

No. XXIX.

PRISONS
REGULATION.

An Act for the Regulation of Gaols Prisons and Houses of Correction in the Colony of New South Wales and its Dependencies and for other purposes relating thereto. [16th December, 1840.]

Preamble.

What shall be the public gaols prisons and houses of correction of the Colony.

WHEREAS the laws now in force in England for regulating gaols and houses of correction and for the classification government and instruction of the prisoners confined therein are not applicable to the Colony of New South Wales and it is expedient to make provision for the better regulation of gaols prisons and houses of correction in the said Colony and its Dependencies Be it therefore enacted by His Excellency the Governor of New South Wales with the advice of the Legislative Council thereof That the said laws now in force in England shall not be construed to apply to the said Colony and that from and after the passing and publication of this Act all the houses buildings enclosures or places now used occupied and supported by the Government of the said Colony as public gaols prisons or houses of correction and which are particularly specified in the Schedule to this Act annexed marked A shall be and are hereby declared to be respectively the public gaols prisons and houses of correction belonging to the said Colony of New South Wales and its Dependencies respectively and shall

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shall be subject to the several provisions hereinafter made for the regulation management care and discipline of the same and of the prisoners therein respectively confined.

2. And be it enacted That all buildings erections houses and premises which shall hereafter be erected built purchased enlarged or maintained at the public expense as and for public gaols prisons and houses of correction within the said Colony and its Dependencies and which shall by proclamation to be from time to time published in the *New South Wales Government Gazette* by order of the Governor for the time being of the said Colony be declared and notified as such public gaols prisons or houses of correction shall from and after the publication of such notification be severally deemed and taken to be the public gaol prison or house of correction of the place or district where the same is or shall be situated within the said Colony or its Dependencies respectively and shall be subject to the several provisions hereinafter made for the regulation management care and discipline of the public gaols prisons and houses of correction belonging to the said Colony and its Dependencies and of the prisoners confined within the same.

Governor may by proclamation appoint places to be used as public gaols &c.

3. And be it enacted That all the said public gaols prisons and houses of correction already established or used and hereby declared to be the public gaols prisons and houses of correction in the said Colony and its Dependencies and also all other public gaols prisons or houses of correction which under the provisions of this Act shall hereafter be notified in manner aforesaid to be and to be used as such within the said Colony or its Dependencies respectively shall be and are hereby declared to be (except as hereinafter excepted) under the charge care and direction of the Sheriff of New South Wales subject however to the control of the Governor for the time being of the said Colony and that all prisoners committed for any crimes offences or misconduct to such public gaols prisons and houses of correction respectively shall be deemed to be in the custody of the said Sheriff and that all the keepers and under keepers of the said public gaols prisons and houses of correction respectively and the assistants of such keepers or under keepers and all other persons required and employed for the safety and care of the said public gaols prisons and houses of correction and of the prisoners confined therein respectively shall be nominated and appointed by the said Sheriff subject to the approbation of the Governor for the time being of the said Colony Provided however that the house of correction now existing at or near the Carters' Barracks in Sydney shall be exempted altogether from the charge or control of the said Sheriff and that it shall be lawful for the Governor for the time being of the said Colony to exempt from the control of such Sheriff any other house of correction which either is or hereafter may be detached from any gaol or prison or separated therefrom by a substantial wall and that every such house of correction shall be exclusively under the control of the Visiting Justice or Justices to be appointed in manner hereinafter directed.

Sheriff to have control of all gaols &c. and custody of all prisoners confined therein

And to appoint keepers &c subject to approval of the Governor.

Exempting from Sheriff's control the house of correction at Carters' Barracks Sydney and such other houses of correction detached from gaols or prisons as the Governor may think fit which shall be under exclusive control of Visiting Justices.

4. And be it declared and enacted That the Supreme Court of New South Wales and the several Judges thereof shall have full power and authority to order and direct the imprisonment of any offender (whether with or without hard labor) to take effect in any particular gaol or house of correction whatever whether the same be under the control of the Sheriff or any Deputy Sheriff or not.

Power of Judges to order imprisonment of offenders in any gaol or house of correction.

5. And be it enacted That all gaols prisons and houses of correction throughout the said Colony shall be governed by such rules and regulations as shall from time to time be made for the good management of the same by the Governor of New South Wales for the

All gaols &c. shall be governed by regulations made by the Governor.

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Proviso as to regulations for management of debtors' prisons.

time being with the advice of the Executive Council Provided always that it shall be lawful for the Judges of the Supreme Court at Sydney and for the Resident Judges at Port Phillip and New Zealand respectively to make all such rules and regulations for the management of all such gaols or buildings as now are or hereafter shall be appointed or set apart or used for the imprisonment of debtors and to make such rules and regulations for the control of such debtors therein respectively confined as to the said Judges respectively shall seem meet.

Gaols to be also houses of correction unless otherwise appointed.

6. And be it enacted That unless where it is otherwise provided by this Act or the Schedule annexed thereto or where it shall be otherwise declared or appointed by the Governor under the authority of this Act every public gaol shall be and be taken for all purposes as being equally a house of correction and also a prison for debtors and also that every house of correction shall be taken to be a prison.

Governor may appoint Visiting Justices—their duties Not to affect power of Judges to visit gaols when and how they think fit.

7. And be it enacted That it shall and may be lawful for the said Governor to nominate and appoint some fit and proper person being a Magistrate of the Territory to be the Visiting Justice of each gaol prison or house of correction within the said Colony and the said Visiting Justice to remove or displace and to appoint another or others in his stead and every Visiting Justice so appointed shall be required to visit such gaol prison or house of correction 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 that nothing herein contained shall be taken to abridge or affect the power of any Judge of the Supreme Court to visit and examine any such gaol house of correction or prison at any time how and when he may think fit.

Any Justice may visit gaols &c.—Penalty on gaolers or others refusing admittance &c.

8. Provided also and be it enacted That it shall be lawful for any and every Justice of the Peace for the said Territory of New South Wales as often as he may think fit to enter and examine any gaol prison or house of correction within the said territory and any gaoler turnkey or other person employed in any such gaol prison or house of correction who shall refuse admittance to any such Justice of the Peace or offer to him any hindrance or obstruction shall on conviction of the same before any other two Justices forfeit and pay the sum of ten pounds.

Persons imprisoned but not sentenced to hard labor may be set to work by Sheriff or Visiting Justices unless they have the means of supporting themselves.

9. And whereas persons convicted of offences are frequently sentenced to imprisonment without being sentenced to hard labor Be it enacted That it shall be lawful for the Sheriff or Visiting Justice of any gaol prison or house of correction to order all such persons except such prisoners as maintain themselves to be set to some work or labor provided the same be not severe Provided that no such prisoner who has the means of maintaining himself shall have any claim to be supplied at the public expense.

Separate confinement of prisoners.

10. And be it enacted That in order to prevent the contamination arising from the association of prisoners any prisoner may be by order of the Sheriff or Visiting Justice separately confined during the whole or any part of his or her imprisonment and such separate imprisonment shall not be deemed solitary confinement within the meaning of any Act forbidding the continuance of solitary confinement for more than a limited time Provided always that no cell shall be used for the separate confinement of any prisoner which is not of such a size and so ventilated and lighted that a prisoner may be confined therein without injury to health and every prisoner so confined shall have the means of taking air and exercise at such times as shall be deemed necessary by the surgeon.

Penalty on persons introducing or attempting to introduce spirituous or

11. And be it enacted That if any person whomsoever shall carry bring or attempt or endeavour to carry or bring into any prison to which the provisions of this Act shall extend any spirituous or fermented

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mented liquor it shall be lawful for the gaoler keeper turnkey or any of their assistants to apprehend or cause to be apprehended such offender and to take him or her before a Justice of the Peace who is hereby empowered and required to hear and determine such offence in a summary way and if the said Justice shall lawfully convict such person of such offence he shall forthwith commit such offender to some common gaol or house of correction there to be kept in custody for any time not exceeding three months without bail or mainprize unless such offender shall immediately pay down such sum of money not exceeding twenty pounds nor less than ten pounds as the said Justice shall impose upon such offender to be paid one moiety to the informer and the other moiety to the Colonial Treasurer of New South Wales for the public uses of the said Colony and in support of the Government thereof and if such offender shall be a convict under a sentence of transportation then unexpired it shall be lawful for the said Justice to sentence such offender to be worked in irons upon any public works in the said Colony for any term not exceeding two years.

fermented liquors
into any prison.

12. And be it enacted That the Visiting Justice shall have power to hear and determine all complaints touching any of the following offences that is to say—disobedience of the rules of the prison—assaults by one person confined in such gaol upon another where no dangerous wound or bruise is given—profane cursing and swearing—any indecent behaviour and any irreverent behaviour at or during Divine service or prayer—all which are hereby declared to be offences under this Act if committed by any description of prisoners whatsoever confined within any such gaol prison or house of correction and the said Visiting Justice shall also hear and determine all complaints of idleness or negligence in work or wilful mismanagement of work which are also hereby declared to be offences under this Act if committed by any prisoner under conviction for any crime and if the party complained of shall be convicted of any of the offences aforesaid it shall be lawful for the said Visiting Justice to sentence such party to be confined in a solitary cell on bread and water for any term not exceeding seven days.

Powers of Visiting
Justices to punish
parties offending in
prison.

13. And be it enacted That in case any prisoner under sentence for any crime shall be guilty of repeated offences against the rules of the prison or shall be guilty of any greater offence than hereinbefore mentioned upon complaint thereof to two or more Justices of the Peace of whom the Visiting Justice may or may not be one such Justices shall have power upon oath to inquire into and to determine the matter of such complaint and to order the offender on conviction to be punished by close confinement for any term not exceeding one calendar month or by personal correction in case of prisoners convicted of felony or sentenced to hard labor.

Punishment for re-
peated offences or
offences not men-
tioned in previous
section.

14. And be it enacted That if any person shall convey or cause to be conveyed into any prison or house of correction any mask visor or other disguise or any instrument or arms proper to facilitate the escape of any prisoner and the same shall deliver or cause to be delivered to any prisoner in such prison or to any other person therein for the use of any such prisoner without the consent and privity of the keeper of such prison or house of correction every such person shall be deemed to have delivered such visor or disguise instrument or arms with intent to aid and assist such prisoner to escape or attempt to escape and if any person shall by any means whatsoever aid and assist any prisoner to escape or in attempting to escape from any prison or house of correction every person so offending whether an escape be actually made or not shall be guilty of felony and being convicted thereof shall be transported beyond the seas for any term not exceeding fourteen years.

Punishment for con-
veying into any
prison any disguise
instrument or arms
to assist the escape
of any prisoner.

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As to the removal of prisoners to allow of the repair or enlargement of prisons or in consequence of infectious diseases.

15. And be it enacted That whenever it shall appear to the Governor for the time being of the said Colony that it is necessary that the debtors or other prisoners or any of them confined in any public gaol prison or house of correction within the said Colony or its Dependencies should be removed therefrom in order that the same may be repaired improved enlarged or re-built or on account of any contagious or infectious disease therein or of the over-crowded state of such gaol prison or house of correction or for any of the purposes of this Act and due and sufficient notice thereof in writing shall by order of the said Governor be given to the Sheriff of the said Colony it shall be lawful for the said Sheriff to remove such debtors and other prisoners or any of them to such other gaol prison or house of correction or other place of confinement within his jurisdiction as the said Governor shall appoint and consign them to during the time such gaol prison or house of correction shall be repairing improving or re-building or during the continuance of such contagious disease on account of which the said prisoners were removed or during such time as may be requisite for any purpose of this Act and when such gaol prison or house of correction shall be made fit for the reception and safe keeping of such debtors and other prisoners it shall be lawful for the said Sheriff to remove back thereto all such prisoners as shall then be in his custody and further in case any newly-erected gaol or building previously used for other purposes shall by proclamation as aforesaid be declared to be adopted and directed to be thenceforth appropriated and used as a public gaol prison or house of correction for any particular place or district it shall be lawful for the said Sheriff on the day of the publication of such proclamation or at any time thereafter to remove all prisoners in his custody in such place or district to such gaol prison or house of correction according to the sentences of the respective prisoners.

As to the removal of prisoners in any place or district to newly-proclaimed gaol or prison for same.

As to the removal of prisoners in cases of contagious disease or other emergency where the order of the Governor cannot be previously obtained in seasonable time.

16. And be it enacted That whenever any contagious disease or other emergency shall render necessary the immediate removal of the prisoners or any of them confined in any gaol prison or house of correction and that previous thereto it shall be impossible to obtain for that purpose the order of the Governor of the said Colony for the time being it shall and may be lawful for the Visiting Justices or the Police Magistrate of the district in which such gaol prison or house of correction shall be situate and he is hereby empowered to issue an order to the keeper of such gaol prison or house of correction to remove such prisoners or any of them to such other prison or place of confinement within his jurisdiction as shall be specified in such order Provided always that every such removal shall be subject to all such restrictions as to its duration as are hereby required and directed in other similar cases of removal by order of the said Governor and that every such order of the Visiting Justice or Police Magistrate together with the causes thereof shall be forthwith notified to the said Governor and also to the Sheriff of the said Colony Provided further that no such removal under this Act shall be deemed or taken to be an escape and that nothing herein contained shall extend to discharge the Sheriff or other officer from being answerable for the actual escape of any prisoner in his custody.

As to the removal of prisoners from one gaol to another or to hospital if necessary.

17. And be it enacted That it shall be lawful for the Sheriff or his deputy and for the Deputy Sheriffs of Port Philip and New Zealand respectively to remove any prisoner whatever from any gaol under his or their control respectively to any other gaol being also under his or their control respectively or in case of illness to any hospital or infirmary as occasion shall seem from time to time to require Provided that no such removal shall actually take place without the leave of a Judge of the Supreme Court on application made to him for that purpose.

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18. And be it enacted That all fines forfeitures and penalties imposed by this Act or which shall be imposed by virtue of any rule to be made in pursuance thereof shall on conviction of the offender be levied by distress and sale of the offender's goods and chattels by warrant under the hand and seal of the Justice or Justices before whom such conviction shall be had and for want of sufficient distress such offender shall be committed to the common gaol or house of correction for such term not exceeding six calendar months as such Justice or Justices shall think proper and all such fines forfeitures and penalties the application whereof is not hereinbefore particularly directed shall be paid to the Colonial Treasurer of New South Wales for the public uses of the said Colony and in support of the Government thereof.

Recovery and application of the penalties &c.

19. And for the more easy and speedy conviction of offenders Be it enacted That the Justice or Justices before whom any person shall be convicted of any offence against this Act shall and may cause the conviction to be drawn up in the following form of words or in any other form of words to the same effect which the case shall require that is to say—

Form of conviction.

BE it remembered that on the day of in the year of our Lord A. B. is convicted before me C. D. Justice of the Peace for the Territory of New South Wales and its Dependencies for that the said A. B. did (*specify the offence and the time and place when and where the same was committed as the case shall be*) and the said A. B. is for his said offence adjudged by me the said Justice to forfeit and pay the sum of pounds or to be imprisoned in for the space of (*as the case may be*).

Given under my hand and seal the day and year first above written.

20. Provided always and be it enacted That if any person shall think himself or herself aggrieved by any conviction of any Justice in pursuance of this Act such person may appeal to the Justices of the Peace at any Quarter Sessions of the district wherein such conviction shall have taken place within four calendar months after the cause thereof shall have arisen such appellant first giving or causing to be given to the Justice or Justices before whom the conviction shall have been had and to the Clerk of the Peace of the district in which such conviction shall have been had at least ten clear days' notice in writing of his or her intention to bring such appeal and of the matter thereof and within two days after such notice entering into recognizances before some Justice of the Peace of such district with two sufficient sureties conditioned to try such appeal and abide the order of and to pay such costs as shall be awarded by the Justices at such Sessions And the Justices at such Session upon due proof of such notice having been given and of the entering into such recognizances as aforesaid respectively shall hear and finally determine the matter of such appeal in a summary way and award such costs to the party appealing or appealed against (as the case may require) as they the said Justices shall think proper and the determination of such Sessions shall be final binding and conclusive to all intents and purposes.

Appeal allowed.

21. And be it enacted That no order made touching any of the matters in this Act contained nor any conviction of any offender against this Act shall be quashed for want of form or be removed or removable by *certiorari* or by any other writ or process whatsoever into the Supreme Court of the said Colony and that where any distress shall be made for any fine forfeiture penalty or sum of money to be levied by

No certiorari.

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Distress not unlawful for want of form.

by virtue of this Act the distress itself shall not be deemed unlawful nor shall the party making the same be deemed a trespasser on account of any defect or want of form in the summons conviction warrant of distress or other proceedings relating thereto nor shall any party be deemed a trespasser *ab initio* on account of any irregularity which shall be afterwards done by the party distraining but the party aggrieved by such irregularity shall and may recover full satisfaction for the special damage (if any) in an action on the case provided that no plaintiff shall recover in any action for such irregularity as aforesaid if tender of sufficient amends shall have been made by or on behalf of the party distraining before such action brought.

As to actions against persons acting in pursuance of this Act.

22. And be it enacted That if any suit or action shall be prosecuted against any person for any thing done in pursuance of this Act such person may plead the general issue and give the special matter in evidence at any trial to be had thereupon and shew that the same was done by authority of this Act and if a verdict shall pass for the defendant or the plaintiff shall become nonsuit or discontinue his or her action after issue joined or if upon demurrer or otherwise judgment shall be given against the plaintiff the defendant shall recover double costs and have the like remedy for the same as any defendant hath by law in other cases and although a verdict shall be given for the plaintiff in any such action such plaintiff shall not have costs given against the defendant unless the Judge before whom the trial shall be had shall certify his approbation of the action and of the verdict obtained thereupon.

Exempting from operation of Act all prisons or barracks used by Government exclusively for the confinement or security of offenders under sentence of transportation.

23. And be it enacted That nothing in this Act contained shall extend to the prisons or barracks at Hyde Park or to any other prison used or appropriated by the Government of the said Colony exclusively for the confinement or security of offenders transported to the said Colony or its Dependencies.

Application of the word Sheriff.

24. And be it enacted That wherever the word "Sheriff" is used in this Act the same shall in and for the Districts of Port Phillip and New Zealand respectively be taken to intend and be construed only as applying to the Deputy Sheriff of and for those places respectively so soon as any such officer shall be appointed for the same.

SCHEDULE REFERRED TO.

A.

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| Sydney... | ... | ... | ... | ... | ... | Gaol. |
| Do. | ... | ... | ... | ... | ... | House of Correction. |
| Parramatta | ... | ... | ... | ... | ... | Gaol. |
| Windsor | ... | ... | ... | ... | ... | Do. |
| Bathurst | ... | ... | ... | ... | ... | Do. |
| Liverpool | ... | ... | ... | ... | ... | Do. |
| Campbell Town | ... | ... | ... | ... | ... | Do. |
| Berrima | ... | ... | ... | ... | .. | Do. |
| Newcastle | ... | ... | ... | ... | ... | Do. |
| Melbourne | ... | ... | ... | ... | ... | Do. |