

~~1850~~



ANNO VICESIMO PRIMO

VICTORIÆ REGINÆ.

*The opinion of an
Judicial Council given in
the 1850s, was that
this act is repugnant
to the law!*

No. 18.

An Act to prevent the introduction into the Province of South Australia of Convicted Felons and other Persons sentenced to Transportation for Offences against the Laws.

[Reserved, 30th November, 1857.]

WHEREAS it has pleased the Government of the United Kingdom of Great Britain and Ireland to constitute the adjacent Colony of Western Australia a penal settlement for the safe keeping of convicted felons and other persons undergoing transportation for offences against the laws: And whereas many of the said convicted felons have been and are frequently permitted to pass from the said Colony to other Australian Colonies: And whereas it is essential for the preservation of peace and good order in the community that an immediate stop should be put to the landing or being in the Province of South Australia of convicted felons or other persons undergoing sentence of transportation for offences against the laws—Be it therefore Enacted, by the Governor-in-Chief of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said Province, in this present Parliament assembled, as follows—

1. No convicted felon, or other person undergoing sentence of transportation for any offence against the laws, nor any person who is or shall be under sentence in any British Colony or Possession, other than the said Province, for any capital or transportable offence, nor any person not at liberty, by reason of any conviction or sentence, to reside in any part of the United Kingdom of Great Britain and Ireland, shall land in any of the ports of the said Province or come or be in any place within the limits of the said Province, under the penalty, on conviction thereof, before any two Justices of the Peace for the said Province, or before any Local Court, established in the said Province, if a male, of being

*approved by the Review
8 April 1858 &
in Gazette 17 June 1858*

Preamble.
** This act therefore takes
effect on 1st Jan 1858.
See S. 12.*

*This not enacted
by the Governor in
Chief as he Reserved
it.*

Imprisonment of felons who enter the Colony.

*as to the instructions
of this clause see the
Judgment of the Supreme
Court, ante p. 202.*

sentenced to penal servitude for a period not exceeding three years, and, if a female, of being imprisoned, and kept to hard labor, in one or other of the public gaols of the said Province, for a period not exceeding two years, or at the discretion of the convicting Justices, or of the said Court, of being conveyed as a prisoner by the most safe and expeditious mode of conveyance to the Colony or Possession to which he or she was transported, or in which he or she was convicted (as the case may be), there to be dealt with according to law.

No person coming from Western Australia to land without proof of being a free person.

2. The master of any ship or vessel arriving at any port of or place in the said Province, from any port of or place in Western Australia, shall detain every passenger on board his ship or vessel, until he shall have obtained from the Collector, or other chief officer of Customs, at or nearest to the port of arrival, in respect of each passenger respectively, a certificate that the said master has proved, to the satisfaction of the said Collector, or other chief officer of Customs, that the passenger, in respect of whom such certificate is granted, is not a prisoner of the Crown, or runaway convict, or any convict coming under cover of any conditional pardon, ticket-of-leave, or indulgence of any kind, other than a free pardon, or remission of his or her sentence by Her Majesty: And any master who shall permit or suffer any passenger to land, previous to obtaining such certificate, shall be liable to a penalty of Twenty-five Pounds for each passenger so landing.

Fining of masters or owners of vessels bringing felons.

3. Any master mariner, or other person commanding, navigating, or sailing any ship, vessel, or boat which may hereafter, with the knowledge of such master or other person, bring to any port or other place in the said Province any runaway convict, or any convict coming under cover of any conditional pardon, ticket-of-leave, or indulgence of any kind other than a free pardon or remission of his or her sentence by Her Majesty, shall be guilty of a misdemeanor; and upon conviction thereof before any Local Court established as aforesaid, or before any two Justices of the Peace shall, for every such offence, incur and be liable to a fine not exceeding One Hundred Pounds, or to imprisonment for any time not exceeding three calendar months, or to both, at the discretion of the said Court or Justices respectively.

Definition of "offender illegally at large."

4. Any person who has been, or shall be transported for any offence against the law to any British Colony or Possession, or who is under sentence for any capital or transportable offence in any British Colony or Possession other than the said Province who shall hereafter come to the said Province, not having served the full period of his or her sentence, or the full term for which he or she was transported, or not having received from Her Majesty a free pardon or remission of his or her sentence shall, for the purposes and in the construction of this Act, be deemed to be an offender illegally at large; and the term "offender illegally at large," whenever it occurs in this Act, shall be taken to signify and denote such person so transported

transported who has not served such period or term, or received such pardon or remission as aforesaid.

5. Every person who shall knowingly harbor or conceal any offender illegally at large, for the purpose of evading the provisions of this Act, shall, on conviction thereof before any such Court as aforesaid, or before two Justices of the Peace, forfeit and pay for every such offence a sum not exceeding One Hundred Pounds; and, in default of payment, shall be imprisoned in any of Her Majesty's gaols in the said Province for any period not exceeding twelve months.

Penalty for concealing offenders.

6. All property found upon or in the possession of the person convicted of being an offender illegally at large shall be forfeited, and it shall be lawful for the said Local Court or the convicting Justices to order the whole or a sufficient part thereof to be applied towards the expense of conveying such offender to the Colony or Possession to which he or she was transported, or in which he or she was convicted.

Property of offenders to be forfeited, and whole or part applied in conveying them away.

7. Proof on oath that any person was in any other British Colony or Possession than the said Province, known to be, or was commonly reputed and deemed to be a transported felon, or a convict under sentence for any capital or transportable offence, shall, for the purposes of this Act, be taken as good *prima facie* evidence that such person was transported to such Colony or Possession, or convicted therein of a capital or transportable offence, as the case may be; and evidence that such person was so known, deemed, or reputed, at any period within seven years, shall be taken as good *prima facie* evidence that such person has not served the full period of his or her sentence, or the full term for which he or she was transported, and has not received such pardon or remission as aforesaid, unless the contrary be proved.

What deemed evidence of a person being a convict.

8. It shall be lawful for any Justice of the Peace, having credible information on oath that any offender illegally at large is harbored in any dwelling-house, or tenement, or other place, within his jurisdiction, to grant a search warrant to any one or more constables to search for and apprehend such offender; and any person found and apprehended by virtue of such warrant, shall, by such constable or constables, be forthwith taken before a Justice or Justices of the Peace, for examination, and to be further dealt with according to law.

Justices to issue search warrants to apprehend offenders.

9. All fines and penalties recovered under this Act, and all moneys and property forfeited and not specially appropriated, shall be applied to and go to Her Majesty, Her heirs, and successors, for the public uses of the said Province.

Appropriation of penalties.

10. All proceedings under this Act shall be had and taken in a summary

Proceedings not to be quashed for want of form.

summary way, and no such proceeding shall be quashed for want of form.

General issue may be pleaded in all actions.

11. If any suit or action shall be brought against any Justice of the Peace, constable, or other person, for any act or thing done in furtherance of this Act, the defendant in every such action or suit may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon.

Commencement of Act.

12. This Act shall take effect two months from and after the passing thereof.

*afforded to the Revenue 6th April 1858
24th April
31st June
5th
taken effect 1st June 1858*

What is the time of passing of the act is reserved for the Legislature to determine or a provision should be inserted in the bill to that effect?

*See Proclamation below
18 August 1858
By Authority*

THE SOUTH AUSTRALIAN

GOVERNMENT GAZETTE.

Published by Authority.

ALL PUBLIC ACTS appearing in this Gazette are to be considered official and obeyed as such.

ADELAIDE, THURSDAY, JULY 29, 1858.

PROCLAMATION

By His Excellency Sir RICHARD GRAVES MACDONNELL, Knight, Companion of the Most Honorable Order of the Bath, Captain-General and Governor-in-Chief of Her Majesty's Province of South Australia, and Vice-Admiral of the same, &c., &c.

(L.S.)

RICHARD GRAVES MACDONNELL

WHEREAS by an Act of the Parliament of Great Britain and Ireland, passed in the fifth and sixth years of Her Majesty's reign, intituled "An Act for the Government of New South Wales and Van Diemen's Land," it is amongst other things enacted, that no Bill which shall be reserved for the signification of Her Majesty's pleasure thereon, shall have any force or authority within the Colony of New South Wales until the Governor of the said Colony shall signify, either by speech or message to the Legislative Council of the said Colony, or by Proclamation as therein aforesaid, that such Bill has been laid before Her Majesty in Council, and that Her Majesty has been pleased to assent to the same: And whereas by another Act passed in the thirteenth and fourteenth years of Her Majesty's reign, intituled "An Act for the better Government of Her Majesty's Australian Colonies," it was provided amongst other things that the provisions of the said former Act concerning the reservation of Bills for the signification of Her Majesty's pleasure

thereon, should apply to and be in force in the Province of South Australia: And whereas, I, the Governor-in-Chief of the said Province of South Australia, did reserve a certain Bill passed by the Legislative Council and House of Assembly of the said Province, in Parliament assembled, intituled "An Act to prevent the introduction into the Province of South Australia of convicted felons, and other persons sentenced to transportation for offences against the Laws," for the signification of Her Majesty's pleasure thereon: And whereas on the eighteenth day of April, one thousand eight hundred and fifty-eight, Her Majesty, in Council, was graciously pleased to assent to the provisions of the said Bill: Now, therefore, I, the said Governor-in-Chief of the said Province of South Australia, do hereby proclaim, order, and ordain, that from and after the eighteenth day of August, now next ensuing, the provisions of the said last-mentioned Act shall be in force within the Province aforesaid.

Given under my hand and the public seal of the said Province, at Adelaide, this twenty-seventh day of July, in the year of our Lord one thousand eight hundred and fifty-eight, and in the twenty-second year of Her Majesty's reign.

By command,

WM. YOUNGHUSBAND,

Chief Secretary.

GOD SAVE THE QUEEN!

** Should be 6th April - see Gazette 1st June 1858*