

*Dangerous Lunatics.*

## No. XIV.

DANGEROUS  
LUNATICS.

An Act 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.  
[12th December, 1843.]

Preamble.  
Justices to commit  
dangerous lunatics.

WHEREAS it is expedient to make provision for the safe custody of and prevention of crime being committed by persons insane Be it enacted by His Excellency the Governor of New South Wales with the advice and consent of the Legislative Council thereof That if any person shall be discovered and apprehended in the Colony of New South Wales 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 New South Wales 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 the said person so apprehended and upon proof on oath by the said two medical practitioners to the effect that in their opinion such person is a dangerous lunatic or a dangerous idiot and 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 Colony 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 by one of the Judges of the Supreme Court of New South Wales or until such person shall be removed to some public Colonial Lunatic Asylum by order of His Excellency the Governor of New South Wales for the time being 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 or her friends and legal advisers at all reasonable times Provided also that this Act 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 or her own care and protection if he or she 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 Quarter Sessions or one of the Judges of the Supreme Court of New South Wales.

Governor may direct  
persons under sen-  
tence of imprison-  
ment or transpor-  
tation to be removed  
to a lunatic asylum.

2. And be it enacted That it shall be lawful for the Governor of New South Wales for the time being 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 or Justices 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 or she 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

*Dangerous Lunatics.*

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 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 or she 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.

3. 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 or her 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 or her friends and legal advisers at all reasonable times which he or she would have had in the gaol or other prison from which he or she may have been removed.

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

4 Vic. c. 27 s. 3.  
39 and 40 Geo. III.  
c. 91 s. 1

and 3 and 4 Vic.  
c. 54 s. 3.

4. 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 misdemeanor 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 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 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.

5. 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 Act that he or she 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 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 of New South Wales for the time being who shall order the liberation of such person from custody unless he or she be detained therein for some other cause by due process of law.

Persons proved not to be insane may be liberated.

1 Vic. c. 4 s. 3.

6. And be it enacted That no person shall for the purposes of this Act be deemed a legally qualified medical practitioner unless such person shall have obtained a certificate of his being a legally qualified medical

Persons who are to be deemed medical practitioners.

*Dangerous Lunatics.*

2 Victoria No. 22.

medical practitioner from the New South Wales Medical Board established under an Act of Council passed in the second year of the reign of Her present Majesty Queen Victoria intituled "*An Act to define the qualification of Medical Witnesses at Coroner's Inquests and Inquiries held before Justices of the Peace in the Colony of New South Wales.*"

Visitors to be appointed.

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 or persons not exceeding five in number to be the visitors of each lunatic asylum within the said Colony 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 New South Wales.

Limitation of actions.

8. 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 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 Act 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 Act into effect he may plead the general issue and give the special matter in evidence.

Indemnity for acts already performed.

9. And whereas divers insane persons have been and are now confined in the Lunatic Asylum at Tarban Creek Be it enacted That 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 Provided always that nothing herein contained shall extend or be construed to extend to indemnify any person against whom an action shall have been commenced in the Supreme Court of New South Wales for any trespass in regard to the confinement of any such insane persons as aforesaid Provided also that in all cases where any insane person shall have been confined in the lunatic asylum upon the certificate of any duly qualified medical practitioner and such insane person shall have since become of sound mind no action shall lie for any such trespass as aforesaid.

General issue.

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

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

11. 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 for the time being on the application of one or more of the relatives or guardians of any insane person which application shall be sanctioned in writing by one of the Judges of the Supreme Court of New South Wales and on receiving the certificate of two legally qualified medical practitioners that they have

---

*Campbelltown and Appin District Council.*

---

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.

12. 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 Colony Provided that no insane person being a convict confined in the said asylum shall be supported out of any funds of the Colony whether local or general.

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

13. 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 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 and such relative guardian or friend shall be and is hereby empowered to reimburse himself 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.

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

---