

No. XXVIII.

An Act to regulate the Law between Masters and Servants. [11th March, 1857.]

MASTERS AND
SERVANTS.

WHEREAS the Acts of the Governor and Legislative Council of New South Wales relating to Masters and Servants have expired and it is deemed expedient to make other provisions instead thereof Be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows :—

1. The following words and expressions in this Act shall have the meaning hereby assigned to them unless there be something in the subject or context repugnant to such construction.

Interpretation.

The word "master" shall extend to and include all employers male or female of servants and also agents superintendents overseers or other persons acting for or on behalf of any employer.

Master.

The word "servant" shall include all agricultural and other laborers shepherds watchmen stockmen grooms all domestic and other servants artificers journeymen handicraftsmen gardeners vine-dressers splitters fencers shearers sheep-washers reapers mowers haymakers hired and engaged in this Colony either by verbal or written contract and all persons engaged in the United Kingdom of Great Britain and Ireland or in any of the British Colonies in the British East India Possessions or in Foreign Countries by indenture or other written agreement as shepherds or laborers or otherwise.

Servant.

The word "Justices" shall mean any two or more Justices of the Peace assembled and acting in Petty Sessions and in open Court in the district or place nearest to the district or place where the matter requiring the cognizance of such Justices arises or where the master and the servant are residing or sojourning when the complaint is made.

Justices.

The word "cattle" shall include cows bulls bullocks heifers steers calves horses mares colts fillies foals asses mules sheep lambs goats and swine.

Cattle.

2. If any servant shall contract with any person to serve him for any time or in any manner or to perform for him as such servant a certain work at a certain price and shall not enter into his service or commence his work according to his contract (such contract being in writing and signed by the parties thereto) or if any servant having entered into such service or commenced such work shall absent himself therefrom without reasonable cause before the term of his contract shall have expired or before the work contracted for shall be completed (whether such contract shall be in writing or not in writing) or shall neglect to fulfil the same or be guilty of any other misconduct or ill behaviour in the execution thereof such offender upon being lawfully convicted thereof shall forfeit and pay any sum of money not exceeding ten pounds and in default of payment the same shall be levied by distress and sale of the goods and chattels of the offender and in case no sufficient distress can be found whereon to levy the fine and costs the offender shall be imprisoned for any period not exceeding fourteen days or in lieu thereof at the discretion of the convicting

Servants not entering
into service accord-
ing to agreement
absenting them-
selves &c.

Masters and Servants.

convicting Justices such offender shall forfeit the whole or such part of the wages then due as the said Justices shall think fit.

Punishment for
fraudulent breach of
agreement.

3. If any servant after having entered into any contract either written or parol with any master to serve him for any time or in any manner shall obtain from such master any advance of money or goods on account of the wages for which he shall have so contracted to serve and shall after obtaining the same neglect or refuse forthwith to go to the place at which he shall have so contracted to serve or shall refuse to perform the work he shall have so contracted to perform to the extent of the advance of wages so made without reasonable cause such servant so offending shall upon being lawfully convicted thereof be imprisoned with or without hard labor for any term not exceeding three months.

Penalty for servants
wilfully spoiling or
losing property.

4. If any servant shall wilfully or negligently spoil or destroy any goods wares work or materials for work committed to his charge or care or shall wilfully abandon lose or injure any cattle or any other property belonging to or in the charge of his employer every such offender being thereof lawfully convicted shall forfeit and pay reasonable compensation for such cattle or property so spoiled destroyed injured or lost as aforesaid and in default of payment or satisfaction of such damages shall be committed to gaol by the convicting Justices for any period not exceeding three months with or without hard labor at the discretion of such Justices. Provided that in all cases of negligent injury under this clause where any compensation shall be assessed against any such offender the mode of satisfying the same shall be by distress and sale of the goods and chattels of the offender and in case no sufficient distress can be found whereon to levy the compensation awarded and costs the offender shall be imprisoned for any period not exceeding fourteen days.

Wages recoverable
in a summary way.

5. In all cases of wages not exceeding fifty pounds which shall be due and payable to any servant it shall be lawful for any Justice where or near to the place where the service shall have been performed or where or near to the place where the party or either of the parties upon whom the claim is made shall be or reside upon complaint made to such Justice by such servant or on his behalf to summon such party or parties to appear before any two Justices at the nearest Court of Petty Sessions to answer such complaint and the Justices there assembled are hereby empowered to examine the parties and their respective witnesses (if there be any) touching the complaint and the amount of wages due and to inspect any agreement or duplicate copy thereof if produced and to make such order for payment of the said wages not exceeding fifty pounds with the costs incurred by the servant in prosecuting such claim or any damages the servant may have sustained by the neglect of his master to pay the wages so found to be due as shall to such Justices appear reasonable and just and in case such order shall not be forthwith obeyed it shall be lawful for such Justices to issue their warrant to levy the amount of wages awarded to be due by distress and sale of the goods and chattels of the party on whom such order for payment shall be made and all the costs charges and expenses including the damages incurred by the servant in the making and prosecuting the complaint as well as the costs and charges of the distress and levy and if such levy cannot be made or shall prove insufficient then such Justices are hereby empowered to cause the party upon whom the order shall be made to be apprehended and committed to gaol there to remain for any period not exceeding fourteen days or unless payment shall be sooner made of the amount of the wages so awarded and of all costs charges and expenses attending the recovery thereof or until his estate shall be sequestrated as insolvent according to law.

Masters and Servants.

6. It shall be lawful for any Justice residing within the district in which such servant is or hath been employed upon the complaint of any such servant touching or concerning the non-payment of his wages to summon the agent manager or overseer of such master to be and appear before any two or more Justices at the nearest Court of Petty Sessions and the Justices then assembled may hear and determine the matter of the complaint and make an order for the payment by such agent overseer or manager to such servant of so much wages as to such Justices shall appear to be justly due Provided that the sum in question do not exceed fifty pounds and in case of refusal or non-payment of any sum so ordered to be paid by such agent overseer or manager or in case such agent overseer or manager shall neglect or refuse to give a draft or order on his master or employer for such sum as the Justices have awarded with costs then such Justice or Justices shall and may issue their warrant to levy the same by distress and sale of the goods and chattels of such master or employer.

Agent may be summoned for wages.

7. When any wages shall be paid to any servant by any cheque draft order or note in writing upon any bank or any person and the same shall be dishonored no servant shall thereby be deprived of any remedy given to him by this Act for the recovery of his wages but every such servant shall be entitled to recover such reasonable damages as he may have sustained in consequence of the dishonor of such cheque draft order or note and such damages shall be recoverable as wages due to such servant in the same way that wages are hereinbefore directed to be recovered.

Payment by cheque.

8. If any master shall unlawfully detain or refuse to deliver the clothes wearing apparel bedding tools or any goods in his possession belonging to any servant it shall be lawful for any Justice to inquire into the matter of such detention or refusal on oath in a summary way and to make an order for the delivery within such reasonable time as the Justice may appoint of such clothes apparel bedding tools or other property and if any master shall refuse or neglect to obey such order he shall forfeit and pay a penalty not exceeding five pounds for every such offence and it shall be lawful for such Justice by warrant under his hand to cause such effects to be seized and delivered over to such servant.

Penalty on withholding property of servants.

9. If any person shall conceal employ or retain or assist in concealing employing or retaining any servant who shall have deserted from the service of any master or otherwise absconded or absented himself from duty knowing such servant to have deserted or otherwise absconded or absented himself from his duty or shall cause induce or persuade any such servant by words or by any other means whatsoever to violate or attempt to violate any agreement (whether in writing or not in writing) which he may have entered into to serve with any master such person so offending shall for every such offence upon conviction thereof forfeit and pay a penalty not exceeding ten pounds or in case of non-payment thereof it shall be lawful for the convicting Justices to commit the person so offending to any gaol for any term not exceeding fourteen days the said commitment to be determined on payment of the penalty and costs.

Penalties on parties harbouring deserters or inciting to desertion.

10. It shall be lawful for any two or more Justices in any case to hear and determine in a summary manner any complaint difference or dispute which shall happen and arise between any such servant and his master and to make such order or award against either party as to such Justices shall seem meet and every such order or award to enforce by cancelling the indenture or agreement between the parties if the Justices should think fit or by imposing on either party a fine or penalty proportionate to the offence but not exceeding the sum of ten pounds and in default of payment by execution against the goods effects

Differences between master and servant to be settled by award.

Masters and Servants.

effects or other property of the party against whom such order or award shall be made or in default of sufficient distress by arrest and imprisonment of such party for any time not exceeding fourteen days.

Summary proceed-
ings.

11. All offences under this Act shall be heard and determined in a summary way before any two or more Justices in Petty Sessions assembled as by law or this Act is or shall be provided And no proceeding under this Act shall be removed by *certiorari* into the Supreme Court and all the forms of information summons warrants orders and convictions under this Act may be prepared in the form required by the Act of Parliament passed in the Session of the eleventh and twelfth year 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*" and no proceedings under this Act shall be invalidated if prepared in any other form which may substantially meet the merits of the case Provided always that no warrant shall issue for the apprehension in the first instance of any person against whom any charge may be made under the provisions of this Act unless it be made to appear on oath to the satisfaction of the Justice before whom the complaint is preferred that the complainant has reasonable cause to believe that the defendant has absconded or removed or is about to abscond or to remove from his usual place of abode or from the district or place in which he has usually resided and that the complaint of the party making the charge may be thereby defeated.

Warrant not to issue
except in certain
cases.

Clerk of Petty
Sessions may issue
summons.

12. It shall be lawful for any Clerk of Petty Sessions to issue his summons in any case of complaint under this Act made to him personally by either master or servant and every such Clerk of Petty Sessions is hereby authorized to receive such complaint and in his discretion having reduced the same to writing and obtained thereto the signature of the person complaining to issue his summons in the same form and manner as if the same had been issued by a Justice of the Peace and the same shall have the same force and effect as if made and issued by any such Justice.

Complainant or
defendant may be
examined.
Attesting witness
not necessary.

13. Any complainant or defendant under this Act may be examined as a witness in any case And in prosecuting any offence under this Act it shall not be necessary for the purpose of proving the execution of any agreement to call any subscribing or attesting witness thereto or to account for the absence or to prove the handwriting of any such subscribing or attesting witness but every agreement may be proved in like manner as if there were no subscribing or attesting witness thereto.

Females not to be
imprisoned.

14. Nothing in this Act shall authorize the imprisonment of any female.

Lock-up may be used
as gaol.

15. 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 Act Provided always that nothing herein contained shall authorize the imprisonment in such public lock-up or watch-house of any person under this or the said recited Act for a longer period than fourteen days.

Title.

16. This Act may be cited as the "*Masters and Servants Act of 1857.*"