



ANNO DECIMO QUINTO

VICTORIÆ REGINÆ.

By His Excellency SIR CHARLES AUGUSTUS FITZ ROY, Knight Companion of the Royal Hanoverian Guelphic Order, Governor-General of all Her Majesty's Australian Possessions, and Captain-General and Governor-in-Chief of the Territory of New South Wales and its Dependencies, and Vice-Admiral of the same, with the advice and consent of the Legislative Council.

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. [Assented to, 1st December, 1851.]

WHIEREAS it is expedient to make more effectual provision for the ^{Preamble.} 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* ^{6 Wm. IV., No. 6, repealed.} *of idle and disorderly persons, rogues and vagabonds, and incorrigible rogues, in the Colony of New South Wales,*" shall be and the same is hereby repealed.

II. And be it enacted, That every person who having no visible ^{What persons shall be deemed idle and disorderly.} 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

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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, 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.

III. 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

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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 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, 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.

IV. 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.

Persons committing certain offences to be deemed incorrigible rogues, and to be punished accordingly

V. 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 therein, 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.

Punishment for obscene language, &c., in public.

VI. 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.

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

VII. 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

Any person may apprehend offenders under this Act.

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Penalty on constables, &c., neglecting their duty.

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.

VIII. 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.

IX. 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.

X. 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.

XI. 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

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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.

XII. 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.

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

XIII. 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 authorise 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.

Lodging-houses, &c., suspected to conceal offenders against this Act, may be searched, and suspected persons brought before a Justice.

XIV. 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.

XV. 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,

Proceedings not to be quashed for informality.

or

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

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

XVI. 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 is and 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 judgment be in their favor.

XVII. 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.

XVIII. 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.

XIX.

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XIX. And be it enacted, That the moneys arising from the 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.

Passed the Legislative Council, this twenty-first day of November, one thousand eight hundred and fifty-one.

CHARLES NICHOLSON,
SPEAKER.

WM. MACPIHERSON,
CLERK OF THE COUNCIL.

In the name and on the behalf of Her Majesty, I assent to this Act,

CH^s. A. FITZ ROY,
GOVERNOR-GENERAL.

Govt. House, Sydney, 1st December, 1851.