



ANNO VICESIMO PRIMO

VICTORIÆ REGINÆ.

No. 17.

An Act to regulate certain Buildings, and for preventing Mischiefs by Fire in the City of Adelaide.

[Assented to, 27th January, 1858.]

John Goyne
19. Aug. 1858

WHEREAS it is expedient, for the safety, health, and comfort of the inhabitants of the City of Adelaide, and the security of property therein, that provision should be made for the better regulation of buildings, and for the prevention of mischiefs by fire in the said City: 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—

Preamble.

1. No building having its sides, ends, roof, or other part of its exterior covered wholly or in part with wood, canvas, thatch, or other inflammable material, shall be erected in the City of Adelaide, nor shall the partitions or ceilings of any building hereafter to be erected, or any part thereof respectively, be of calico, canvas, paper, or other inflammable material whatsoever.

Erection of wooden and other dangerous buildings prohibited.

2. In case any person or persons shall erect within the said City any building with its sides, ends, roof, or other exterior part covered wholly or in part with wood, straw, grass, or thatch, or any other inflammable material, of whatsoever description; or shall put up or continue in use, in any building in the said City, for three months after he shall have been required by writing under the hand of the Town Clerk to remove the same, any ceiling, partition, or other interior part of any building, of calico, canvas, paper, or other equally or more inflammable material—every such person shall be liable to a fine of

Penalty for erecting wooden or dangerous buildings.

not less than Five Pounds, or more than Fifty Pounds, to be recovered in a summary way before any two Justices of the Peace; and the objectionable parts of any building, and in respect to which any such penalty shall have been inflicted, shall forthwith be removed, by and at the expense of the person or persons erecting or using the same respectively; and in default of his, her, or their so doing, then by any person duly authorized by the Mayor of the said City for that purpose; and the costs of such removal shall be recoverable, if not previously paid, upon the order of the Council of the said City, under the hand of the Mayor or Town Clerk, and it shall be lawful for any Justice of the Peace to order the same to be levied by distress and sale of the goods and chattels of the person mentioned in such order, or in default of such distress, to commit such person to the Common Gaol at Adelaide, for any period not exceeding three calendar months.

Dangerous buildings may be ordered to be removed, and compensation awarded.

3. It shall be lawful for any two or more Justices of the Peace, at any time, on complaint made to them, after notice under the hand of the Mayor or Town Clerk shall have been duly served upon the owner or person beneficially interested therein, that any building as hereinbefore described, is dangerous in the event of accident by fire, to order the removal of such building, or the parts thereof which render it dangerous, within such time, as to such Justices shall seem meet, and on such terms as to compensation for injury to be done in rebuilding the same, as may be fixed by a reference to arbitration in the usual way, each party appointing a referee, and the referees an umpire, the award of any two to be final; and in case of refusal to obey such order, then to direct the removal thereof by the persons duly appointed by the Mayor and Corporation, at the expense of the owner or person aforesaid, after seven days' further notice shall have been served upon him or them, or upon his or their agent, the costs of such removal to be recoverable, in manner hereinbefore provided in respect of the expenses of removal of buildings mentioned in the second section of this Act: Provided that in all cases of buildings held by lessees having tenures of less than three years to run, and on whom the rebuilding or reinstating of such building would fall, and not on the owner thereof, it shall be lawful for such referees, in conjunction with one referee to be appointed by the owner (if such owner shall within fourteen days make such appointment), to fix what portion of the cost of rebuilding the same building shall be borne or contributed by the owner, and what proportion of the compensation shall be paid to such owner.

Wooden buildings to be removed within specified periods.

4. All buildings, now erected in the said City, having their sides, ends, roof, or other exterior part covered wholly or in part with wood, canvas, thatch, or other inflammable material, shall be removed altogether or in part, according as may be necessary to get rid of all the inflammable materials forming part of the exterior of any such building, but so far as regards any such building situate at a less distance than thirty feet from any adjoining building, on or before the first day of January, one thousand eight hundred and

and sixty-three ; and so far as regards all other such buildings, on or before the first day of January, one thousand eight hundred and seventy, under pain of being declared, by any two or more Magistrates, a nuisance ; and, in either of such cases, shall be removed by the said Council, upon compensation being given under an award by arbitrators, in the usual manner : Provided always, that this clause shall only be applicable to such acres, streets, or squares of the City of Adelaide which shall be placed under the provisions thereof, by any Proclamation to be issued by the Governor, with the advice of the Executive Council, and on application being made by the Corporation.

5. The Governor, with the advice of the Executive Council, may, by Proclamation, extend the provisions of this Act, or any of them, to any Corporate Town, on being requested so to do by the Mayor and Corporation of such Town.

Provisions of this Act may be extended to other Corporate Towns.

6 This Act shall commence and take effect from and after the passing thereof.

Commencement of Act.

This was an adjourned hearing of argument on a writ of certiorari to quash a conviction under which the appellants had been sentenced to 12 months' penal servitude, as convicts "unlawfully found" in South Australia.

Mr. Ingleby said he was prepared with affidavits of the service of notices, as directed, but the attendance of the Crown Solicitor rendered it unnecessary to read them. He then called attention to the 1st clause of the Convicts Prevention Act, which rendered convicted persons liable to summary conviction and imprisonment; and to the 7th clause, which made evidence that the accused party had been a resident in a penal colony, and reputed to be a prisoner of the Crown within seven years, *prima facie* evidence that he is a convict at large, and liable unless he disprove the presumption to be dealt with under the 1st clause. He said he had taken exception to the terms of the conviction, and to the jurisdiction of the convicting magistrate; but the great question was whether the Convicts Prevention Act was retrospective in its operation.

The Crown Solicitor in support of the convicting magistrate's jurisdiction, referred to the Act No. 8 of 1850, clause 49, which gave a Special Magistrate a power equal to that exercised by two Justices.

A long conversation ensued, in which it was suggested that the Special Magistrate could only exercise his special power to convict in that case when presiding in a Local Court.

Mr. Stow, on the part of the prisoner Kay, said a decision turning on that point would leave the men, if discharged, liable to be again imprisoned by a Special Magistrate sitting in Local Court, or by two Justices. It would therefore be better, to remove the possibility of the same man having again to come before the Court, to decide whether the Convicts Prevention Act had a retrospective operation.

The Chief Justice—With regard to that we will if necessary give our opinion; but our attention has been called to this question, and it is our duty to look to it.

The Court consulted for some time, referring to the various enactments referred to.

The Chief Justice gave judgment:—We are of opinion that it was not the intention of the Legislature to make this Act penal to persons who were in the colony before its enactment. We believe the object to be what is stated, namely, to prevent the introduction of convicts or persons under sentence of transportation for having violated the law. His Honor went on to read passages from the Act and to comment on them. The following is the substance of his remarks:—The Act states its intention to be, to prevent the landing or bringing of convicts, &c. We understand by that the prevention of their landing after the passing of the Act from the seaboard or their coming into the province overland. We think the terms of the first clause clearly apply to persons not in the colony when the Act was passed. It is possible the Legislature may have intended the Act to operate as stringently as the Crown Solicitor contended for, but the Court do not feel it necessary to put that construction upon it. It does not seem to be either just or necessary to put that construction upon the Act, or to assume that the Legislature chose to pass an Act whereby it is made penal to remain in this colony to people who had been in it lawfully before the Act passed. We do not feel it to be our duty to set ourselves up against the Legislature, but we do feel it to be our duty to give a reasonable construction to their Acts, and we feel that we are doing so in this case. I believe I am justified in saying that there are many persons—if not in this colony, elsewhere—who have been under sentence of transportation for life, but who having been pardoned have through industry acquired wealth; they have carried on trades or other lawful business, and become not only wealthy but respectable. Now, if this Act applied to such men a grievous injustice would be done, and we therefore do not feel it necessary to give such a harsh construction to the Act. The 4th clause refers to offenders illegally at large, and provides a penalty for harbouring them, so that by the construction contended for by the Crown Solicitor it would be as penal to conceal a person who had come to the colony before the Act passed as it would be to conceal one who came after the Act came into operation. We think that we must draw a distinction between these cases. We can say punish persons for concealing offenders illegally at large, but if they are not offenders whom they conceal how can we say they ought to be punished, or that they should come under the operation of the Act. The Legislature is now sitting, and if it is their intention to pass an Act so harsh as the construction contended for would make this enactment, they can do so. In that case we will of course obey the law; but we cannot believe that it was or is the intention of the Legislature to pass an Act making it unlawful to remain here for those who came here lawfully. This measure gave two months before it came into operation, which we understand to have been a notice to all concerned not to come into the colony, or they would be subject to its penalties. With regard to the other objections to the conviction, it might not be necessary to go into them except for the guidance of the Magistrates. Should a Special Magistrate hereafter have occasion to convict, it would be safer to describe the act as having been done in Special Sessions or in the Local Court, or before two Justices. It does not appear to this Court that it was intended to give to one Special Magistrate the power to sentence to three years' penal servitude given to two Magistrates, but simply to enable him to transact minor matters. It is, however, not necessary to pronounce a formal opinion upon these matters, but I think it would be advisable to allege in proceedings under this Act that the offender arrived in the colony subsequent to two months after the passing of the Act. The coming to this colony is not an act in itself, but it is made so by a special enactment under special conditions, and therefore it is advisable to set forth that the offence of landing or entering the colony was committed two months after the passing of the Convicts Prevention Act.

Conclusions qualified.

The proceedings applied to two cases; but there was a third conviction which added the result, and the Crown Solicitor stated that all three prisoners would have the benefit of the judgment and be restored to liberty.