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ANNO VICESIMO NONO

VICTORIÆ REGINÆ.

A.D. 1865-6.

No. 19.

An Act to amend "The Lunatics Act, 1864."

[Assented to, 16th March, 1866.]

WHEREAS it is expedient to amend "The Lunatics Act, 1864" Preamble.
—Be it therefore Enacted, by the Governor-in-Chief of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said Province, in this present Parliament assembled, as follows:

1. This Act may be cited as "The Lunatics Act 1865-6." Short title.
2. Sections 10, 11, 12, 13, 14, 20, 21, 23, 49, 52, 55, 58, 65, 66, 84, 88, 93, and 110 of "The Lunatics Act, 1864," are hereby repealed save so far as is necessary to give validity to all acts hitherto done in pursuance thereof respectively, and save so far as may be necessary to enable any penalty to be imposed, enforced, or recovered, and save so far as may be necessary to enable any punishment to be inflicted for any offence against the said sections, or any of them. Repeal.
3. "The Lunatics Act, 1864" (save in so far as the same is hereby repealed) shall be incorporated and construed together with this Act as forming one Act. Incorporation.
4. The Colonial Surgeon for the time being, shall, from time to time, visit and inspect every asylum, and may make such suggestions to the Resident Medical Officer, as to the mode of conducting such asylum, as to him may seem proper and expedient; all which suggestions shall be entered in "The Visitor's Book," herein- Colonial Surgeon to inspect, &c.
after

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after mentioned; and the Colonial Surgeon may, if he think fit, report specially to the Chief Secretary on the subject of any suggestions which he may make from time to time.

Board of Inquiry.

5. The Colonial Surgeon, the Resident Medical Officer, and any two or more of the Visitors, shall be and are hereby constituted a Board, to be called "The Board of Inquiry," and shall have and exercise all the powers and authorities conferred upon the Board of Inquiry by the said Lunatics Act, 1864, and the Resident Medical Officer shall be the chairman of such Board; and every question shall be decided by a majority of votes, the chairman having a vote; and in the event of an equality of votes, the chairman shall have an additional or casting vote.

Provision for sending pauper lunatics to asylum.

6. If an information be laid before any Justice, that any pauper is or is deemed to be a lunatic, he shall by an order under his hand require such pauper to be "brought before a Justice, and the said Justice before whom such pauper shall be brought shall call to his assistance a Medical Practitioner and examine such person; and if such Medical Practitioner shall sign a certificate with respect to such pauper, according to the form in Schedule C to the said Lunatics Act, 1864, and such Justice be satisfied upon view or personal examination of such pauper, or other proof that such pauper is a lunatic, and a proper person to be taken charge of and detained under care and treatment, he shall, by an order under his hand, according to the form in the Schedule A, No. 1, to the said Lunatic Act, 1864, direct such pauper to be received into some asylum duly proclaimed under the said Act, and such lunatic shall be received and detained therein accordingly: Provided always, that any Justice may upon his own knowledge, without any information being laid as aforesaid, examine any pauper deemed to be a lunatic, at any convenient place, and proceed in all respects as if such pauper were brought before him in pursuance of an order for that purpose.

Provision as to lunatics wandering at large, not being properly taken care of, or being cruelly treated.

7. Every constable or other peace officer who shall have knowledge that any person wandering at large is deemed to be a lunatic, shall immediately apprehend and take, or cause such person to be apprehended and taken, before a Justice:

And any Justice may, upon its being made appear to him, by the information upon oath of any person whomsoever, that any person wandering at large is deemed to be a lunatic, by an order under the hand of such Justice, to require any constable, or other peace officer, to apprehend him and bring him before a Justice:

And every constable or other peace officer who shall have knowledge that any person, not a pauper and not wandering at large as aforesaid, is deemed to be a lunatic, and is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the care or charge of him shall, within three days after obtain-
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ing such knowledge, give information thereof upon oath to a Justice :

And in case it be made to appear to any Justice upon such information, or upon the information upon oath of any person whomsoever, that any person, not a pauper, and not wandering at large, is deemed to be a lunatic, and is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the care or charge of him :

Such Justice shall either himself visit and examine such person, and make inquiry into the matters so appearing upon such information, or by an order under his hand direct and authorize some Medical Practitioner to visit and examine such person and make such inquiry, and to report in writing to such Justice his opinion thereupon ; and in case, upon such personal visit, examination, and inquiry by such Justice, or upon the report of such Medical Practitioner, it appear to such Justice that such person is a lunatic, and is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the care or charge of him :

Such Justice may, by an order under his hand, require any constable or other peace officer to bring such person before any two Justices :

And the Justice or Justices, as the case may be, before whom any such person as aforesaid in the respective cases aforesaid is brought, under this section, shall call to his or their assistance a Medical Practitioner, and shall examine such person, and make such inquiry relative to such person as he or they shall deem necessary :

And if upon examination of such person, or other proof, such Justice be satisfied that such person so brought before him is a lunatic and was wandering at large, and is a proper person to be taken charge of and detained under care and treatment :

Or such two Justices be satisfied that such person so brought before them is a lunatic, and is not under proper care and control, or is cruelly treated or neglected by any person having the care or charge of him, and that he is a proper person to be taken charge of and detained under care and treatment, and if such Medical Practitioner sign a certificate with respect to every such person so brought, either before one Justice or two Justices, according to the form in the Schedule C to the said Lunatics Act, 1864 :

The said Justice or Justices may, by an order under his or their hand or hands, according to the form in Schedule A, No. 1, to the said Lunatics Act, 1864, direct such person to be received into any
asylum

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asylum duly proclaimed, and such person shall forthwith be conveyed to and detained in such asylum accordingly: Provided always, that any Justice may upon such information on oath as aforesaid, or upon his own knowledge and alone in the case of any such person as aforesaid wandering at large and deemed to be a lunatic, or with some other Justice in any other of the cases aforesaid, examine the person deemed to be a lunatic at any convenient place, and proceed in all respects as if such person were brought before him or them as hereinbefore mentioned: Provided also, that the said Justice or Justices may suspend the execution of any such order for removing any such person as aforesaid to any asylum for such period not exceeding fourteen days as he or they may deem meet, and in the meantime may give such directions or make such arrangements for the proper care and control of such person as he or they shall consider necessary: Provided also, that nothing herein contained shall be construed to extend to restrain or prevent any relation or friend from retaining or taking such lunatic under his own care, if such relation or friend shall satisfy the Justice or Justices before whom such lunatic shall be brought, or the visitors of the asylum in which such lunatic is or is intended to be placed, that such lunatic will be properly taken care of.

No pauper to be received into asylum without a certain order and certificate.

8. No pauper shall be received into any asylum (save under the provisions herein contained), without an order according to the form required in the said Schedule A, No. 1, under the hand of one Justice, together with such statement of particulars as is contained in the said Schedule, nor without a medical certificate according to the form in the said Schedule C, signed by one Medical Practitioner, who shall have personally examined him not more than seven clear days previously to his reception.

If amount agreed to be paid for private patient not paid, such patient may be treated as pauper.

9. If any person shall be or shall have been received into any asylum otherwise than as a pauper, and the relative, guardian, friend, or committee who may have agreed with the Resident Medical Officer for the maintenance of such person, shall refuse or neglect, or shall have refused or neglected, for the space of three calendar months, to pay the amount which he may have agreed to pay as aforesaid, the Resident Medical Officer may, without any order of a Justice or otherwise, consider and treat such person in all respects as if such person had been originally admitted into such asylum as a pauper patient, and may transfer such person to any portion of such asylum set apart for pauper patients: Provided that an entry of such transfer shall, within twenty-four hours thereof, be made in the book of admissions: Provided also that nothing herein contained shall be construed to prevent the Resident Medical Officer from continuing to keep such person as a private patient, if he shall think fit, nor from enforcing the agreement entered into for such person's maintenance against the relative, guardian, friend, or committee with whom such agreement may have been made.

Proviso.

Reports of deaths of patients transmit-

10. In case of the death of a patient in any asylum, a statement of

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of the cause of the death of such patient shall be drawn up and signed by the Resident Medical Officer of such Asylum, and a copy thereof, duly certified by him, shall be by him transmitted to the Chief Secretary, within two clear days of the death of such patient.

ted to the Chief Secretary.

11. Every such asylum shall be visited once every week at least by some one or more of the visitors, who shall inquire what occupation or amusements are provided for the patients, and the result thereof; and whether there has been adopted any system of non-coercion, and if so, the result thereof; and also as to the classification of patients, and the condition of the pauper patients, if any; and shall also make such inquiries as to such visitors shall seem expedient, and once at least in every two months two or more of the visitors shall inspect every part of the asylum and see and inspect as far as circumstances will permit every patient therein.

Visitors to visit at least once a week, and to institute certain inquiries.]

12. The Resident Medical Officer shall cause to be prepared and hung up in some conspicuous part of every asylum, a plan thereof; and there shall be kept in every asylum, a copy of "The Lunatics Act, 1864," and of this Act, bound up in a book to be called "The Visitors' Book;" and the visitors shall, at the time of their respective visitations, enter therein the result of the inspections and inquiries hereinbefore directed or authorized to be made by them, with such observations, if any, as they shall think proper; and also such observations as they may think fit respecting the state of mind or body of any patient in such Asylum: and the said visitors shall cause to be transmitted to the Chief Secretary, at least once in every three months, a copy of such minutes, and of the "Book of Admissions."

Books to be kept called "Visitors' Book," in which to be entered result of inquiries.

13. In case any person confined in any asylum, not being a dangerous or criminal lunatic shall effect his escape therefrom, he may be retaken at any time within fourteen days, by the Resident Medical Officer, or any officer or servant belonging to such asylum, or any person assisting any such Resident Medical Officer, officer, or servant in this behalf, or any other person authorized in this behalf, by the Chief Secretary or Resident Medical Officer, and shall be conveyed to and received and retained in such asylum; and if any dangerous or criminal lunatic shall effect his escape he may be so retaken at any time.

Escaped lunatics may be recaptured.

14. Where it appears to the Court or a Judge to be for the lunatic's benefit, such Court or Judge may order that the whole or any part of any moneys expended or to be expended under any order for the permanent improvement, security, or advantage of the land of the lunatic, or of any particular part thereof, shall, with interest, be a charge upon and be raisable out of the lunatic's estate and interest in the land, or such particular part thereof as aforesaid, but so that no right of sale or foreclosure during the lifetime of the lunatic be given or acquired under or by virtue of the charge, and the interest shall be kept down during the lunatic's lifetime out of the income of his general estate, as far as the same shall be sufficient

Expenses of improvements may be charged on estate.

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cient to bear it; and the committee may and shall, in the name and on behalf of the lunatic, execute and do all such conveyances and things for effectuating this present provision as the Court or a Judge shall order, and such charge may be made either to some person advancing the money, or, if the money is paid out of the lunatic's general property, to some person as a trustee for him, as part of his personal estate.

Where lunacy temporary, Court or Judge may apply cash arising from income for temporary maintenance, without grant, &c.

15. Where it appears to the Court or Judge, upon a report of the Master of the said Court, that there is reason to believe that the unsoundness of mind of any lunatic is in its nature temporary, and will probably be soon removed, and that it is expedient that temporary provision should be made for the maintenance of the lunatic, or of the lunatic and the members of his immediate family who are dependent upon him for maintenance, and that any sum of money arising from or being in the nature of income, or of ready money belonging to the lunatic, and standing to his account with a banker or agent, or being in the hands of any person for his use, is readily available, and may be safely and properly applied in that behalf, the Court or a Judge may allow thereout such amount as may be thought proper for the temporary maintenance of the lunatic, or of the lunatic and the members of his immediate family who are dependent upon him for maintenance, and may, instead of proceeding to order a grant of the custody of the estate, order or give liberty for the payment of any such sums of money as aforesaid, or any part thereof, to such person as such Court or Judge may, under the circumstances of the case, think proper to intrust with the application thereof, and may direct the same to be paid to such person accordingly, and when received to be applied, and the same shall accordingly be applied in or towards such temporary maintenance as aforesaid; and the receipts in writing of the person named in the order to whom payment is to be made for any moneys payable to him by virtue thereof shall effectually discharge the banker, agent, or other person paying the same from the moneys therein respectively expressed to be received, and they respectively are hereby directed to act upon and obey every such order; and the person so receiving any moneys by virtue of this present provision shall pass an account before the Master of the said Court when required.

Committee may make sale, partition, or exchange.

16. When a lunatic is seised of or entitled to an undivided share of land, and it appears to the Court or a Judge to be for his benefit, and to be expedient that a sale of the land, or a part thereof, or a partition of the land should be made, and where a lunatic is seised of, or entitled to land, and it appears to the Court or a Judge to be for his benefit, and to be expedient that an exchange thereof, or of part thereof for other land should be made, the committee of the estate, in the name and on behalf of the lunatic, under an order from the Court or a Judge, may concur with such other person in making such sale or partition, or may make such exchange and receive such moneys payable on the sale, and give or receive such moneys

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moneys for equality of partition or exchange, or otherwise in relation thereto, as the order may direct; and all moneys received by the committee of the estate upon such sale, partition, or exchange, as aforesaid, shall be applied and disposed of in manner directed in section 72 of the said "Lunatics Act, 1864," respecting the fines, premiums, and sums of money therein mentioned, and the land taken in charge shall be held and assured (as nearly as may be) to the same uses and upon trusts, and subject to the same powers and provisions (if any) to, upon, and subject to which the land given in exchange is held, and the committee of the estate may and shall, in the name and on behalf of the lunatic, execute and do all such conveyances and things for effectuating this present provision as the Court or a Judge shall order.

17. The committee of the estate of a lunatic may, with the approbation of the Court or a Judge, signified by order on the application of the committee, enter into any agreement for or on behalf of the lunatic which the guardian of an infant might have entered into for or on behalf of the infant, by virtue of the Act passed in the Session of Parliament holden in the first year of the reign of King George the First, chapter ten, if so much of that Act as related to agreements of guardians for or on behalf of infants or idiots under their guardianship had not been repealed by the Act passed in the Session of Parliament holden in the first year of the reign of King William the Fourth, chapter sixty-five, section twenty-five.

Committee may make agreement under 1 G. I., c. 10.

18. Where a lunatic is seised, or possessed of, or entitled to land in fee or in tail, or to leasehold land for an absolute interest, and it appears to the Court or a Judge to be for his benefit that a lease or underlease should be made thereof for terms of years, for encouraging the erections of buildings thereon, or for repairing buildings actually being thereon, or otherwise improving the same, or for farming or other purposes, the committee of the estate may, in the name and on behalf of the lunatic, under order of the Court or a Judge, make such lease of the land or any part thereof, according to the lunatic's estate and interest therein, and the nature and tenure thereof, for such term or terms of years, and subject to such rents and covenants as the Court or a Judge shall order.

Committee may make building and other leases subject to such covenants as Court or a Judge shall order.

19. If, on information before any Special Magistrate or two Justices, it be made to appear that any lunatic confined in any asylum under an order made by one or more Justices has an estate, real or personal, applicable to his maintenance, and more than sufficient to maintain his family, if any, such Special Magistrate or Justices may make an order under his or their hand or hands, directing the seizure of so much money, or the seizure and sale of so much of the goods and chattels, or directing any person, to be therein named, to receive and take so much of the rents and profits of the lands and tenements of such lunatic, or other income of such lunatic, as may be necessary to pay for the lodging, maintenance, clothing, medicine, and

Justices may make an order for maintenance of lunatic out of his estate in certain cases.

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and care of such lunatic, the receipt of the person named in such order to receive any moneys to be realized under such order shall be a sufficient discharge to any person paying over any moneys of the lunatic in his possession: Provided that no such order shall be made in any case where a committee, receiver, or guardian has been appointed for the estate of such lunatic by the Supreme Court.

The following offences to be misdemeanors:

20. Any Resident Medical Officer or other officer or servant of any asylum:

Wilfully neglecting to make entries in Book of Admission.

Who shall, knowingly or wilfully neglect to make due entry in "The Book of Admission," "The Book of Admissions of Dangerous and Criminal Lunatics," "The Medical Journal," or "The Case Book," of all or any of the particulars by this Act, or the said Lunatics Act, 1864, required to be made by them, or any of them respectively:

Fraudulently concealing any patient from visitors.

Or shall fraudulently conceal or attempt to conceal any part of any such asylum, or any person detained therein as a lunatic, from the visitors, or any other person hereby or by the said Lunatic Act, 1864, authorized to visit and inspect such asylum, and the patients confined therein, or shall refuse to admit any visitor or other person duly authorized to visit and inspect such asylum.

Not giving true answers to questions of visitors.

Or shall not give full and true answers, to the best of his or their knowledge, to all questions which the visitors or other persons authorized under this Act or the said Lunatic Act, 1864, shall ask in reference to all or any of the matters which by this Act, or the said Lunatics Act, 1864, they are authorized to inquire into:

Receiving patient without order and certificate required by Acts.

Or shall receive any patient, whether pauper, dangerous, or otherwise, into any asylum without the order, or order and certificates, or certificate, required by the said Lunatics Act, 1864, or of this Act.

Having received patient under special circumstances, permitting him to remain beyond three days without obtaining certificate.

Or who having received any patient under special circumstances, as mentioned in clause 15, of the said Lunatics Act, 1864, upon the certificate of one Medical Practitioner alone, two being required, shall permit such patient to remain in such asylum beyond the period of three clear days, without such further certificates as are mentioned in the said clause:

Wilfully permitting escape of any lunatic.

Or shall, through wilful neglect or connivance, permit any person confined in any such asylum to escape therefrom, or shall secrete such person, or abet or connive at any such escape:

Ill-treating any lunatic.

Or shall strike, wound, ill treat, or wilfully neglect any patient confined in any such asylum:

Shall be guilty of a misdemeanor, and shall be subject to indictment for every such offence, or to forfeit, on a summary conviction thereof before two Justices, any sum not exceeding Twenty Pounds nor less than Two Pounds.

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21. If any person shall, by the production of any false certificate or otherwise, knowingly and wilfully procure any person, not being insane, to be confined in any asylum, such person shall be guilty of a misdemeanor.

Procuring confinement of sane person on false certificate misdemeanor.

22. If any action or suit be brought against any person for anything done in pursuance of this Act, or of the said Lunatics Act, 1864, the same shall be commenced within twelve calendar months next after the release of the party bringing the action; and notice in writing of such action, and the cause thereof, shall be given to the defendant one calendar month at least before the commencement of the action; and the defendant in any such action or suit may, at his election, plead specially, or the general issue, not guilty, and give this Act and the said Lunatics Act, 1864, and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance and by the authority of this Act or the said Lunatics Act, 1864, or both; and the plaintiff shall not recover in such action, if tender of sufficient amends shall be made before action brought, or if, after action brought, the defendant shall pay into Court sufficient amends; but in such last mentioned case the plaintiff shall recover his costs of suit up to the time of payment into Court; and if a verdict shall be found for the defendant, or if the plaintiff shall be nonsuited or discontinue his action or suit after the defendant shall have appeared, or if, upon demurrer, judgment shall be given against the plaintiff, then the defendant shall recover double costs, and have such remedy for recovering the same as any defendant hath or may have in ordinary cases.

Actions to be commenced within twelve calendar months.

In the name and on behalf of the Queen I hereby assent to this Act.

D. DALY, Governor.