



ANNO DECIMO-NONO

VICTORIÆ REGINÆ,

No. 3.

*By His Excellency SIR HENRY EDWARD FOX YOUNG, Knight,
Captain-General and Governor-in-Chief of the Island of Van
Diemen's Land and its Dependencies, with the Advice and
Consent of the Legislative Council.*

AN ACT to substitute other Punishment in lieu of Transportation. [9th August, 1855.]

WHEREAS it is expedient to substitute other Punishment in lieu of Transportation: Be it therefore enacted by His Excellency the Governor of Van Diemen's Land, by and with the advice and consent of the Legislative Council, as follows:—

1 After the commencement of this Act no person shall be sentenced to Transportation; but any person who, if this Act had not been passed, might have been sentenced to Transportation shall, after the commencement of this Act, be liable to be kept in Penal Servitude for such term as under this Act may be awarded instead of such Transportation.

Persons liable to Transportation to be sentenced to Penal Servitude instead.

2 The terms of Penal Servitude to be awarded instead of the Transportation to which any Offender would have been liable if this Act had not been passed shall be as follows; (that is to say,)

Terms of Penal Servitude which are to be awarded

instead of the
present terms of
Transportation.

Instead of Transportation for Seven Years or for a term not exceeding Seven Years, Penal Servitude for the term of Four Years :

Instead of any term of Transportation exceeding Seven Years and not exceeding Ten Years, Penal Servitude for any term not less than Four and not exceeding Six Years :

Instead of any term of Transportation exceeding Ten Years and not exceeding Fifteen Years, Penal Servitude for any term not less than Six and not exceeding Eight Years :

Instead of any term of Transportation exceeding Fifteen Years, Penal Servitude for any term not less than Six and not exceeding Ten Years :

Instead of Transportation for the term of Life, Penal Servitude for the term of Life.

And in every case where, at the discretion of the Court, one of any two or more of the terms of Transportation herein-before mentioned might have been awarded, the Court shall have the like discretion to award one of the two or more terms of Penal Servitude herein-before mentioned in relation to such terms of Transportation.

Power of Criminal
Courts to mitigate
certain punish-
ments.

3 Whereas in certain cases of felony the Court is not now by law empowered to award sentence of Transportation for a less period than the term of the offender's life or some long term of years, or sentence of imprisonment for any shorter term than Two Years; but it is desirable that some such offenders should, after the commencement of this Act, be sentenced to Penal Servitude for a shorter term than that substituted by this Act for the term of Transportation in any such case, or imprisonment for a shorter period than Two Years, at the discretion of the Court before which they are convicted: Be it therefore enacted, that in all cases where the Court is now by law empowered or required to award a sentence of Transportation exceeding Seven Years, it shall be lawful for such Court, at its discretion, to award a sentence of Penal Servitude for a term of years not less than Four Years, or to award such sentence of imprisonment for any period not exceeding Two Years, with or without hard labour, as shall to the Court in its discretion appear just under the circumstances.

Conditional
Pardons to be
allowed with
reference to the
substituted punish-
ment, as in cases of
Pardons on con-
dition of Trans-
portation.

4 Whenever Her Majesty, or the Governor, shall be pleased to extend mercy to any offender convicted of any offence for which he may be liable to the punishment of Death, upon condition of his being kept to Penal Servitude for any term of years or for life, such intention of mercy shall have the same effect and may be signified in the same manner, and all Courts, Justices, and others shall give effect thereto, and to the condition of the Pardon, in like manner as in the cases where Her Majesty, or the Governor, is now pleased to extend mercy upon condition of Transportation beyond Seas, the order for the execution of such Punishment as Her Majesty, or the Governor, may have made the condition of Her or his mercy being substituted for the order for Transportation.

How persons un-
der Penal Servi-
tude to be dealt
with,

5 Every person who, under this Act or any other Act hereafter to be passed, shall be sentenced or ordered to be kept in Penal Servitude shall, during the term of the sentence or order, be kept to hard labour and otherwise dealt with in this Colony in all respects as persons sentenced to Transportation may now by law be dealt with.

6 All Laws now in force in this Colony applicable with respect to persons under sentence or order of Transportation shall, so far as may be consistent with the express provisions of this Act, be construed to extend and be applicable to persons under any sentence or order of Penal Servitude under this Act or any other Act hereafter to be passed; and in the application of any such Law to a person under any such sentence or order of Penal Servitude the word "Transportation," wherever it occurs in such Law, shall be construed to mean "Penal Servitude."

All Acts, &c. concerning Convicts sentenced to Transportation made applicable for the purposes of this Act.

7 It shall be lawful for the Governor, by an order in writing under his hand, to grant to any person who may hereafter be sentenced or ordered to be kept in Penal Servitude for life, and after having undergone ten years of such Penal Servitude, a Licence to be at large in this Colony, or in such part thereof as in such Licence shall be expressed, during such portion of his term of Penal Servitude, and upon such conditions in all respects as to the Governor shall seem fit; and it shall be lawful for the Governor to revoke or alter such Licence by a like order at his pleasure; and upon the revocation of such Licence such person shall *ipso facto* be remitted to his original sentence, and shall undergo the residue thereof as if no such Licence had been granted.

Governor may grant Licences to be at large to persons under Penal Servitude.

8 So long as such Licence shall continue in force and unrevoked, such person under sentence or order of Penal Servitude shall not be liable to be imprisoned by reason of such sentence or order, but shall be allowed to go and remain at large according to the term of such Licence.

Holder of Licence to be allowed to go at large.

9 Nothing in this Act contained shall in any manner affect Her Majesty's Royal Prerogative of mercy, or any Prerogative of mercy vested in the Governor.

Queen's Prerogative.

10 Nothing in this Act contained shall interfere with or affect the authority or discretion of any Court in respect of any punishment which such Court may now by law award or pass on any offender other than Transportation, but where such other punishment may be awarded at the discretion of the Court instead of Transportation, or in addition thereto, the same may be awarded instead of or (as the case may be) in addition to the punishment substituted for Transportation under this Act.

Discretion of Courts as to alternative punishments not to be affected.

11 This Act shall commence on the tenth day of *August* instant.

Commencement of Act.

MICHAEL FENTON, *Speaker*.

Passed the Legislative Council this seventh day of August, one thousand eight hundred and fifty-five.

FR. HARTWELL HENSLOWE,
Clerk of the Council.

IN the name and on the behalf of Her Majesty I assent to this Act.

H. E. F. YOUNG,
Governor.

Government House, Hobart Town,
9th August, 1855.

