



ANNO SECUNDO
VICTORIÆ REGINÆ,

No. 32.

By His Excellency, SIR JOHN FRANKLIN, Knight, Commander of the Royal Hanoverian Guelphic Order, Knight of the Greek Order of the Redeemer, and a Captain in Her Majesty's Royal Navy, Lieutenant-Governor of the Island of Van Diemen's Land and its Dependencies, with the advice of the Legislative Council.

AN ACT to amend the Act lately passed for the more perfect constitution of Courts of General Quarter Sessions and to provide for the more effectual punishment and control of Transported and other Offenders.

WHEREAS the Act passed on the thirtieth day of October one thousand eight hundred and thirty-eight intituled "An Act for the more perfect constitution of Courts of General Quarter Sessions and to provide for the more effectual punishment and control of Transported and other Offenders" (by the first section thereof) repealed the Act relating to Courts of General and Quarter Sessions and to the punishment of Offenders which was passed in this Island on the fourth day of August one thousand

PREAMBLE.

eight hundred and thirty-five—*And whereas* since the passing of the said Act of the said thirtieth day of October last sundry errors and omissions (chiefly of a clerical nature only) have been discovered to exist therein and immediate amendments in the said last mentioned Act are therefore become necessary—*And whereas* such amendments would be best and most conveniently effected by repealing the whole of the said last mentioned Act with the exception of the first section so repealing the said former Act of the fourth day of August one thousand eight hundred and thirty-five—**BE IT THEREFORE ENACTED** by His Excellency Sir JOHN FRANKLIN Knight Commander of the Royal Hanoverian Guelphic Order Knight of the Greek Order of the Redeemer and a Captain in Her Majesty's Royal Navy Lieutenant-Governor of the Island of Van Diemen's Land and its Dependencies with the advice of the Legislative Council that from and after the twentieth day of January one thousand eight hundred and thirty-nine the said Act of the thirtieth day of October one thousand eight hundred and thirty-eight (with the exception of the first section thereof which shall be and remain in full force) shall be and the said Act of the thirtieth day of October one thousand eight hundred and thirty-eight (except as last aforesaid) is hereby repealed—*Provided* that all offences committed before the said twentieth day of January one thousand eight hundred and thirty-nine shall be dealt with as if this present Act had not been passed.

The Lieutenant-Governor to appoint the times and places when and where Courts of General and Quarter Sessions shall be holden.

II.—**AND BE IT ENACTED** that from and after the said twentieth day of January one thousand eight hundred and thirty-nine Courts of General and Quarter Sessions shall be holden within this Island and its Dependencies at such times and places as the Lieutenant-Governor shall from time to time by any proclamation or proclamations for that purpose issued appoint.

Several Courts of General Quarter Sessions.

III.—**AND BE IT ENACTED** that every Court of General Quarter Sessions and every sitting of any such Court under any such proclamation shall be and be deemed legal and valid notwithstanding that more than one such Court is or shall be thereby appointed to be holden within the limits of the same jurisdiction or that two or more of such Courts shall sit and be holden within the same jurisdiction at one and the same time. And each of such Courts shall have power to adjourn its sittings from time to time as to the same Court may seem meet but so always that no such Court shall by virtue of any such adjournment be holden for any other than one and the same district or at any other than one and the same place within such district.

Chairman for such Courts.

IV.—**AND BE IT ENACTED** that it shall be lawful for the Lieutenant-Governor from time to time to nominate and appoint any justice of the peace as and to be chairman and any justice of the peace as and to be deputy chairman of and for each or any of the said Courts and any such chairman or deputy chairman from time to time to remove and to appoint another in his stead and the same justice may be appointed chairman of and for any two or more of such Courts as to the Lieutenant-Governor shall seem expedient—*Provided* that no deputy chairman of

any such Court shall be competent to act in that capacity except only in the actual absence of the chairman of such Court but that in cases of such absence every such deputy shall whilst so acting be deemed and taken to be the chairman of such Court for the time being within the intent and meaning of this Act and of every or any other Act relating to any such Court and to and for all other intents and purposes whatsoever.

V.—AND BE IT ENACTED that it shall also be lawful for the Lieutenant-Governor from time to time to nominate and appoint all such clerks of the peace and other ministerial officers of and for each or any of the said Courts as shall seem to him to be necessary and any such clerk of the peace or other officer at any time to remove and to appoint another or others from time to time in the stead of any such clerk or officer and in case of the absence of any such clerk or officer at any time from any sitting of any such Court it shall be lawful for the chairman or deputy chairman thereof as the case may be for the time being to appoint some other fit and proper person to act in his stead at such sitting which person so appointed shall for all purposes during such sitting be deemed and taken to be the officer in whose stead he shall have been so appointed to and for all intents and purposes whatsoever.

Ministerial Officers.

VI.—AND BE IT ENACTED that (so far as the circumstances and condition of this Colony shall require and admit) such Courts of General and Quarter Sessions respectively shall or lawfully may take cognizance of all matters and things cognizable in and shall possess all the powers and authorities incidental to Courts of General and Quarter Sessions (as the case may be) in England—*Provided always* that in any case in which any offender may become liable to transportation for any period not exceeding seven years it shall be lawful for the said Court to sentence any such offender to be transported beyond the sea for any term not exceeding seven years nor less than three years.

General authority of such Courts.

VII.—AND BE IT ENACTED that the said Courts respectively shall or lawfully may take cognizance in a summary way of all crimes and misdemeanors not punishable by death or by transportation for any period exceeding ten years committed by any transported offender whether such crimes or misdemeanors shall be committed by any transported offender in this Island or its Dependencies or on board of any vessel during the voyage to this Island and the same crimes and misdemeanors respectively to punish either by such and the same punishments or modes of punishment (by transportation or otherwise) as any free and un-transported person would be liable to if lawfully convicted of the same crime or misdemeanor or by extending for any period not exceeding three years the time for which any such offender shall then be under sentence or order of transportation or by directing such offender to be kept to hard labour in or out of chains for any period not exceeding three years and (if the Court shall see fit) by whipping also in addition to any such sentence of extension or hard labour—*Provided always* that no Court of General or Quarter Sessions shall in any case exercise the aforesaid summary powers or jurisdiction unless a num-

Summary jurisdiction of such Courts.

Proviso as to summary jurisdiction.

ber of not less than three justices shall be present and remain as the sitting justices during the whole time of the trial of any such transported offender.

Justices to sit in rotation.

VIII.—AND BE IT ENACTED that every justice of the peace usually residing in the district in or for which any such Court of General Quarter Sessions shall be appointed to be holden and whose place of residence shall be distant not more than twenty miles from the place where such Court shall usually be holden shall be liable to attend and sit at such Court in rotation in the order in which his name shall be inserted in a list of all such justices to be kept for that purpose by the clerk of the peace or person usually acting as such clerk in and for that district and three days at the least before the appointed day of sitting of such Court whether by adjournment or otherwise such clerk or person shall cause a notice under his hand to be sent to two at the least of such justices in the form contained in the Schedule to this Act marked A—*Provided* that it shall be lawful for the justices at their General Quarter Sessions holden in the month of January in each year (if they shall so think fit) to settle and appoint for themselves the order of such rotation.

Non-attendance &c.

IX.—AND BE IT ENACTED that if any justice having received any such notice shall not appear and act as a sitting justice at such Court (having no reasonable excuse in that behalf transmitted by him for that purpose to the chairman) then upon proof of delivery of such notice being made to the satisfaction of the chairman at such Court (which proof such chairman shall then and there require to be made) such justice shall pay for any such neglect the sum of Two Pounds—*And* the amount of every such sum shall at any time after notice to the justice so neglecting to appear or act that such sum hath been imposed and the same nevertheless remaining unpaid for the space of thirty days next following upon a certificate in that behalf signed by the clerk of the peace directed to the sheriff be by the said sheriff or his deputy levied in a summary manner by distress and sale of the goods and chattels of the justice liable to pay such sum and the surplus money (if any) remaining after payment of such sum and the attendant expenses shall be thereafter rendered to such justice—*Provided always* that it shall be lawful for the Lieutenant-Governor by any order under his hand (directed and delivered to the clerk of the peace acting in and for any such district) from time to time to exempt either generally or for a limited period from liability to attend at any such Court any justice whose attendance there shall appear to him to be incompatible with the performance of his other public duties.

Non-attendance of witnesses in misdemeanors and felonies.

X.—AND BE IT ENACTED that if any person shall be summoned to appear as a witness to give evidence before any such Courts of General or Quarter Sessions touching any felony or misdemeanor whatsoever and shall neglect to appear at the time and place for that purpose appointed without a reasonable excuse for such neglect every such person shall for every such offence forfeit and pay a penalty of not less than Five Pounds and not exceeding Fifty Pounds which said penalty shall or may be recovered by information before any one justice of the peace in

the manner provided by the Act to regulate summary proceedings before justices of the peace—*Provided always* that no person upon whom any such penalty is imposed shall be liable to any other punishment for not obeying such summons—*And provided also* that all such penalties when recovered shall go to the use of Her Majesty Her Heirs and Successors—*And provided also* that any person aggrieved by any such proceeding shall be at liberty to appeal in manner pointed out by the said Act for regulating proceedings before justices of peace.

XI.—AND WHEREAS in certain cases fees are by law payable in proceedings before justices of the peace in England and it is expedient that the like fees should be demanded and received in the several police-offices of this Island—*Be it therefore enacted* that from and after the passing of this Act it shall be lawful for the several fees specified in the Schedule hereunto annexed marked (B.) to be demanded and received at the several police-offices for the business and services therein contained—*And be it enacted* that a table of such fees shall be affixed to some conspicuous part of the justice-room at every police office to which such table shall relate and the same or some other copy showing truly therein the then amount of fees there lawfully payable shall be kept constantly so affixed or otherwise conspicuously exhibited in such justice-room so as to be at all times distinctly legible—*And if* at any time any person shall at such police-office demand or receive any greater fees than such as are specified and set forth in the said Schedule he shall for every such offence forfeit and pay the sum of Five Pounds to be recovered in a summary way before any one justice of the peace—*Provided always* that it shall be lawful for every justice of the peace and he is hereby required to administer to any naval or military pensioner the oath or declaration necessary to be made for the receipt of his pension without any charge being made for the same.

Justices' fees.

XII.—AND BE IT ENACTED that it shall be lawful for any justice or clerk or other person at any such police office or for any justice not being a police or acting police magistrate resident in the interior at his dwelling place to refuse to do any act or thing in respect of which a fee shall be payable under the provisions of this Act unless such fee be first duly paid and if any such act or thing shall be done and the fee due thereon shall not be paid it shall be lawful for any justice of the peace to summon the person from whom such fee shall be due and to make order for payment of the same with the costs of the proceedings and in default of payment to levy the same with the costs of the distress by warrant under his hand and seal as in any other case of distress and sale under warrant of a justice or by committal to the common gaol for any period not exceeding fourteen days unless such fee be sooner paid—*Provided* that in any case wherein it shall appear to be conducive to the ends of public justice that the amount of any such fee as aforesaid should be remitted or paid back or the party by whom the same is payable shall appear to be unable to pay the same it shall be lawful for any police or assistant police magistrate at such office or other justice presiding to remit or pay back the amount of such fee and in every such case the same shall not be payable.

Provisions as to payment.

By what party payable.

XIII.—AND BE IT ENACTED that in every case where it shall not under the provisions of this Act be otherwise expressly appointed the amount of every such fee as aforesaid shall in the first instance be payable by the party (whether prosecutor or otherwise) on whose behalf or at whose instance the particular act or thing shall be done or required so to be done but be eventually repaid to him by the defendant or adverse party in the case if the justices or justice deciding the same case think fit so to order—*And* every such defendant or adverse party against whom any such order shall be made shall be liable to the like proceedings at the suit of the successful party for enforcing such repayment as any defendant against whom a pecuniary penalty has been awarded under any penal Act is liable to in case of non payment of such penalty by the Act of this Island for regulating summary proceedings before justices of peace.

Offenders subject to summary jurisdiction.

XIV.—AND BE IT ENACTED that the term “transported offender” used in this Act shall for the several purposes of this Act be holden to intend and apply to every person whatsoever who hath been or shall be for whatever offence transported to this Island or its Dependencies or who hath been or shall be within this Island or its Dependencies sentenced or ordered to be transported or who is now or shall hereafter be within this Island or its Dependencies under a sentence or order of transportation originally to New South Wales or its Dependencies and whose term or terms of sentence shall not at the time of the committing by him of the particular crime misdemeanor or other offence or misconduct imputed to him have either expired or been remitted although such sentence or sentences may have expired or been remitted at the time of his apprehension or trial—*And* no temporary or partial remission by ticket-of-leave only shall be deemed a “remission” of sentence within the meaning of this Act nor shall the expiration of any extended term of transportation be deemed an “expiration of sentence” within the meaning of this Act where the then existing term of transportation shall under either of the provisions of this Act have been once or oftener extended and the entire term of such extended sentence or sentences shall not have expired or been remitted.

Summary jurisdiction of two justices.

XV.—AND BE IT ENACTED that (concurrently with the several Courts of General or Quarter Sessions) any two or more justices of the peace of whom one shall be a stipendiary magistrate shall also or lawfully may in a like summary way take cognizance of complaints made against any transported offender for insubordination or absconding or for any act or acts of larceny or feloniously receiving or embezzlement under the value of Five Pounds or for wilful prevarication upon oath or (in the case of any male offender) for indecent exposure of his person to any female or infant and any such offence to punish by extending for any period not exceeding two years the time for which such offender shall then be under sentence of transportation or by hard labour in or out of chains for any period not exceeding two years or by removal to some other place in this Island or its Dependencies or by such hard labour and removal together or by whipping not exceeding one hundred lashes.

XVI.—AND BE IT ENACTED that (concurrently with the said Courts and justices) any one justice of the peace shall have authority in a like summary way to take cognizance of complaints made against any transported offender for drunkenness absence without leave disobedience of orders idleness neglect or wilful mismanagement of work or duty indecent or abusive language profane swearing insolence or other misconduct and such offences or misconduct to punish by hard labour in or out of chains not exceeding one year or solitary confinement not exceeding fourteen days or by exposure in the stocks not exceeding six hours or by whipping not exceeding thirty-six lashes.

Jurisdiction of any one justice.

XVII.—AND BE IT ENACTED that a return of all sentences imposed under this Act by every such Court or justices or justice during each or any month shall be made to the Lieutenant-Governor within the first week of the month next succeeding and every such return shall be in such form and contain such particulars as the said Lieutenant-Governor may from time to time prescribe and that every justice who shall neglect for fourteen days next after such time so limited to make such return shall forfeit and pay a penalty not exceeding Five Pounds to be recovered in manner hereinafter mentioned.

Return to be made of sentences.

XVIII.—AND BE IT ENACTED that in all proceedings in either of the said Courts of General or Quarter Sessions under the seventh section of this Act the charge against any such transported offender shall be in the name of the clerk of the peace acting at such Court who shall for the purposes of this Act be deemed the prosecutor on behalf of the Crown in every such case by virtue of that office and every such charge with the record of the proceedings thereon shall be in the form or to the effect of the form contained in the Schedule to this Act marked C.—*And* in all proceedings before any such Court or any such justices or justice as aforesaid under the fifteenth and sixteenth sections of this Act the complaint against any such offender with the entry or minute of the proceedings thereon shall be in the form or to the effect of the form contained in the Schedule to this Act marked D.

Forms of proceeding.

XIX.—AND (in order to provide for the more effectual punishment of transported offenders who shall be twice or oftener convicted before any such Court or two or more justices as aforesaid) BE IT ENACTED that wherever any such transported offender convicted before any such Court or two or more justices of any crime offence or misconduct shall be already under sentence passed under the authority of either this Act or of the said now repealed Acts of the sixth year of His late Majesty or of the tenth year of His Majesty King George the Fourth respectively such Court or justices may award the punishment for such subsequent crime offence or misconduct to commence at the expiration of any such previous sentence and so *toties quoties* upon every subsequent similar conviction although some previous sentence may have been an extension of the term of transportation of such offender and although the aggregate term or terms of extension or other punishment may exceed the term for which any such sentence could otherwise be awarded—*And* until the whole of

Cumulative sentences.

such several terms of extension or other periods of punishment so awarded shall have expired or been remitted the person so convicted and sentenced shall continue to be deemed a transported offender within the meaning of this Act to all intents and purposes.

Subsequent convictions 7
& 8 Geo. 4, cap. 28, sec. 11.

XX.—PROVIDED ALWAYS that nothing in the preceding section shall be construed to affect the provision respecting subsequent convictions for felony contained in the eleventh section of the statute passed in England in the seventh and eighth year of His Majesty King George the Fourth and in force within this Colony for improving the administration of justice in criminal cases but the said section shall or lawfully may continue to be acted upon in all cases to which the same may in this Colony be applicable and where any transported offender shall under that section be convicted in any such Court of General or Quarter Sessions of any felony committed by him after a previous conviction in this Colony for felony he shall on such subsequent conviction be liable at the discretion of the Court to be transported for life or any term not less than seven years.

Punishments not affected
by expiration of sentence
of transportation.

XXI.—AND (for the prevention of doubts in all cases) BE IT ENACTED that no sentence passed at any time on any transported offender by any such Court or justices or justice shall be affected by reason of the *ad interim* expiration of the original or extended term or terms of transportation of such offender but every punishment awarded by any sentence shall or lawfully may be carried into full effect notwithstanding its expiration.

Convicts under sentence for
life.

XXII.—AND WHEREAS where an offender is already transported or under sentence or order of transportation for life the punishments at present prescribed by law are in many cases (with respect to offences subsequently committed by such offenders) of no practical effect—BE IT ENACTED that where any such offender shall be convicted in any Court within this Colony of any felony or other crime for which he shall by any law now or hereafter in force be liable to be transported it shall be lawful for such Court instead of or in addition to such sentence to direct such offender to be kept to hard labour in chains for such portion or portions of the term of transportation or for such time not exceeding seven years as such Court shall according to the nature of the offence or the circumstances of the case think proper.

General explication of terms

XXIII.—PROVIDED ALWAYS that nothing in this Act shall be construed to direct or authorize the punishment of exposure in the stocks or whipping or hard labour in chains excepting only in the case of males but in all other cases where in this Act the term used indicates the male gender only the same shall (unless the context be repugnant to such construction) be construed equally to intend and include females and also (unless the context be repugnant to such construction) the singular number shall with respect to things as well as persons be construed equally to mean and imply the plural and *vice versa*.

XXIV.—AND BE IT ENACTED that if in case only one justice shall happen to be present at the time and place appointed for the holding of any such Court of General or Quarter Sessions as aforesaid such one justice (whether he be the chairman of such Court or not) shall for the purposes mentioned in the ninth section of this Act and for the purposes of opening and adjourning such Court and postponing the consideration of all matters proper to have been then and there heard or considered be and be deemed and be taken to be a lawfully constituted Court the same as if two or more justices had been present and assisting thereat any law to the contrary notwithstanding.

Any one justice of the peace may adjourn a Court.

XXV.—AND BE IT ENACTED that after the publication of this Act in every case whatsoever (whether under this Act or otherwise) wherein a question shall arise or be made whether a person is or was at any particular time a transported offender within the meaning of this Act it shall be sufficient for the party on whom the affirmative shall lie to prove that such person is or at the time in question was a person in fact ordinarily dealt with as or generally deemed and reputed to be a transported offender or an offender under sentence or order of transportation the non-production of any record of conviction and sentence or order of transportation of such reputed offender or an examined copy thereof in any such case notwithstanding—*Provided* that such proof shall be received as *prima facie* proof only and that the effect thereof may be rebutted by any certificate or instrument under the hand of some competent person in that behalf or by any other mode of proof to the satisfaction of the Court or sitting justices or justice (as the case may be) showing that the term or terms of transportation of such offender and every extension thereof (if any) had at the time in question expired or been remitted—*Provided also* that every person who shall under any provision of this Act be complained of or charged before any such court of sessions or justices or justice as aforesaid as a transported offender shall be deemed and taken to be in fact a transported offender within the meaning of this Act and amenable to such summary jurisdiction as aforesaid without proof thereof unless he shall in the first instance and before pleading actually insist that he is not so amenable.

Proof of being a transported offender.

XXVI.—AND (in order to render more effectual the provisions contained in the nineteenth and twenty-second sections of this Act respecting punishments to commence at the expiration of any previous and existing sentence and respecting additional punishments in the case of offenders under sentence or order of transportation for life) *Be it enacted* that it shall not be necessary in any such case as aforesaid to introduce any allegation or averment touching any such previous and existing sentence or any such sentence or order of transportation either on the record or in any charge or indictment or information but upon the production of a certificate or writing in that behalf to the effect hereinafter mentioned purporting to be under the hand of some person authorised as hereinafter mentioned it shall be lawful for the Court or justices to award such additional punishment as aforesaid or any of them as provided by the said twenty-second section or (in cases contemplated by the nineteenth

Facilitating proofs &c. in sections 19 and 22.

section) that the sentence or punishment shall commence upon some future day certain on or after which day such previous sentence would by effluxion of time expire or to award generally (with or without any such certificate) that such subsequent sentence or punishment shall take effect at the expiration of any existing previous sentence or sentences if any such there be.

Transportation Act extended to sentences under this Act.

XXVII.—AND BE IT ENACTED that the Act of this Island passed in the eighth year of the reign of his late Majesty King George the Fourth intituled “An Act for the transportation of offenders from Van Diemen’s Land” and all powers and provisions therein shall extend and be applied to every sentence of transportation and (so far as the same can be so applied) to every sentence of removal passed by any such Court or justices as aforesaid as fully and effectually to all intents and purposes as the same Act powers and provisions respectively apply to sentences of transportation passed by or in the Supreme Court of Van Diemen’s Land anything in the last mentioned Act to the contrary notwithstanding.

Sentences of imprisonment with hard labour.

XXVIII.—AND BE IT ENACTED that where any person whatsoever shall be convicted before the Supreme Court of Van Diemen’s Land or any such Court of Sessions or two or more justices of any offence for which hard labour or imprisonment with hard labour may by law be awarded it shall be lawful for such Court or justices to sentence such person either to hard labour or imprisonment with hard labour generally or to direct specially that he shall be kept in solitary confinement for such portion of the term of sentence as such Court or justices shall think proper—*Provided* that no such sentence of solitary confinement shall exceed at any one time one month or in the whole three months at different times in one year with intervals of not less than one month between such times or (if he be convicted of felony or other infamous crime or be a transported offender) that he shall be kept to hard labour on the public roads or works in chains during the whole or any part of such term of sentence.

Lieutenant-Governor to appoint place of labour.

XXIX.—AND BE IT ENACTED that where any person shall have been sentenced to hard labour or imprisonment with hard labour or to solitary confinement it shall be lawful for the Lieutenant-Governor to cause every such sentence to be carried into effect in any gaol or house of correction within this Island or its Dependencies as to such Lieutenant-Governor may from time to time seem meet or (where any such person was so sentenced for felony or other infamous crime or is a transported offender) to cause every such sentence to be carried into effect in or on any of the public works or roads of this Island or its Dependencies or otherwise and either in or out of chains as such Lieutenant-Governor shall from time to time think proper—*Provided* that nothing in this section shall extend to prevent the Supreme Court or any judge thereof from directing any sentence passed by that Court to be carried into effect in any particular gaol if such Court or judge shall in any case give any such direction.

Proviso.

XXX.—AND BE IT ENACTED that where any such sentence of hard labour or imprisonment with hard labour shall have been passed for felony or other infamous crime or upon any transported offender the offender so sentenced shall during the entire term of such sentence and also during every extension thereof as hereinafter provided be liable to the same punishments (so far as the same shall be applicable) and be subject to the same summary jurisdiction and proceedings under the seventh fifteenth and sixteenth sections of this Act respectively for absconding insubordination or indecent exposure of person or for drunkenness disobedience of orders idleness neglect or wilful mismanagement of work or duty indecent or abusive language profane swearing insolence or other disorderly conduct as such offender would have been or would be subject and liable to if he were under an unexpired and unremitted sentence of transportation.

Summary jurisdiction over certain imprisoned offenders.

XXXI.—AND BE IT ENACTED that where under the said seventh fifteenth and sixteenth sections of this Act or either of them the punishment of hard labour may be awarded it shall be lawful for the Court or justices or justice to direct that the existing sentence of hard labour or imprisonment with hard labour under which the offender may then be shall be extended but so as that no such extension shall at any one time be for any period longer than twelve months—*And* if any offender whilst under sentence of hard labour or imprisonment with hard labour as aforesaid either during the original term or any extension or extensions thereof shall be guilty of absconding he may at any time after expiration of such sentence be dealt with and punished for that offence in the same manner as he might be dealt with and punished for such offence if such sentence and the original term thereof were still unexpired and in full force.

Extensions &c.

XXXII.—AND BE IT ENACTED that every transported or other offender who shall forcibly or with violence or in a turbulent manner oppose or resist any lawfully constituted authority or shall excite or endeavour to excite any other person to be guilty of such opposition or resistance or who shall openly refuse to obey any lawful command or who shall in any manner unlawfully excite or knowingly occasion or assist in any riot or tumultuary proceeding whatsoever or shall endeavour unlawfully to excite or occasion any such riot or proceeding shall be deemed guilty of insubordination within the meaning of this Act.

Definition of insubordination.

XXXIII.—AND BE IT ENACTED that if on or at any time after the passing of this Act any person shall have reasonable cause to believe any person to be an absconded offender or an offender then illegally at large it shall thereupon be lawful for the person having such cause of belief immediately (either alone or by any other person in his aid or authorised by him) without a warrant to apprehend such suspected person or to cause him to be taken before any justice of the peace to be dealt with according to law—*And* such justice shall or lawfully may cause such apprehended person to be detained in custody for such reasonable period as shall be necessary for the purpose of ascertaining whether in fact such person be an offender or not.

Apprehension of absconded offender or offenders illegally at large.

Definition of "illegally at large" and of absconding.

XXXIV.—AND BE IT ENACTED that every transported or other offender who shall unlawfully depart or absent himself or be for whatever time absent from his appointed residence or place of punishment confinement or labour or from the service of the Government or his master or other employer for the time being shall be deemed "illegally at large" within the meaning of this Act—*And* every transported or other offender who shall be at any time illegally at large with intent to escape from the Colony or with intent to remain absent more than twenty-four hours or with intent to prevent his lawful apprehension or who shall (with whatever intent) be illegally at large for more than twenty-four hours shall be deemed guilty of "absconding" within the meaning of this Act.

Assisting or employing absconded offenders in any case.

XXXV.—AND WHEREAS it is of great importance that no assistance by employment or otherwise should under any circumstances be afforded to absconded offenders whereby they are often enabled to remain a longer time at large—*Be it therefore enacted* that every person who shall in any manner harbour shelter protect or employ any absconded offender whatever or who shall provide any such offender with lodging clothes tobacco money wine or any spirituous liquors (whether knowing or suspecting him at the time to be an absconded offender or not) shall forfeit and pay a penalty or sum of not less than Five Shillings nor more than Twenty Pounds.

Provisions as to supposed freedom.

XXXVI.—PROVIDED ALWAYS that (for the purpose of affording due protection in such cases) as often as any person being a householder shall be desirous of sheltering or employing any one who may possibly be an absconded offender it shall be lawful for such householder or any person on his behalf to apply to any justice of the peace within his district to inquire whether the person is or is not so at large and such justice is hereby required upon such application to inquire into that fact and if it shall appear to him that such person is not illegally at large such justice shall grant a certificate to that effect under his hand to such householder such justice nevertheless sending to the police magistrate of his district within ten days after the date of such certificate a full and particular description of such person but where the householder resides within five miles of a police magistrate such magistrate only is in that case to grant such certificate—*And* in any prosecution under the preceding section the production of such a certificate by such householder shall be a full and complete defence.

When such certificate to be no defence.

XXXVII.—PROVIDED ALWAYS AND BE IT ENACTED that if any person (whether he shall have obtained any such certificate or not) shall have just and reasonable cause to believe a person to be in fact an absconded offender and shall notwithstanding in any manner harbour conceal shelter protect or employ such last mentioned person or shall commit any other of the offences in the said thirty-fifth section mentioned (such last mentioned person being in fact at the time an absconded offender) he shall forfeit and pay a penalty or sum of not less than Ten Pounds nor more than Fifty Pounds.

XXXVIII.—AND BE IT ENACTED that if any person actually knowing a person to be an absconded offender shall in any manner rescue harbour conceal shelter protect or employ such offender or provide him with lodging food clothes tobacco money wine or any spirituous liquor or other sustenance or means of sustenance or shall in any manner whether by information or otherwise assist such offender in remaining illegally at large or shall in any manner induce or persuade or endeavour to induce or persuade such offender to remain illegally at large or if any person whatsoever shall induce or persuade or endeavour to induce or persuade any transported offender or offender under a sentence of hard labour or imprisonment with hard labour to abscond or shall in any manner knowingly assist such offender in absconding every such person as aforesaid so offending shall forfeit and pay a penalty or sum of not less than Twenty Pounds nor more than One Hundred Pounds and in addition thereto he shall or may if the justices before whom the case is heard think fit so to order be committed to any common gaol or house of correction there to be kept to hard labour for any term not exceeding six calendar months.

Knowingly harbouring &c. such offenders.

XXXIX.—AND WHEREAS in order to facilitate the apprehension of absconded offenders and offenders illegally at large it is necessary that a power should by law be conferred on magistrates (under proper restrictions) of directing that in certain cases a search shall or may be made for any such offender in the manner hereinafter provided—*Be it therefore enacted* that upon information on oath being made before any justice of the peace by any credible person that he doth verily believe that some absconded offender or offender illegally at large is in or on any particular house or place it shall be lawful for such justice (if he shall think it expedient so to do) to grant his warrant to any constable to enter and search such house or place and such constable may under such warrant break open any doors if not opened within a reasonable time after demand and may apprehend any such offender found there to be dealt with according to law—*Provided* that no such house or place shall nevertheless be searched or entered under any such warrant in the night-time unless by or in the presence of some chief constable chief district constable or division or district constable anything in such warrant to the contrary notwithstanding.

Power of apprehending absconded offenders.

XL.—AND (in order to prevent doubts) BE IT ENACTED that the term "absconded offender" in the six last preceding sections shall for the purposes of this Act be construed to include and apply to every offender whatsoever who shall within the meaning of this Act have absconded whether he shall be a transported offender or an offender under sentence of hard labour or imprisonment with hard labour and whether such offender shall at the time be under an original or an extended sentence or his sentence shall have in fact expired but under either of the provisions of this Act he shall be liable to be still dealt with as if such sentence were subsisting and in force.

The term "absconded offender" in the six preceding sections.

XLI.—AND WHEREAS by the unauthorised employment of transported and other offenders in any case or by their being suffered to

Employment &c. of offenders under punishment but not absconded.

acquire or retain property of any kind before expiration or remission of their sentences the necessary ends of punishment are occasionally defeated—*Be it enacted* that if after the publication of this Act any person having no lawful excuse or authority in that behalf shall in any manner harbour conceal shelter employ or provide with lodging food clothes money tobacco wine or any spirituous liquor or receive or allow to remain upon his premises (whether licensed premises or not) for one hour or upwards any transported or other offender who whether illegally at large or not shall be at the time under an unexpired and unremitted sentence of hard labour or imprisonment with hard labour or who shall at the time belong to or be ordinarily worked with any gang or party employed on any of the public roads or works he shall forfeit and pay a penalty or sum of not less than Ten Shillings nor more than Twenty Pounds.

Employment of convict messengers.

XLII.—AND BE IT ENACTED that where any transported offender shall have been appointed for the discharge of any public service or duty whether as messenger or otherwise if any person shall after the publication of this Act having no lawful excuse or authority in that behalf employ for one hour or upwards any such offender other than for the purpose or one of the purposes for which he shall have been so appointed such person shall forfeit and pay a penalty or sum of not less than Five Shillings nor more than Ten Pounds.

Harbouring &c. offenders in assigned service.

XLIII.—AND (for the more efficient control of offenders in assigned service and the better protection of masters in such cases) BE IT ENACTED that if any person without the express consent of the master or some other lawful excuse or authority in that behalf shall in any manner knowingly harbour shelter conceal or employ any transported offender whatsoever being at the time in assigned service or on loan or shall without such consent or other lawful excuse or authority as aforesaid knowingly receive any such offender into or upon any part of his premises or knowingly permit such offender to remain or be in or on such premises or shall in any manner without such consent excuse or authority induce or persuade or endeavour to induce or persuade any such offender to depart or continue absent from his master's premises such person in any case so offending shall forfeit and pay a penalty or sum of not less than Two Pounds nor more than Twenty Pounds.

Facilitating prosecutions.

XLIV.—AND BE IT ENACTED that in any prosecution under any of the three preceding sections it shall be sufficient to allege generally that the act charged as an offence was committed without lawful excuse or authority in that behalf but the existence of any such excuse or authority (if any) shall be matter to be proved by the defendant.

Convicts tippling or gambling.

XLV.—AND BE IT ENACTED that if any person shall receive any transported offender whatsoever whether knowing him to be a transported offender or not in or on any part of his premises for the purpose of tippling or gambling or shall allow any such offender to remain or be in or on such premises (whether licensed premises or not) tippling or gambling or for the purpose of tippling or gambling such person shall

forfeit and pay a penalty or sum of not less than Twenty Shillings nor more than Twenty Pounds.

XLVI.—PROVIDED ALWAYS that (in order to prevent two penalties or proceedings for one offence) a conviction under the preceding section shall be a bar to any proceedings under the Act intituled “ An Act to consolidate and amend the laws relating to the sale by retail of wine and malt and spirituous liquors and to promote good order in public houses” and a conviction under the said last-mentioned Act shall be a bar to any proceedings under this Act in respect of the same occasion or subject matter.

Reference to Publicans' Act.

XLVII—AND BE IT ENACTED that if any master or person to whom the services of any transported offender shall have been lent or assigned shall knowingly permit any such offender whilst under such loan or assignment to acquire or have or keep or deal with in any manner as his own property any sheep or cattle or to become the tenant in his own right of any house hut or land or without the permission of the Lieutenant-Governor or of the police magistrate of the district in which he resides or other lawful excuse to work for his own benefit or otherwise than in the service of the master or person to whom he is so lent or assigned such master or person shall forfeit and pay a penalty or sum of not less than Two Pounds nor more than Fifty Pounds and in every such case the proof of such permission or excuse as aforesaid shall lie on the defendant.

Masters allowing convicts to have cattle, &c.

XLVIII.—AND BE IT ENACTED that in case any transported offender shall at any time by virtue of any civil process whatsoever be imprisoned or arrested for debt or any other alleged cause of action it shall be lawful for Her Majesty's Attorney-General by any order in writing under his hand to direct the sheriff to discharge such offender and the sheriff or gaoler in whose custody such offender shall then be shall thereupon forthwith discharge such offender accordingly and deliver him into the custody of the principal superintendent or assistant superintendent of convicts or any person by him in that behalf appointed.

Discharge of convicts if arrested for debt.

XLIX.—AND WHEREAS a certain part of this Island called “ Port Arthur” with the tract of country adjoining has been set apart for the reception and punishment of offenders under colonial sentences of transportation and other convicts whom it may be proper to remove from the settled districts and it is expedient that no unnecessary intercourse with that part of the colony should be permitted—BE IT THEREFORE ENACTED that if at any time any person commanding navigating or sailing in any vessel or boat whatsoever not in the service of the Government or not having a license in writing for that purpose from the Lieutenant-Governor shall (except in cases of unavoidable necessity) enter touch at or hold intercourse with the said port or any other part of the tract or country called “ Tasman's Peninsula” or shall (except in such cases of necessity as aforesaid) be for whatever purpose in any vessel or boat hovering or at anchor nearer to the coast on any

Intercourse with Port Arthur.

part thereof than three miles such person shall forfeit and pay a penalty or sum of not less than Ten Pounds nor more than One Hundred Pounds and shall also or lawfully may together with such vessel or boat be forthwith and without any warrant arrested and detained there or sent to and be afterwards detained in Hobart Town until the case shall have been there inquired into and determined or the amount of the penalty incurred by him shall have been paid.

Limits prohibited.

L.—AND BE IT ENACTED that “Tasman’s Peninsula” shall for the purposes of the preceding section be understood to comprise all that tract of country which is bounded towards the west by Storm Bay towards the south and east by the Ocean and towards the north by Frederick Henry Bay Norfolk Bay and a line across the centre of the Isthmus connecting the said peninsula with “Forestier’s Peninsula” and shall include the Island called Slopen or Sloping Island.

Transportation for life for absconding from Tasman’s Peninsula.

LI.—AND BE IT ENACTED that if any offender who shall have been or shall be within this Island lawfully sentenced or ordered to be transported whether for life or years shall afterwards abscond before the expiration of the term for which such offender shall have been sentenced or ordered to be transported or if any transported offender (although not under any such last mentioned sentence or order) who shall have been or shall be for whatever cause confined or kept to labour at Port Arthur or on any other part of Tasman’s Peninsula shall abscond before the expiration of the appointed term of such confinement or labour every such offender or transported offender so in any such case absconding shall be guilty of felony and be liable to be transported for life.

Absconding from chain gangs.

LII.—AND BE IT ENACTED that if any transported offender who shall have been or shall be lawfully sentenced to hard labour in chains or ordered to be kept to hard labour in chains in or on any of the public roads or works shall afterwards and whilst belonging to or directed to be worked with any chain-gang or party kept to labour in chains abscond before the expiration of the appointed term of such sentence or labour every such offender so absconding shall be guilty of felony and be liable to be transported for any term not exceeding Fourteen Years.

Punishment in certain slight cases.

LIII.—PROVIDED ALWAYS that (in order to provide for cases requiring only a milder punishment) in every such case of feloniously absconding as aforesaid if any two justices shall think fit any such offender or transported offender as aforesaid shall and may be tried and dealt with for such offence of absconding under the fifteenth section of this Act in a summary way before or by such two justices and shall or may be punished accordingly as by the said section is provided.

Convicts absconding and having arms or attempting to commit any robbery.

LIV.—AND BE IT ENACTED that if any offender whatsoever (whether under a colonial sentence or order of transportation or not and whether under sentence or order to be kept to hard labour or not) shall abscond and afterward and whilst illegally at large shall use or have any

fire-arms or commit or attempt to commit any felony by means of force or by putting in fear every such offender shall be guilty of felony and shall suffer death—*Provided always* that in every such case it shall be deemed sufficient in any information under this section to allege that the person charged was at the time of his absconding a transported offender and that in support of such allegation it shall be sufficient to prove that such person was at the time of his absconding a person in fact ordinarily dealt with or generally reputed to be a transported offender or an offender under sentence or order of transportation the non-production of any record or conviction and sentence or order of transportation of such reputed offender or an examined copy thereof in any such case notwithstanding—*Provided also* that such proof shall be received as *primâ facie* evidence only and that the effect thereof may be rebutted by any certificate or instrument under the hand of some competent person in that behalf or by any other mode of proof to the satisfaction of the court showing that the term of transportation of such offender and every extension thereof (if any) or the term of his colonial sentence as the case may be had at the time of his absconding expired or been remitted.

LV.—AND WHEREAS the commission of robberies is greatly encouraged by persons who knowingly harbour the perpetrators of such outrages or receive or conceal their spoil—*Be it enacted* that if any person knowing any larceny by means of force or by putting in fear or other felony punishable with death to have been committed (whether by a transported offender or not) and whether before or after the publication of this Act shall after the publication of this Act receive or conceal any chattel money or property so stolen knowing the same to have been so stolen or shall in any manner knowingly harbour conceal shelter protect or provide with lodging clothes or sustenance or in any manner by information or otherwise knowingly assist the felon or felons or either of them every such person shall be guilty of felony and being thereof convicted (whether such principal felon or felons shall then be convicted or not or shall or shall not be then amenable to justice) shall be liable to be transported for life.

Harbouring &c. any bush-ranger or receiving the property stolen.

LVI.—AND (in order to discourage more effectually than at present the embezzlement or unauthorised disposal of property by transported offenders and others where the same shall belong to the Crown and to remove the difficulties of proof against receivers in such cases)—*Be it enacted* that if after the publication of this Act any person whatsoever shall receive or have in his possession any article or thing or articles or things of the value of two shillings in the whole or upwards the property of the Crown or which shall be reasonably suspected to be the property of the Crown the same may be seized under any warrant to be for that purpose issued by any justice of the peace (if he shall think fit to grant the same) upon information on oath before such justice by any credible person setting forth therein to the satisfaction of such justice reasonable grounds for suspecting such article or thing or articles or things to be the property of the Crown and to have been embezzled or

Having in possession crown property.

otherwise unlawfully disposed of—*And* the person so receiving or having the same in his possession as aforesaid shall forfeit and pay a penalty or sum of not less than Two Pounds nor more than Fifty Pounds unless within such reasonable time as shall be limited for that purpose by the justice before whom the case is inquired into he shall show to the reasonable satisfaction of such justices either that such article or thing is not the property of the Crown or was not embezzled or otherwise unlawfully taken or disposed of or that the same came to his possession honestly and without any cause for suspicion that it had been so embezzled or unlawfully disposed of—*Provided* that where there shall be more articles than one and the whole of them shall appear to have been received on one and the same occasion a conviction in respect of any one of such articles shall be a bar to any other prosecution or proceeding under this section in respect of any other of such articles.

Proceeding for penalties.

LVII.—AND BE IT ENACTED that all offences against this Act not otherwise provided for in respect of which any pecuniary penalty is imposed shall or may upon information in that behalf exhibited be in a summary way heard and determined and every such penalty in respect of the same be awarded and imposed by and before any two justices of the peace in the manner provided by the Act intituled “An Act to regulate summary proceedings before justices of the peace”—*And* if any person shall feel aggrieved by any summary judgment or conviction under this Act imposing any such pecuniary penalty such person shall be entitled to appeal therefrom in the manner also provided by that Act.

Protection against actions.

LVIII.—AND BE IT ENACTED that if any action shall be brought against any person whatsoever in respect of any thing done in pursuance of this Act or any provision therein the defendant may plead the general issue and give the special matter in evidence thereupon and if the verdict shall be for the defendant or the plaintiff be nonsuited or discontinue his action or upon demurrer judgment be given against the plaintiff the defendant shall have double costs and the like remedy for recovering the same as any defendant hath in any other case to recover costs by law.

Appropriation of sums and fines under this Act.

LIX.—AND BE IT ENACTED that all fees and other sums of money and all shares of penalties imposed under this Act payable to Her Majesty shall be and the same are hereby reserved to Her Majesty Her Heirs and Successors for the public uses of this Island and the support of the Government thereof for defraying the expenses of the judicial and police establishments or otherwise as shall by any Act passed in this Island for the appropriation of the Revenue be directed.

Every gaol to be also a house of correction.

LX.—AND BE IT ENACTED that every building now or hereafter used by the authority of the Government as a common and public gaol for the ordinary confinement of prisoners therein at Hobart Town Launceston Richmond New Norfolk Oatlands Campbell Town

Longford and Swansea shall be deemed and taken to be not only a legal common and public gaol but also a house of correction to all intents and purposes whatsoever.

LXI.—AND BE IT ENACTED that the buildings at Hobart Town and Launceston respectively called penitentiaries used for the reception of transported male offenders in the service of the Government and the buildings at Hobart Town and Launceston respectively called factories used for the reception of transported female offenders in the service of the Government shall be also respectively to all intents and purposes houses of correction the said penitentiaries for males and the said factories for females.

The penitentiaries and factories to be also houses of correction.

LXII.—AND WHEREAS it may be hereafter expedient to appoint and establish houses of correction throughout this Island for the reception and punishment respectively of transported male and female and other offenders—*Be it therefore enacted* that the Lieutenant-Governor shall have power from time to time to appoint any building or buildings now erected or hereafter to be erected as and to be gaols and houses of correction respectively for the reception and punishment therein of transported and other male and female offenders within this Island or its Dependencies.

Power given to Lieutenant-Governor to appoint gaols and houses of correction.

LXIII.—AND BE IT ENACTED that the person for the time being by whatever denomination known having the actual charge or superintendence of any such penitentiary factory or goal as aforesaid shall for the purpose of enabling such person to perform the duties thereby imposed upon him have the powers and authorities of a gaoler within every such building and the term "gaoler" used in this Act shall accordingly for the purposes of the Act extend to and include every such person.

Actual keepers to be deemed the gaolers.

LXIV.—AND BE IT ENACTED that where any law authorises or directs in any case a committal to a house of correction or the passing of a sentence of solitary confinement or imprisonment with hard labour a committal may be made to or any sentence of solitary confinement or imprisonment with hard labour be carried into effect in either of the said gaols or houses of correction so by this Act instituted or which may hereafter be instituted as aforesaid (but nevertheless as to the said penitentiaries and factories regard being had to the sex of the offender)—*And* every such gaol or house of correction shall for those purposes be deemed to be a house of correction within the intent and meaning of every such law.

Laws authorising imprisonment in houses of correction.

LXV.—AND BE IT ENACTED that all prisoners at any time imprisoned or liable to be imprisoned in any of the said gaols may be imprisoned in any such gaol at the discretion of the Sheriff as he shall deem expedient for the general safety or advantage of such prisoners and the Sheriff shall also have the power of removing any person now

Prisoners removed to and from gaols.

or hereafter confined in any such gaol to and from each other whenever he shall for any cause deem such removal requisite—*And* in case any prisoner shall be afflicted with any dangerous sickness or infectious distemper in any such gaol the Sheriff or any two Justices of the Peace may on the recommendation in writing of the surgeon appointed to attend such gaol authorise the immediate removal of such prisoner for his necessary cure to some public or common hospital and upon his sufficient recovery may cause such prisoner to be remanded again into confinement—*Provided always* that every removal of any prisoner under the authority of this section to or from any such gaol as aforesaid shall be reported by such Sheriff or Justices (as the case may be) to the Lieutenant-Governor and also to the Chairman or Deputy Chairman of the Court of Quarter Sessions of the district as soon as may be afterwards and in every case within twenty days next following together with the particular cause of such removal—*Provided also* that when any offender shall have been committed to any particular gaol by the Supreme Court or any Judge thereof no such removal shall be lawful (except in case of any such sickness or distemper as aforesaid) without the leave of one of the Judges of the said Court first obtained for that purpose.

Proviso.

Carrying liquors or food
&c. into gaols.

LXVI.—AND BE IT ENACTED that if any person shall send or bring or cause to be sent or brought or shall attempt to send or bring into any such gaol or house of correction or any building commonly used as a lock-up or watch-house without the consent of the goaler or keeper thereof any food tobacco or clothing or (with or without such consent) any spirituous or fermented liquor or shall (unless expressly authorised by the prison regulations or by the Sheriff or by two Justices of the Peace) hold or attempt to hold any communication by letter or otherwise with any prisoner in such gaol or house of correction without the consent of such goaler or keeper it shall be lawful for the goaler or any turnkey of such gaol or house of correction or keeper of such lock-up or watch-house or any of his assistants to apprehend such person and carry him before a Justice of the Peace and such person shall pay a fine for any such offence over and above any other punishment to which he may by law be liable of not less than Five Pounds nor more than Fifty Pounds.

Proviso.

Reference to Publicans'
Act.

LXVII.—PROVIDED ALWAYS that nothing in the preceding section shall extend to any articles of necessary food or clothing bonâ fide sent or brought for any prisoner confined in any gaol for debt or any person not being a transported offender under commitment therein for trial only or to any communication holden with any such debtor or person (such communication not being otherwise contrary to any of the prison regulations) or to any liquor bonâ fide intended for the use of the goaler or his family or any of the troops on duty in any gaol or house of correction or bonâ fide prescribed by the surgeon appointed to attend such gaol or house of correction for medicinal purposes—*Provided also* that a conviction under the said preceding section shall be a bar to any proceedings under the aforesaid Act passed to consolidate and amend the laws relating to public-houses and to the selling by retail of wine and other liquors and a conviction under the said last mentioned Act shall be a bar

to any proceedings under this present Act in respect of the same occasion or subject matter.

LXVIII.—AND BE IT ENACTED that if any person (without the consent of the gaoler or keeper) shall send or bring or cause to be sent or brought or shall attempt to send or bring into any such gaol or house of correction for the use of any prisoner therein any instrument or arms proper to facilitate the escape of such prisoner every such person shall forfeit and pay a penalty or sum of not less than Twenty Pounds nor more than One Hundred Pounds—*And* if any person shall by any means whatever assist any prisoner to escape or in attempting to escape from any such gaol or house of correction every person so offending (whether an escape be actually made or not) shall be guilty of felony and be transported for any term not exceeding fourteen years.

Assisting prisoners to escape.

LXIX.—AND BE IT ENACTED that the Justices in each district assembled at the Quarter Sessions which shall be first holden for such district in the months of April and October in each year shall nominate two justices (who shall consent thereto) to be visiting justices for the ensuing half-year for every gaol and house of correction within such district each of whom shall personally visit such prisons at the least once in every month or oftener if occasion shall require for the purpose of examining into the treatment behaviour and condition of the several prisoners therein and so far as their powers shall extend redressing all abuses within the same.

Appointment of visiting justices.

LXX.—PROVIDED ALWAYS that nothing in the preceding section shall be construed to prevent any justice of the peace whatever although not a visiting justice from entering into and examining any gaol within the district in which he usually resides or holding any intercourse not being contrary to the prison regulations with any prisoner therein (other than any prisoner ordered to be kept in close or solitary confinement) as often as any such justice shall think it expedient to do so.

Reserving a visiting power for every justice whatever.

LXXI.—AND BE IT ENACTED that no prisoner whether confined for debt or otherwise shall be permitted to use or have in any such prison (without the consent of the gaoler or one of such visiting justices) any article of extravagance or luxury and no prisoner confined under sentence of hard labour or any other sentence of any Court or justices or on any summary conviction or for non-payment of any penalty shall use or have any food or clothing beyond the ordinary prison allowance except under such circumstances (if any) as shall be specified by the prison regulations or as shall be permitted by an express order to the gaoler in writing from any such justice stating therein the reason for such order—*And* no gambling or dice cards or other materials for gambling shall be permitted within any such prison and the gaoler or his assistants shall seize and destroy all such materials.

Certain rules as to food &c.

Setting prisoners to work
in certain cases.

LXXII.—AND BE IT ENACTED that every prisoner within any such gaol under sentence of imprisonment only (without hard labour) or in pursuance of any such conviction or for non-payment of any penalty and who shall not maintain himself may by order of any such visiting justice be set to some work or labour within the prison not of a severe nature to be specified by such justice and no prisoner who shall be of ability to contribute by any such work or labour towards his own subsistence and shall refuse or neglect to do so shall have any claim to the ordinary prison allowance at the expense of the public but may be fed on bread and water only.

Additional prison regula-
tions.

LXXIII.—AND BE IT ENACTED that it shall be lawful for any five justices of the peace in Quarter Sessions assembled at Hobart Town or Launceston and for any three justices so assembled elsewhere to make such general or additional prison regulations (not being inconsistent with any of the provisions of this Act) for any or every gaol or house of correction within the district for which such Sessions shall be holden as to such justices shall seem to be expedient and any such regulations from time to time to revoke or alter—*And* every such regulation so made shall be of the same force and authority as if it had been inserted in this present Act—*Provided* that no such regulations shall have any such force or authority until they shall have been approved of by the Lieutenant-Governor and a copy thereof in fair and legible characters been affixed respectively to at the least two public and conspicuous parts of the prison to which such regulations refer.

Powers of gaolers in Hobart
Town and Launceston.

LXXIV.—AND BE IT ENACTED that the keepers of the gaols and houses of correction in Hobart Town and Launceston respectively shall severally have power to inquire into and determine all complaints touching either of the following offences committed by any prisoner in such gaol or house of correction that is to say disobedience of any regulation of the prison whether established by this Act or by such justices assaults where no dangerous wound or bruise is given profane swearing or any riotous or disorderly conduct or indecent language or behaviour and every such offence to punish by keeping the offender in close solitary confinement and fed on bread and water only—*Provided* that no such punishment when inflicted by authority of the gaoler alone shall in any case exceed in duration the term of three days.

Gaolers elsewhere.

LXXV.—AND BE IT ENACTED that in case any prisoner confined in any other gaol or house of correction than one of such last mentioned gaols or houses of correction shall be guilty of any such offence as aforesaid (or if any prisoner confined in either of the said gaols or houses of correction at Hobart Town or Launceston shall be guilty of any such offence a second time or oftener or shall commit any such offence under circumstances of aggravation or shall commit any offence or be guilty of any misconduct which the gaoler is not empowered to punish) the gaoler or keeper shall forthwith report the same to one of the visiting

justices or (in case of their absence) to some other justice resident within the district and any such justice shall have power in a summary way to inquire upon oath and forthwith determine concerning any such matter so reported to him and to order the offender to be punished by close solitary confinement for any term not exceeding fourteen days and in addition thereto by being fed on bread and water only for such portion of that term not exceeding seven days as such justice shall think fit or (in the case of transported offenders or prisoners convicted of felony or sentenced to hard labour) by personal correction also in lieu of or in addition to such other punishment if the justice shall deem the circumstances of such a nature as to require it.

LXXVI.—AND BE IT ENACTED that it shall be lawful for every Court of General Quarter Sessions and for any judge of the Supreme Court of Van Diemen's Land at the discretion of such Court or judge by any verbal order to the sheriff or his deputy or by an order in writing addressed to any gaoler to cause any person under imprisonment whether for debt or felony or other cause to be brought up in order to his being examined as a witness in any case or matter civil or criminal depending before such Court or judge and after his evidence shall have been given such sheriff or deputy or gaoler shall cause such prisoner to be removed and again imprisoned the non issue of a writ of Habeas Corpus in any such case notwithstanding.

Bringing witnesses before Courts.

LXXVII.—AND (in order to prevent doubts) BE IT ENACTED that where any transported offender or offender under sentence for felony or other infamous crime shall have been sentenced to or directed to be kept in solitary confinement or to hard labour whether in or out of irons it shall be lawful for the Lieutenant-Governor at any time or from time to time during the continuance of the term of any such punishment to cause such offender to be kept to hard labour in the day-time and under solitary confinement at night only.

Construction of solitary confinement.

LXXVIII.—AND BE IT ENACTED that every such certificate or writing as is mentioned in the twenty-sixth section of this Act shall be under the hand of either the muster-master or person duly acting for him or the principal or assistant superintendent of convicts or some police magistrate and shall contain the following particulars—that is to say—the name of the offender together with a description of his person—the crime or offence for which such offender shall then be under conviction and sentence—the date of such conviction or sentence—and the nature and term or duration of such sentence—*And* every such certificate or writing may be so produced as aforesaid either before or after the trial of the offender and the same shall (with such additional proofs if any of the identity of the person of the offender although not according to the strict law of evidence as the court or justices passing sentence shall require) be received as sufficient evidence without proof of the signature or official character of the person appearing to have signed the same.

Certificate of existing sentences.

Explanation of the term
Lieutenant-Governor.

LXXIX.--AND BE IT ENACTED that the term Lieutenant-Governor used in this Act shall be equally taken to extend to every other officer for the time being lawfully administering the Government.

JOHN FRANKLIN.

Passed the Legislative Council
this first day of January one
thousand eight hundred and
thirty-nine.


ADAM TURNBULL,
Clerk of the Councils.

SCHEDULE A.

SIR

You are requested to attend on
the _____ day of _____
at a Court of Quarter Sessions to be holden at _____
in this Island at the usual place there at _____ o'clock
in the forenoon of the same day.

Dated this _____ day of _____ 18 .

(Signed) A. B. 
Clerk of the Peace.

To

Esquire J. P.

SCHEDULE B.

TABLE OF FEES PAYABLE AT THE POLICE OFFICES.

	Amount.		
	£	s.	d.
For every Summons or Warrant in any case of Misdemeanor	0	5	0
For every Summons for a Witness (in cases of Misdemeanor)	0	1	0
For every Oath (except in cases of felony)	0	1	0
For every Recognizance to be paid by the party entering into the same to keep the peace be of good behaviour or answer to any charge of felony or misdemeanor before the Supreme Court or Court of Quarter Sessions	0	10	0
For every Bond of Appeal.....	0	5	0
For every Information or Conviction upon any Penal Act or Statute if tendered ready drawn.....	0	1	0
For ditto for drawing (if by the clerk)	0	2	6
For ditto ditto (where special).....	0	5	0

SCHEDULE D.

MEMO.

M. N. per [ship in which he arrived]

No. [Police Number] under
sentence for [] years [or life] is charged upon the complaint of
A. B. with [state shortly in substance the offence or misconduct
complained of]

The prisoner pleads [“ Guilty” or “ Not Guilty.”]

Verdict [state the decision whether Guilty or not Guilty] Sentence to
[state the sentence]

Remarks [add any remarks which the case may appear to call for.]

Dated at [] this [] day of [] 18 []