

No. IX.

MASTERS AND
SERVANTS.

An Act to amend an Act intituled “ *An Act to amend and consolidate the Laws between Masters and Servants in New South Wales.*”
[16th August, 1847.]

Preamble.
9 Vic. No. 27.

Declaring and defining summary jurisdiction of Justices.

WHEREAS an Act was passed in the ninth year of Her present Majesty intituled “ *An Act to amend and consolidate the Laws between Masters and Servants in New South Wales* ” And whereas doubts have arisen as to the extent of summary jurisdiction created by the said recited Act and it is advisable to remove the same Be it therefore enacted by His Excellency the Governor of New South Wales
by

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by and with the advice and consent of the Legislative Council thereof That it shall and may be lawful for any two or more Justices of the Peace to hear and determine in a summary manner all informations for penalties and all complaints differences or disputes of whatsoever nature or description which shall happen or arise under the said recited Act or under this Act whether the same be between any servant and his master or employer or the overseer or agent of such master or employer or between any person or persons whomsoever and the order or award of such Justices shall be final and conclusive in all such cases unless where either party appeal to the Court of Quarter Sessions in the manner provided by the said recited Act.

2. And be it enacted That no suit information indictment prosecution or other proceeding whatsoever shall be commenced or prosecuted in any manner howsoever against any Justice or Justices of the Peace or any other person for any matter or thing already done by him or them for want of any power or authority in such Justices to hear and determine the same in a summary way under the said recited Act and if any action suit information indictment prosecution or proceeding whatsoever shall have been commenced against any such Justice or Justices or other person or persons acting under and in obedience to any warrant order or conviction of any such Justice or Justices in respect of anything already done for want of summary jurisdiction therein under the said recited Act it shall be lawful for the defendant or defendants to apply to the Supreme Court or any Judge thereof to stay such proceedings and such Court or Judge respectively is hereby required to stay such proceedings accordingly and to make such order as to the costs of the application as to the said Court or Judge shall seem fit.

Staying proceedings against persons who have acted without sufficient powers under recited Act.

3. And whereas it was recited by the said Act among other things that "servants in the United Kingdom in British Colonies in the British East India Possessions and in Foreign Countries occasionally contract by indenture or other written agreement with persons about to proceed to or actually resident in New South Wales" And whereas doubts have arisen whether such contracts by indenture or other written agreement are subject to the summary jurisdiction of Justices of the Peace and it is expedient to remove the said doubts Be it therefore declared and enacted That all such contracts by indenture or other written agreement shall be of the like force and effect within the said Colony of New South Wales as if they had actually been made and executed by the respective parties thereto within the same and shall subject every such party for any breach thereof upon summary conviction by or before any two or more Justices to the like fines penalties and punishments as in and by the said recited Act are provided for any wilful violation of the provisions of any indenture or other written agreement actually made or executed within the said Colony or for any misdemeanor miscarriage misconduct or ill-behaviour of any master or servant within the same Provided that no such contract shall be binding on any person to serve for a longer period than five years.

Declaring that agreements made without the Colony subject the parties thereto to the same jurisdiction and penalties as if made within the Colony.

4. And whereas by the said recited Act it was enacted among other things that upon the discharge of any servant or upon the termination of his service he should receive from his master and his master should give to him a certificate of his service and discharge and no penalty was provided for the forging of any such certificate of discharge as aforesaid Be it therefore enacted That any servant or other person who shall forge or knowingly use any forged certificate purporting to be a discharge of any person or persons from any service as aforesaid shall be deemed guilty of a misdemeanor and on being summarily convicted thereof by or before any two or more Justices of the Peace who shall hereby

Penalty for forging certificates of discharge.

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hereby have power and authority to determine the same shall be liable to imprisonment with or without hard labor for any period not exceeding three calendar months.

Justices to examine parties on oath or otherwise at their discretion.

5. And whereas doubts are entertained as to whether it is not imperative on Justices under the said recited Act to examine both complainant and defendant upon oath and it is advisable to remove the same Be it therefore enacted That it shall and may be lawful for any Justice or Justices of the Peace acting under the said recited Act or under this Act to exercise his or their discretion as to the examination of any complainant or complainants or defendant or defendants under the same.

The evidence of a wife may be received for a husband.

6. And whereas doubts are entertained as to whether it is lawful to examine a wife as witness for her husband under the said recited Act and whereas it is advisable to remove the same Be it therefore enacted That it shall and may be lawful for any Justice acting under the said recited Act or under this Act to receive the evidence of a wife as a witness for her husband either as complainant or defendant under the same Provided always nevertheless that it shall and may be lawful for such Justice to exercise his discretion as to the examination of any such witness.

Penalty on persons employing or harbouring servants already engaged by other persons under agreements entered into without the Colony.

7. And whereas the said recited Act contains no provision for summary adjudication in cases where servants hired by indenture or other written agreement in the United Kingdom in British Colonies in the British East India Possessions or in Foreign Countries for service in this Colony are retained or employed and it is advisable to provide for the same Be it therefore enacted That if any person shall wilfully or knowingly hire or employ any such servant whatsoever already employed or retained by any other person every person so offending shall for every such offence being summarily convicted thereof by or before any two or more Justices of the Peace forfeit and pay a sum not exceeding twenty pounds one half thereof to be paid to the informer in such case.

Offenders may be imprisoned in lock-up or watch-house in certain cases.

8. And be it enacted That in cases where the nearest gaol may be at a distance greater than thirty miles the nearest public lock-up or watch-house may be used as a gaol under this and the said recited Act Provided always that nothing herein contained shall authorize the imprisonment in such public lock-up or watch-houses of any person under this or the said recited Act for a longer period than one week.

Justices to act summarily in Courts of Petty Sessions only.

9. And be it declared and enacted That in every case in which a summary jurisdiction is vested in any Justices under this or the said recited Act the same shall be exercised only by such Justices in some Court of Petty Sessions duly appointed and publicly notified in the *New South Wales Government Gazette*.

Empowering Justices to seize and sell goods and effects of offenders on non-payment of penalties.

10. And whereas doubts are entertained as to the mode of enforcing the payment of fines and penalties in certain cases under the said recited Act and it is advisable to remove the same Be it therefore enacted That if any fine or penalty awarded under the said Act or under this Act shall not be paid within twenty-one days after the conviction or award ordering it was made the same may be enforced by the convicting Justices by warrant of distress and sale of the goods and chattels of the person or persons convicted or against whom such award shall be given.

Limitation of complaints.

11. And whereas the said recited Act specifies no period of limitation for complaints for non-payment of wages and it is advisable to define the same Be it therefore enacted That no conviction order or award shall be made or had under the said recited Act or this Act unless complaint be made within six months from the time when the offence breach of agreement or cause of complaint arose.

Building Societies.

12. And whereas no period has been specified under the said recited Act for limitations of actions against persons acting under the same Be it therefore enacted That no action at law shall lie against any Justice or Justices of the Peace for any matter or thing which may be done or commanded to be done by him or them in pursuance of the provisions of the said recited Act or this Act unless there be direct proof of corruption or malice and unless such action be commenced within three calendar months after the cause of action or complaint shall have arisen and if any Justice or Justices shall be sued for any matter or thing done in pursuance of this or the said recited Act he or they may plead the general issue and give this Act and the special matter in evidence.

Limitation of actions.

13. And be it enacted That in all cases under the said recited Act or under this Act all proceedings by summons or warrant without a formal information in writing shall be good valid and effectual to all intents and purposes as if formal information in writing had been exhibited Provided always that in every such summons or warrant the general nature of the charge shall be succinctly stated and the original complaint shall be made on oath.

Proceedings by summons or warrant without information in writing valid.

14. Provided always and be it enacted That nothing in this or under the said recited Act shall be deemed to authorize the imprisonment of any female under the same.

Females not to be imprisoned.

15. Provided always and be it enacted That nothing in this or the said recited Act contained shall be deemed or construed to apply to any native of any savage or uncivilized tribe inhabiting any Island or Country in the Pacific Ocean or elsewhere anything therein or herein to the contrary notwithstanding.

Not to extend to natives of savage or uncivilized tribes inhabiting any island in the Pacific Ocean.

16. And be it enacted That if any person shall feel himself aggrieved by any conviction order or award made by any Justices of the Peace under and by virtue of this Act or the said recited Act it shall be lawful for such person to appeal from such conviction order or award to the nearest Court of Quarter Sessions in the same manner and upon the same terms that any person may now appeal against any conviction under the said recited Act.

Appeal given.

17. And be it enacted That this Act shall commence and take effect from and after the first day of August next and that the said recited Act and this Act shall be and continue in force until the thirty-first day of December in the year of our Lord one thousand eight hundred and fifty.

Commencement and duration of Act.