



ANNO OCTAVO

VICTORIÆ REGINÆ,

No. 14.



*By His Excellency SIR JOHN EARDLEY EARDLEY-WILMOT,
Baronet, Lieutenant-Governor of the Island of Van Diemen's
Land and its Dependencies, with the Advice of the Legislative
Council.*

*AN ACT for the Control of Transported Offenders and
for other Purposes relating thereto.*

WHEREAS it would tend to simplicity and be more convenient if the laws respecting the control of transported offenders were embodied in a distinct Act—AND WHEREAS several of those laws were enacted in and formed part of an Act of this Island passed in the seventh year of the reign of Her present Majesty intituled *An Act to amend the Law in respect to the Constitution of Courts of General Quarter Sessions and the Punishment and Control of Transported and other Offenders*—AND WHEREAS by an Act passed in the present Session of the Legislative Council of this Island intituled *An Act to consolidate and amend the Laws in respect to the Constitution of Courts of General and Quarter Sessions of the Peace to define the Jurisdiction Powers and Authorities of such Courts and of Justices of the Peace in certain Cases relating to Transported and other Offenders* the said last-mentioned Act is repealed—BE IT THEREFORE ENACTED by His Excellency SIR JOHN EARDLEY EARDLEY-WILMOT Baronet Lieutenant-Governor of the Island of Van Diemen's Land and its Dependencies by and with the advice of the Legislative Council that if on or at any time after the passing of this Act any person shall have reasonable cause to believe that any person is a transported and absconded offender it shall

7th Nov 1847

8th Nov 1847

Apprehension of
absconded offender
or offenders
illegally at large.

thereupon be lawful for the person having such cause of belief immediately (either alone or by any other person in his aid or authorised by him) without a warrant to apprehend such suspected person and to take him or cause him to be taken so soon as conveniently may be before any Justice of the Peace to be dealt with according to law—AND such Justice shall or lawfully may cause such apprehended person to be detained in custody for such reasonable period as shall be necessary for the purpose of ascertaining whether in fact such person be such transported and absconded offender or not.

Definition of transported offender.

II. AND BE IT ENACTED that for the purposes of this Act every person shall be deemed and taken to be a transported offender who shall at the time be under sentence or order of transportation or extension of sentence or being under such sentence or order of transportation or extension of sentence shall at the time be under sentence of hard labour or imprisonment with hard labour.

Assisting or employing absconded offenders in any case.

III. AND WHEREAS it is of great importance that no assistance by employment or otherwise should under any circumstances be afforded to absconded offenders whereby they are often enabled to remain a longer time at large—BE IT THEREFORE ENACTED that every person who shall in any manner harbour shelter protect or employ any such absconded offender whatever or who shall provide any such offender with lodging clothes tobacco money wine or any spirituous liquors (whether knowing or suspecting him at the time to be an absconded offender or not) shall forfeit and pay a penalty or sum of not less than Five Shillings nor more than Twenty Pounds.

Provisions as to supposed freedom.

IV. PROVIDED ALWAYS that (for the purpose of affording due protection in such cases) as often as any person being a householder shall be desirous of sheltering or employing any one who may possibly be such absconded offender as aforesaid it shall be lawful for such householder or any person on his behalf to apply to any Justice of the Peace within his district to inquire whether such person is or is not such an absconded offender and such Justice is hereby required upon such application to inquire into that fact and if it shall appear to him that such person is not such absconded offender such Justice shall grant a certificate to that effect under his hand to such householder such Justice nevertheless sending to the Police Magistrate of his district within ten days after the date of such certificate a full and particular description of such person but where the householder resides within five miles of a Police Magistrate such Magistrate only is in that case to grant such certificate—AND in any prosecution under the preceding section the production of such a certificate by such householder shall be a full and complete defence.

Knowingly harbouring &c. such offenders.

V. AND BE IT ENACTED that if any person actually knowing a person to be such absconded offender shall in any manner rescue harbour conceal shelter protect or employ such offender or provide him with lodging food clothes tobacco money wine or any spirituous liquor or other sustenance or means of sustenance or shall in any manner whether by information or otherwise assist such absconded offender in remaining illegally at large or shall in any manner induce or persuade or endeavour to induce or persuade such absconded offender to remain illegally at large or if any person whatsoever shall induce or persuade or endeavour to induce or persuade any transported offender or offenders

under a sentence of hard labour or imprisonment with hard labour to abscond or shall in any manner knowingly assist such offender in absconding every such person as aforesaid so offending shall forfeit and pay a penalty not exceeding One hundred Pounds and be imprisoned until such penalty be paid.

VI. AND WHEREAS in order to facilitate the apprehension of such absconded offenders it is necessary that a power should by law be conferred on magistrates (under proper restrictions) of directing that in certain cases a search shall or may be made for any such absconded offender in the manner hereinafter provided—**BE IT THEREFORE ENACTED** that upon information on oath being made before any Justice of the Peace to the satisfaction of such Justice by any credible person that he doth verily believe that some transported and absconded offender is in or on any particular house or place it shall be lawful for such Justice (if he shall think it expedient so to do) to grant his warrant to any constable to enter and search such house or place and such constable may under such warrant break open any doors if not opened within reasonable time after demand and may apprehend any such absconded offender found there to be dealt with according to law—**PROVIDED** that no such house or place shall nevertheless be searched or entered under any such warrant in the night-time unless by or in the presence of some chief constable chief district constable or division or district constable any thing in such warrant to the contrary notwithstanding.

Power of apprehending absconded offenders.

VII. AND WHEREAS by the unauthorised employment of transported and other offenders in any case or by their being suffered to acquire or retain property of any kind before expiration or remission of their sentences the necessary ends of punishment are occasionally defeated—**BE IT ENACTED** that if after the publication of this Act any person having no lawful excuse or authority in that behalf shall in any manner harbour conceal shelter employ or provide with lodging food clothes money tobacco wine or any spirituous liquor or receive or allow to remain upon his premises (whether licensed premises or not) for one hour or upwards any transported offender whether such offender shall have then absconded or not who shall be at the time under an unexpired and unremitted sentence of hard labour or imprisonment with hard labour or who shall at the time belong to or be ordinarily worked with any gang or party employed on any of the public roads or works he shall forfeit and pay a penalty or sum of not less than Ten Shillings nor more than Twenty Pounds.

Employment &c. of offenders under punishment but not absconded.

VIII. AND (for the more efficient control of transported offenders being at the time in service on wages and the better protection of masters in such cases) **BE IT ENACTED** that if any person without the express consent of the master or some other lawful excuse or authority in that behalf shall in any manner knowingly harbour shelter conceal or employ any transported offender whatsoever being at the time in service on wages or shall without such consent or other lawful excuse or authority as aforesaid knowingly receive any such offender into or upon any part of his premises or knowingly permit such offender to remain or be in or on such premises or shall in any manner without such consent excuse or authority induce or persuade or endeavour to induce or persuade any such offender to depart or continue absent from his master's premises such person in any case so offending shall forfeit and pay a penalty not exceeding Twenty Pounds.

Harbouring &c. offenders in service.

Facilitating prosecutions.

IX. AND BE IT ENACTED that in any prosecution under any of the two preceding sections it shall be sufficient to allege generally that the act charged as an offence was committed without lawful excuse or authority in that behalf but the existence of any such excuse or authority (if any) shall be matter to be proved by the defendant.

Convicts tipping or gambling.

X. AND BE IT ENACTED that if any person shall receive any transported offender whatsoever whether knowing him to be a transported offender or not in or on any part of his premises for the purpose of tipping or gambling or shall allow any such offender to remain or be in or on such premises (whether licensed premises or not) tipping or gambling or for the purpose of tipping or gambling such person shall forfeit and pay a penalty or sum of not less than Twenty Shillings nor more than Twenty Pounds.

Reference to Publicans' Act.

XI. PROVIDED ALWAYS that (in order to prevent two penalties or proceedings for one offence) a conviction under the preceding section shall be a bar to any proceedings under the Act intituled *An Act to consolidate and amend the Laws relating to the Sale by Retail of Wine and Malt and Spirituous Liquors and to promote good Order in Public Houses* and a conviction under the last-mentioned Act shall be a bar to any proceedings under this Act in respect of the same occasion or subject matter.

4 Nov. 1798.

Masters allowing Convicts to have cattle &c.

XII. AND BE IT ENACTED that if any master of any Pass-holder or person to whom the services of any transported offender shall have been hired on wages shall knowingly permit any such Pass-holder or offender whilst in his service or under such hiring to acquire or have or keep or deal with in any manner as his own property any sheep or cattle or to become the tenant in his own right of any house hut or land such master or person shall forfeit and pay a penalty or sum of not less than Two Pounds nor more than Fifty Pounds.

Discharge of Convicts if arrested for debt.

XIII. AND BE IT ENACTED that in case any transported offender shall at any time by virtue of any civil process whatsoever be imprisoned or arrested for debt or any other alleged cause of action it shall be lawful for Her Majesty's Attorney-General by any order in writing under his hand to direct the Sheriff to discharge such offender and the Sheriff or Gaoler in whose custody such offender shall then be shall thereupon forthwith discharge such offender accordingly and deliver him into the custody of the Comptroller-General or any person by him in that behalf appointed—PROVIDED that nothing in this or the preceding section shall extend to or be construed to extend to a person holding a Ticket-of-Leave.

Intercourse with Port Arthur.

XIV. AND WHEREAS a certain part of this Island called Port Arthur with the tract of country adjoining has been set apart for the reception and punishment of offenders under Colonial sentences of transportation and other Convicts whom it may be proper to remove from the settled districts and it is expedient that no unnecessary intercourse with that part of the Colony should be permitted—BE IT THEREFORE ENACTED that if at any time any person commanding navigating or sailing in any vessel or boat whatsoever not in the service of the Government or not having a licence in writing for that purpose from the Lieutenant-Governor shall (except in cases of unavoidable necessity) enter touch at or hold intercourse with the said port or any other part of the tract or country called Tasman's Peninsula or at or

with Forestier's Peninsula or Slopen Island or shall (except in such cases of necessity as aforesaid) be for whatever purpose in any vessel or boat hovering or at anchor nearer to the coast of any of the places hereinbefore mentioned than three miles or if any person shall be in or upon any part of Tasman's Peninsula or Forestier's Peninsula or Slopen Island without such licence as aforesaid every such person shall forfeit and pay a penalty or sum of not less than Ten Pounds nor more than One hundred Pounds and shall also or lawfully may be forthwith and without any warrant arrested and taken before the Commandant or any Justice of the Peace and it shall be lawful for such Commandant or Justice of the Peace to imprison any such person or persons as aforesaid until such person or persons can be conveniently sent to Hobart Town and to commit such person or persons to the Gaol at Hobart Town until the case shall be there enquired into and determined and any such boat or vessel as aforesaid may lawfully be seized and detained until such case shall have been so enquired into and determined as aforesaid—PROVIDED ALWAYS that nothing in this section shall be deemed or taken to extend to any lands contained in the said tracts of country called Forestier's Peninsula which have been heretofore granted or located to John Spotswood Charles Swanston and Robert Pitcairn or any or either of them.

Preventing communication with Port Arthur.

XV. 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 shall conceal or receive any goods chattels money bill note valuable security or effects whatsoever that shall have been feloniously stolen by means of force or putting in bodily fear from the person or from the dwelling-house of any person knowing the same to have been stolen every such person shall be transported for the term of his or her natural life—AND any person who shall receive harbour maintain or conceal any person who shall have committed any such felony as aforesaid knowing him to have committed any such felony as aforesaid and being thereof lawfully convicted shall be taken to be an accessory to such felony and shall be transported for the term of his or her natural life whether the principal felon shall or shall not have been previously convicted or shall or shall not be amenable to justice.

Punishment of persons receiving housebreakers and others and concealing their spoil.

XVI. AND BE IT ENACTED that the Chief Superintendents of the several Gangs of Convicts throughout this Island or persons lawfully acting as such shall have power to enquire into and determine all complaints touching any of the following offences committed by any transported offender employed in any of the said gangs that is to say disobedience of any of the regulations prescribed or hereafter to be prescribed for the discipline and management of such transported offenders assaults where no dangerous wound or bruise is given profane swearing or any riotous or disorderly conduct or indecent language or behaviour and every such offence to punish by keeping the offender in close solitary confinement and causing him to be fed on bread and water only—PROVIDED that no such punishment when inflicted by authority of such Superintendent alone shall in any case exceed in duration the term of Three days—PROVIDED ALSO that no such punishments as are mentioned in this section shall take place until after due enquiry into the alleged offence and until after the minutes of the same shall have been recorded in a book to be provided for that purpose.

Power of Chief Superintendents of Gangs.

Having in possession crown property.

XVII. AND (in order to discourage more effectually than at present the embezzlement or unauthorized disposal of property by transported offenders and others where the same shall belong to the Crown and to remove the difficulties of proof against receivers in such cases)—BE IT ENACTED that if any person whatsoever shall receive or have in his possession any article or thing or articles or things of the value of two shillings in the whole or upwards the property of the Crown or which shall be reasonably suspected to be the property of the Crown the same may be seized under any warrant to be for that purpose issued by any Justice of the Peace (if he shall think fit to grant the same) upon information on oath before such Justice by any credible person setting forth therein to the satisfaction of such Justice reasonable grounds for suspecting such article or thing or articles or things to be the property of the Crown and to have been embezzled or otherwise unlawfully disposed of—AND the person so receiving or having the same in his possession as aforesaid shall forfeit and pay a penalty or sum of not less than Two Pounds nor more than Fifty Pounds unless within such reasonable time as shall be limited for that purpose by the Justice before whom the case is inquired into he shall show to the reasonable satisfaction of such Justices either that such article or thing is not the property of the Crown or was not embezzled or otherwise unlawfully taken or disposed of or that the same came to his possession honestly and without any cause for suspicion that it had been so embezzled or unlawfully disposed of—PROVIDED that where there shall be more articles than one and the whole of them shall appear to have been received on one and the same occasion a conviction in respect of any one of such articles shall be a bar to any other prosecution or proceeding under this section in respect of any other of such articles.

Proceeding for penalties.

XVIII. AND BE IT ENACTED that all offences against this Act not otherwise provided for in respect of which any pecuniary penalty is imposed shall or may upon information in that behalf exhibited be in a summary way heard and determined and every such penalty in respect of the same be awarded and imposed by and before any two Justices of the Peace in the manner provided by the Act intituled *An Act to regulate Summary Proceedings before Justices of the Peace*—AND if any person shall feel aggrieved by any summary judgment or conviction under this Act imposing any such pecuniary penalty such person shall be entitled to appeal therefrom in the manner also provided by that Act.

Protection against Penalties.

XIX. AND BE IT ENACTED that if any action shall be brought against any person whatsoever in respect of any thing done in pursuance of this Act or any provision therein the defendant may plead the general issue and give the special matter in evidence thereupon and if the verdict shall be for the defendant or the plaintiff be nonsuited or discontinue his action or upon demurrer judgment be given against the plaintiff the defendant shall have double costs and the like remedy for recovering the same as any defendant hath in any other case to recover costs by law.

Appropriation of sums and fines under this Act.

XX. AND BE IT ENACTED that all fees and other sums of money and all shares of penalties imposed under this Act payable to Her Majesty shall be and the same are hereby reserved to Her Majesty Her Heirs and Successors for the public uses of this Island and the support of the Government thereof for defraying the expenses of the Judicial and Police Establishments or otherwise as shall by any Act passed in this Island for the appropriation of the Revenue be directed.

XXI. AND BE IT ENACTED that where by the terms of this Explication of Act the masculine gender is used the same shall be deemed to include terms. and import as well the feminine.

E. EARDLEY-WILMOT.

Passed the Legislative Council, this twenty-eighth day of February, one thousand eight hundred and forty-five,

ADAM TURNBULL, *Clerk of the Council.*

