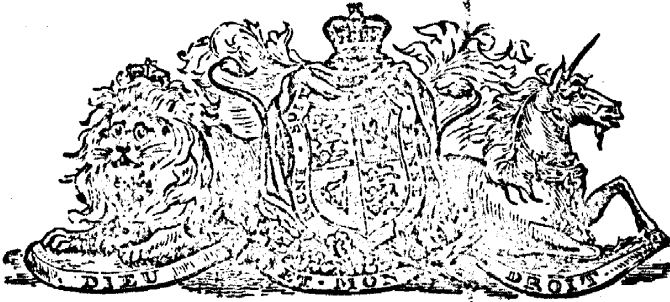


Repealed by Act. 38. 1877



1845.

No. 1.

By His Excellency GEORGE GREY, Esquire, Governor and Commander-in-Chief of Her Majesty's Province of South Australia and its Dependencies, and Vice-Admiral of the same, by and with the advice and consent of the Legislative Council.

AN ORDINANCE to assimilate the Law of this Province to the Law of England relative to the Punishment for Malicious Injuries to Property heretofore Punishable with Death and relative to the Punishment for Rape and Carnally Knowing and Abusing any Girl under Ten Years of Age.

“WHEREAS by an Act passed in the Eighth Year of the Reign of His late Majesty King George the Fourth, intituled ‘An Act for consolidating and amending the Laws in England relative to malicious injuries to property,’ it was amongst other things enacted, that if any persons riotously and tumultuously assembled together to the disturbance of the public peace should unlawfully and with force demolish, pull down, or destroy, or begin to demolish, pull down, or destroy any church or chapel, or any chapel for the religious worship of persons dissenting from the United Church of England and Ireland duly registered or recorded, or any house, stable, coach-house, out-house, warehouse, office, shop,

Preamble.
7 & 8 G. 4, c. 30, s. 8.
Riotous demolition
of churches, houses,
&c.

"shop, mill, malt-house, hop-oast, barn, or granary, or any building
 "or erection used in carrying on any trade or manufacture, or any
 "branch thereof, or any machinery whether fixed or moveable
 "prepared for or employed in any manufacture or in any branch
 "thereof, or any steam-engine or other engine for sinking, draining,
 "or working any mine, or any staith, building or erection used
 "in conducting the business of any mine, or any bridge, waggon,
 "way, or trunk for conveying minerals from any mine, every
 "such offender should be deemed guilty of felony, and being
 "convicted thereof should suffer death as a felon; and that in
 "case of every felony punishable under that Act every principal
 "in the second degree, and every accessory before the fact, should
 "be punishable with death or otherwise in the same manner
 "as the principal in the first degree was by that Act punish-
 "able: And whereas it was deemed expedient in England that
 "the said offences hereinbefore mentioned should be no longer
 "punishable with death, and by an Act made and passed in the
 "Parliament held in the Fourth and Fifth Years of the Reign of
 "Her present Majesty, intituled 'An Act for taking away the
 "'punishment of death in certain cases and substituting other
 "'punishments in lieu thereof,' and by another Act made and
 "passed in the Parliament held in the Sixth and Seventh Years
 "of the Reign of Her present Majesty for removing doubts as to
 "the punishment which might be awarded under the provisions
 "of the last mentioned Act, the punishment of death hath been
 "taken away in respect of the said offences hereinbefore men-
 "tioned and other punishments have been substituted in lieu
 "thereof: And whereas it is expedient to assimilate the Law of
 "this Province to the Law of England in respect to the punish-
 "ment of offences:"

4 & 5 Vict., c. 56.
 Taking away the pu-
 nishment of death.

6 & 7 Vict., c. 10.
 Explaining the 4 & 5
 Vict., c. 56.

BE IT THEREFORE ENACTED BY HIS EXCELLENCY THE GOVERNOR
 of South Australia, with the advice and consent of the Legislative
 Council thereof, in conformity with the provisions of the two last
 mentioned Acts: That from and after the commencement of this
 Ordinance, if any person shall be convicted in this Province of any
 of the offences hereinbefore specified whether as principal, or as
 principal in the second degree, or as accessory before the fact,
 such person shall not be subject to any sentence, judgment, or
 punishment of death, but shall instead of the punishment by
 the said first recited Statute ordered to be given or awarded
 against persons convicted of the said offences hereinbefore spe-
 cified, be liable at the discretion of the Court to be transported
 beyond the seas for the term of the natural life of such person,
 or for any term not less than seven years, or to be imprisoned
 with or without hard labor for any time not exceeding three years:

And be it further enacted, that in the construction of this clause the words "any church or chapel or any chapel for the religious worship of persons dissenting from the United Church of England and Ireland duly registered or recorded," shall be deemed and construed to mean any church or chapel for religious worship in this Province either of the Church of England and Ireland, or of Scotland, or of Rome, or any chapel of any christian congregation whereof the Minister shall be duly registered as an Officiating Minister under and by virtue of an Ordinance of the Governor and Council of this Province, passed on the 22nd day of March, 1842, intituled "An Act for regulating Marriages in the Province of South Australia."

Meaning of the words church or chapel, &c., in this Province.

II. And whereas also by an Act passed in the Ninth Year of His said late Majesty King George the Fourth, intituled "An Act for consolidating and amending the Statutes in England relative to offences against the person," it was amongst other things enacted, "that every person convicted of the crime of rape should suffer death as a felon, and that if any person should unlawfully and carnally know and abuse any girl under the age of ten years every such offender should be guilty of felony, and being convicted thereof should suffer death as a felon:" And whereas by the said Act made and passed in the Parliament held in the Fourth and Fifth Years of the Reign of Her present Majesty, intituled "An Act for taking away the punishment of death in certain cases and substituting other punishments in lieu thereof," the punishment of death is taken away in respect of persons guilty of the several last mentioned offences, and the punishment of transportation for life is substituted in lieu thereof: Be it therefore enacted, in conformity with the last mentioned Statute, that from and after the commencement of this Ordinance if any person shall be convicted in this Province of either of the offences hereinbefore last specified, such person shall not be subject to any sentence, judgment, or punishment of death, but shall instead of the sentence or judgment in and by the said hereinbefore in part recited Act, passed in the Ninth Year of the Reign of His said late Majesty King George the Fourth, ordered to be given or awarded against persons convicted of the said last mentioned offences or either of them respectively be liable to be transported beyond the seas for the term of his natural life.

9 Geo. 4, c. 31, secs. 16 & 17.

Rape, &c.

4 & 5 Vict., c. 56.

Not to be punishable with death,

But with transportation for life.

III. And be it enacted, that in awarding the punishment of imprisonment for any offences punishable under this Ordinance, it shall be lawful for the Court to direct such punishment to be with or without hard labor in the Common Gaol or House of Correction, and also to direct that the offender shall be kept in solitary

Imprisonment may be with or without hard labor.

38/76

solitary confinement for any portion or portions of such imprisonment whether the same be with or without hard labor, not exceeding one month at any one time, and not exceeding three months in any one year, as to the Court in its discretion shall seem meet.

offences not to be tried at General or Quarter Sessions.

IV. And be it enacted, that none of the offences hereinbefore specified shall be tried or triable before any Justices of the Peace at any General or Quarter Sessions of the Peace.

Commencement of Ordinance.

V. And be it enacted, that this Ordinance shall commence and take effect on the first day of August next ensuing.

G. GREY,
Governor and Commander-in-Chief,

Passed the Legislative Council this First day of July, One Thousand Eight Hundred and Forty-five.

W. L. O'HALLORAN,
Clerk of Council,