

No. X.

MERCHANT SEAMEN.

An Act for the better regulation and government of Seamen in the Merchant Service in the Colony of New South Wales and for the protection of Masters and Ships from vexatious suits in the Colony. [2nd March, 1832.]

Preamble.

Masters of vessels not to carry mariners to sea without entering into agreement stating wages and intended voyage.

Master to forfeit £5 for every seaman taken to sea without such agreement.

Articles to be entered into agreeable to annexed Schedule.

Seamen entering themselves for any such voyage to sign agreement within three days.

Seamen after such agreement deserting or refusing to proceed to forfeit their wages.

WHEREAS it is expedient to adopt such provisions of the Laws of Great Britain for the regulation and good government of seamen employed in the merchant service as are applicable to the merchant service in New South Wales And whereas great delays and inconvenience have been occasioned to ships arriving at Port Jackson and other ports of the said Colony by the desertion of seamen and by such ships or their masters being arrested and detained for unreasonable demands made by persons who are unable to pay the costs which may ultimately be awarded against them For remedy whereof Be it enacted by His Excellency the Governor of New South Wales and its Dependencies with the advice of the Legislative Council That from and after the passing and publication of this Act it shall not be lawful for any master or commander of any ship or vessel to carry any seaman or mariner excepting his apprentice or apprentices to sea from any port or place within this Colony or the Dependencies thereof where he was entered or shipped to proceed on any voyage to parts beyond the limits of the said Colony and its Dependencies without first coming to an agreement or contract with such seaman or mariner which agreement or contract shall be in writing and shall declare what voyage such seaman or mariner is shipped to perform and also what wages he is to receive for the same And in case any master or commander of any ship or vessel shall carry out any seaman or mariner excepting his apprentice or apprentices upon any voyage as aforesaid without first entering into such agreement or contract as aforesaid and he and they signing the same such master or commander shall forfeit and pay the sum of five pounds for every such seaman or mariner whom he shall carry to sea without entering into such agreement in writing as aforesaid to be recovered in manner hereinafter directed.

2. And be it further enacted That the agreement to be entered into by and between the masters seamen and mariners of such merchant ship or ships as aforesaid shall be according to the purport and effect as mentioned in the Schedule hereto annexed marked with the letter A.

3. And be it further enacted That if any seaman or mariner enter or ship himself on board any ship or vessel proceeding from any port or place within this Colony or the Dependencies thereof on any intended voyage for parts beyond the same he and they so entering as aforesaid shall and they are hereby obliged to sign such agreement or contract within three days after he or they shall have entered themselves on board any ship or vessel in order to proceed on any voyage as aforesaid which agreement or contract after the signing thereof shall be conclusive and binding to all parties for and during the time or times so agreed or contracted for to all intents and purposes any custom or usage to the contrary in anywise notwithstanding And in case such seaman or mariner shall desert or refuse to proceed on the voyage on board any ship or vessel bound to parts beyond the limits of the said Colony as aforesaid or shall desert from any ship or vessel to which he or they shall belong in parts beyond the said limits after he or they shall have signed such contract or agreement he or they shall

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shall forfeit to the owners of such ship or vessel the wages which shall be due to him or them at the time of his or their deserting from such ship or vessel or obstinately refusing to proceed on such voyage.

4. And be it further enacted That in case any such seaman or mariner after he shall have entered into and signed such contract or agreement to serve in any ship or vessel as aforesaid shall desert or absent himself from any such ship or vessel upon application to be made to any of His Majesty's Justices of the Peace of the said Colony by the master or commander owner or owners or other persons having charge of such ship or vessel to which such seaman or mariner did belong it shall and may be lawful for such Justice or Justices and he and they are hereby required to issue forth his or their warrant or warrants to apprehend such seaman or mariner and in case he shall refuse to proceed on the voyage for which he entered into contract or agreement to perform as aforesaid and shall not give a sufficient reason for such refusal to the satisfaction of such Justice or Justices then to commit such seaman or mariner to the common gaol or house of correction there to be kept to hard labor for any period not exceeding thirty nor less than fourteen days.

Seamen having entered into such agreement deserting or absenting themselves to be apprehended by warrant

and failing to give sufficient reason for refusing to proceed on the voyage to be committed to the house of correction.

5. And be it further enacted by the authority aforesaid That in case any seaman or mariner shall absent himself from the ship or vessel to which he shall belong without leave from the master or commander or other chief officer having charge of such ship or vessel every such seaman or mariner shall for every such day's absence forfeit two days' pay to the owners of such ship or vessel.

Seamen absenting themselves without leave to forfeit two days' wages for every day so absent.

6. And be it further enacted That in case any such seaman or mariner whilst in any port or harbour within this Colony shall wilfully refuse or neglect to work on board his said ship or vessel for which he so contracted himself as aforesaid according to his said contract or engagement it shall and may be lawful for one or more of His Majesty's Justices of the Peace upon complaint thereof being made to such Justice or Justices by the owner or master or any other person or persons having charge of such ship to issue his or their warrant or warrants to bring such seaman or mariner before him or them to examine into such complaint upon the oath or oaths of one or more credible witness or witnesses and upon conviction thereof to commit such seaman or mariner to the common gaol or house of correction there to be kept to hard labor for any number of days not exceeding seven as to such Justice or Justices shall seem meet.

Seamen refusing or neglecting to work according to contract to be brought before Magistrates

and on conviction committed to gaol or house of correction.

7. And whereas seamen and mariners after their ship's arrival at their delivering port oftentimes leave their ships and vessels before they are unladen or before the said seamen or mariners are discharged by the master or commander of such ships and vessels in order to prevent such practices in future be it further enacted by the authority aforesaid That in case any seaman or mariner shall leave the ship or vessel to which he belongs in any port or place within this Colony or the Dependencies thereof before the expiration of one calendar month after the arrival of such ship or vessel in any port or place aforesaid unless he has been discharged by the master or commander or other person having charge of such ship or vessel such seaman or mariner so leaving such ship or vessel shall forfeit one month's pay to be recovered applied and disposed of as is hereinafter directed.

Seamen leaving their vessels in port before they are unladen to forfeit one month's pay.

8. And be it further enacted upon the authority aforesaid That upon the arrival of any Colonial ship or vessel or any ship or vessel fitted out from this Colony and having completed her voyage the masters or commanders of such ships or vessels shall be and they are hereby obliged to pay the seamen and mariners belonging to such ships or vessels their wages if demanded in one calendar month after the said ships or vessels being entered at the Custom-house except in cases

On completion of voyage seamen to be paid their wages in one month or on their discharge.

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cases where a covenant shall be entered into to the contrary or at the time the said seamen or mariners shall be discharged whichever shall first happen deducting out of such wages the penalties and forfeitures by this Act imposed under the penalty of paying to such seamen and mariners as shall be unpaid contrary to the true intent and meaning of this Act twenty shillings over and above the wages that shall be due to each person to be recovered by the same means and methods as the wages may be recovered and such payment of wages aforesaid shall be good and valid in law notwithstanding any action bill of sale attachment or incumbrance whatsoever.

Not incumbent on seamen but on master or owner to produce agreement in action for recovery of wages.

9. And be it further enacted That no seaman or mariner by entering into or signing such contract or agreement as aforesaid shall be deprived of or hindered from using any means or methods for the recovery of wages against any ship or the master or owners thereof which he may now lawfully make use of and that in all cases where it shall or may be necessary that the contract or agreement in writing as aforesaid should be produced in Court no obligation shall be on any seaman or mariner to produce the same but on the master owner or owners of the ship or vessel for which the wages shall be demanded and no seaman or mariner shall fail in any suit action or process for recovery of wages for want of such agreement or contract being produced any law usage or custom to the contrary notwithstanding.

Penalty on employment of a deserter from other service.

10. And be it further enacted That any master or commander of a merchant ship or other vessel who shall knowingly hire or engage to serve on board his ship or vessel any seaman or mariner belonging to any other ship or vessel then in the same port or harbour such master or commander shall forfeit and pay the sum of twenty pounds to be recovered levied and applied as hereinafter directed.

Seamen deserting from any ship arriving from abroad to be imprisoned till ship proceeds to sea.

11. And be it further enacted That if any seaman or mariner who shall have arrived in any ship or vessel at any port within this Colony from abroad and who shall not have completed the voyage or term for which he contracted to serve shall desert or absent himself from any such ship or vessel upon application made to any two or more of His Majesty's Justices of the Peace for the said Colony by the master or commander or other person having charge of such ship or vessel to which such seaman or mariner did belong it shall be lawful for any such Justices of the Peace and they are hereby required to issue their warrant to apprehend such seaman or mariner and in case such seaman or mariner shall refuse to return to his duty or to proceed on the voyage which he contracted to perform or shall not give a sufficient reason for such refusal then to commit such seaman or mariner to gaol or other place of safe custody there to remain until he shall consent to return to his duty on board of such ship or vessel or until such ship or vessel shall be ready to proceed to sea and it shall be lawful for such Justices or for any one Justice for the said Colony and they and he are hereby required as soon as such ship or vessel shall be ready to proceed to sea to cause such seaman or mariner to be conveyed on board of such ship or vessel and there delivered to the master or commander or other person having charge thereof.

Proviso Master to pay for the maintenance of such seamen.

12. Provided always and be it further enacted That every master or commander or other person making such application as aforesaid shall before any such warrant shall be issued by any two or more Justices as aforesaid undertake jointly and severally with one or more housekeepers residing within the said Colony in the presence of such Justices to pay for the maintenance of such seaman or mariner to the gaoler or other person in whose custody he shall be placed at the rate of one shilling per day for every day such seaman or mariner shall be so left in custody and all reasonable expenses in conveying

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conveying such seaman or mariner on board of such ship or vessel and also to give due notice to such Justices or to any one Justice of the Peace for the said Colony of his intention to proceed to sea at least twenty-four hours before the sailing of such ship or vessel and in case such master commander or other person shall neglect to give such notice and to pay such daily allowance and reasonable expenses as aforesaid then in either such case the said master or commander of such ship or vessel and the housekeepers so undertaking as aforesaid shall severally be liable for the amount thereof and the same shall be recovered and levied in the manner hereinafter directed.

13. And be it further enacted That it shall not be lawful to arrest or imprison any seaman or mariner who shall have arrived in any ship or vessel from abroad at any port in this Colony and who shall not have completed the voyage or term for which he engaged to serve for any debt contracted after the arrival of such ship and if any such seaman or mariner shall be arrested or imprisoned for any such debt it shall be lawful for any Judge at Chambers or Commissioner of the Court of Requests (in case such seaman or mariner shall have been taken in execution by virtue of any process of such Court) upon complaint made by or on behalf of any such seaman or mariner to such Judge or Commissioner respectively and due proof that such seaman or mariner was arrested or imprisoned contrary to this Act to discharge such seaman or mariner and cause him to be conveyed on board of the ship or vessel to which he belonged.

Seamen belonging to ships arriving from abroad not to be arrested for debt.

14. And be it further enacted That no ship or vessel arriving or touching at Port Jackson in the said Colony from abroad in the course of prosecuting a voyage to some other port or place beyond the limits of the said Colony and no master or commander of any such ship or vessel shall be liable to be arrested for wages claimed to be due by any mariner or seaman for services performed on board of such ship or vessel during such voyage nor shall the master or commander of any such ship or vessel be arrested for any assault violence or other misconduct alleged to be committed on board of such ship or vessel before the arrival thereof within the limits of the said Colony unless a special order shall have been first made for such purpose by a Judge of the Supreme Court or Court of Vice-Admiralty (as the case may require) and that before any such order shall be made as aforesaid such Judge shall and he is hereby required to cause satisfactory proof to be laid before him that there is probable or reasonable cause for arresting such ship or vessel or the master or commander thereof and that no unreasonable delay hath taken place in suing out or applying for process against such ship or vessel or master or commander thereof and it shall be further lawful for such Judge in case he shall deem fit before any such process shall issue to require the party suing out or applying for such process to give security to the satisfaction of such Judge for the payment of such costs as shall be taxed and allowed by the Court in case the plaintiff or complainant shall fail to prosecute his suit or action or judgment shall be given against him and to impose such further sums for expediting such suit or action as to such Judge may seem reasonable and proper And in case any such ship or vessel or the master or commander thereof shall be arrested contrary to the intention and meaning of this Act or Ordinance it shall be lawful for any such Judge upon application and due proof thereof made before him to order such ship or vessel or the master or commander thereof to be discharged and further to order such reasonable costs as shall have been incurred by the master or commander of such ship or vessel on account of such arrest to be paid to such master or commander and in default thereof

No ship arriving from abroad or master thereof to be arrested unless by special order of Judge.

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to attach the party or parties at whose suit or action such ship or vessel or the master or commander thereof shall have been arrested.

Summary remedy for the redress of complaints against masters of ships arriving from abroad.

15. And to the end that a cheap and summary remedy may be provided for the redress of all complaints made against any masters or commanders of any ships or vessels arriving from abroad in any port within this Colony be it further enacted That whenever any seaman mariner or passenger on board of any merchant ship or vessel arriving from abroad in any port or place in this Colony or the Dependencies thereof shall have any ground of complaint against the master or commander of such ship or vessel either for or on account of wages breach of contract or on account of any misconduct or assault or violence committed to such seaman mariner or passenger as aforesaid every such seaman mariner or passenger shall make complaint to two or more Justices of the Peace as shall be nearest to such port or harbour and such Justices of the Peace shall issue a summons to such master or commander and they are hereby authorized and empowered to hear and determine according to law and the provisions of this Ordinance all cases of complaint for wages or for breach of contract or for any misconduct assault or violence as aforesaid where the cause of action or the amount of damages sought to be recovered shall not exceed the sum of ten pounds in any one case and to issue his or their warrant or warrants against such master or commander to levy of his goods and chattels the amount which shall be decreed with the costs of such proceedings to be awarded by such Justices against the party which said costs shall in no one case exceed the sum of one pound and in case sufficient goods and chattels cannot be found whereon to levy the same then to commit the defendant to the common gaol there to remain until the same shall be paid And in case the master or commander against whom such complaint or complaints shall be so made as aforesaid shall not attend before such Justices on the day or time appointed in such summons as aforesaid for the hearing of such complaint or complaints as aforesaid that it shall and may be lawful for such Justices in the absence of such master or commander upon oath being made of the service of such summons upon such master or commander at least twenty-four hours before the time appointed for the hearing of such complaint or complaints to hear and determine such complaint or complaints and to issue their warrant against the said master or commander to levy the amount so decreed to be paid together with such costs as aforesaid not exceeding one pound as aforesaid and to commit the party to the common gaol in case no sufficient distress can be found and if any party shall proceed in the Supreme Court or Court of Vice-Admiralty for any such cause as aforesaid and the Jury or the Judge shall by their verdict or judgment award any sum not exceeding ten pounds then the party-plaintiff so proceeding shall not be entitled to recover more costs than one pound.

Complaints for wages or for breach of contract or for assault if demand do not exceed £10 to be determined by Justices.

Masters not attending when summoned to be proceeded against as if present.

If party proceed in Supreme Court costs not to exceed £1.

Proceedings not to be quashed for informality nor removed by *certiorari*.

Recovery and appropriation of fines.

16. And be it further enacted That no conviction under this Act nor any adjudication made on appeal therefrom shall be quashed for want of form or be removed by writ of *certiorari* or otherwise into the Supreme Court and no warrant of commitment shall be held void by reason of any defect therein provided it be therein alleged that the party has been convicted and that there be good and valid conviction to sustain the same.

17. And be it further enacted That all fines and forfeitures imposed by this Law or Ordinance shall and may be recovered in a summary way before any two or more of His Majesty's Justices of the Peace within the said Colony and levied by distress and sale of the offender or offenders' goods and in case no distress can be found then it shall be lawful for such Justices of the Peace to commit such offender or offenders to gaol there to remain until the same shall be paid And all
fines

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finer and forfeitures shall be paid as soon as recovered into the hands of the Colonial Treasurer and be appropriated to the use of His Majesty towards defraying the expense of the Police Establishments of the Colony.

THE SCHEDULE TO WHICH THIS ACT REFERS.

A.

It is hereby agreed between the master seamen and mariners of the ship
 now bound for the port of
 and the master or commander of the said ship That in consideration of the monthly or other wages against each respective seaman or mariner's name hereunto set they severally shall and will perform the above-mentioned voyage and the said master doth hereby agree with and hire the said seamen and mariners for the said voyage at such monthly wages to be paid pursuant to the Laws or Ordinances in force in New South Wales and they the said seamen and mariners do hereby promise and oblige themselves to do their duty and obey the lawful commands of their officers on board the said ship or boats thereunto belonging as become good and faithful seamen and mariners and at all places where the said ship shall put in or anchor during the said ship's voyage to do their best endeavours for the preservation of the said ship and cargo and not to neglect or refuse doing their duty by day or night nor shall go out of the said ship on board any other vessel or be on shore under any pretence whatsoever till the voyage is ended and the ship discharged of her cargo without leave first obtained of the master captain or commanding officer on board and in default thereof they freely agree to be liable to the penalties mentioned in a certain Act or Ordinance of His Excellency the Governor of New South Wales intituled "*An Act for the better regulation and government of Seamen in the Merchant Service in the Colony of New South Wales and for the protection of Masters and Ships from vexatious suits in the said Colony*" And it is further agreed by the parties to these presents That twenty-four hours absence without leave shall be deemed a total desertion and render such seamen and mariners liable to the forfeitures and penalties contained in the Act or Ordinance above-recited that each and every lawful command which the said master shall think necessary to issue for the effectual government of the said vessel suppressing immorality and vice of all kinds be strictly complied with under the penalty of the person or persons disobeying forfeiting his or their whole wages or hire together with every thing belonging to him or them on board the said vessel And it is further agreed that no officer or seaman or person belonging to the said ship shall demand or be entitled to his wages or any part thereof until the arrival of the said ship at the above-mentioned port of discharge and her cargo delivered nor less than twenty days in case the seaman is not employed in the delivery And it is hereby further agreed between the master and officers of the said ship That whatever apparel furniture and stores each of them may receive into their charge belonging to the said ship shall be accounted for on her return and in case any thing shall be lost or damaged through their carelessness or insufficiency it shall be made good by such officer or seaman by whose means it may happen to the master and owner of the said ship And whereas it is customary for the officers and seamen on the ship's return home in the harbour and during the time their cargoes are delivering to go on shore each night to sleep greatly to the prejudice of such ship and freighters be it further agreed by the said parties That neither officer nor seaman shall on any pretence whatsoever be entitled to such indulgence but shall do their duty by day in discharge of the cargo and keep such watch by night as the master or commander of the said ship shall think necessary in order for the preservation of the above And whereas it often happens that part of the cargo is embezzled after being delivered into lighters and as such losses are made good by the owners of the ships be it therefore agreed by these presents That whatever officer or seaman the master shall think proper to appoint shall take charge of the cargo in the lighters and go with the same to the lawful quay and there deliver his charge to the ship's husband or his representative or see the same safely weighed at the King's beam and in consequence of their true fidelity such officer or seaman shall be entitled to two shillings and sixpence each lighter exclusive of their monthly pay and should it so happen that lighters are detained a considerable time at the quay before they can be unloaded such officer and seaman so appointed shall in that case be entitled to two shillings and sixpence for every twenty-four hours exclusive of their said monthly pay that each seaman and mariner who shall well and truly perform the above-mentioned voyage (provided always that there be no plunderage embezzlement or other unlawful acts committed on the said vessel's cargo or stores) shall be entitled to his wages or hire that may become due to him pursuant to this agreement that for the due performance of each and every the above-mentioned articles and agreements and
 acknowledgment

Debtors' Relief.

acknowledgement of their being voluntary and without compulsion or any other clandestine means being used the said parties have hereto subscribed their names the day and month set opposite to their respective names.

Place and time of entry.	Men's names.	Quality.	Witness to each man's signing.	Pay in the Harbour.		Wages <i>per</i> month or by the run for the voyage.	Whole wages.
				Whole.	Half.		