



1854.

No. 3.

*An Act to repeal "An Act to provide for the Commutation of Sentences of Transportation, and to substitute Imprisonment with Hard Labor as a Punishment in lieu of Transportation, and for the employment of Prisoners sentenced to Hard Labor," and to substitute other provisions in lieu thereof.*

[Assented to, 9th October, 1854.]

*Assented to by  
No. 17 - 1855 - 16*

**W**HEREAS an Act was passed in the fifteenth year of the reign of Her present Majesty, intituled "An Act to provide for the Commutation of Sentences of Transportation, and to substitute Imprisonment with Hard Labor as a Punishment in lieu of Transportation, and for the employment of Prisoners sentenced to Hard Labor:" And whereas, by reason of the discontinuance of transportation as a punishment for offenders, the number of Prisoners confined in the Gaols of the Province hath greatly increased, and may be expected further to increase; and it is expedient to provide more effectually for the safe custody, discipline, and government of such Prisoners: And, whereas, it is also expedient to give a power to the Courts of the Province in sentencing Prisoners, to define and prescribe the nature of the imprisonment to which such Prisoners may be sentenced, and for that purpose, to repeal the said Act—Be it therefore Enacted by the Lieutenant-Governor of the Province of South Australia, with the advice and consent of the Legislative Council thereof, as follows:

Preamble.

15th Vict., No. 18.

1. From and after the passing of this Act, the said Act "To provide for the Commutation of Sentences of Transportation, and to substitute Imprisonment with Hard Labor as a Punishment in lieu of Transportation, and for the employment of Prisoners sentenced

Repeal of Act 15th  
Vict., No. 18.

to Hard Labor" shall be, and the same is, hereby repealed, excepting as regards anything heretofore lawfully done, or sentenced to be done, under the authority thereof.

Sentence of penal servitude instead of transportation.

2. Whenever, before the passing of the said Act, the punishment of transportation beyond the seas was by law annexed to any offence, it shall be lawful for any Court having jurisdiction therein, to sentence any person convicted of such offence, to be kept in penal servitude for such term as in this Act is awarded, in lieu of transportation.

Terms of penal servitude to be awarded.

3. The term of penal servitude to be awarded, instead of the term of transportation to which any offender would have been liable if the said Act had not been passed, shall be as follows, that is to say—

Instead of transportation for seven years, or for a term not exceeding seven years, penal servitude for the term of four years.

Instead of transportation for any term exceeding seven years and not exceeding ten years, penal servitude for any term not less than four and not exceeding six years.

Instead of transportation for any term exceeding ten years and not exceeding fifteen years, penal servitude for any term not less than six and not exceeding eight years.

Instead of transportation for any term exceeding fifteen years, penal servitude for not less than eight and not exceeding ten years.

Instead of transportation for the term of life, penal servitude for the term of life.

And in any case where, at the discretion of the Court, one of any two or more of the terms of transportation hereinbefore-mentioned might have been awarded, the Court shall have the like discretion to award one of the two or more terms of penal servitude hereinbefore mentioned in relation to such terms of transportation.

Persons sentenced to penal servitude to be kept in Labor Prison, or other place appointed by Governor.

4. Every person who, under this Act, shall be sentenced or ordered to be kept in penal servitude, and every person who, under the said Act, shall have been sentenced to imprisonment with hard labor, may, during the term of the sentence or order, be kept in such Labor Prison, or other place, and employed in such manner and upon such works as the Governor, with the advice of his Executive Council, may, from time to time, direct, or as may be prescribed by any regulation to be published in manner hereinafter directed; but not upon public roads, which have been used for traffic, or in any place where the persons so sentenced would be employed with free laborers.

Governor may proclaim Gaols or Prisons to be Labor Prisons.

5. It shall be lawful for the Governor to appoint one or more Gaols

**Gaols or Prisons to be Labor Prisons, to be used for the confinement and employment of any persons who may be so sentenced to be kept in penal servitude, or who may have been sentenced to imprisonment with hard labor under the said Act, and to place such Prisons under the control and superintendence of a Comptroller of Convicts, and to appoint such gaolers and other officers for such Prisons, as may be necessary or expedient; and, after any gaol or prison shall, by Proclamation in the *South Australian Government Gazette*, be declared and notified to be a Labor Prison, the same shall no longer be under the charge, care, and direction of the Sheriff of South Australia, and the Prisoners for the time being confined therein shall not be deemed to be in the custody of the said Sheriff; but such Gaols or Prisons shall, in all other respects, be subject to the provisions of an Ordinance passed in the sixth year of the Reign of Her present Majesty, intituled "An Act for the Regulation of Gaols, Prisons, and Houses of Correction in South Australia."**

6. The Sheriff of the said Province shall, upon receiving any order to that effect from the Governor, deliver any person so sentenced to be kept in penal servitude, or to imprisonment with hard labor, and named in such order, to the Comptroller of Convicts, together with a true statement, attested by such Sheriff, of the sentence or order of the Court, by which such offender was sentenced to penal servitude, or imprisonment with hard labor; and such Comptroller shall give a receipt, in writing, to the said Sheriff for his discharge.

Prisoners sentenced to penal servitude to be delivered to custody of Comptroller of Convicts.

7. Within any Labor Prison, or other place as aforesaid, the Comptroller of Convicts shall have, possess, and be liable to, the same rights, powers, responsibilities and duties, which are possessed by, or attached to, the said Sheriff in Gaols and Prisons within the said Province.

Comptroller of Convicts to have power of Sheriff within Labor Prisons.

8. It shall be lawful for the Governor, with the advice of his Executive Council, by any regulations to be from time to time published in the *South Australian Government Gazette*, to prescribe and direct the time and manner of employing the persons confined in any Labor Prison, or other place under the authority hereof, and to provide for their safe custody, management, and discipline therein, and to give to such Comptroller of Convicts any of the powers of a Visiting Justice within any such Labor Prison, or other place, and to provide for the remission of any part of the sentence of any such person upon certain conditions; and to provide for the due order, control, and government of such Prison; and in such regulations to direct the said persons to be kept in separate or solitary confinement.

Governor, with advice of Executive Council, may frame regulations for government of Labor Prisons.

9. Nothing herein contained shall interfere with or affect the authority or discretion of any Court, in respect of any punishment which the said Court might, prior to the passing of the said Act, have awarded or passed, or may now award or pass, on any offender

Discretion of Courts as to alteration of punishment, not to be affected.

other

other than transportation; but where such other punishment may be awarded, at the discretion of the Court, instead of transportation, or in addition thereto, the same may be awarded, instead of, or (as the case may be) in addition to, the punishment substituted for transportation under this Act.