

No. XXV.

An Act for more effectually preventing Desertion FOREIGN SEAMEN. and other Misconduct of Seamen belonging to Foreign Ships. [6th December, 1852.]

BE it enacted by His Excellency the Governor of New South Wales with the advice and consent of the Legislative Council thereof as follows:—

1. If any seaman belonging to any Foreign ship or vessel shall whilst such ship shall be in any port harbour roadstead or river of this Colony or otherwise within the limits thereof desert therefrom or otherwise abscond or absent himself from his duty it shall be lawful for any Justice of the Peace upon the complaint on oath of the master mate or other person having charge of such ship of the fact of such desertion absconding or absence from duty to issue his warrant for the apprehension of such seaman and thereupon either to deal with such seaman as hereinafter is provided or to place such seaman at the disposal of the Consul Vice-Consul or other Consular Officer or Agent of the Nation or State to which such ship shall belong or at the request of such Consul Vice-Consul or other Consular Officer or Agent to order such seaman to be put forcibly on board the ship to which he may belong.

Seamen deserting &c. from Foreign ships may be apprehended and placed at disposal of Consul or on board their ship.

2. Every seaman of any Foreign ship who shall whilst such ship shall be in any port harbour roadstead or river of the Colony or otherwise within the limits thereof commit any of the offences hereinafter mentioned shall upon conviction thereof before a Justice of the Peace be liable to be imprisoned with hard labor in any gaol or house of correction within the Colony for periods not exceeding the periods respectively hereinafter set against the said offences respectively that is to say—

Such seamen may be imprisoned with hard labor.

- 1.—For desertion from the ship to which he belongs a period of twelve weeks for the first offence and a period of six months for a second or subsequent desertion.

For desertion.

Foreign Seamen.

Assaulting officers.

2.—For assaulting any master or other officer of such ship a period of twelve weeks.

Disobedience.

3.—For wilful disobedience to any lawful command of such master or other officer of such ship a period of four weeks.

Continued disobedience or neglect of duty.

4.—For continued wilful disobedience to such lawful commands or for continued wilful neglect of his duty as a seaman of such ship a period of twelve weeks.

Combining to disobey or neglect duty.

5.—For combining with any other or others of the crew of the ship to which he belongs to disobey the lawful commands of his officers or to neglect his duty as a seaman or to impede the discharge loading or departure of the ship or the progress of the voyage a period of twelve weeks. Provided always that nothing herein contained shall take away or abridge any powers which a master of any such ship has over his crew.

Power to order convicted seamen to be put on board at after or during term of sentence at the instance of Consul.

3. It shall be lawful for any Justice of the Peace at the instance of the Consul Vice-Consul or other Consular Officer or Agent of the Nation or State to which the ship of any seaman convicted and sentenced under this Act shall belong to order any such seaman at or after the expiration or earlier determination of his sentence of imprisonment or at any time during the continuance thereof to be put forcibly or otherwise on board the ship to which he may belong and in all such cases it shall be lawful for any Justice of the Peace to grant an order to any gaoler or keeper of any prison to discharge such seaman from prison into such custody as such Justice shall direct which shall be a sufficient warrant to such gaoler or keeper to deliver such seaman into such custody and for such purpose as aforesaid.

Ships or places may be searched for runaway seamen.

4. It shall be lawful for any Justice of the Peace upon the complaint on oath of the master or other person having charge of any such ship or vessel as aforesaid that he has good cause for suspecting that any runaway seaman of such ship is harboured secreted or concealed on board any ship boat or other vessel or in any house or place whatsoever to issue a warrant directing some constable or constables to search such ship boat or other vessel or such house or place and to apprehend and lodge such seaman in some watch-house and such warrant shall be executed accordingly and every such seaman shall upon his apprehension be brought with all convenient speed before some Justice or Justices of the Peace to be dealt with as is hereinafter directed.

Prosecution not to be instituted except at the request or on consent of Foreign Government.

5. Provided always That no such warrant as hereinbefore mentioned shall be issued and that no offence hereby made punishable shall be prosecuted or punished except at the instance or with the express assent in writing of the Consul Vice-Consul or other Consular Officer or Agent of the Nation or State to which such ship or vessel as aforesaid shall belong unless it shall have been duly notified in the *New South Wales Government Gazette* under the authority of the Governor that the Government of such Nation or State has by its proper officer signified its desire that this Act may be enforced in all cases against the crews of ships belonging to such Nation or State.

Penalties on persons harbouring deserters or inciting to desertion.

6. If any person shall harbour conceal employ or retain or assist in harbouring concealing employing or retaining any seaman belonging to any such ship as aforesaid who shall have deserted therefrom or otherwise absconded or absented himself from duty knowing such seaman to have deserted or otherwise absconded or absented himself from duty without having used reasonable diligence to ascertain whether such seaman had been duly discharged from his last employment or shall cause induce or persuade any such seaman by words or by any other means whatsoever to violate or to attempt or endeavour to violate any agreement which he may have entered into to serve on board

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board any such ship or vessel as aforesaid or shall knowingly connive at the desertion absconding or absence from duty of any such seaman such person so offending shall for every such offence upon conviction thereof before any Justice of the Peace in a summary way forfeit and pay a penalty not exceeding twenty pounds for the first offence and not less than ten nor more than fifty pounds for a second or subsequent offence or in case of non-payment thereof it shall be lawful for any Justice of the Peace to commit the person so offending to any gaol or house of correction for any term not exceeding six calendar months with or without hard labor the said commitment to be determined on payment of the penalty and costs.

7. In prosecuting under this Act it shall not be necessary for the purpose of proving the articles or agreement under or by which any such seaman shall have engaged to serve on board any such ship to call any subscribing or attesting witness thereto but such articles or agreement may be proved as if there were no such subscribing or attesting witness and a copy of any such articles or agreement as aforesaid certified under the hand of the Consul Vice-Consul or other Consular Officer or Agent of the Nation or State to which such ship shall belong to be a true copy thereof shall be received as *prima facie* evidence of the existence and contents of such articles or agreement.

Attesting witness to ship's articles need not be called and certified copy admissible in evidence.

8. All expenses incidental to the apprehension confinement and removal of any seaman under and by virtue of the powers and authority conferred by this Act shall be paid by the Consul Vice-Consul or other Consular Officer or Agent at whose instance such seaman shall have been apprehended proceeded against or removed.

Expenses by whom payable.

9. All proceedings under this Act where not otherwise provided for may be carried on in a summary way in the manner directed by an Act of Parliament passed in the Session of the eleventh and twelfth years of the reign of Her Majesty Queen Victoria intituled "*An Act to facilitate the performance of the duties of Justices of the Peace out of Sessions within England and Wales with respect to Summary Convictions and Orders*" or according to the law in force for the time being regulating summary proceedings before Justices of the Peace out of Sessions and the service of any summons or other matter in any legal proceeding under this Act shall be good service if made personally on the person to be served or if made by leaving such summons for him on board any vessel to which he may belong with the person being or appearing to be in command or charge of such vessel.

Proceedings may be summary under 11 and 12 Vic. cap. 43 or as regulated by law in force for time being.

10. No conviction under this Act shall be quashed for want of form or be removed by *certiorari* or otherwise into the Supreme Court of the said Colony and no warrant of commitment or order for imprisonment shall be held void by reason of any defect therein provided it be therein alleged that the person has been convicted or ordered to be imprisoned and there be a good and valid conviction or an offence to sustain the same.

No *certiorari*.

11. The Act of Council relating to Foreign seamen passed in the tenth year of Her present Majesty's reign numbered three is hereby repealed.

10 Vic. No. 3 repealed.