

Legislative Council.

58^o VICTORIÆ, 1894.

A BILL

To prevent the Influx of Criminals into New South Wales, and to prevent Criminals who have come into New South Wales contrary to the provisions of this Act from remaining in the said Colony.

[MR. WHITE;—20 September, 1894.]

BE it 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:—

- 5 1. It shall be lawful for any Justice of the Peace or any constable having reasonable cause to suspect that any person has at any time been found guilty of any capital or transportable felony by a Court of competent jurisdiction in the United Kingdom of Great Britain and Ireland, or any British possession other than New South
10 Wales, and has at any time after the passing of this Act come into New South Wales, forthwith and without any warrant for such purpose to cause such suspected person to be apprehended and taken before any two Justices of the Peace to be dealt with as hereinafter mentioned, such person not having been lawfully resident in New
15 South Wales at the time of or previous to the passing of this Act. Provided that it shall be lawful for any Justice of the Peace to take bail for the appearance of such suspected person before such Justices in such sum and with or without such securities as such Justice may
- Suspected persons
may be arrested.
- deem

deem expedient. Provided also that nothing in this Act contained shall apply or be deemed to apply to any person whose sentence or sentences (if more than one) shall have expired for a greater period than three years previous to his arrival in New South Wales.

Punishment on suspected persons being convicted.

2. It shall be lawful for any two Justices of the Peace before whom any such suspected person shall have been brought, on proof that such person has come into New South Wales contrary to the provisions of this Act, to convict him thereof; and at their discretion either to take bail that such person shall leave New South Wales within seven days after his conviction, or to cause such person to be conveyed in custody to the country or possession from whence he came, or to sentence such person to imprisonment for any term not exceeding years.

Forfeiture of property.

3. All property found upon or in the possession of any such suspected person as aforesaid shall upon his apprehension be seized and detained; and in the event of his being convicted and sentenced as aforesaid shall at the discretion of the convicting Justices be forfeited and sold.

Additional punishment for convicted persons remaining after expiration of sentence.

4. Any person sentenced as aforesaid to imprisonment who shall remain in New South Wales for three months after the termination of such sentence shall be liable to be again similarly apprehended and sentenced; and so on from time to time as often as he shall so remain.

Penalty for harbouring.

5. Any person who shall harbour or conceal any other person whom he shall know or believe to have come into or remained in New South Wales contrary to the provisions of this Act, shall be liable to a fine not exceeding *one hundred* pounds, or to imprisonment for any period not exceeding *twelve* months.

Master liable if persons improperly brought to New South Wales.

6. Any master mariner or other person commanding, navigating, or sailing any vessel for the trip or voyage when such vessel shall bring to any port or place in New South Wales any person who to the knowledge, information, or belief of such master mariner or other person has been found guilty as aforesaid, shall, upon conviction thereof before any two Justices of the Peace, for every such offence, be liable to a fine not exceeding *one hundred* pounds, or to imprisonment for any time not exceeding *six* months, or to both, at the discretion of the said Justices.

Power to grant search warrant.

7. It shall be lawful for any Justice of the Peace, having information on oath that any person who has arrived in New South Wales contrary to the provisions of this Act is harboured in any house or other place within the jurisdiction of such Justice, to grant a general search warrant to any constable for such person; and it shall be lawful for any such constable in virtue of such general search warrant to break, enter, and search, by day or by night, any dwelling-house, tenement, or other place wherein such person may be suspected to be concealed, and to apprehend any person whom such constable shall have reasonable cause for suspecting to have arrived or remained in New South Wales contrary to the provisions hereof, and also to apprehend all persons found in or about such dwelling-house, tenement, or other place whom such constable shall have reasonable grounds for suspecting, and believing to have knowingly harboured and concealed such suspected person; and all persons found and apprehended as aforesaid shall be forthwith taken before any Justices of the Peace to be dealt with as herein provided.

Power of search.

8. It shall be lawful for any Justice of the Peace or constable to enter on board any vessel, and having reasonable cause to suspect that any person having been found guilty as aforesaid is on board such vessel, to search any and every part thereof, and apprehend any person found therein contrary to the provisions of this Act.

9. It shall be lawful for any two or more Justices assembled at Petty Sessions to hear and determine in a summary way all cases arising under this Act, and at their discretion to fix and determine all the fines, penalties, punishments and forfeitures hereby imposed ; and
 5 no complaint, conviction, order for confiscation, punishment, or forfeiture or other proceeding before or by any Justices under this Act shall be quashed, or set aside, or deemed void or insufficient for want of form only, or be removed or removable by *certiorari* or any other writ or process whatsoever into the Supreme Court.
- 10 10. Every summons, information, conviction, and warrant of commitment under the provisions of this Act shall be deemed valid in which the offence charged or alleged in the same respectively shall be set forth in the words of this Act. Summary jurisdiction.
Words of Act sufficient statement of offence.
- 15 11. Oral proof that any person was in any country known to have been or commonly deemed or reputed to have been found guilty of any felony in the United Kingdom, or any British possession other than New South Wales, or to have been serving any sentence of transportation or imprisonment for such offence, or the production of any paper purporting to be a *Government Gazette* published in any of the
 20 Australian colonies, and containing the name of any person charged with offending against any of the provisions of this Act, described in such paper as a convicted prisoner of the Crown or transported felon shall, for the purposes of this Act, be taken as good *prima facie* evidence that such person was found guilty of felony as aforesaid ;
 25 and proof that any person so found guilty was apprehended in New South Wales at any time after the commencement of this Act, not having a fixed and known place of residence, shall be deemed good *prima facie* evidence that such person arrived in New South Wales after the commencement hereof, unless the contrary be proved. Oral proof.
- 30 12. Whenever any pecuniary penalty shall have been imposed under the provisions of this Act, and the person convicted shall not forthwith pay the same into the hands of the convicting Justices, it shall be lawful for such Justices to direct that such person be imprisoned with or without hard labour, as they shall think fit, for a
 35 period not exceeding *two* calendar months if the penalty be not above *twenty* pounds, and for a period not exceeding *four* calendar months if the penalty be above *twenty* pounds and not above *fifty* pounds, and for a period not exceeding *twelve* calendar months if the penalty be above *fifty* pounds ; and such person shall be detained and kept to
 40 hard labour unless such respective penalties shall be sooner paid. Recovery of penalties.
13. All pecuniary fines and penalties, and the proceeds of all forfeitures received under this Act shall be paid into the Police Reward Fund, except such portion thereof, not exceeding one-half, as the convicting Justices may award to the informer. Application of penalties.
- 45 14. If any suit or action shall be brought against any Justice of the Peace, constable, or other person for any act or thing done in furtherance of the provisions of this Act, the defendant in every such action may give this Act and the special matter in evidence at any trial to be had thereupon ; and if the verdict shall be for the defendant, or
 50 if the plaintiff in any such action or suit shall be non-suited, or discontinue his action or suit, or if judgment shall be given against the plaintiff, the defendant shall have treble costs, and shall have the like remedy for the same as any other defendant hath in any other case to recover costs by law ; and although a verdict shall be given
 55 for the plaintiff in any such action, he shall not be entitled to recover any costs against the defendant unless the Judge before whom such action shall be tried shall certify at the trial and in open Court under his hand on the back of the record his approbation of the action and of the verdict thereon. Indemnifying Justices.

Appeal.

15. Any person who shall feel himself aggrieved by the judgment of the Justices adjudicating under this Act may appeal from their order or adjudication to the next Court of General Sessions of the Peace which shall be held nearest to the place where such order or adjudication shall have been given or made; and the execution of every such order or adjudication so appealed from, and the forfeiture and sale of any property as aforesaid may at the discretion of the Justices be suspended, in case such person shall with one or more sufficient surety or sureties, before such Justices, enter into a recognizance to Her Majesty, her heirs, and successors, in such sum as to such Justices shall seem fit (which recognizance such Justices are hereby authorised to take) conditioned to prosecute such appeal with effect, and to be forthcoming to abide the determination of such Court of General Sessions, and pay such costs as the said Court shall award; and such Court is hereby authorised finally to hear and determine the matter of such appeal. 5

Jurisdiction of
Police or Stipendiary
Magistrate.
Short title.

16. The jurisdiction herein conferred on two Justices may in all cases be exercised by a Police or Stipendiary Magistrate. 10

17. This Act may be cited as the "Influx of Criminals Prevention Act, 1894." 20

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15 South Wales at the time of or previous to the passing of this Act. Provided that it shall be lawful for any Justice of the Peace to take bail for the appearance of such suspected person before such Justices in such sum and with or without such securities as such Justice may deem

deem expedient. Provided also that nothing in this Act contained shall apply or be deemed to apply to any person whose sentence or sentences (if more than one) shall have expired for a greater period than three years previous to his arrival in New South Wales.

Punishment on suspected persons being convicted.

2. It shall be lawful for any two Justices of the Peace before whom any such suspected person shall have been brought, on proof that such person has come into New South Wales contrary to the provisions of this Act, to convict him thereof; and at their discretion either to take bail that such person shall leave New South Wales within seven days after his conviction, or to cause such person to be conveyed in custody to the country or possession from whence he came, or to sentence such person to imprisonment for any term not exceeding

Forfeiture of property.

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3. All property found upon or in the possession of any such suspected person as aforesaid shall upon his apprehension be seized and detained; and in the event of his being convicted and sentenced as aforesaid shall at the discretion of the convicting Justices be forfeited and sold.

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Master liable if persons improperly brought to New South Wales.

6. Any master mariner or other person commanding, navigating, or sailing any vessel for the trip or voyage when such vessel shall bring to any port or place in New South Wales any person who to the knowledge, information, or belief of such master mariner or other person has been found guilty as aforesaid, shall, upon conviction thereof before any two Justices of the Peace, for every such offence, be liable to a fine not exceeding *one hundred* pounds, or to imprisonment for any time not exceeding *six* months, or to both, at the discretion of the said Justices.

Power to grant search warrant.

7. It shall be lawful for any Justice of the Peace, having information on oath that any person who has arrived in New South Wales contrary to the provisions of this Act is harboured in any house or other place within the jurisdiction of such Justice, to grant a general search warrant to any constable for such person; and it shall be lawful for any such constable in virtue of such general search warrant to break, enter, and search, by day or by night, any dwelling-house, tenement, or other place wherein such person may be suspected to be concealed, and to apprehend any person whom such constable shall have reasonable cause for suspecting to have arrived or remained in New South Wales contrary to the provisions hereof, and also to apprehend all persons found in or about such dwelling-house, tenement, or other place whom such constable shall have reasonable grounds for suspecting, and believing to have knowingly harboured and concealed such suspected person; and all persons found and apprehended as aforesaid shall be forthwith taken before any Justices of the Peace to be dealt with as herein provided.

Power of search.

8. It shall be lawful for any Justice of the Peace or constable to enter on board any vessel, and having reasonable cause to suspect that any person having been found guilty as aforesaid is on board such vessel, to search any and every part thereof, and apprehend any person found therein contrary to the provisions of this Act.

9. It shall be lawful for any two or more Justices assembled at Petty Sessions to hear and determine in a summary way all cases arising under this Act, and at their discretion to fix and determine all the fines, penalties, punishments and forfeitures hereby imposed ; and no complaint, conviction, order for confiscation, punishment, or forfeiture or other proceeding before or by any Justices under this Act shall be quashed, or set aside, or deemed void or insufficient for want of form only, or be removed or removable by *certiorari* or any other writ or process whatsoever into the Supreme Court.

Summary jurisdiction.

10. Every summons, information, conviction, and warrant of commitment under the provisions of this Act shall be deemed valid in which the offence charged or alleged in the same respectively shall be set forth in the words of this Act.

Words of Act sufficient statement of offence.

11. Oral proof that any person was in any country known to have been or commonly deemed or reputed to have been found guilty of any felony in the United Kingdom, or any British possession other than New South Wales, or to have been serving any sentence of transportation or imprisonment for such offence, or the production of any paper purporting to be a *Government Gazette* published in any of the Australian colonies, and containing the name of any person charged with offending against any of the provisions of this Act, described in such paper as a convicted prisoner of the Crown or transported felon shall, for the purposes of this Act, be taken as good *prima facie* evidence that such person was found guilty of felony as aforesaid ; and proof that any person so found guilty was apprehended in New South Wales at any time after the commencement of this Act, not having a fixed and known place of residence, shall be deemed good *prima facie* evidence that such person arrived in New South Wales after the commencement hereof, unless the contrary be proved.

Oral proof.

12. Whenever any pecuniary penalty shall have been imposed under the provisions of this Act, and the person convicted shall not forthwith pay the same into the hands of the convicting Justices, it shall be lawful for such Justices to direct that such person be imprisoned with or without hard labour, as they shall think fit, for a period not exceeding *two* calendar months if the penalty be not above *twenty* pounds, and for a period not exceeding *four* calendar months if the penalty be above *twenty* pounds and not above *fifty* pounds, and for a period not exceeding *twelve* calendar months if the penalty be above *fifty* pounds ; and such person shall be detained and kept to hard labour unless such respective penalties shall be sooner paid.

Recovery of penalties.

13. All pecuniary fines and penalties, and the proceeds of all forfeitures received under this Act shall be paid into the Police Reward Fund, except such portion thereof, not exceeding one-half, as the convicting Justices may award to the informer.

Application of penalties.

14. If any suit or action shall be brought against any Justice of the Peace, constable, or other person for any act or thing done in furtherance of the provisions of this Act, the defendant in every such action may give this Act and the special matter in evidence at any trial to be had thereupon ; and if the verdict shall be for the defendant, or if the plaintiff in any such action or suit shall be non-suited, or discontinue his action or suit, or if judgment shall be given against the plaintiff, the defendant shall have treble costs, and shall have the like remedy for the same as any other defendant hath in any other case to recover costs by law ; and although a verdict shall be given for the plaintiff in any such action, he shall not be entitled to recover any costs against the defendant unless the Judge before whom such action shall be tried shall certify at the trial and in open Court under his hand on the back of the record his approbation of the action and of the verdict thereon.

Indemnifying Justices.

Appeal.

15. Any person who shall feel himself aggrieved by the judgment of the Justices adjudicating under this Act may appeal from their order or adjudication to the next Court of General Sessions of the Peace which shall be held nearest to the place where such order or adjudication shall have been given or made; and the execution of every such order or adjudication so appealed from, and the forfeiture and sale of any property as aforesaid may at the discretion of the Justices be suspended, in case such person shall with one or more sufficient surety or sureties, before such Justices, enter into a recognizance to Her Majesty, her heirs, and successors, in such sum as to such Justices shall seem fit (which recognizance such Justices are hereby authorised to take) conditioned to prosecute such appeal with effect, and to be forthcoming to abide the determination of such Court of General Sessions, and pay such costs as the said Court shall award; and such Court is hereby authorised finally to hear and determine the matter of such appeal. 5 10 15

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