

Legislative Council.

42^o VICTORIÆ, 1879.

A BILL

To abolish the Punishment of Death in certain cases.

[MR. DE SALIS ;—17 *June*, 1879.]

WHEREAS it is expedient to mitigate the severity of the criminal law of this Colony and with that view to assimilate the said law so far as practicable to the law of Great Britain and Ireland with respect to the crimes for which the punishment of death should be inflicted as well as to make provision for the infliction of flogging in certain cases Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows :—

10 1. This Act may be cited as the "Criminal Law Mitigation Act of 1879." Short title.

15 2. After the passing of this Act the punishment of death shall not be inflicted for any crime except that of high treason murder piracy with wounding and such crimes committed with reference to Her Majesty's ships of war dockyards and arsenals as are now by the law of England punishable by death. Capital punishment abolished except in certain cases.

On indictment for murder jury may return a verdict of manslaughter only in certain cases.

3. A person indicted for murder committed after the passing of this Act may be found guilty of manslaughter if the jury are of opinion that the act causing death was not premeditated nor committed with reckless indifference to life nor with intent to kill or inflict grievous bodily harm upon any person nor during or immediately after the commission of any offence heretofore capital or of the offence of burglary or robbery. 5

Substitution of hard labour &c. for capital punishment in certain cases.

4. Upon the conviction of any person of any crime other than high treason murder or any of the crimes mentioned in the second section hereof committed after the passing of this Act and for which sentence of death might heretofore have been passed it shall be lawful for the Judge to sentence the offender if a male to be kept to hard labour on the roads or other public works of the Colony for life or for any term not less than *three* years And the Judge may direct such offender to be kept in irons for any period of such term not exceeding the first *three* years thereof and if the Jury shall think fit to recommend flogging by a rider to the verdict of guilty then the Judge may direct the offender to be flogged on one or more occasions not exceeding *ten* And if the offender be a female it shall be lawful for the Judge to sentence her to be kept to hard labour for life or for any term not less than *three* years in a gaol or such other Penitentiary or Reformatory as the Governor may from time to time appoint for the purposes of this Act. 10 15 20

Flogging may be inflicted for certain assaults.

5. Every person being a male of or above the age of sixteen years who shall be convicted of any of the offences hereinafter enumerated may in addition to any other punishment which may be awarded for such offence be sentenced by the Judge to be flogged. 25

The following are the offences hereinbefore referred viz. :—

- (1.) Any attempt to commit—or any assault upon a female with intent to commit the crime of rape. 30
- (2.) Any fraudulent procurement of illicit carnal connection under the eighth section of the Act sixteen Victoria number seventeen.
- (3.) Assaulting any girl under the age of ten years with intent or attempting to carnally know any such girl under the seventh section of the Act nine George Fourth chapter thirty-one. 35
- (4.) Any indecent assault under the Act eleven Victoria number thirty.
- (5.) Any assault upon a female of such a cowardly or dastardly or brutal character as in the opinion of the Judge deserves to be stigmatised by the punishment of flogging. 40

Definition of "flogging" and limitations.

6. For the purposes of this Act the punishment of "flogging" means the infliction of a number of strokes not exceeding fifty on any one occasion on a person whose age exceeds sixteen years Provided that the form of instrument used for such flogging shall be such as the Comptroller-General of Prisons with the approval of the Governor and Executive Council shall prescribe as the instrument to be used in the several gaols of the Colony for the purposes of this Act But no person shall be flogged under the authority of this Act— 50

Limitations.

- (1.) If such person be a female.
- (2.) Unless the Court in its sentence shall specify the number of strokes (which shall in no case exceed *fifty* at one time) and the number of times (which shall in no case exceed *ten*) when as well as the period of the sentence during which the flogging shall be inflicted. 55

(3.)

5 (3.) Unless in the presence of the medical officer of the gaol in which the offender is confined or of some legally qualified medical practitioner duly appointed for that purpose And such medical officer if of opinion that the carrying out of the whole or part of such flogging is likely to be attended with dangerous results to the offender may by writing under his hand delivered to the gaoler order the postponement of the whole or part of such flogging to some specified day.

10 7. It shall be lawful for the Governor whenever sentence of death has been pronounced or recorded against any person and such sentence has been or is intended to be commuted for such lesser punishment as may by law be substituted therefor to order that the person so capitally convicted be flogged not more than ten times in addition to the punishment so substituted and thereupon such flogging shall be
15 carried out in the gaol wherein such person is confined and in all other respects as if it had formed part of the original sentence.

20 8. No conviction shall after the passing of this Act be quashed or judgment be vacated on the ground only that flogging was illegally included in any sentence but such sentence shall in any such case stand good for the portion thereof which has been lawfully adjudged.

Flogging capitally convicted prisoners whose sentences have been commuted.

Sentences not to be deemed bad *in toto* if flogging is improperly adjudged.

General Law

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