

## No. IV.

### 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. [1st December, 1851.]

VAGRANCY.

WHEREAS 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 and incorrigible rogues. 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" 6 Wm. IV. No. 6 repealed. "Rogues and Vagabonds and incorrigible Rogues in the Colony of New South Wales" shall be and the same is hereby repealed.

2. And be it enacted That every person who having no visible lawful means of support or insufficient lawful means who shall not being thereto required by any Justice of the Peace or who being duly summoned for such purpose or who shall be brought before any Justice in pursuance of the provisions of this Act give a good account of his or her means of support 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 what persons shall be deemed idle and disorderly.

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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 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.

Persons committing certain offences to be deemed rogues and vagabonds and to be punished accordingly.

3. And be it enacted That every person committing any of the offences hereinbefore mentioned after having been before convicted as 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 thoroughfare 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 thoroughfare highway or public place any obscene book print picture drawing painting or other indecent exhibition or representation 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 enclosed yard garden or area or being found in and on board any ship or other vessel when lying or being in any port harbour or place within this Colony 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

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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 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 pick-lock key crow jack bit or 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.

4. 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.

5. And be it enacted That any person who shall sing any obscene song or ballad or write or draw any indecent or obscene word figure or representation or use any profane indecent or obscene language in any public street thoroughfare or place or within the view or hearing of any person passing therin shall be liable to be apprehended by any constable or other person 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 she 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.

6. And be it enacted That any person who shall use any threatening abusive or insulting words or behaviour in any public street thoroughfare or place with intent to provoke a breach of the peace or whereby a breach of the peace may be occasioned shall forfeit and pay on conviction in a summary way by any Justice of the Peace 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.

7. 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

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

Punishment for  
obscene language  
&c. in public.

Penalty for using  
threatening or  
abusive language in  
any public street  
thoroughfare or  
place.

Any person may  
apprehend offenders  
under this Act.

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Penalty on constables &c. neglecting their duty.

hended 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.

Justices on information to issue warrants to apprehend offenders and suspected persons.

8. 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.

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

9. 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.

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.

10. 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.

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

11. 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

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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.

12. 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 the 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.

13. 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.

14. 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.

15. 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 or for any other offence under this Act shall be in the form or to the

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effect following or as near thereto as the circumstances of the case will permit that is to say—

Form of conviction.

“ To wit

“ Be it remembered that on the      day of  
 “ A. D. 18      at      in the Colony of New South  
 “ Wales A. B. is convicted before me C. D. one of Her  
 “ Majesty’s Justices of the Peace in and for the said  
 “ Colony of (here state the offence in the words of this Act)  
 “ within the intent and meaning of the Act of the Governor  
 “ and Legislative Council passed in the fifteenth year of  
 “ the reign of Her Majesty Queen Victoria intituled ‘ *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* ’ that is to say for that he the said  
 “ A. B. on the      day of      at      in the  
 “ said Colony (here state the offence proved before the  
 “ Magistrate) and for which said offence the said A. B. is  
 “ ordered to be committed to Her Majesty’s Gaol at  
 “      (or house of correction) there to be kept to hard  
 “ labor for the space of      (or until the next Quarter  
 “ Sessions to be holden at      )

“ Given under my hand the day year and at  
 “ the place first above written ”

Provided always that this enactment shall not invalidate any information or conviction laid or drawn in any other form which may be specially suited to the case or may be provided by law and in every information and in every conviction for an offence contrary to this Act it shall be sufficient if the offence shall be stated in the words thereof declaring the offence or attaching any penalty thereto and in all proceedings under this Act the informer or party prosecuting shall be deemed and taken and is hereby declared to be a competent witness.

16. And be it enacted That 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 now in force or which may hereafter be made respecting the same is or are required.

Justices &c. to have  
treble costs if judg-  
ment be in their  
favor.

17. 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 favor 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.

18. 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.

*Hard Labor on Roads &c.*

19. And be it enacted That the moneys arising from the fines Application of fines. penalties and forfeitures imposed by this Act shall when recovered be paid one moiety 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 thereof shall be paid into the "Police Reward Fund" and shall be applied according to the rules and regulations in force for the time being for the distribution of the said Fund.

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