

No. XXI.

LUNATICS.

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.

[18th November, 1846.]

Preamble.

WHEREAS it is expedient to make provision for the safe custody of and prevention of crime being committed by persons insane: BE IT THEREFORE ENACTED by the Lieutenant-Governor of New Zealand, with the advice and consent of the Legislative Council thereof, as follows:—

Dangerous lunatics may be apprehended and kept in custody.

1. If any person shall be discovered and apprehended under circumstances denoting a derangement of the mind and a purpose of committing suicide or any crime for which if committed such person would be liable to be indicted, it shall be lawful for any two Justices of the Peace before whom such person may be brought to call to their assistance any two legally qualified medical practitioners, and if upon view and examination of such person and upon proof on oath by the said medical practitioners to the effect that in their opinion such person is a dangerous lunatic or a dangerous idiot, and on any further 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, there to be kept in strict custody until such person shall be discharged by an order of two Justices

*Lunatics.*

Justices of the Peace, one whereof shall be one of the Justices who has signed such warrant, or by one of the Judges of the Supreme Court, or until such person shall be removed to some public colonial lunatic asylum by order of His Excellency the Governor as hereinafter provided.

2. Every such person while in such custody as aforesaid shall have the liberty of seeing his or her friends and legal advisers at all reasonable times; and nothing herein contained shall prevent any relative or friend from taking such insane person or dangerous idiot under his own care and protection, provided he enter into sufficient recognizance for the peaceable behaviour or safe custody of such dangerous lunatic or idiot before two Justices of the Peace, the Court of Sessions, or before one of the Judges of the Supreme Court.

But may have access to their friends.

3. It shall be lawful for the Governor, by warrant under his hand, to direct that any person so kept in custody by any such warrant as aforesaid, or any person who may be in any prison or place of confinement, except for debt or under any civil process, and in respect of whom it shall be certified by two legally qualified medical practitioners that such person is insane, shall be removed to such public colonial lunatic asylum as the said Governor shall appoint.

And may be placed in a lunatic asylum.

4. Every person so removed as aforesaid shall remain under confinement in the asylum to which he may have been removed until it shall be certified to the Governor by two such practitioners as aforesaid that such person has become of sound mind, whereupon the said Governor is hereby authorized 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 of confinement from which he may 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: Provided always that nothing herein contained shall prevent the relatives guardians or friends of any insane person or idiot from removing such person, with the sanction of His Excellency the Governor, from any public colonial lunatic asylum, upon their giving sufficient security for the safe custody of such insane person or idiot in manner hereinbefore mentioned.

Until he shall recover.

5. In case it shall be certified to the Governor by two such practitioners as aforesaid 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 in like manner to order that such person shall be removed to such lunatic asylum as he shall appoint, unless in the meantime admitted to bail by some legal authority until the sitting of the Court at which such person should be tried or indicted according to the due course of law, and that such person shall then be remitted to the custody of the keeper 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 of seeing his friends and legal advisers at all reasonable times which he would have had in the gaol or prison from which he may have been removed.

Persons in prison and being insane may also be removed to an asylum.

6. 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

Persons acquitted on ground of insanity may be kept in strict custody.

*Lunatics.*

commission of such offence, and to declare whether such person was acquitted by them on account of such insanity. And if they shall find that such person was insane at the time of committing such offence, 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 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.

Persons proved not to be insane to be liberated.

7. If it shall appear to any two legally qualified medical practitioners present at an examination of any person in custody that such person is not insane or a dangerous idiot, and that such person may be suffered to go at large with safety, it shall be lawful for such 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 for the time being, who shall order the liberation of such person from custody unless he shall be detained therein for some other cause by due process of law.

Visitors of lunatic asylums may be appointed.

8. It shall be lawful for the Governor to nominate and appoint some fit person or persons to be visitor or visitors of such lunatic asylum within the Colony, and the said visitor or visitors to remove and displace and to appoint another or others in his or their stead. The persons so appointed shall visit such asylums and make reports thereon at such times and in such manner as the Governor shall from time to time direct and appoint.

Persons insane but not dangerously so may be placed in a lunatic asylum.

9. And whereas it is also 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 friend of any insane person (which application shall be sanctioned in writing by one of the Judges 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 in such lunatic asylum as he the said Governor shall appoint.

Costs of maintenance &c. to be defrayed by Colony.

10. 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 be made, be at the expense of the Colony.

Relations &c. of a lunatic may pay such costs out of his estate.

11. Provided always, and be it further 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 or her maintenance in any such asylum, to agree with any relative guardian or friend of any such lunatic or idiot for his or her maintenance whilst detained therein.

Limitation of action.

12. No action shall be brought against any person or persons on account of any act matter or thing done or to be done or commanded by such person or persons 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 in any such action the general issue may be pleaded and the special matter given in evidence.

Who to be deemed legally qualified medical practitioners.

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*Lunatics.*

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*Land Claims.*

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proved to the satisfaction of two Justices of the Peace that he is a Doctor or Bachelor of Medicine of some University, or a Physician or Surgeon, licensed or admitted as such by some College of Physicians or Surgeons in Great Britain or Ireland, or a member of the Company of Apothecaries of London, or who is or has been a Medical Officer, duly appointed and confirmed, of Her Majesty's sea or land service.

14. Provided that nothing herein contained shall be construed to prevent a writ *de lunatico inquirendo* from being sued out of the Supreme Court by any person or persons having a lawful right to do so, for the purpose of having the fact of the insanity or idiocy of any person not dangerously insane or idiotic tried by due course of law,

Writ of *de lunatico inquirendo* may issue in certain cases.

15. For the purposes of this Ordinance the word "Governor" shall be taken to include the Lieutenant-Governor or the Officer Administering the Government of the Colony for the time being.

Interpretation.

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