

## No. XLVI.

VAGRANCY.

### An Act for the more effectual prevention of Vagrancy and for the punishment of idle and disorderly Persons Rogues and Vagabonds and incorrigible Rogues in the Colony of New South Wales. [12th October, 1849.]

Preamble.

WHEREAS by reason of the numerous depredations which have been recently committed on the property of residents in this Colony it is expedient to make more effectual provision for the prevention of vagrancy and crime and for the punishment of idle and disorderly persons rogues and vagabonds Be it therefore enacted by His Excellency the Governor of New South Wales with the advice and consent of the Legislative Council thereof That from and after the passing of this Act an Act made and passed in the sixth year of the reign of His late Majesty King William the Fourth intituled "*An Act for the prevention of Vagrancy and for the punishment of idle and disorderly Persons Rogues and Vagabonds and incorrigible Rogues in the Colony of New South Wales*" shall be and the same is hereby repealed.

6 Wm. IV. No. 6  
repealed.

Persons convicted in this Colony of any capital or transportable offence and persons transported to or convicted in any British Colony or Possession in the Southern Hemisphere and coming to this Colony to register their place of residence with Justices of Petty Sessions.

2. And be it enacted That from and after the passing of this Act every person who hath been or shall be convicted in this Colony of any capital or transportable offence and who has for such offence been or shall be transported from this Colony to Norfolk Island and every person who hath been or shall be transported from any place other than this Colony to Van Diemen's Land Norfolk Island or any British Colony or Possession in the Southern Hemisphere or who hath been or shall be convicted in any such last mentioned Colony or place other than this Colony of any capital or transportable offence and who hath already come or shall hereafter come to this Colony shall within the respective times hereinafter mentioned that is to say every such person who is now in this Colony within one week after the passing of this Act and every such person who shall hereafter come to this Colony within one week after he or she shall arrive therein personally appear before the Police Magistrate or Justices assembled in Petty Sessions of the district or place where such person resides or intends to reside and notify to the said Police Magistrate or Justices his or her name and place or intended place of residence and his or her occupation or description and shall also in like manner notify to the said Police Magistrate or Justices every change of residence which he or she shall make within the said district or place within one week after making the same and shall also in the event of any change of residence to any other district or place in like manner and within the like time notify such change to the Police Magistrate or Justices assembled in Petty Sessions for the district or place from which he or she shall remove and also

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also to the Police Magistrate or Justices assembled in Petty Sessions of the district or place to which he or she shall remove and such Police Magistrate or the Clerk of such Magistrate or Petty Sessions shall register the name residence occupation and description of every such person and every change of residence so notified as aforesaid in a book to be kept for that purpose and shall also deliver to every such person a certificate signed by him of such registration without fee or reward Provided always that if any such person shall reside or intend to reside in any place for which there shall then be no Police Magistrate or Petty Sessions appointed every such person shall within the time aforesaid notify his or her name place of residence occupation description or removal to the nearest Justice of the Peace to be by him registered and certified as aforesaid.

3. And be it enacted That every person who hath been or shall be convicted in this Colony of any capital or transportable offence and who has for such offence been or shall be transported from this Colony to Norfolk Island and every person who hath been or shall be transported from any place other than this Colony to Van Diemen's Land Norfolk Island or any British Colony or Possession in the Southern Hemisphere or who hath been or shall be convicted in any such last mentioned Colony or place other than this Colony of any capital or transportable offence and who hath already come or shall hereafter come to this Colony and who shall not within the times hereinbefore prescribed for that purpose notify to the Police Magistrate or Justices assembled in Petty Sessions or nearest Justice where there are no Petty Sessions or Police Magistrate his or her place or intended place of residence occupation and description or shall not within the same time notify as aforesaid any change of residence in manner hereinbefore in that behalf prescribed and every such person who having been duly summoned by any Justice of the Peace to appear before him or any other Justice of the Peace to give an account of his or her means of support shall fail to appear at the time and place appointed for that purpose without any lawful excuse being shewn to the satisfaction of the Justice before whom such person shall be summoned to appear and every person who having no visible lawful means of support or insufficient lawful means shall not being thereto required by any Justice of the Peace give a good account thereof to the satisfaction of such Justice and every person not being an aboriginal native or the child of any aboriginal native who being found lodging or wandering in company with any of the aboriginal natives of this Colony shall not being thereto required by any Justice of the Peace give a good account to the satisfaction of such Justice that he or she hath a lawful fixed place of residence in this Colony and lawful means of support and that such lodging or wandering hath been for some temporary and lawful occasion only and hath not continued beyond such occasion and every common prostitute wandering in any street or public highway or being in any place of public resort who shall behave in a riotous or indecent manner and every habitual drunkard having been thrice convicted of drunkenness within the preceding twelve months who in any street or public highway or being in any place of public resort shall behave in a riotous or indecent manner and the holder of every house which shall be frequented by reputed thieves or persons who have no visible lawful means of support and every person found in any such house in company with such reputed thieves or persons who shall not being thereto required by any Justice give a good account to the satisfaction of such Justice of his or her lawful means of support and also of being in such house upon some lawful occasion and every person wandering abroad or placing himself or herself in any public place street highway court or passage

Persons not complying with this Act and persons committing certain offences to be deemed idle and disorderly and to be punished accordingly.

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to beg or gather alms or causing or procuring or encouraging any child or children so to do shall be deemed an idle or disorderly person within the true intent and meaning of this Act and it shall be lawful for any Justice of the Peace to commit such offender (being thereof convicted before him by his own view or by the confession of such offender or by the evidence on oath of one or more credible witness or witnesses) to Her Majesty's nearest gaol or house of correction there to be kept to hard labor for any time not exceeding two years Provided that nothing herein contained with respect to notification of residence as aforesaid shall be held to apply to any person not convicted as aforesaid within seven years next before the passing of this Act nor to any person after seven years shall have lapsed from the date of his last conviction as aforesaid.

**Oral proof to be sufficient.**

4. And be it enacted That oral proof that any person was whilst he or she was in Van Diemen's Land Norfolk Island or any British Colony or Possession in the Southern Hemisphere known to be or was commonly deemed and reputed to be a transported convict or a convict under sentence in pursuance of a conviction in any such Colony or Possession as last aforesaid for any capital or transportable offence shall for the purposes of this Act be deemed and taken as good *prima facie* evidence that such person was transported to such Colony or place or convicted therein of a capital or transportable offence as the case may be.

**Persons committing certain offences to be deemed rogues and vagabonds and to be an idle and disorderly person and all persons going about as gatherers of alms under false pretence of loss by fire or by other casualty or as collectors under any false pretence and all persons imposing or endeavouring to impose upon any charitable institution or private individual by any false or fraudulent representation either verbally or in writing with a view to obtain money or some other benefit or advantage every person wilfully exposing to view in any street road highway or public place or who shall expose or cause to be exposed to public view in the window or other part of any shop or other building situate in any street road highway or public place any obscene print picture or other indecent exhibition every person wilfully and obscenely exposing his or her person in any street road or public highway or in the view thereof or in any place of public resort every person playing or betting at any unlawful game every person playing or betting in any street road highway or other open and public place at or with any table or instrument of gaming at any game or pretended game of chance every person having in his or her custody or possession any picklock key crow jack bit or other implement with intent feloniously to break into any dwelling-house warehouse coach-house stable or out-building or being armed with any gun pistol hanger cutlass bludgeon or other offensive weapon or having upon him or her any instrument with intent to commit any felonious act every person being found in or upon any dwelling-house warehouse coach-house stable or out-house or in any inclosed yard garden or area for any unlawful purpose every suspected person or reputed thief frequenting any river canal or navigable stream dock or basin or any quay wharf or warehouse near or adjoining thereto or any street highway or avenue leading thereto or any place of public resort or any avenue leading thereto or any street highway or place adjacent with intent to commit felony and every person apprehended as an idle and disorderly person and violently resisting any constable or other peace officer so apprehending him or her and being subsequently convicted of the offence for which he or she shall have been so apprehended shall be deemed a rogue and vagabond**

within

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within the true intent and meaning of this Act and it shall be lawful for any Justice of the Peace to commit such offender (being thereof convicted before him by the confession of such offender or by the evidence on oath of one or more credible witness or witnesses) to Her Majesty's nearest gaol or house of correction there to be kept to hard labor for any time not exceeding two years and every such picklock key crow jack bit and other implement and every such gun pistol hanger cutlass bludgeon or other offensive weapon and every such instrument as aforesaid shall by the conviction of the offender become forfeited to the Queen's Majesty.

6. And be it enacted That any person who shall break or escape out of any place of legal confinement before the expiration of the term for which he or she shall have been committed or ordered to be confined by virtue of this Act every person committing any offence against this Act which shall subject him or her to be dealt with as a rogue and vagabond such person having been at some former time adjudged so to be and duly convicted thereof and every person apprehended as a rogue and vagabond and violently resisting any constable or other peace officer so apprehending him or her and being subsequently convicted of the offence for which he shall have been so apprehended shall be deemed an incorrigible rogue within the true intent and meaning of this Act and it shall be lawful for any Justice of the Peace to commit such offender (being thereof convicted before him by the confession of such offender or by the evidence on oath of one or more credible witness or witnesses) to Her Majesty's nearest gaol or house of correction there to remain until the next Quarter Sessions of the Peace to be held in the district wherein or nearest to which the said offence shall be committed and every such offender who shall be so committed as aforesaid shall be there kept to hard labor during the period of his or her imprisonment.

7. And be it enacted That any person who shall use any profane indecent or obscene language to the annoyance of the inhabitants or passengers in any public street or place shall be liable to be apprehended by any constable and conveyed before any Justice of the Peace and upon any offender being convicted by such Justice of any such offence in a summary way he or they shall forfeit any sum not exceeding five pounds and in default of immediate payment shall be committed to the common gaol or house of correction for any period not exceeding three calendar months.

8. And be it enacted That it shall be lawful for any person whatsoever to apprehend any person who shall be found offending against this Act and forthwith to take and convey him or her before some Justice of the Peace to be dealt with in such manner as is hereinbefore directed or to deliver him or her to any constable or other peace officer of the place where he or she shall have been apprehended to be so taken and conveyed as aforesaid and in case any constable or other peace officer shall refuse or wilfully neglect to take such offender into his custody or to take and convey him or her before some Justice of the Peace or shall not use his best endeavours to apprehend and to convey before some Justice of the Peace any person that he shall find offending against this Act it shall be deemed a neglect of duty in such constable or other peace officer and he shall on conviction be punished in such manner as is hereinafter directed.

9. And be it enacted That it shall be lawful for any Justice of the Peace upon oath being made before him that any person hath committed or is suspected to have committed any offence against this Act to issue his warrant to apprehend and bring before him or some other Justice of the Peace the person so charged to be dealt with as directed by this Act.

Persons committing  
certain offences to be  
deemed incorrigible  
rogues and to be  
punished accord-  
ingly.

Punishment for  
obscene language  
in public.

Any person may  
apprehend offenders  
under this Act.

Penalty on constables  
&c. neglecting their  
duty.

Justices on informa-  
tion to issue warrants  
to apprehend  
offenders and sus-  
pected persons.

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All offenders against this Act to be searched and trunks bundles &c. to be inspected.

Effects found upon offenders against this Act to be sold and the proceeds applied towards defraying the expense of apprehending and maintaining &c.

Justices may bind persons by recognizances to prosecute and give evidence as to incorrigible rogues and such other offenders as may appeal before the next Quarter Sessions.

Power of Quarter Sessions to detain and keep to hard labor and punish by whipping incorrigible rogues.

Offenders sentenced to hard labor may be worked on the public roads.

10. And be it enacted That it shall be lawful for any constable peace officer or other person apprehending any person charged with being an idle and disorderly person or a rogue and vagabond or an incorrigible rogue to take any horse or other cattle or any vehicle or goods in the possession or use of such person and to take and convey the same as well as such person before a Justice of the Peace and for every Justice of the Peace by whom any person shall be adjudged to be an idle and disorderly person or a rogue and vagabond or an incorrigible rogue to order that such offender shall be searched and that his or her trunks boxes bundles parcels or packages shall be inspected in the presence of the said Justice and of him or her and also that any cart or other vehicle which may have been found in his or her possession or use shall be searched in his or her presence and it shall be lawful for the said Justice to order that any money which may be then found with or upon such offender shall be paid and applied for and towards the expense of apprehending and conveying to the gaol or house of correction and maintaining such offender during the time for which he or she shall have been committed and if upon such search money sufficient for the purposes aforesaid be not found it shall be lawful for such Justice to order that a part or if necessary the whole of such other effects then found shall be sold and that the produce of such sale shall be paid and applied as aforesaid and also that the overplus of such money or effects after deducting the charges for such sale shall be returned to the said offender.

11. And be it enacted That when any Justice as aforesaid shall commit any such incorrigible rogue to any gaol or house of correction there to remain till the next Quarter Sessions or when any such idle and disorderly person rogue and vagabond or incorrigible rogue shall give notice of his or her intention to appeal against the conviction of him or her and shall enter into recognizance as hereinafter directed to prosecute such appeal such Justice shall require the person by whom such offender shall be apprehended and the person or persons whose evidence shall appear to him to be material to prove the offence or to support such conviction to become bound in recognizance to Her Majesty Her Heirs and Successors to appear at the said Quarter Sessions to give evidence against such offender touching such offence and in case any such person or persons as aforesaid shall refuse to enter into such recognizance it shall be lawful for such Justice to commit such person or persons so refusing to the common gaol there to remain until he she or they shall enter into such recognizance or shall be otherwise discharged by due course of law.

12. And be it enacted That when any incorrigible rogue shall have been committed to any gaol or house of correction there to remain until next Quarter Sessions it shall be lawful for the Justices of the Peace in Quarter Sessions assembled in a summary way to examine into the circumstances of the case and upon conviction to order if they think fit that such offender be further imprisoned therein and be kept to hard labor for any time not exceeding one year from the time of making such order and to order further if they think fit that such offender (not being a female) be punished by whipping at such time during his imprisonment and at such place as according to the nature of the offence they in their discretion shall deem to be expedient.

13. And be it enacted That whenever any male offender shall be convicted of any offence against the provisions of this Act by any one or more Justices of the Peace or by any Court of Quarter Sessions and shall be sentenced or ordered to be imprisoned and kept to hard labor in any gaol or house of correction it shall be lawful for the Governor for the time being of the said Colony to cause any such offender to be kept to hard labor (during the term for which he may be so sentenced as

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as aforesaid) upon the roads or other public works of the said Colony.

14. And be it enacted That in case any constable or other peace officer shall neglect his duty in anything required of him by this Act or in case any person shall disturb or hinder any constable peace officer or other person in the execution of this Act or shall be aiding abetting or assisting in so doing and shall thereof be convicted upon oath of one or more credible witness or witnesses before any one or more Justice or Justices of the Peace every such offender shall for every such offence forfeit and pay any sum not exceeding five pounds as the said Justice or Justices shall in his or their discretion award and in case such offender shall neglect or refuse forthwith to pay such sum so forfeited it shall be lawful to and for such Justice or Justices to commit the person so refusing or neglecting to pay to Her Majesty's nearest gaol or house of correction there to be kept for any time not exceeding three calendar months or until such fine be paid.

Penalties on officers neglecting their duties and on persons obstructing officers therein.

15. And be it enacted That it shall be lawful for any Justice of the Peace upon information on oath before him made that any person hereinbefore described to be an idle and disorderly person or a rogue and vagabond or an incorrigible rogue is or is reasonably suspected to be harboured or concealed in any house kept or purporting to be kept for the reception lodging or entertainment of travellers or others by warrant under his hand and seal to authorize any constable or other person or persons to enter at any time into such house and to apprehend and bring before him or any other Justice of the Peace every such idle and disorderly person rogue and vagabond or incorrigible rogue as shall be found therein to be dealt with in the manner hereinbefore directed.

16. And be it enacted That any person aggrieved by any act or determination of any Justice or Justices of the Peace out of Sessions in or concerning the execution of this Act may appeal to the next Quarter Sessions which shall be held in the district or place wherein or nearest to where such offence shall have been committed giving to the Justice or Justices of the Peace whose act or determination shall be appealed against notice in writing of such appeal and of the ground thereof within seven days after such act or determination and before the next Quarter Sessions and entering within such seven days into a recognizance with sufficient sureties before a Justice of the Peace for the district or place in which such person shall have been convicted personally to appear and prosecute such appeal and upon such notice being given and such recognizance being entered into such Justice is hereby empowered to discharge such person out of custody and the Court of Quarter Sessions shall hear and determine the matter of such appeal in a summary way and shall make such order therein as shall to the said Court seem meet and in case of the dismissal of the appeal through the non-appearance of the appellant or otherwise or the affirmance of the conviction shall issue the necessary process for the apprehension and punishment of the offender according to the conviction.

Persons aggrieved  
may appeal to the  
next Quarter  
Sessions.

17. And be it enacted That all proceedings to be had before any Justice or Justices of the Peace under the provisions of this Act shall be had and taken in a summary way and no such proceeding shall be quashed for want of form or removed by *certiorari* or otherwise into the Supreme Court and every conviction of any offender as an idle and disorderly person or as a rogue and vagabond or as an incorrigible rogue under this Act shall be in the form or to the effect following or as near thereto as circumstances will permit that is to say

Proceedings not to be quashed for informality.

“To wit,

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Convictions to be filed of record and certified copies thereof to be evidence and returns thereof made as in cases of other convictions.

And the Justice or Justices of the Peace before whom any such conviction shall take place shall and he and they are hereby required to transmit the said conviction to the Clerk of the Peace of the district or place wherein or nearest to which such conviction shall have taken place to be by him filed and kept of record and a copy of the conviction so filed duly certified by the said Clerk of the Peace shall and may be read as evidence in any Court of Record or before any Justice or Justices of the Peace acting under the power and provisions of this Act and such and the like returns of such convictions shall be made and inserted in the general returns of all proceedings and convictions had before any Justice or Justices of the Peace and be transmitted to such office in such and the like manner as in and by any Law or Ordinance now in force or which may hereafter be made respecting the same is or are required.

Justices &c. to have  
treble costs if  
judgment be in their  
favour.

18. And be it enacted That in all cases where an action shall be brought against any Justice of the Peace constable or other person for or on account of any matter or thing whatsoever done or committed by him or in execution of his duty or office under this Act such Justice constable or other person if he shall have judgment in his favour shall have treble costs awarded to him by the Court unless the Judge shall certify that there was a reasonable cause for such action.

### Limitation of actions.

19. And be it enacted That every such action shall be commenced within three calendar months after the cause of action or complaint shall have arisen and not afterwards and if any person or persons shall be sued for any matter or thing which he she or they shall have done in the execution of this Act he she or they may plead the general issue and give the special matter in evidence.

### Appropriation of fines.

20. And be it enacted That the moneys arising from the fines penalties and forfeitures imposed by this Act shall when recovered be applied and disposed of in manner hereinafter mentioned that is to say one moiety thereof shall be paid to Her Majesty Her Heirs and Successors for the public uses of the said Colony and in support of the Government thereof and shall be applied in such manner as may from time to time be directed by any Act or Acts of the Governor and Legislative Council of New South Wales and the other moiety to the use of the informer or person prosecuting or suing for the same.