liability as aforesaid, such person may plead the general issue, and upon his defence, give this Ordinance, and the special matter in evidence upon any trial to be had thereupon.

General issue.

XI. And whereas it is desirable to provide for the care and maintenance of persons who are insane, but not dangerously so: Be it Enacted, That it shall be lawful for the Governor, on the application of one or more of the relatives or guardians or friends of any insane person, which application shall be sanctioned in writing by a Judge of the Supreme Court, and on receiving the certificate of two legally qualified medical practitioners that they have examined and found such person to be of unsound mind, to direct and order, if he think it proper so to do, that such person be received into such lunatic asylum, as he the said Governor may appoint.

The Governor may order persons insane (though not dangerously so) to be received into a lunatic asylum.

XII. And be it Enacted, That when any insane person shall be committed to any gaol or hospital as aforesaid, for the purpose of being received into such lunatic asylum as the said Governor may appoint, the removal to and from, and maintenance in the said asylum, of such insane person, shall, until further provision shall be made, be at the expense of the Province.

Expense of removal and maintenance of insane persons to be defrayed by the Province.

XIII. Provided always, and be it Enacted, That it shall be lawful for the superintendent of any such asylum, in all cases where any lunatic or idiot shall be possessed of sufficient means, to defray the expense of his maintenance in such asylum, to agree with any relative, guardian, or friend, of any such lunatic or idiot, for his maintenance whilst detained therein; and such relative, guardian, or friend, shall be, and is hereby empowered to reimburse himself

Relations or guardians may agree with superintendent for maintenance of lunatics or idiots.

or

sealed by Act. 21/64

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or herself all necessary sums expended in such maintenance, out of any funds or property belonging to such lunatic or idiot, which funds or property are hereby made chargeable therewith.

G. GREY,
Governor of South Australia.

*Passed the Legislative Council this Fifteenth
day of August, 1844.*

W. L. O'HALLORAN,
Clerk of Council.