



ANNO DECIMO-NONO

VICTORIÆ REGINÆ,

No. 6.



*By His Excellency SIR HENRY EDWARD FOX YOUNG, Knight,
Captain-General and Governor-in-Chief of the Island of Van
Diemen's Land and its Dependencies, with the Advice and
Consent of the Legislative Council.*

***AN ACT to make provision for the better Control and
Disposal of Offenders under Sentence of Imprisonment.***
[28th August, 1855.]

WHEREAS it is expedient to make provision for the better control and disposal of Offenders under sentence of imprisonment: Be it enacted by His Excellency the Governor of Van Diemen's Land, by and with the advice and consent of the Legislative Council, as follows : PREAMBLE.

1 Where any offender shall, for any offence whatsoever, be under a sentence of imprisonment, with or without hard labour, or with or without solitary confinement, passed by any Court or by any Justice or Justices of the Peace, it shall be lawful for the Governor to cause such sentence to be carried into effect in any Gaol or House of Correction within this Colony as the Governor, from time to time, shall think fit to direct. Offenders may be imprisoned in any Gaol Governor may direct.

2 Where any male offender shall be under sentence of imprisonment with hard labour for any felony or infamous misdemeanor, or for any assault with intent, or attempt, to commit felony, it shall be lawful for the Governor to cause such offender to be employed, during the whole or any portion of his sentence, either in or out of chains, at such labour and in such place as the Governor shall from time to time direct. Male offenders under sentence of imprisonment with hard labour for felony, &c. may be worked in chains in any place Governor may direct.

Male offenders under imprisonment with hard labour for other offences may be worked in any place Governor may direct.

3 Where any male offender shall, for any offence whatsoever, other than felony, infamous misdemeanor, or assault with intent, or attempt, to commit felony, be under sentence of imprisonment with hard labour passed by any Court, or by any Justice or Justices of the Peace, it shall be lawful for the Governor to cause such offender to be employed, during the whole or any portion of his sentence, at such labour, and in such place, as the Governor shall from time to time direct: Provided that the Court, or Justice or Justices, in passing sentence upon any such offender shall have authority to exempt him from the operation of this Section.

Offenders not to be sent to Port Arthur unless under sentence for felony, &c.

4 Nothing in this Act contained shall authorise the confinement or employment of any offender at *Port Arthur*, or in any penal establishment on *Tasman's Peninsula*, unless such offender shall be under sentence for felony, infamous misdemeanor, or assault with intent, or attempt, to commit felony.

Governor empowered to make regulations for control of offenders at places of labour.

5 It shall be lawful for the Governor with the advice of the Executive Council, from time to time, to make such Regulations for the proper control, discipline, and management of male offenders employed at labour at any place in this Colony, under the provisions of this Act, as to the Governor with the advice aforesaid shall appear expedient; and such Regulations shall be published in the *Hobart Town Gazette*, and promulgated at any such place of labour in such manner as the Governor shall from time to time direct.

Offenders under sentence of imprisonment for felony, &c. may be kept in separate apartments during the night.

6 It shall be lawful for the Superintendent of any Penal Establishment or place of labour to cause offenders under sentence of imprisonment, with or without hard labour, or with or without solitary confinement, for felony, infamous misdemeanor, or assault with intent, or attempt, to commit felony, to be kept in separate apartments or places of confinement during the night time, and at such other times as may be authorised by any Regulations made under the authority of this Act.

Governor may give general directions as to places of labour and nature of labour.

7 It shall be competent to the Governor from time to time to give general directions to the Sheriff touching the places at which offenders sentenced to imprisonment with hard labour shall be kept at labour, and the nature of the labour at which such offenders shall be employed; and all offenders so sentenced shall forthwith, or as soon as conveniently may be after their respective sentences, be forwarded to such places of labour accordingly.

Regulating the warrants under which offenders to be removed to places of labour.

8 All offenders under sentence of imprisonment with hard labour, and liable to be forwarded to such places of labour as before mentioned, may be forwarded to such places of labour under a Warrant from any convicting Justice (in the case of a summary conviction), or of the Sheriff, or of any person acting or who shall have acted as Deputy Sheriff at the Court at which such offender shall have been sentenced; and any such Warrant shall be a sufficient authority for all Constables who may be entrusted with the conveyance of any such offender to keep and convey him accordingly, and to all Lock-up Keepers and Gaolers to keep and detain such offender in custody for so long as convenience may require for the purpose and in the course of such removal.

Punishment for escape of offenders

9 If any offender under sentence of imprisonment, with or without hard labour, or with or without solitary confinement, for any felony or

infamous misdemeanor, or for any assault with intent, or attempt, to commit felony, shall, during such sentence, or during any sentence passed under this Act, escape or attempt to escape from any Gaol or House of Correction, or from the custody of any Gaoler, Constable, or other Officer in whose custody such offender may be, or if any male offender under sentence of imprisonment with hard labour for any felony or infamous misdemeanor, or for any assault with intent, or attempt, to commit felony shall, during such sentence or during any sentence passed under this Act, escape or attempt to escape from any place where he shall be employed at labour under the provisions of this Act, every such offender shall, upon conviction before any two Justices of the Peace, be liable to imprisonment with hard labour for any period not exceeding Three Years, and, if a male, to be kept in chains for the whole or any portion of such imprisonment, if such Justices shall so think fit to order.

under sentence of imprisonment for felony, &c.

10 If any offender under sentence of imprisonment, with or without hard labour, or with or without solitary confinement, for any offence other than felony, infamous misdemeanor, or assault with intent, or attempt, to commit felony, shall during such sentence, or during any sentence passed under this Act, escape or attempt to escape from any Gaol or House of Correction, or from the custody of any Gaoler, Constable, or other Officer in whose custody such offender may be, or if any male offender under sentence of imprisonment with hard labour for any offence other than felony, infamous misdemeanor, or assault with intent, or attempt, to commit felony, shall, during such sentence, or during any sentence passed under this Act, escape or attempt to escape from any place where he shall be employed at labour under the provisions of this Act, every such offender shall, upon conviction before any two Justices of the Peace, be liable to imprisonment with hard labour for any period not exceeding Six Months.

Punishment for escape of other offenders sentenced to imprisonment.

11 Where any offender under sentence of imprisonment, with or without hard labour, or with or without solitary confinement, for any felony or infamous misdemeanor, or for any assault with intent, or attempt, to commit felony, shall, during such sentence or during any sentence passed under this Act, be guilty of any of the following offences,—

Punishment for greater offences committed by offenders under imprisonment for felony, &c.

1. Insubordination.
2. Larceny, or feloniously receiving, or embezzling any money, chattel, or valuable security of the value of Five Pounds and under.
3. Wilful prevarication upon oath.
4. Indecent exposure of person.
5. Wilful destruction or injury of any Gaol or House of Correction, or any furniture thereof, or of any Public Works of this Colony, or of any implement used thereon, or used on any work, or in any place where such offender may be employed at labour under this Act, or of any chattel or other property.
6. Assault ;

it shall be lawful for any two Justices of the Peace to hear and determine any such offence, and on conviction to sentence the offender to either of the following punishments,

1. Solitary confinement, or solitary confinement and to be fed on bread and water only, for any period not exceeding One Month.

2. Imprisonment with hard labour for any period not exceeding Nine Months, and, if a male, to be kept in chains during the whole or any portion of such sentence, if the Justices shall think fit so to order.

Punishment of lesser offences committed by offenders under imprisonment for felony, &c.

12 Where any offender under sentence of imprisonment, with or without hard labour, or with or without solitary confinement, for any felony or infamous misdemeanor, or for any assault with intent, or attempt, to commit felony, shall during such sentence, or any sentence passed under this Act, be guilty of any of the following offences,—

1. Drunkenness.
2. Disobedience of the lawful orders of any person having lawful authority over such offender.
3. Idleness.
4. Wilful mismanagement of, or neglect of, or refusal to, work.
5. Indecent, profane, or abusive language.
6. Insolence to any person having lawful authority over such offender.
7. Absence without leave from the appointed station or place of work of such offender.
8. Breach of any Rule or Regulation of the Prison, Penal Establishment, or place of labour, where such offender may be, or any other misconduct not specified in this or the preceding Section ;

it shall be lawful for any Justice of the Peace to hear and determine any such offence ; and, on conviction, to sentence the offender to either of the following punishments,—

1. Solitary confinement, or solitary confinement and to be fed on bread and water only, for any period not exceeding Fourteen Days.
2. Imprisonment with hard labour for any period not exceeding Six Months, and, if a male, to be kept in chains during the whole or any portion of such sentence, if the Justice shall think fit so to order.

Punishment of greater offences committed by other offenders under imprisonment with hard labour.

13 Where any offender under sentence of imprisonment with hard labour for any offence other than felony, infamous misdemeanor, or assault with intent, or attempt, to commit felony, shall, during such sentence, or any sentence passed under this Act, be guilty of any of the following offences,—

1. Insubordination.
2. Wilful prevarication on oath.
3. Indecent exposure of person.
4. Wilful destruction or injury of any Gaol or House of Correction, or any furniture thereof, or of any Public Works of this Colony, or of any implement used thereon, or used on any work or in any place where such offender may be employed at labour under this Act, or of any chattel or other property.
5. Assault ;

it shall be lawful for any two Justices of the Peace to hear and determine any such offence, and on conviction to sentence the offender to either of the following punishments,—

1. Solitary confinement, or solitary confinement and to be fed on bread and water only, for any period not exceeding Fourteen Days.
2. For the first offence, imprisonment with hard labour for any period not exceeding Two Months ;

For the second and every subsequent offence, imprisonment with hard labour for any period not exceeding Four Months.

14 Where any offender under sentence of imprisonment with hard labour for any offence other than felony, infamous misdemeanor, or assault with intent or attempt to commit felony, shall during such sentence, or any sentence passed under this Act, be guilty of any of the following offences,—

Punishment of lesser offences committed by other offenders under imprisonment with hard labour.

1. Drunkenness.
2. Disobedience of the lawful orders of any person having lawful authority over such offender.
3. Idleness.
4. Wilful mismanagement of, or neglect of, or refusal to, work.
5. Indecent, profane, or abusive language.
6. Insolence to any person having lawful authority over such offender.
7. Absence without leave from the appointed station or place of work of such offender.
8. Breach of any Rule or Regulation of the Prison, Penal Establishment, or place of labour, where such offender may be, or any other misconduct not specified in this or the preceding Section ;

it shall be lawful for any Justice of the Peace to hear and determine any such offence, and on conviction to sentence the offender to either of the following punishments,—

1. Solitary confinement, or solitary confinement and to be fed on bread and water only, for any period not exceeding Seven Days.
2. For the first offence, imprisonment with hard labour for any period not exceeding One Month.

For the second and every subsequent offence, imprisonment with hard labour for any period not exceeding Two Months.

15 The jurisdiction by this Act vested in a Justice or Justices of the Peace shall not be exercised by any Justice who is the Keeper of any Prison or House of Correction, or the Superintendent of any Penal Establishment or place of labour, or in whose custody or under whose charge or control otherwise than as a Justice of the Peace any such offenders may be.

Jurisdiction of Justices not to be exercised by Superintendents of Penal Establishments, &c.

16 The period of any sentence passed under the provisions of this Act shall not be deemed or taken as a portion of the period or periods of imprisonment with or without hard labour, or with or without solitary confinement, to which the offender shall have been previously sentenced, whether under this Act or otherwise, but such offender shall, after the expiration of any sentence passed under this Act, undergo such portion of such previous sentence or sentences as may be unexpired at the time when any sentence under this Act shall be passed.

Sentences under this Act not to form part of original or existing sentences.

17 Every offender who shall have been sentenced to imprisonment, with or without hard labour, or with or without solitary confinement, for any offence whatsoever, and who shall have received any sentence of extension of, or cumulative upon, such original sentence, shall during any such extension or cumulative sentence be deemed for the purposes of this Act to be under such original sentence of imprisonment as aforesaid.

Offenders under extended sentences to be deemed to be under original sentences.

18 In all proceedings for offences under this Act before any Justice or Justices of the Peace, the charge against the offender, with the

Form of proceeding for offences against this Act.

No *Certiorari*.

record of the conviction and other proceedings therein, shall be on paper or parchment, and in the Form or to the effect of the Form in the Schedule to this Act annexed; and no conviction or other proceeding under this Act shall be quashed for want or defect of form, or be removed into the Supreme Court by Writ of *Certiorari* or otherwise.

Protection of persons acting in the execution of this Act.

19 All actions brought against any person for any thing done in pursuance of this Act shall be commenced within three months after the fact committed, and not otherwise, and notice in writing of such action and of the cause thereof shall be given to the Defendant one month at least before the commencement of the action; and in such action the Defendant may plead the general issue, and give this Act and the special matter in evidence at the trial; and no Plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into Court after such action brought by or on behalf of the Defendant; and if a verdict shall pass for the Defendant, or the Plaintiff shall become nonsuit or discontinue any such action, or if upon demurrer or otherwise judgment shall be given against the Plaintiff, the Defendant shall recover his full costs as between attorney and client, and have the like remedy for the same as any Defendant hath by law in other cases, and such Plaintiff shall not have costs against the Defendant unless the Judge before whom the trial shall be shall certify his approbation of the action, and of the verdict obtained thereupon.

This Act not to affect powers of Gaolers under 8 Vict. No. 16, Sec. 16.

20 Nothing in this Act contained shall affect the powers conferred upon the Keepers of Gaols and Houses of Correction by the 16th Section of the Act of Council passed in the eighth year of the reign of Her present Majesty, No. 16; but no offender shall be liable to be punished under that Section and under this Act for the same offence.

Commencement of Act.
Repeal of 8 Vict., No. 13, sec. 28.
8 Vict., No. 16, sec. 17 (partially),
and 8 Vict., No. 19, secs. 2 & 3.

21 This Act shall commence and take effect on the First day of *September* next; and thereupon the 28th Section of the Act of Council passed in the eighth year of Her Majesty's reign, No. 13, and the 17th Section of the said Act of Council passed in the same year, No. 16, so far as the said Section affects or relates to offenders under sentence of imprisonment, with or without hard labour, or with or without solitary confinement, for any felony or infamous misdemeanor, or for any assault with intent, or attempt, to commit felony, or to offenders under sentence of imprisonment with hard labour for any other offence, and the 2nd and 3rd Sections of the Act of Council passed in the same year, No. 19, shall be repealed, except as to all matters theretofore done or offences theretofore committed, which shall be proceeded and dealt with as if this Act had not been passed.

Short Title.

22 In referring to this Act it shall be sufficient to use the expression "*The Offenders Control Act.*"

SCHEDULE.

A. B., an Offender under sentence of [imprisonment with hard labour], for [felony, or other offence as the case may be], is charged under the provisions of *The Offenders Control Act*, before [me, one] of Her Majesty's Justices of the Peace, upon the complaint of *C. D.*, with [here state shortly the offence or misconduct charged].

The Prisoner pleads [guilty or not guilty].

Now [I] the said [Justice], having inquired into the said charge, do find that the said *A. B.* is [guilty or not guilty]. [If guilty proceed as follows.]

And [I] do sentence the said *A. B.* for such offence to [here state the sentence].

Dated at this day of 1855.

J. P.

[To be signed by the Justice or Justices adjudicating.]

MICHAEL FENTON, *Speaker.*

Passed the Legislative Council this seventeenth day of August, one thousand eight hundred and fifty-five.

FR. HARTWELL HENSLOWE,
Clerk of the Council.

In the name and on the behalf of Her Majesty I assent to this Act.

H. E. F. YOUNG,
Governor

Government House, Hobart Town,
28th August, 1855.

