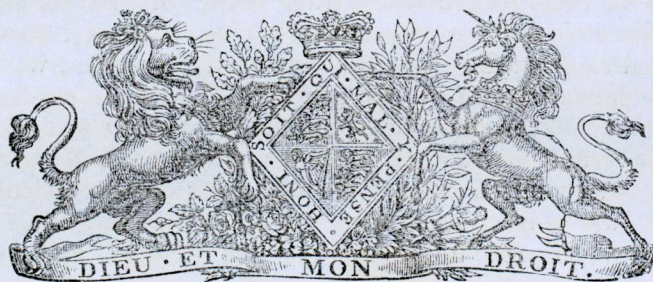


New South Wales.



ANNO VICESIMO

VICTORIÆ REGINÆ.

No. XXVIII.

An Act to regulate the Law between Masters and Servants.

[Assented to, 11th March, 1857.]

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.

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.

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.

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.

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

Masters' and Servants' Act.—1857.

Servants not entering into service according to agreement, absents themselves, &c.,

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 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

Masters' and Servants' Act.—1857.

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.

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 enquire 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.

Masters' and Servants' Act.—1857.

Differences between Master and Servant to be settled by award.

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, 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 proceedings.

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.*"