

Act No. 59, 1902.

An Act to consolidate the enactments relating to  
Masters and Servants. [4th September, 1902.]

MASTERS AND  
SERVANTS.  
—

**B**E it enacted by the King'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 :—

PART I.

*Preliminary.*

1. This Act may be cited as the “Masters and Servants Act, 1902,” and is divided into Parts, as follows :—

PART I.—*Preliminary*—ss. 1-3.

PART II.—*Remedies against servants*—ss. 4-6.

PART III.—*Remedies against masters*—ss. 7-10.

PART IV.—*General provisions and procedure*—ss. 11-17.

2. The Acts mentioned in the Schedule hereto are, to the extent therein expressed, hereby repealed.

3. In this Act, unless the context or subject-matter otherwise indicates or requires,—

Interpretation.  
20 Vic. No. 28, s. 1.

“Master” extends to and includes all employers of servants and agents, superintendents, overseers, or other persons acting for or on behalf of any employer.

“Servant”

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“Servant” includes all agricultural and other labourers, shepherds, watchmen, stockmen, grooms, all domestic and other servants, artificers, journeymen, handicraftsmen, gardeners, vine-dressers, splitters, fencers, shearers, sheep-washers, reapers, mowers, and haymakers, hired and engaged in this State, either by verbal or written contract, and all persons engaged in the United Kingdom, or in any of the British Colonies or Possessions, or in foreign countries, by indenture or other written agreement as shepherds, or labourers, or otherwise.

“Justice” means justice of the peace.

“Cattle” includes cows, bulls, bullocks, heifers, steers, calves, horses, mares, colts, fillies, foals, asses, mules, sheep, lambs, goats, and swine.

## PART II.

*Remedies against servants.*

Servants not entering  
into service according  
to agreement  
absenting themselves,  
&c.  
20 Vic. No. 28, s. 2.

4. Any servant who contracts 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 does 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 any servant having entered into such service or commenced such work who absents himself therefrom, without reasonable cause, before the term of his contract has expired or before the work contracted for is completed, whether such contract is in writing or not, or neglects to fulfil the same, or is guilty of any other misconduct or ill behaviour in the execution thereof, shall be liable to a penalty not exceeding ten pounds or in lieu thereof, at the discretion of the convicting justices, shall forfeit the whole or such part of the wages then due, as the justices shall think fit.

Punishment for  
fraudulent breach  
of contract.  
*Ibid.* s. 3.

5. Any servant, having entered into any contract either written or parol with any master to serve him for any time or in any manner, and having obtained from such master any advance of money or goods on account of the wages for which he has contracted to serve, who neglects or refuses forthwith to go to the place at which he has so contracted to serve, or refuses to perform the work he has so contracted to perform to the extent of the advance of wages so made, without reasonable cause, shall be liable to imprisonment, with or without hard labour, for any term not exceeding three months.

6.

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6. Any servant who wilfully or negligently spoils or destroys any goods, wares, work, or materials for work committed to his charge or care, or wilfully abandons, loses, or injures any cattle or any other property belonging to or in the charge of his employer shall on conviction be liable to pay reasonable compensation for such cattle or property so spoiled, destroyed, injured, or lost as aforesaid.

Penalty for servants wilfully spoiling or losing property.  
20 Vic. No. 28, s. 4.

PART III.

*Remedies against masters.*

7. In any case where any wages not exceeding fifty pounds are due and payable to any servant by any master, such servant may recover the same upon complaint made before the nearest court of petty sessions, and such court may order the defendant to pay any such wages proved to be due and payable, together with the costs incurred by the complainant in prosecuting such claim, and any damages sustained by the complainant by the neglect of the defendant to pay such wages.

Wages recoverable summarily.  
*Ibid.* s. 5.

8. In any case where any wages not exceeding fifty pounds are due to a servant by his master any justice may, upon the complaint of such servant, summon the agent, manager, or overseer of such master to appear before the nearest court of petty sessions, and such court may hear and determine the matter, and may make an order for the payment by such agent, manager, or overseer to such servant of any such wages found to be due :

Agent may be summoned for wages.  
*Ibid.* s. 6.

Provided that such agent, manager, or overseer shall not be imprisoned in default of payment by him of the amount so ordered to be paid if he within a time to be stated by the court gives to such servant a draft or order on his master or employer for the amount and costs so ordered to be paid.

Proviso.

9. When any wages are paid to any servant by any cheque, draft, order, or note in writing upon any bank or any person, and the same is 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 cheques.  
*Ibid.* s. 7.

10. If any master unlawfully detains or refuses to deliver the clothes, wearing apparel, bedding, tools, or any goods in his possession belonging to any servant, any justice may inquire in a summary way into

Penalty on withholding property of servants.  
*Ibid.* s. 8.

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into the matter of such detention or refusal, and may make an order for the delivery, within such reasonable time as he may appoint, of such clothes, apparel, bedding, tools, or other property, and any master who refuses or neglects to obey such order shall be liable to a penalty not exceeding five pounds for every such offence, and such justice may by warrant under his hand cause such effects to be seized and delivered over to such servant.

## PART IV.

*General provisions and procedure.*

Jurisdiction.

20 Vic. No. 28, ss. 1,  
11.

**11.** All informations and complaints under this Act may be heard and determined in a summary manner by a stipendiary or police magistrate or by two or more justices sitting in petty sessions in the district or place nearest to the district or place where the matter requiring cognizance of such magistrate or justices arises, or where the master and servant are residing or sojourning when the complaint is made, according to the provisions of the Acts regulating proceedings before justices.

Penalties on  
harboring deserters,  
or inciting to  
desertion.*Ibid.* s. 9.**12.** Whosoever—

- (a) conceals, employs, retains, or assists in concealing, employing, or retaining any servant who has deserted from the service of any master, or has otherwise absconded or absented himself from duty, knowing that such servant has deserted, or otherwise absconded or absented himself from his duty; or
- (b) causes, induces, or persuades any servant, by words or by any other means whatsoever to violate or attempt to violate any agreement, whether in writing or not, which he has entered into to serve with any master,

shall for every such offence be liable to a penalty not exceeding ten pounds.

Differences between  
master and servant to  
be settled by award.*Ibid.* s. 10.

**13.** Any stipendiary or police magistrate or any two justices may in any case hear and determine in a summary manner any complaint, difference, or dispute which arises between any servant and his master, and may make such order against either party as to such justices shall seem meet, and may enforce every such order by cancelling the indenture or agreement between the parties if the justices think fit, or by imposing on either party a fine or penalty proportionate to the offence, but not exceeding the sum of ten pounds.

Warrant not to issue  
except in certain  
cases.*Ibid.* s. 11.

**14.** No warrant shall issue for the apprehension in the first instance of any person against whom any charge is made under this Act, unless it is made to appear on oath to the satisfaction of the justice before whom the complaint is preferred, that the complainant has

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has reasonable cause to believe that the defendant has absconded or removed, or is about to abscond or 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.

**15.** Any clerk of petty sessions may receive any complaint made to him personally by any master or servant, and after the same has been reduced into writing and signed by the complainant, may issue his summons against the defendant, and such summons shall have the same force and effect as if issued by a justice.

Clerk of petty sessions may issue summons.  
20 Vic. No. 28, s. 12.

**16.** It shall not be necessary, for the purpose of proving the execution of any agreement, in any proceedings under this Act, to call the attesting witness to such agreement, or to account for the absence, or to prove the handwriting of such witness; but every such agreement may be proved in like manner as if there were no attesting witness thereto.

Proof of agreement.  
*Ibid.* s. 13.

**17.** Subject to the provisions of the Justices Act, 1902, nothing in this Act shall authorise the imprisonment of any female.

Females not to be imprisoned.  
*Ibid.* s. 14.

SCHEDULE.

Reference to Act.	Title or short title.	Extent of repeal.
16 Vic. No. 26 ...	An Act to authorise lock-up houses or watch-houses to be used as places of imprisonment under summary sentences for short periods.	Section 2.
20 Vic. No. 28 ...	Masters and Servants Act of 1857 ...	The whole.