

No. VIII.

An Act to authorize the Governor of New South Wales to detain at hard labor any Male Offender under a second Sentence or Order of Transportation. [21st September, 1841.]

HARD LABOR FOR
MALE OFFENDERS.

WHEREAS by an Act of the Governor and Council of New South Wales passed in the third year of the reign of His late Majesty King William the Fourth intituled "*An Act to consolidate and amend the Laws for the transportation and punishment of Offenders in New South Wales and for defining the respective powers and authorities of General Quarter Sessions and of Petty Sessions and for determining the places at which the same shall be holden and for better regulating the summary jurisdiction of Justices of the Peace and for repealing certain Laws and Ordinances relating thereto*" it was enacted that certain offenders should be transported to such penal settlements within the said Colony or its Dependencies as the Governor should direct and whereas in the progress of the settlement of the said Colony the places which at the time of the passing of the said recited Act were used as penal settlements have ceased to be used as such for the said Colony and it is expedient to repeal so much of the said recited Act as enacts that "Every sentence of transportation passed in due course of law upon any offender in New South Wales or its Dependencies and every order made by the Governor for the transportation of any such offender in lieu of capital punishment shall subject such offender to be conveyed to such penal settlement within the said Colony or its Dependencies at such time and in such manner as the Governor for the time being shall direct and appoint" Be it therefore enacted by His Excellency the Governor of New South Wales with the advice of the Legislative Council thereof That so much of the said recited Act as directs that any offender shall be transported to a penal settlement within the Colony of New South Wales or its Dependencies who shall be convicted of any offence for which he would be liable to be transported either by reason of a sentence of transportation passed in due course of law or of an order of transportation made by the Governor in lieu of capital punishment shall be and the same is hereby repealed.

Preamble.

3 William IV. No. 3.

Repealing sec. 4 of
3 William IV. No. 3.

2. And whereas circumstances have arisen which may render it necessary to suspend for a time the carrying into effect any sentence of transportation passed by any Court in the Colony of New South Wales or any order made by the Governor for the transportation of any offender in lieu of capital punishment and until provision can be made for the transportation of such offenders to detain them in some

Hard Labor for Male Offenders.

Governor to appoint places at which persons under sentence of transportation may be detained at hard labor.

Such offenders to be placed under a commandant or superintendent.

And punished for misconduct.

Not to affect persons born or arrived free in the Colony unless convicted of a capital offence or previously convicted of a transportable offence.

Governor may order removal of offenders from one place of detention to another.

Penalty for unauthorized intercourse with places of detention.

place of safe custody and at hard labor within the said Colony under such regulations as are hereinafter provided Be it therefore enacted That it shall be lawful for the Governor for the time being of the said Colony to appoint any one or more place or places within the same at which any male offender who shall have been convicted therein and shall be under any order or sentence of transportation passed by any competent Court or any order made by the Governor for the transportation of offenders in lieu of capital punishment shall be detained and every such offender shall be liable to be kept to hard labor at such place of safe custody during such period of his sentence or order of transportation as the said Governor shall order and direct Provided always that all male offenders so detained shall be kept at such place or places under the charge of a commandant or superintendent duly appointed by the said Governor and every such commandant or superintendent shall have the same powers over such offenders as are incident to the office of sheriff or gaoler and if any such offender shall during such custody be guilty of misbehaviour or disorderly conduct it shall be lawful for such commandant or superintendent and he is hereby authorized and empowered to inflict on such offender such moderate punishment as shall be allowed by any rules or regulations to be from time to time made for the management and discipline of such offenders by the said Governor with the advice of the Executive Council and such commandant or superintendent shall subject to such rules as aforesaid keep every offender to hard labor and duly provided with food and clothing according to a scale to be set forth in the said rules Provided moreover that it shall be lawful for the said Governor to detain any such offender who may have been convicted of any burglary robbery or other crime attended with violence and under a sentence or order of transportation in irons or in separate confinement if deemed necessary for the safe custody of such offender.

3. Provided always and be it enacted That nothing herein contained shall be deemed to apply to any person who shall have been born in the said Colony or its Dependencies or who shall have arrived free therein unless such person shall be convicted of a capital offence or have been previously convicted of a transportable offence.

4. And be it enacted That it shall be lawful for the said Governor from time to time to order and direct the removal of every such offender from any such place of detention to another as he in his discretion shall think proper.

5. And whereas for the safe custody of offenders kept at any such place of detention as aforesaid it is expedient to prohibit all intercourse with such places except by persons duly authorized by the said Governor Be it therefore enacted That it shall not be lawful for any person whomsoever to approach be found at or in any manner communicate with any place or places within the Colony of New South Wales or its Dependencies which shall have been appointed by the said Governor for the detention of any such male offenders as aforesaid without the license or permission of the said Governor being first had and obtained and any person or persons who shall approach be found at or in any manner communicate with any such place or places 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 Provided always that whenever any place shall be appointed for the detention of male offenders as aforesaid the same shall be notified in the *New South Wales Government Gazette* by order of the said Governor.

Advancement of Justice.

6. And be it enacted That every such offender under sentence or order of transportation shall while so detained at hard labor as aforesaid be subject to the summary jurisdiction of the Justices of the Peace and of the Principal Superintendent of Convicts in like manner as offenders transported to New South Wales are subject thereto.

Offenders to be subject to summary jurisdiction of Justices.

7. And be it enacted That the time during which any offenders shall be detained as aforesaid under the provisions of this Act shall be taken and reckoned in discharge or part discharge of the term of such offender's sentence or order of transportation passed or made within the said Colony or its Dependencies and all such offenders shall be subject as soon as His Excellency the Governor shall see fit to be transported to such place as may be duly established by proclamation for the transportation of offenders for the residue of their respective sentences.

Time of confinement to reckon as part discharge of offender's transportation.

8. Provided however and be it enacted That nothing herein contained shall be held or construed to repeal or alter the provisions of an Act of the Governor and Council of New South Wales passed in the third year of the reign of Her present Majesty intituled "*An Act to abolish the transportation of Female Convicts and to provide for the more effectual punishment of Female Offenders within the Colony of New South Wales.*"

3 Victoria No. 22 abolishing the transportation of female convicts not repealed or altered.

9. Provided further and be it declared That nothing herein contained shall be held to affect in any way the exercise of Her Majesty's prerogative of mercy.

Act not to interfere with Her Majesty's prerogative.

10. 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 the defendant may plead the general issue and give this Act and the special matter in evidence at any trial to be had thereupon and that the same was done by the authority of this Act and if a verdict shall pass for the defendant or judgment shall in any manner be given against the plaintiff the defendant shall recover treble costs and have the like remedy for the same as any defendants have by law in other cases and if a verdict shall be given for the plaintiff in any such action such plaintiff shall not have costs against the defendant unless the Judge before whom the trial shall be had shall certify his approbation of the verdict.

As to costs.

11. And be it enacted That this Act shall commence and take effect from and after the passing thereof and shall thenceforward be and continue in force for one year.

Commencement and duration of Act.