



1852.

No. 13.

An Act to prevent the introduction into the Colony of South Australia of Convicted Felons, and other persons sentenced to Transportation for offences against the Laws.

agent withheld.

WHEREAS it has pleased the Government of the United Preamble.
Kingdom of Great Britain and Ireland to constitute and appoint the adjacent Colonies of Van Diemen's Land and Western Australia penal settlements for the safe keeping of convicted felons, and other persons undergoing sentence of 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 Colonies to the other Australian Provinces: 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 said Province of South Australia, of convicted felons, or other persons undergoing sentence of transportation for offences against the laws:

Be it therefore Enacted, by His Excellency the Lieutenant-Governor of the Province of South Australia, with the advice and consent of the Legislative Council thereof, as follows: That no convicted felon, or other person undergoing sentence of transportation for offending against the laws, nor any person who is under sentence in any British Colony or Possession, other than the Province of South Australia, for any capital or transportable offence, nor any person not at liberty by reason of crime to reside in any part of the United Kingdom of Great Britain and Ireland, shall land in any of the ports of the Province of South Australia, or come, or be, in any place within the limits thereof, under the penalty, on conviction, before any two Justices of the Peace, having jurisdiction within the said Province, or before any Local Court Imprisonment of felons who enter the Colony.
established

established in the said Province, or any portion thereof, if a male, of being imprisoned and worked in irons for the term of 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 the term of two years, or at the discretion of the convicting Justices, or of the said Court, of being conveyed in irons 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 Van Diemen's Land or Western Australia to land in South Australia without proof of being a free person.

2. And be it Enacted, That the Colonies of Van Diemen's Land and Western Australia being virtually public gaols of the United Kingdom of Great Britain and Ireland, it shall not be lawful for persons coming from the said Colonies to land in any of the ports or other places of the Province of South Australia without having previously shown to the satisfaction of some officer to be appointed for that purpose by the Lieutenant-Governor of the said Province, or in the absence of any such officer, to a Justice of the Peace having jurisdiction within the said Province, or any part thereof, that he or she is at full liberty to be, and reside in any part of the British Dominions; and any free person who shall land from the said Colonies of Van Diemen's Land and Western Australia, or their dependencies, in any of the ports or other places of the Province of South Australia, without having previously shown to the satisfaction of such officer, or Justice of the Peace, as aforesaid, that he or she is at full liberty to be, and reside in any part of the British dominions, and without having obtained from such officer, or Justice of the Peace as aforesaid, a certificate to that effect, shall, on conviction before any Local Court established in the said Province, or any two Justices of the Peace having jurisdiction within the said Province, or any portion thereof, forfeit and pay for every such offence, a sum not less than Ten Pounds, nor more than One Hundred Pounds.

Fining of masters or owners of vessels bringing felons.

3. And be it Enacted, That any master-mariner, or other person, commanding, navigating, or sailing any ship, vessel, or boat, which may hereafter bring to any port, or other place in the Province of South Australia, 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 two Justices of the Peace having jurisdiction within the said Province, or any portion thereof, 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 one calendar month, or to both, at the discretion of the said Court or Justices respectively.

Distress not to be unlawful for defect in form.

4. And be it Enacted, That when any distress shall be made for any money to be levied under this Act, the distress itself shall not be

be deemed unlawful, nor the party or parties making the same be deemed a trespasser or trespassers, on account of any defect or want of form in the summons, information, conviction, warrant of distress, or other proceeding relating thereto, nor shall the party or parties distraining be deemed a trespasser or trespassers, *ab initio*, on account of any irregularity which shall be afterwards committed by the party or parties distraining, but the person or persons aggrieved by such irregularity, shall, and may recover full satisfaction for the special damage, in an action on the case.

5. And be it Enacted, That every person who has been, or shall be transported for any offence against the law, to any British Colony or possession, other than the Province of South Australia, or who is under sentence for any capital or transportable offence in any British Colony or Possession, other than the said Province of South Australia, who has already come, or shall hereafter come to the said Province, not having served the full period of his 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 they occur, shall be taken to signify and denote such person so transported, and who has not served such period or term, or received such pardon or remission as aforesaid.

No person to land from Van Diemen's Land, under certain provisions.

6. And be it Enacted, That every person apprehended on suspicion of being an offender illegally at large shall, on being taken before any one or more Justices of the Peace, having jurisdiction within the said Colony, or any part thereof, prove to the reasonable satisfaction of such Justice or Justices, that he or she is not an offender illegally at large, upon which proof, such Justice or Justices shall forthwith order his or her discharge, and in default of such proof, the burden whereof shall always be upon the person accused, it shall be lawful for such Justice or Justices, to order such person to be detained in custody, until it shall be ascertained whether such person is or is not an offender illegally at large.

Suspected persons may be taken before Justices, and detained.

7. And be it Enacted, That all property found upon or in the possession of any person convicted of being an offender illegally at large, shall be forfeited, and it shall be lawful for 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 was transported, or in which he was convicted as aforesaid.

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

8. And be it Enacted, That every person who shall knowingly harbor or conceal any offender illegally at large shall, on conviction thereof before any such Court as aforesaid, or before two Justices of the Peace having jurisdiction within the said Province, or any portion

Penalty for concealing offenders.

portion thereof, forfeit and pay for every such offence the sum of One Hundred Pounds; and in default of immediate payment shall be imprisoned in any of Her Majesty's gaols in the said Province for any period not exceeding twelve calendar months.

What deemed
evidence of person
being a convict.

9. And be it Enacted, That oral proof that any person was in Van Diemen's Land, or any other British Colony or Possession other than the Province of South Australia, known to be, or was commonly deemed and reputed 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 and transportable offence, as the case may be, and oral proof 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 sentence, or the full term for which he was transported, and has not received such pardon or remission as aforesaid, unless the contrary be proved.

Justices to issue
search warrants to
apprehend offenders.

10. And be it Enacted, That 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 such offender; and to apprehend or cause to be apprehended any person whom such constable or constables shall have reasonable cause for suspecting to be an offender illegally at large; and also to apprehend all persons found in or about such dwelling-house or tenement, or other place, whom such constable or constables shall have reasonable grounds for suspecting and believing to have knowingly harbored and concealed such offender illegally at large as aforesaid; and all persons so found and apprehended as aforesaid, shall, by such constable or constables as aforesaid, be forthwith taken before a Justice or Justices of the Peace, having jurisdiction in the locality, for examination, and to be further dealt with according to law.

Penalty for refusing
to enforce this Act.

11. And be it Enacted, That all Her Majesty's subjects shall be liable to be called upon to aid and assist in executing and enforcing the several provisions of this Act; and every person who shall, when so called upon to aid and assist, refuse or neglect so to do, shall be liable to a fine not exceeding Five Pounds, to be recovered and levied in a summary way, before any Justice of the Peace, or before any such Court as aforesaid, over and above any punishment to which such person shall be liable by law.

Appropriation of
penalties.

12. And be it Enacted, That all fines and penalties recovered under this Act, and all moneys and property forfeited, and not specially appropriated, shall be applied and go—one moiety to Her Majesty, her heirs and successors, for the public uses of the said

said Province and in support of the Government thereof, and the other moiety to the use of the informer or party prosecuting, who shall, nevertheless, be deemed a competent witness.

13. And be it Enacted, That all proceedings under 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 of the said Province of South Australia. No *certiorari* to be allowed.

14. And be it Enacted, That 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 the provisions 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; and if the verdict shall be for the defendant, or if the plaintiff in any such action or suit shall be nonsuited, or discontinue his action or suit after the defendant shall have appeared, or if upon demurrer, judgment shall be given against the plaintiff, the defendant shall have treble costs, and shall have the like remedy for the same, as any other defendant hath in any other case to recover costs by law, and although a verdict shall be given for the plaintiff in any such action, he shall not be entitled to recover any costs against the defendant, unless the Judge before whom such action shall be tried, shall certify at the trial, and in open Court, under his hand, on the back of the record, his approbation of the action, and of the verdict obtained thereupon. General issue may be pleaded in all actions.

15. And be it Enacted, That this Act shall take effect from the first day of January, one thousand eight hundred and fifty-three. Commencement of Act.

JOHN MORPHETT, Speaker.

*Passed the Legislative Council this tenth day of
November, one thousand eight hundred and
fifty-two.* }

F. C. SINGLETON,
Clerk of the Legislative Council.

Her Majesty's assent is withheld from this Act.

H. E. F. YOUNG,
Lieutenant-Governor.