



ANNO OCTAVO

GEORGIIV. REGIS.

No. 4.

By His Excellency Colonel GEORGE ARTHUR, Lieutenant-Governor of the Island of Van Diemen's Land and its Dependencies, with the advice of the Legislative Council.

AN ACT for the Transportation of Offenders from Van Diemen's Land.

WHEREAS by an Act of Parliament made and passed in the fourth year of the reign of King George the First intituled "An Act for the further preventing Robbery Burglary and other Felonies and for the more effectual Transportation of Felons and unlawful exporters of Wool and for declaring the Law upon some points relating to Pirates" it was amongst other things enacted that where any person or persons should be thereafter convicted of grand or petty Larceny or any felonious stealing or taking of Money or goods and chattels either from the person or the house of any other or in any other manner and who by the Law should be liable only to the penalties of burning in the hand or whipping (excepting persons convicted for receiving or buying stolen goods knowing them to be stolen) it should be lawful for the Court before whom they were convicted or any Court held at the same place with like authority if they should think fit instead of ordering any such offenders to be burnt in the hand or whipped to order and direct that such offenders should be sent as soon as conveniently might be to some of His Majesty's Colonies and Plantations in America and that that Court before whom they were convicted or any subsequent Court held at the same place with like authority with the former should have power to convey transfer and make over such offenders by order of

Court to the use of any person or persons who should contract for the performance of such Transportation and his or their assigns for such term of Seven Years and that where any offenders should thereafter be convicted of any crimes whatsoever for which they were by Law to be excluded the Benefit of Clergy and His then Majesty His Heirs or Successors should be graciously pleased to extend Royal Mercy to any such offenders upon the condition of Transportation to *any part of America* and such intention of Mercy be signified by one of His Majesty's Principal Secretaries of State it should be lawful to and for any Court having lawful authority to allow such offenders the benefit of a Pardon under the Great Seal and to order and direct the like transfer and conveyance to any person or persons who would contract for the performance of such Transportation and to his and their assigns of any such before-mentioned offenders as also of any person or persons convicted of receiving or buying stolen goods knowing them to be stolen for the term of Fourteen Years in case such condition of Transportation should be general or else for such other term or terms as should be made part of such condition if any particular time should be specified by His said then Majesty His Heirs and Successors as aforesaid and that such person or persons so contracting as aforesaid should have a property or interest in the service of such offenders for such term of years—And it was by the said Act of Parliament further enacted that where any such offenders should be transported and should have served their respective terms according to the order of any such Court as aforesaid such services should have the effect of a Pardon to all intents and purposes as for that crime or crimes for which they were so transported and should have so served as aforesaid—AND WHEREAS by several Acts of Parliament made and passed between the Fourth Year of the Reign of King George the First and the Nineteenth Year of the Reign of His late Majesty King George the Third persons convicted of certain offences were made liable to be transported to America—AND WHEREAS by an Act of Parliament made and passed in the nineteenth year of the reign of His late Majesty King George the Third intituled “An Act to explain and amend the Laws relating to Transportation Imprisonment and other Punishment of certain offenders” the several Courts therein mentioned within that part of Great Britain called England and Wales before which any person should be convicted of any grand or petty Larceny or other crime for which he or she was or should be liable to be transported to any of His Majesty's Colonies in America or any Court held for the same place with like authority were empowered to order and adjudge any such person to be transported to any place beyond Seas whether the same should be situated in America or elsewhere in such and the like manner and for such and the same term of years as and for which any such person was or should be liable

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to be transported to any of His Majesty's Colonies and Plantations in America—And by another Act of Parliament made and passed in the twenty-fourth year of the reign of His said late Majesty King George the Third intituled “An Act for the effectual Transportation of Felons and “ other offenders and to authorise the Removal of Prisoners in certain “ cases and for other purposes therein mentioned” the Courts therein mentioned (being Courts in that part of Great Britain called England and in the Principality of Wales) before whom any persons should be thereafter convicted of grand or petty Larceny or any other offence for which they should be liable to be transported were empowered to order and adjudge such persons to be transported beyond Seas for any term or number of years not exceeding the number of years or term for which such persons were or should be liable to be transported and in every such case it was made lawful for the King with the advice of his Privy Council to declare and appoint to what places within or without his Dominions such offenders should be transported—And by several other Acts of Parliament since passed from time to time the aforesaid provisions of the two last-mentioned Acts have been continued in the cases of persons convicted before the same Courts in England and Wales but neither the same nor any provisions of the like nature have been extended to the cases of persons convicted before the Courts of this Colony—And it is doubtful whether persons convicted in this Colony of any felonious taking or stealing of any money or goods and chattels or of receiving or buying stolen goods knowing them to be stolen within the said Act of the Fourth Year of the Reign of King George the First or of any offence for which they are liable to Transportation by any Act or Acts of Parliament which extend to this Colony and which were made after the last-mentioned Act and previous to the making of the said Act of the Nineteenth Year of the Reign of King George the Third are by Law liable to any other sentence or order of Transportation than sentence or order to be transported to one of His Majesty's Colonies in America—AND WHEREAS by a certain other Act of Parliament made and passed in the Sixth Year of the Reign of His present Majesty intituled “An Act for punishing Offences committed “ by Transports kept to labour in the Colonies and better regulating the “ Powers of Justices of the Peace of New South Wales” His Majesty was empowered by any order made by him with the advice of His Privy Council to authorise the Governors Lieutenant-Governors or other persons for the time being administering the Government of any of His Majesty's Foreign Possessions Colonies or Plantations from time to time to appoint the places within His Majesty's Dominions to which any offender convicted in any such Foreign Possessions Colonies or Plantations and being under sentence or order of Transportation shall be sent or transported and a certain order to that effect bearing date at

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Carlton House the eleventh day of November one thousand eight hundred and twenty-six hath been made and issued by His Majesty with the advice of His Privy Council but the said last-mentioned Act of Parliament and order in Council are applicable only to the cases of persons liable to be ordered or sentenced to Transportation generally and not to the cases of persons liable to be sentenced or ordered to be transported to America—THEREFORE to give full and general effect in this Colony to the last-mentioned Act and the said Order in Council and any Proclamation or Proclamations which may be made in pursuance thereof and to produce uniformity in the Laws in force in this Colony as to the Transportation of offenders convicted therein—

I. BE IT ENACTED by His Excellency the Lieutenant-Governor aforesaid with the advice of the Legislative Council that from and after the commencement of this Act when any person or persons shall be convicted before any Court of competent Jurisdiction within this Colony or any of the Dependencies thereof of any offence for which by any Law in force in this Colony such person or persons shall be liable to be transported it shall be lawful to and for that Court or any subsequent Court holden for the same place to order and adjudge that such person or persons so convicted as aforesaid shall be transported beyond the Sea for the term of life or years for which such person or persons shall be so liable to be transported as aforesaid.

II. AND BE IT FURTHER ENACTED by the authority and with the advice aforesaid that whenever His Majesty His Heirs or Successors or the Governor of this Colony having lawful authority thereunto shall be pleased to extend mercy to any offender convicted within this Island or any Dependency thereof of any crime for which he or she shall be excluded the Benefit of Clergy on condition of Transportation beyond Sea and such intention of mercy shall be signified by the Colonial Secretary to the Judge or Justice before whom such offender shall be convicted or to any Judge or Justice of any superior Court of Criminal Jurisdiction such Judge or Justice shall allow to such offender the benefit of a Conditional Pardon and shall make an order for the immediate Transportation of such offender and such allowance and order shall be considered as an allowance and order made by the Court before which such offender was convicted and shall be entered upon the Records of the same Court by the proper officer thereof.

III. AND BE IT FURTHER ENACTED by the authority and with the advice aforesaid that every such sentence or order of Transportation so made as aforesaid shall subject the offender to be conveyed to such place or places beyond Sea and within His Majesty's Dominions

as the Governor Lieutenant-Governor or other person for the time being administering the Government of this Colony shall from time to time by any Proclamations to be by them issued in pursuance of the said order of His Majesty in Council or any other order of His Majesty in Council for that purpose made appoint as the place or places to which offenders convicted in this Colony or any Dependency thereof and being under sentence or order of Transportation shall be sent or transported.

IV. AND BE IT FURTHER ENACTED by the authority and with the advice aforesaid that it shall and may be lawful for the said Governor to cause every such sentence or order of Transportation to be carried into effect and when any offenders shall be about to be transported to give all necessary and proper orders for their removal to the Vessel in which they are to be transported and to nominate some person or persons to have the custody of such offenders during the voyage to the place to which they are to be transported.

V. AND BE IT FURTHER ENACTED by the authority and with the advice aforesaid that the Sheriff or Gaoler receiving such order of removal shall forthwith deliver every offender to whom the same shall apply to such person or persons as shall by such order be empowered to receive the offender or offenders ordered to be removed and the person so empowered to receive such offender or offenders shall give a receipt in writing to the Sheriff or Gaoler which shall be a discharge to such Sheriff or Gaoler.

VI. AND WHEREAS the carrying into effect such sentences or orders of Transportation as aforesaid may be often attended with inconvenience or great delay—BE IT FURTHER ENACTED by the authority and with the advice aforesaid that it shall be lawful for the said Governor whenever he shall think fit so to do to order any male offender or offenders being under such sentence or order of Transportation as aforesaid to be removed and confined and kept to labour either at Macquarie Harbour or Maria Island or any other part or place within this Island or its Dependencies to be appointed for the reception of offenders and every offender who shall be so removed shall continue at such Port or Place aforesaid and be under the custody and management of the Commandant thereof until the said Governor shall otherwise direct or until such offender shall be entitled to his Liberty.

VII. AND BE IT FURTHER ENACTED by the authority and with the advice aforesaid that after the removal of any offender as aforesaid the Commandant who shall have the custody or management of

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him shall during the term of such custody have the same powers over him as are incident to the office of Sheriff and if any offender shall during such custody be guilty of any Misdemeanor the Commandant shall and may cause such punishment to be inflicted on him as in like cases any Justice of the Peace may cause to be inflicted on any offender transported to this Colony and being here under sentence or order of Transportation.

VIII. AND BE IT FURTHER ENACTED by the authority and with the advice aforesaid that it shall and may be lawful to keep to hard labour every offender under sentence or order of Transportation while he or she shall remain in the Common Gaol if his or her health permit and that it shall be lawful for the Governor if he shall think fit to order any such offender being a male to be removed to any Penitentiary and to be kept to hard labour there under the custody and management of the Superintendant or in chains upon the high Roads or other Public Works and in like manner to order any such offender being a female to be removed and confined in any Factory and there kept to hard labour under the custody and management of the Superintendant thereof or otherwise or when he shall think fit to assign and make over any such male or female offender to any person or his or their Assigns for all or any part of the residue then to come of the term for which such offender shall be sentenced or ordered to be transported which person or persons and their Assigns shall have a property in the service of such offender for and during the time for which he or she shall be assigned.

IX. AND BE IT FURTHER ENACTED by the authority and with the advice aforesaid that the time during which every offender shall continue in or at any Gaol Port or Place of confinement Penitentiary or Factory or as an assigned servant shall be taken and reckoned in part discharge of the term of his or her Transportation.

X. AND BE IT FURTHER ENACTED by the authority and with the advice aforesaid that the Superintendant of any Penitentiary or Factory having the custody of any such offender under the authority of this Act shall during the term of such custody have over such offender the same powers as are incident to the Office of Sheriff or Gaoler.

XI. AND BE IT FURTHER ENACTED by the authority and with the advice aforesaid that if any offender who shall have been or shall be so sentenced or ordered to be transported either for life or years shall afterwards be at large within this Colony or any of the Depen-

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dencies thereof without some lawful cause before the expiration of the term for which such offender shall have been sentenced or ordered to be transported every such offender so being at large being thereof lawfully convicted shall suffer Death as in cases of Felony without Benefit of Clergy and if any person shall rescue such offender from the custody of such Commandant or Superintendant as aforesaid or from the custody of the Sheriff or any Gaoler or other person conveying removing transporting or reconveying him or her or shall convey or cause to be conveyed any disguise instrument for effecting escape or arms to such offender every such offence shall be punishable in the same manner as if such offender had been confined in a Gaol or Prison in the custody of the Sheriff or Gaoler for the crime of which such offender shall have been convicted.

XII. AND BE IT FURTHER ENACTED by the authority and with the advice aforesaid that in any Information or Indictment against any offender for being found at large contrary to the provisions of this or of any other Act hereafter to be made and also in any Information or Indictment against any person who shall rescue or attempt to rescue to assist in rescuing any such offender from such custody or who shall convey or cause to be conveyed any disguise instrument for effecting escape or arms to any such offender contrary to the provisions of this or of any other Act hereafter to be made it shall be sufficient to charge and allege the order made for the Transportation of such offender without charging or alleging any Information or Indictment trial conviction judgment or sentence or any pardon or intention of mercy or signification thereof of or against or in any manner relating to such offender.

XIII. AND BE IT FURTHER ENACTED by the authority and with the advice aforesaid that the Registrar or Clerk of the Court or other Officer having the custody of the Records of the Court where such sentence or order of Transportation shall have been passed or made shall at the request of any person on His Majesty's behalf make out and give a Certificate in writing signed by him containing the effect and substance only (omitting the formal part) of every Information or Indictment and conviction of such offender and of the sentence or order for his or her Transportation (not taking for the same more than Six Shillings and Eight-pence) which Certificate shall be sufficient evidence of the conviction and sentence or order for the Transportation of such offender.

XIV. AND BE IT FURTHER ENACTED by the authority and with the advice aforesaid that every offender under sentence or order of Transportation shall while confined in any Gaol Penitentiary or Factory

or while assigned as a servant be subject to the summary Jurisdiction of the Justices of the Peace and the Principal Superintendant of Convicts as in such cases and in such manner as offenders transported to this Colony are subject thereto.

XV. AND in order to avoid frequent repetitions and the use of numerous terms in this Act—BE IT ENACTED by the authority and with the advice aforesaid that whenever the word Governor is used in any part of this Act the same shall be construed to mean the Governor for the time being of this Island and in case of his absence or of a vacancy in that Office the Lieutenant-Governor or other person for the time being lawfully administering the Government of this Island and that by the word Commandant shall be understood and meant the Officer commonly so called or other person by whatever denomination known for the time being having the command and management of the Island Harbour Port or Place of confinement mentioned or referred to in that part of this Act in which the word Commandant is used that by the term Penitentiary shall be understood and meant any building or place for the time being used for the reception and lodging of male offenders transported from Great Britain and in the service of the Government and that by the term Factory shall be understood and meant any building used for the reception of female offenders transported from Great Britain and in the service of the Government and that by term Superintendent as applied to a Penitentiary or Factory shall be understood the person for the time being by whatever denomination known who shall have the charge care or Superintendence of such Penitentiary or Factory as aforesaid.

XVI. AND BE IT FURTHER ENACTED by the authority and with the advice aforesaid that nothing in this Act contained respecting the sentence or order to be made by any Court for the Transportation of offenders liable to be transported shall apply to any sentence or order to be made by any Court of General or Quarter Sessions or any Justices or Justice of the Peace in the exercise of the summary Jurisdiction vested in such Courts of General or Quarter Sessions and Justices or Justice of the Peace respectively by a certain Act of Parliament made and passed in the Fourth Year of the Reign of His present Majesty intituled “An Act to provide until the first day of July one thousand eight hundred and twenty-seven and until the end of the next Session of Parliament for the better Administration of Justice in New South Wales and Van Diemen’s Land and for the more effectual Government thereof and for other purposes relating thereto” and by the before-mentioned Act of Parliament of the Sixth Year of His present Majesty’s Reign.

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XVII. AND WHEREAS since the opening of the Supreme Court of Van Diemen's Land several offenders convicted before the said Court of petty larceny and other offenders convicted before the said Court of grand larceny within the Benefit of Clergy have been by the said Court ordered to be transported to such places as the Lieutenant-Governor should appoint for terms of Seven Years each and other offenders convicted before the said Supreme Court of receiving stolen goods knowing them to be stolen have been by the same Court ordered to be transported to such places as the Lieutenant-Governor should appoint for terms of Fourteen Years each and the Lieutenant-Governor has from time to time appointed Macquarie Harbour and Maria Island as the places to which such offenders should be sent or transported and many of such offenders have been sent to such places for the terms for which they have so been respectively ordered to be transported—

AND WHEREAS several offenders convicted of capital crimes have received promises of Pardon upon condition of Transportation and have been sent to Macquarie Harbour or Maria Island or have been transported to Norfolk Island for the several terms according to the conditions upon which they have been respectively promised such Pardons—

BE IT FURTHER ENACTED and declared by the authority and with the advice aforesaid that every sentence or order of Transportation which hath been so made by the said Supreme Court hath been and is good and valid in Law as an order of Transportation and that every such offender who hath been so sent to Macquarie Harbour or Maria Island and who hath not since been pardoned and also every such offender capitally convicted as hath been so sent or transported to either of those places or Norfolk Island as aforesaid and the condition of whose Pardon hath not been since remitted is and shall be deemed and taken to have been and to be lawfully transported and shall be subject and liable to all laws regulations and penalties to which transported offenders are or shall be subject and liable and that every offender who now is under such sentence or order of Transportation and hath not been removed or transported as also every such person capitally convicted to whom a Pardon has been promised on condition of Transportation such condition not having been remitted to him or her shall and may without further sentence or order be transported to or removed to and confined in such place or be assigned as a servant for all the residue now to come of the term for which he or she hath been so ordered to be transported or on condition of Transportation for which he or she hath been promised such Pardon in such and the like manner as any offender who shall hereafter be sentenced or ordered to be transported under or by virtue of this Act shall and will be liable to be transported removed confined and assigned and shall be subject and liable to all the same laws regulations and penalties,

XVIII. AND BE IT FURTHER ENACTED by the authority and with the advice aforesaid that nothing in this Act contained shall affect His Majesty's Royal Prerogative of Mercy.

XIX. AND BE IT FURTHER ENACTED by the authority and with the advice aforesaid that if any suit or action shall be prosecuted against any person for any thing done in pursuance of this Act the Defendant may plead the general issue and give this Act and the special matter in evidence at any trial to be had thereupon and that the same was done by the authority of this Act and if a verdict shall pass for the Defendant or judgment shall in any manner be given against the Plaintiff the Defendant shall recover treble costs and have the like remedy for the same as any defendants have by Law in other cases and notwithstanding a verdict shall be given for the plaintiff in any such action such Plaintiff shall not have costs against the Defendant unless the Judge before whom the trial shall be had shall certify his approbation of the verdict.

GEORGE ARTHUR.

Passed the Council this twenty-first
day of September one thousand
eight hundred and twenty-seven,

JOHN MONTAGU, *Clerk of the Council.*