

*Secondary Punishment.*

## No. IX.

AN ACT to abolish the Punishment of Transportation, and to substitute Penal Servitude within the Colony in lieu thereof. [16th September, 1854.]

SECONDARY PUNISHMENT.

WHEREAS by reason of the difficulty of transporting offenders beyond the seas it has become expedient to make temporary provision for the substitution of other punishment in lieu of transportation:

Preamble.

BE IT THEREFORE ENACTED by the General Assembly of New Zealand as follows:—

## I.—PENAL SERVITUDE SUBSTITUTED FOR TRANSPORTATION.

1. On and after the first day of January, one thousand eight hundred and fifty-five, no person shall be sentenced to transportation.

Transportation abolished.

2. Any person who, if this Act had not been passed, might have been sentenced to transportation, shall be liable, at the discretion of the Court, to be kept in penal servitude within the Colony for such term as hereinafter mentioned.

Penal servitude substituted for transportation.

3. 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,—

Equivalent terms of servitude or 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.

4. In every case when, at the discretion of the Court, one of any two or more terms of transportation hereinbefore mentioned might have been awarded, the Court shall have the like discretion to award one of the two or more terms of penal servitude hereinbefore mentioned in relation to such terms of transportation.

The Court to decide upon one of two or more terms.

5. Provided always that 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 award or pass on any offender other than transportation, but when 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.

Not to prevent other punishments being awarded.

6. Whenever the Governor of the Colony 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 cases where the

Penal servitude may in certain cases be substituted for capital punishment.

Governor

*Secondary Punishment.*

Governor of the Colony is now pleased to extend mercy upon condition of transportation beyond seas, the order for the execution of such punishment as the Governor may have made the condition of mercy being substituted for the order of transportation.

Convicts already under sentence of transportation to be kept in penal servitude.

7. And whereas there are divers persons now in custody under sentence or order of transportation, who cannot conveniently be sent beyond the seas: Be it therefore enacted that every person who may be under such sentence or order when this Act shall come into operation shall, instead of being transported for the period for which such person shall have been so sentenced or ordered as aforesaid, be kept in penal servitude within the Colony for and during the lowest term hereinbefore provided as an equivalent for the period of transportation to which such person may have been sentenced or ordered as aforesaid, such term of penal servitude being computed to commence from the date of the conviction of such person.

And to be deemed to have been sentenced to penal servitude.

8. Every person who shall be kept in penal servitude as last aforesaid shall be deemed to have been sentenced to be kept in penal servitude under this Act.

## II.—PENAL SERVITUDE WHAT AND HOW TO BE REGULATED.

Penal servitude what. Convicts not to be assigned.

9. Every person, except as hereinafter mentioned, who shall be kept in penal servitude shall, during the term of his servitude, be employed on the roads or public works, or otherwise be kept to hard labour in such part of the Colony of New Zealand as the Governor shall in that behalf direct, and either in irons or under such other restraint and subject to such correction as may be necessary for his safe custody and strict discipline, and for the purpose of being so employed as aforesaid every such convict may be removed from place to place, either by sea or land, and may be confined in such public gaol, at such penal station, or in such place of confinement, or may otherwise be kept in custody, as the Governor shall from time to time direct: Provided always that every person who shall have been convicted of any capital offence, and whose punishment shall have been commuted for penal servitude for life, shall be confined in some public gaol in close custody, and be kept to hard labour in separate confinement for the remainder of his life: Provided also that nothing herein contained shall authorize the Governor to issue any directions or regulations which shall permit the assignment to any person or persons whatsoever of any prisoner so sentenced as aforesaid.

Governor to make regulations for management &c. of convicts.

10. It shall be lawful for the Governor from time to time to make such rules and regulations as to him shall seem meet for the employment safe custody management and discipline of the convicts under sentence of penal servitude, and to enforce the observance of such rules and regulations by solitary confinement for any period or periods not exceeding fourteen days at any one time, and not to be repeated at a less interval than forty-two days, by placing in irons, and by such other prison discipline as may be prescribed in that behalf: Provided always that no rule or regulation awarding any such punishment as aforesaid shall come into operation until a copy thereof shall have been first published in the New Zealand Government *Gazette*.

## III.—ESCAPE FROM PENAL SERVITUDE HOW PUNISHED.

Escape of convicts how punished.

11. If any person who shall have been sentenced to be kept in penal servitude for any term other than for life shall be afterwards at large within any part of the Colony of New Zealand, without some lawful cause, before the expiration of the term of such servitude, every such offender so being at large and being thereof lawfully convicted

*Secondary Punishment.*

convicted shall be kept in penal servitude for any term not exceeding five years, to commence and be computed from the expiration of the term of the original sentence.

12. If any male offender who shall have been sentenced to be kept in penal servitude for the term of his life shall afterwards be found at large within any part of the Colony of New Zealand without some lawful cause, every such offender so being at large and being thereof lawfully convicted shall be kept in solitary confinement during such periods, not exceeding fourteen days at a time or three months in the space of one year, as the Court shall direct.

Escape of convicts under sentence for life.

13. Whoever shall discover and prosecute to conviction, or shall give such information as shall lead to the conviction of, any offender being at large contrary to the provisions of this Act, shall be entitled to a reward not exceeding twenty pounds, at the discretion of the Judge, for every such offender so being convicted.

Reward for the discovery &c. of escaped convicts.

14. If any person shall rescue or attempt to rescue or assist in rescuing or attempting to rescue any convict under sentence of penal servitude from the custody of any Sheriff, Gaoler, Overseer, or other person conveying removing transporting or re-conveying such convict, or if any person shall aid or assist any convict under sentence of penal servitude to escape from the custody of any Sheriff, Gaoler, Overseer, or other person, such person so offending shall, upon conviction thereof, be sentenced to penal servitude for any term not exceeding ten years.

Punishment for rescuing convicts.

15. In any indictment against any offender for being found at large contrary to the provisions of this Act, and also in any indictment against any person who shall rescue or attempt to rescue or assist in rescuing or attempting to rescue any such offender from such custody, or who shall aid or assist any such offender to escape from such custody, it shall be sufficient to charge and allege the sentence or order made for the penal servitude of such offender, without charging or alleging any indictment trial or conviction of such offender.

Form of indictment for escape &c.

16. The certificate in writing, under the hand of the Registrar or other officer having the custody of the records of the Court where such sentence or order of penal servitude shall have been made or recorded, containing the substance of such sentence or order, shall be sufficient evidence thereof, and shall be received in evidence of such sentence or order upon proof of the signature and official character of the person signing the same.

Proof of previous sentence.

## IV.—MISCELLANEOUS PROVISIONS.

17. It shall be lawful for the Governor, by instructions under his hand, to delegate to the Superintendent of any Province, on such terms and conditions and subject to such limitations and restrictions as may be prescribed in that behalf, all or any of the powers hereinbefore reserved to the Governor by the ninth clause of this Act.

Governor may delegate certain powers to Superintendent of a Province.

18. And whereas it may be expedient that persons in confinement under sentence of imprisonment with hard labour should from time to time be set to work outside the precincts of the place of their imprisonment: Be it enacted and declared that any person in custody under such sentence as aforesaid may be employed at hard labour beyond the precincts of the gaol in which he may be lodged, any law or usage to the contrary notwithstanding: Provided always that every such person, notwithstanding such employment, shall, as respects the provisions of the Prisons Ordinance, No. 7 of Session VII., be deemed to be within the limits of the gaol in which he shall be lodged.

Convicts under sentence of imprisonment may be employed outside the gaol.

19. Provided always that nothing herein contained shall in any manner affect Her Majesty's royal prerogative of mercy, or any prerogative

Prerogative of mercy not to be affected.

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*Powers of Attorney.*

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gative of mercy vested in the Governor of the Colony for the time being.

Interpretation of the word "Governor."

20. In the interpretation of this Act the word "Governor" shall extend to the Officer Administering the Government.

Short Title.

21. This Act shall be termed and may be cited and referred to as "*The Secondary Punishment Act, 1854.*"

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