

No. XXXIV.

PUNISHMENTS IN  
LIEU OF TRANSPOR-  
TATION.

An Act to substitute other punishments for  
Transportation beyond the Seas. [2nd  
October, 1847.]

Preamble.

**W**HEREAS impediments have arisen to the carrying into execu-  
tion of sentences to transportation beyond seas passed  
within the Colony of New South Wales and it is expedient and  
necessary to make provision for the substitution in certain cases of  
other punishments in lieu of actual transportation Be it therefore  
enacted by His Excellency the Governor of New South Wales with  
the advice and consent of the Legislative Council thereof That where  
any

Courts to have power  
to award hard labor  
on public works in  
lieu of transportation

*Punishments in lieu of Transportation.*

any male offender shall now be under conviction or shall be hereafter convicted in any Court of competent jurisdiction in New South Wales of any offence now or hereafter punishable by law with transportation it shall be lawful for such Court at its discretion either to sentence such offender to transportation for the term of life or of years as by law in that behalf provided or in lieu thereof that he be kept to hard labor on the roads or other public works of the Colony for such term as the said Court shall think fit not being more nor less in any case than the periods next mentioned that is to say—in lieu of transportation for life a period of not less than seven years nor more than fifteen years in lieu of transportation for fifteen years or for any term not less than seven years and not exceeding fifteen years a period of not less than five years nor more than ten years and in lieu of transportation for seven years a period of not less than three years nor more than five years and upon all convictions for perjury or for any felony attended with violence to the person or committed by the offender when armed with any offensive weapon or instrument or by means of any threat or by putting in fear it shall be lawful for the Court before which any such conviction shall have been had to direct that the offender shall whether sentenced to hard labor or to transportation be kept to hard labor in irons for any term not exceeding in any case the first three years of his sentence.

and in certain cases to direct that the offender shall be kept in irons for a limited time.

2. And be it enacted That it shall be lawful for the Governor or officer administering the Government of the Colony in all cases in which he is or shall be authorized on behalf of Her Majesty to extend mercy to any offender under sentence of death on condition of transportation to extend mercy in like manner on condition of such offender being kept to hard labor on the roads or other public works for such term as he shall think fit and also if he shall think proper to direct that any offender so pardoned whether on condition of transportation or of hard labor shall be kept to hard labor in irons for any term not exceeding in any case the first three years of the term of transportation or of hard labor on condition whereof such offender shall have been so pardoned and such extension of mercy whether on condition of transportation or of hard labor shall be signified by the Colonial Secretary to the Judge before whom such offender was convicted who shall allow such offender the benefit of a conditional pardon and shall make an order thereupon for the transportation of such offender or for his being kept to hard labor either in or out of irons as the said Governor shall have directed pursuant to the condition of such pardon and such allowance or order shall be considered as and have the effect of a valid sentence made and passed by the Court before which such offender was convicted and shall be entered on the Records of the Court accordingly.

Governor to be empowered to commute sentences of death to labor on public works as well as to transportation

and to direct that the offender be kept in irons for a limited time.

Commutation to be recorded and to have the effect of a sentence.

3. And be it enacted That where any sentence of transportation shall have been or shall be passed by any Court of competent jurisdiction within the Colony or where any sentence of death shall have been commuted to transportation or have been remitted on condition of transportation every offender under such sentence or commutation or conditional remission shall be liable to be summarily tried punished and in all other respects dealt with within the said Colony as if he were an offender transported to the Colony from England and whose term of transportation had not expired or been remitted and every offender sentenced to hard labor on the roads or other public works or pardoned on condition of being kept to hard labor as aforesaid shall in like manner be liable to be summarily tried punished and dealt with during his term of punishment in all respects as if he were an offender transported to this Colony from England whose term of sentence had not

How sentences of transportation to be served.

How sentences to labor on the public works to be served.

*Punishments in lieu of Transportation.*

How labor in irons to be served.

not expired or been remitted and every offender directed as aforesaid to be kept to hard labor in irons for any term shall be liable during such last mentioned term to be summarily tried punished and dealt with as if he had arrived in the Colony as a transported offender and had been sentenced to such labor in irons upon a subsequent conviction within the Colony of an offence punishable by the law of England with transportation.

Governor empowered to grant pardons on condition of exile.

1. And be it enacted That it shall be lawful for the Governor or officer administering the Government of the Colony to grant to any person under any sentence or order for transportation or of hard labor who shall have served on the roads or other public works of the Colony for not less than two years in any case a remission of the remainder of the term for which he shall have been so sentenced or ordered for transportation or hard labor on condition that he shall not remain in or come within the Colony during the residue of his said term and it shall be lawful for the said Governor to make such rules and regulations as he shall think fit for the mitigation or remission conditional or otherwise of any sentence or order for punishment under this Act as an incentive to or reward for good conduct whilst the offender shall be serving under such sentence or order and to mitigate or remit the term of punishment accordingly.

and to make rules for remission of sentence as an incentive to good conduct.

Governor may appoint places of detention for male offenders.

5. And be it enacted That it shall be lawful for the Governor for the time being of the said Colony by any notice to be published by his order in the *New South Wales Government Gazette* to appoint any one or more place or places within the said Colony or its dependencies at which male offenders convicted therein and under order or sentence of transportation or under any order or sentence passed in pursuance of the provisions of this Act shall be detained and every such offender shall be liable to be kept to hard labor at such place or places during such period of the sentence or term of punishment as the said Governor shall order and direct.

Penalty on persons being at or near such places without permission.

6. And be it enacted That it shall not be lawful for any person whomsoever to be found at or near or in any manner communicate with any such place so appointed by the Governor without the permission of the said Governor or some other proper officer first had and obtained and any person who shall be found at or near or in any manner communicate with any such place as aforesaid without such permission shall be guilty of a misdemeanor and upon conviction thereof before the Supreme Court or any other Court of competent jurisdiction within the said Colony or its dependencies shall for every such offence be liable to a fine or penalty not exceeding twenty pounds or to imprisonment for any time not exceeding three calendar months or to both at the discretion of the said Court.

Queen's prerogative of mercy not affected.

7. And be it enacted and declared That nothing in this Act contained shall or doth in any manner affect Her Majesty's Royal Prerogative of Mercy.