

solitary confinement; or confinement with or without hard labour in any Penitentiary or House of Correction that may be appointed for such purposes, either during life, or for any term of years; and that an Instrument under the Hand and Seal of the Governor, Lieutenant Governor, or Person administering the Government of this Province, declaring such commutation of sentence, shall be sufficient authority to any of His Majesty's Judges or Justices in this Province having jurisdiction in such cases, to make such orders, and give such directions, under his hand and seal, as may be requisite for the change of custody of such Convict, and for his conduct to and delivery at any Penitentiary or House of Correction in this Province, and his detention therein, according to the terms on which his sentence may have been commuted.

IV. *And be it further enacted by the authority aforesaid,* That the time during which any offender shall have continued in any Common Gaol, under sentence of Transportation, or under sentence of Confinement in the Penitentiary, shall be reckoned in discharge, or part discharge, of the term which shall be appointed by such sentence.

Imprisonment after sentence to be reckoned in the term of transportation.

CHAP. VII.

AN ACT respecting the Transportation of Convicts.

[Passed 4th March, 1837.]

WHEREAS it is expedient to facilitate the Transportation of offenders to such place or places in His Majesty's Dominions as may be assigned for the reception of Convicts, and to make further provision in respect to the punishment of Transportation: *Be it therefore enacted* by the King's most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled 'An Act for making more effectual provision for the Government of the Province of Quebec in North America, and to make further provision for the Government of the said Province,'" and by the authority of the same, That notwithstanding anything contained in a certain Act of the Parliament of this Province, passed in the fortieth year of the reign of His late Majesty King George the Third, entitled, "An Act for the further introduction of the Criminal Law of England in this Province,

Preamble.

Transportation may be substituted for Banishment.

and for the more effectual punishment of certain offenders," it shall be lawful, after the passing of this Act, to sentence offenders to Transportation, not only in such cases where by any law now in force, or hereafter to be passed, it is expressly provided that such offenders may be transported, but also in every case in which by the provisions of the said Act passed in the fortieth year of the reign of His late Majesty King George the Third, the person convicted would be liable to be Banished from this Province: *Provided always, nevertheless*, that no offender shall, under the authority of this Act, be sentenced to be Transported, except by such Court, and in such cases, and for such term of time, as the same offender might, according to the said Act, be Banished from this Province; and that nothing in this Act contained shall extend, or be construed to take away or affect the power of sentencing offenders to be Banished according to the Act herein-before recited, when it shall appear proper to pass such sentence.

Punishment for returning from transportation.

II. *And be it further enacted by the authority aforesaid*, That all and singular the provisions now in force which are contained in the said Act of the Parliament of this Province, passed in the fortieth year of the reign of His late Majesty King George the Third, respecting persons returning to this Province before the expiration of the period for which they have been banished by sentence of a Court, or have consented to be banished according to the terms of any conditional pardon, granted to a Convict sentenced to suffer death, shall equally extend to and be in force with respect to any person returning from Transportation after this Act, whether such person shall have been sentenced to be Transported, or having been capitally convicted, shall have been pardoned on condition of being Transported.

Form of sentence to transportation.

III. *And be it further enacted by the authority aforesaid*, That the sentence in case of Transportation shall be, that the offender shall be Transported for a time to be mentioned in such sentence, or for life, where that may be lawful, and shall in the opinion of the Court passing such sentence appear proper, to such place as the Governor, Lieutenant Governor, or Person administering the Government of this Province, by and with the advice of the Executive Council thereof, shall appoint.

Place of transportation to be determined by Governor, &c. in Council.

IV. *And be it further enacted by the authority aforesaid*, That it shall and may be lawful for the Governor, Lieutenant Governor, or Person administering the Government of this Province, by and with the advice of the Executive Council thereof, to determine, upon reference to His Majesty's Government in England, to what Foreign Possession of His

Majesty, Convicts shall be Transported from this Province, under the provisions of this Act.

V. *And be it further enacted by the authority aforesaid,* That an Instrument under the Sign Manual of the Governor, Lieutenant Governor, or Person administering the Government of this Province, and directed to the Judges of the Court of King's Bench, declaring to what Colony or place it has been determined to Transport any Convict, shall be sufficient authority for the Judge who passed sentence on such Convict, or in his absence, for any other Judge of the said Court, to make his warrant, authorizing any person or persons to carry and secure such Convict in and through this Province, towards the Sea-Port or place from whence he or she is to be Transported; and if any person or persons shall rescue such Convicts, or any of them, or assist them, or any of them, in making their escape from such person or persons as shall have them in their custody, as aforesaid, such offence shall be punishable in the same manner as if such Convict had, at the time it was committed, been confined in a Gaol or Prison, in the custody of the Sheriff or Gaoler, after sentence for the crime of which he shall have been convicted. Judge's Warrant.

VI. *And be it further enacted by the authority aforesaid,* That the time during which any offender shall have continued in Gaol under sentence of Transportation, shall be taken and reckoned in part discharge or satisfaction of the term of his Transportation. Imprisonment to be reckoned as part of the term of transportation.

VII. *And be it further enacted by the authority aforesaid,* That the expenses of carrying this Act into execution, so far as respects the removal of Convicts in order to their being Transported, shall be annually laid before both Houses of the Legislature. Expenses of removing Convicts to be laid before Parliament.

VIII. *And be it further enacted by the authority aforesaid,* That if by reason of any difficulty occurring, which may prevent the Transportation or reception of any Convict in any Colony or Possession of His Majesty, the sentence which shall have been passed on any such Convict cannot be carried into effect, such Convict may be detained in Prison, for a period not longer than that for which he shall have been sentenced to be Transported, unless it shall appear expedient to pardon such Convict, in which case it may be made a condition of such pardon, that the Convict shall banish himself from this Province, for a period not exceeding the residue of the time for which he was to have been Transported. Provision in case sentence of transportation cannot be carried into effect.