

No. XXIII.

MASTERS AND SER-
VANTS.

An Act to ensure the fulfilment of Engagements and to provide for the adjustment of Disputes between Masters and Servants in New South Wales and its Dependencies. [20th October, 1840.]

Preamble.

9 Geo. IV. No. 2

Repealed.

Penalty on artificers
manufacturers jour-
neymen workmen
shepherds laborers
or other servants
refusing to serve the
term of their engage-
ments or returning
or leaving work un-
completed or absent-
ing themselves from
or refusing to work.

WHEREAS an Act was passed by the Governor and Legislative Council of New South Wales in the ninth year of the reign of His late Majesty King George the Fourth intituled "*An Act for the better regulation of Servants Laborers and Work People*" and whereas from the increased population and extended occupation of the lands of the said Colony and its Dependencies it has become expedient to repeal the said Act and to substitute other provisions in lieu thereof Be it therefore enacted by His Excellency the Governor of New South Wales with the advice of the Legislative Council thereof That the said recited Act shall be and the same is hereby repealed except as to any matter or thing already done or commenced to be done under and by virtue of the same.

2. And be it enacted That if any artificer manufacturer journeyman workman shepherd laborer or other male servant who shall have been engaged or hired either as a manual or house servant on any estate farm stock-station lands or premises whatsoever in the Colony of New South Wales whether within the located parts thereof or otherwise or in the Dependencies thereunto belonging by any master or mistress employer or employers or by any agent or agents for and on behalf of any such master or mistress employer or employers for any time or period whatsoever or who shall have been engaged or hired in the said Colony of New South Wales or the Dependencies thereunto belonging by any such master or mistress employer or employers or by his her or their agent or agents for the execution performance and completion of any work job or business taken in task by the piece or in gross and where the amount to be paid shall not exceed the sum of thirty pounds shall without reasonable or sufficient excuse during any part of the time for which he shall have been so hired and engaged or at any time before the work job or business which he had been so hired or engaged to execute perform and complete shall be fully and perfectly executed performed and completed according to the agreement entered into in that respect absent himself from the service of the person or persons to and for whom he shall be so engaged or hired as aforesaid during the customary time of serving or working at the trade occupation or employment for which he shall have been so hired or engaged or shall refuse or neglect to work in a diligent manner at the trade calling or employment for which he shall have been so engaged or hired or shall return his work or desert or quit the same before it shall have been completely

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completely finished without the consent of the person or persons by or for whom he shall have been so engaged or hired it shall be lawful for any Justice of the Peace upon complaint on oath of one or more credible person or persons to cause any person who shall have been complained of as so offending to be brought before any two or more Justices of the Peace of whom such Justice may be one and the said Justices shall hear and determine the matter of such complaint and if no such reasonable or sufficient cause be shewn to the contrary such Justices shall adjudge every person convicted of offending as aforesaid to forfeit all or such part of the wages or pay which at the time of such conviction shall be due or owing to him from and by the party complaining as to such Justices shall appear just and reasonable and also a sum not exceeding twice the amount of any damage which the said party shall have incurred according to the estimation of such Justices through the neglect absence or failure of the person so complained of as aforesaid and in default of payment thereof to commit such person to the common gaol there to remain without bail or mainprize for any time not exceeding three calendar months unless the same be sooner paid Provided always that whenever any such forfeiture shall be imposed the same shall be in the first instance applied to indemnify such master or mistress employer or employers for any loss or damage which according to the estimation of such Justices he she or they shall have incurred as aforesaid and the overplus if any shall be paid to Her Majesty Her Heirs and Successors and applied to the public uses of the said Colony and in support of the Government thereof.

3. And whereas differences often arise between masters or employers and persons employed or engaged by or for them to perform certain services in agricultural or other work or labor as to the wages or remuneration to be paid or allowed to such party or parties for the performance of such work or labor and it is expedient that such differences should be settled with as little delay and expense as possible Be it enacted That it shall and may be lawful for any Justice of the Peace within the district or nearest to the district where such work or labor was so performed (and where the wages or sum demanded as the remuneration for such work or labor shall not exceed the sum of thirty pounds) on application on oath of the party or parties interested therein to cause a summons or summonses to be issued requiring the attendance of the other or others of the parties so concerned before any two or more Justices of the Peace of the said district of whom the said Justice may be one at the next convenient day for holding the Petty Sessions therein and in case the said parties shall attend pursuant to such summons (or in case of the absence of any such party upon proof on oath of the due service of the said summons upon the party so neglecting or refusing to attend in obedience thereto) it shall be lawful for the said Justices or any other two or more Justices of the Peace of the said district to hear and determine the matter of such difference or complaint between the said parties and to order and direct such sum or sums of money as to them shall appear just and proper to be paid by such master or employer to the party or parties engaged in such work and labor as aforesaid within fourteen days after such order shall be so made and in case such sum or sums of money so ordered to be paid as aforesaid shall not be paid within the said period so directed for the payment thereof then it shall and may be lawful for such Justices or any other two Justices of the Peace of the said district by warrant under their hands and seals to direct such sum or sums of money together with the costs and expenses arising from such proceedings to be levied by distress and sale of the goods and effects of such master or employer and

In cases of difference between master and servant where the sum demanded shall not exceed £30 any two or more Justices may summon the parties concerned and direct the payment of such sum as shall appear to them to be reasonable and just and in case of non-payment thereof may direct the same to be recovered by distress and sale of the master's goods and effects or for want of sufficient distress may commit the master to gaol.

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and paid over to the party or parties entitled to receive the same and in default of sufficient distress to commit the master or employer to the common gaol for any time not exceeding three calendar months unless the distress be sooner satisfied.

Persons hiring themselves and obtaining money in advance of wages and afterwards absconding or refusing to perform the work they had engaged to perform or to proceed to the places where they were engaged to be employed may be committed to gaol for any time not exceeding three calendar months or to the house of correction there to be kept to hard labor for three calendar months.

4. And whereas many persons fraudulently hire or engage themselves to persons in possession of lands stations or stock in distant parts of the Colony and obtain from the person or persons to or from whom they have so hired or engaged themselves or from their agents different sums of money as an advance of the wages or salary at which they have so engaged or hired themselves under the pretence that they require such money either to enable them to pay the expense of their travelling to the place or station at which they have so hired or engaged to work or serve their employers or for some other purpose and after having so obtained such sums of money have under various pretexts either neglected or refused to go to the place or places at which they were so hired or engaged to serve such employers or have obtained advances of wages or money beyond the sums actually earned and refuse or neglect to perform or complete the work or labor for which they have agreed Be it enacted That if any artificer manufacturer journeyman workman shepherd groom laborer or other male servant who shall have entered into any agreement either written or parol with any master or mistress employer or employers or with the agent or agents of any such master or mistress employer or employers to serve such master or mistress employer or employers for any time or period whatsoever at and for any wages or salary whatsoever or who shall have hired or engaged himself to any such master or mistress employer or employers to do perform finish or complete any work job or employment whatsoever taken in task by the piece or in gross shall under pretence of requiring the same to enable him to pay the expense of his journey to the place or places at which and where he has so engaged to serve such master or mistress employer or employers or under any other pretence whatsoever obtain or procure from such master or mistress employer or employers or his her or their agent or agents any sum or sums of money as an advance on account of the wages at which they have so engaged to serve or in part of the amount for which they have agreed to perform and finish any such work job or employment as aforesaid shall after obtaining the same neglect or refuse under any pretext whatsoever forthwith to go to the place or places at which they have been so hired or employed to work or to serve such master or mistress employer or employers during the time for which they have agreed or shall refuse to perform or complete any work job or employment whatsoever which they had engaged to perform or complete as aforesaid it shall be lawful for any two or more Justices of the Peace to cause every person who shall be complained of as so offending to be brought before them or before any other Justices of the Peace and the said Justices shall hear and determine the matter of such complaint upon oath and if no reasonable and sufficient cause be shewn to the contrary such Justices shall commit every person so offending as aforesaid to the common gaol or to some house of correction for the district there to remain for any term not exceeding three calendar months and at the discretion of such Justice or Justices to be kept to hard labor for the whole or any part of the said term.

How agreements entered into by servants may be proved.

5. And be it enacted That in prosecuting any offence under this Act it shall not be necessary for the purpose of proving the execution of any indenture or agreement to call any subscribing or attesting witness or witnesses thereto or to account for the absence or to prove the handwriting of any such subscribing or attesting witness or witnesses but that every such indenture or agreement may be proved in like manner as if there were no subscribing or attesting witness thereto.

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6. And be it enacted That if any person shall knowingly receive employ or entertain any such artificer manufacturer journeyman workman shepherd laborer or other servant whether male or female already employed engaged or retained by any other person or persons during the time for which he or she shall be so employed or retained without leave of such other person or persons as last aforesaid every such offender being thereof lawfully convicted before any two or more Justices of the Peace shall for every such offence forfeit and pay any sum not less than five pounds nor more than twenty pounds.

Persons employing servants previously retained to be fined not more than £20 nor less than £5.

7. And be it enacted That if any such artificer manufacturer journeyman workman shepherd laborer or other servant whether male or female shall wilfully or negligently spoil or destroy any goods wares work or materials for work committed to his or her care or charge or wherewith he or she shall be entrusted by his or her master or mistress or employer or shall negligently injure or lose any property entrusted to his or her care every such offender and his or her accomplice or accomplices being thereof lawfully convicted before any two or more Justices of the Peace shall forfeit and pay double the value of such goods wares work or materials for work so spoiled or destroyed or other property lost or injured as aforesaid to the owner or owners thereof respectively and if a male shall be committed to gaol by such Justices for any period not exceeding three months.

Servants spoiling destroying or losing any property entrusted to them to pay double the value of such property and be committed to gaol for any time not exceeding three months.

8. And be it enacted That it shall be lawful for any two or more Justices of the Peace in any case not hereinbefore specially provided for to hear and determine any complaint difference or dispute which shall happen and arise between any such artificer manufacturer journeyman workman shepherd laborer or other servant whether male or female and his or her master mistress or employer and to make such order and award against either party in every such case as to such Justices shall seem meet and every such order or award to enforce by cancelling the indenture or agreement between the parties or by imposing on either party any fine or penalty proportionable to the offence but not exceeding the sum of thirty pounds and in default of payment by execution against the goods effects or other property of the party or parties against whom such order or award shall be made or in default of sufficient distress by arrest and imprisonment of such party if a male for any time not exceeding three calendar months.

Justices to hear and determine disputes between masters and servants in cases not hereinbefore specially provided for.

9. And whereas it is just and expedient that the expenses attendant on the adjudication of cases under this Act should be borne and paid by the parties interested therein and not by the public Be it therefore enacted That it shall be lawful for the Justices present at the adjudication of any such case as aforesaid to assess the expenses attendant on the same and the amount so assessed shall be paid by the party complaining if he shall not prosecute the case or by the party against whom any such order or award as aforesaid shall be made Provided however that if the said party so failing to prosecute or against whom any such order or award shall be made be unable to pay the amount so assessed the same shall be paid by the other party to such case and in default of any such payment the amount so assessed shall be levied by warrant under the hand and seal of any one or more Justice or Justices of the Peace by distress and sale of so much of the goods and effects of the party so failing to pay as may be necessary to satisfy the same Provided further that in case sufficient distress shall not be found it shall be lawful for the said Justice or Justices or for any other Justice of the Peace to commit the party so unable to pay if a male to any of Her Majesty's gaols for any term not exceeding three calendar months.

Expenses of prosecutions to be paid by the parties thereto.

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Women not to be
committed to gaol.

10. Provided always and be it enacted That nothing in this Act contained shall be deemed or taken to authorize the committal of any female servant to any gaol or house of correction for any offence committed under the same.

Appropriation of
fines.

11. And be it enacted That all fines or pecuniary penalties not hereinbefore specially appropriated shall be paid to Her Majesty Her Heirs and Successors and applied to the public uses of the said Colony and in support of the Government thereof.

Warrants or orders
to be drawn in the
form set forth in the
Schedules annexed.

12. And be it enacted That the Justices before whom any person or persons shall be convicted of any offence against this Act shall cause all such convictions and the warrants or orders for commitments thereupon to be respectively drawn up in the form or to the effect set forth in the Schedules to this Act annexed.

Persons convicted
may appeal to the
next Court of
Quarter Sessions.

13. And be it enacted That if any person convicted of any offence or offences punishable under this Act before any two or more Justices of the Peace shall think himself or herself aggrieved by the judgment of such Justices such person shall have liberty to appeal from any such conviction to the next Court of Quarter Sessions of the Peace which shall be held for the district or place wherein or nearest to which such offence shall have been committed and that the execution of every judgment so appealed from shall be suspended in case the person so convicted shall with two sufficient sureties immediately before such Justice enter into a bond to Her Majesty Her Heirs and Successors in the penal sum of double the amount of the penalty so incurred or forfeited or in case such conviction should contain a judgment of imprisonment such appellant shall immediately enter into a recognizance before such Justices himself or herself in the penalty of twenty pounds with two sufficient sureties in the penalty of ten pounds each which bond or recognizance respectively such Justices are hereby authorized and required to take and such bond or recognizance shall be conditioned to prosecute such appeal with effect and to be forthcoming to abide the judgment and determination of the said Court of Quarter Sessions and to pay such costs as the said Court shall award on such occasion and the Justices in the said Court of Quarter Sessions are hereby authorized and required to hear and determine the matter of the said appeal and to award such costs as to them shall appear just and reasonable to be paid by either party and such decision shall be final between the said parties to all intents and purposes and if upon hearing the said appeal the judgment of the Justices before whom the appellant shall have been convicted shall be affirmed such appellant shall forthwith pay the forfeiture or penalty if any mentioned in such conviction and the costs awarded to be paid by such appellant and in default of payment thereof or in case such conviction shall contain a judgment of imprisonment such appellant shall immediately be committed by the said Court to the common gaol or house of correction according to such conviction and for the space of time therein mentioned without bail or mainprize and also until the payment of such costs as shall be awarded by the said Court to be paid by such appellant.

Such appeal shall be
final.

No *certiorari*.

14. And be it enacted That no conviction under this Act nor any adjudication made on appeal therefrom shall be quashed for want of form or removed by writ of *certiorari* or otherwise into the Supreme Court of the said Colony 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 a good and valid conviction to sustain the same.

Limitation of convictions.

15. And be it enacted That no conviction shall be had under this Act unless the complaint be made within twelve months from the time the offence shall have been committed.

Debtors' Relief.

SCHEDULES TO WHICH THIS ACT REFERS.

Form of Conviction and Commitment.

To WIT. } BE it remembered That on the _____ day of _____ in
 } the _____ year of the reign of Her Majesty Queen Victoria and
 in the year of our Lord one thousand eight hundred and _____ A. B. was convicted
 before us (*naming the Justices*) two (*or more*) of Her Majesty's Justices of the Peace duly
 authorized in that behalf of having (*state the offence*) contrary to an Act of the Governor
 and Council passed in the fourth year of the reign of Her Majesty Queen Victoria intituled
 " *An Act to ensure the fulfilment of Engagements and to provide for the adjustment of*
 " *Disputes between Masters and Servants in New South Wales and its Dependencies*" and
 we the said Justices do hereby order and adjudge the said A. B. for the said offence to be
 committed to and confined in the (*place where to be confined*) for the space of _____
 or to be committed to the House of Correction at _____ there to be kept to hard
 labor for the space of _____

Given under our hands the day and year above written.

Form of Conviction in a Pecuniary Penalty.

To WIT. } BE it remembered That on the _____ day of _____ in
 } the _____ year of the reign of Her Majesty Queen Victoria and
 in the year of our Lord one thousand eight hundred and _____ A. B. was convicted
 before us (*naming the Justices*) two (*or more*) of Her Majesty's Justices of the Peace duly
 authorized in that behalf of having (*state the offence*) contrary to an Act of the Governor
 and Council passed in the fourth year of the reign of Her Majesty Queen Victoria intituled
 " *An Act to ensure the fulfilment of Engagements and to provide for the adjustment of*
 " *Disputes between Masters and Servants in New South Wales and its Dependencies*" and
 we the said Justices do hereby adjudge and determine the said A. B. for the said offence to
 forfeit and pay the sum of _____ to be distributed as the said Act directs.

Given under our hands the day and year above written.

J. P.

J. P.