



ANNO VICESIMO SEXTO ET VICESIMO SEPTIMO

VICTORIÆ REGINÆ.

A.D. 1863.

No. 7.

An Act to consolidate and amend the Laws relating to Masters and Servants.

[Assented to, 12th November, 1863.]

WHEREAS it is expedient to consolidate and amend the laws relating to Masters and Servants—Be it therefore Enacted by the Governor-in-Chief of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said Province, in this present Parliament assembled, as follows:

1. This Act may be cited for all purposes as “The Masters and Servants Act, 1863.” Short title of Act.

2. An Ordinance, No. 9 of 1847, “To amend the Laws relating to Masters and Servants;” an Ordinance, No. 5 of 1849, “To amend an Ordinance (No. 9 of 1847) ‘to amend the Laws relating to Masters and Servants;’” an Act No. 6 of 1852, intituled “An Act further to amend the Laws relating to Masters and Servants,” are hereby repealed except as to anything lawfully done thereunder, and except as to enforcing agreements between masters and servants heretofore entered into, and inflicting punishments for the breach thereof, and except as to the recovery and appropriation of penalties, and the infliction of punishments for offences against the said Ordinances and Act, or any of them heretofore committed: Provided that this Act shall not operate to revive any Acts or Ordinances repealed by either of the said Ordinances or Act hereby repealed. Repeal of Acts.

3. In

Masters and Servants Act.—1863.

Interpretation of terms.

3. In the construction of this Act the following words shall, unless inconsistent with the context or subject matter, have the meaning hereby assigned to them respectively that is to say—The word “Master,” shall extend to, and include all employers male or female in the several cases to which this Act is intended to apply; the word “Servant,” shall extend to, and include all persons engaged in the service of another, either at salary or wages, or to perform work at a certain price by the piece or in gross; the word “Justice,” shall mean Justice of the Peace for the said Province.

Punishment for servants not entering into service according to agreement, absenting themselves, or guilty of neglect, misconduct, or misdemeanor.

4. If any person shall contract with another, either in writing or verbally, to serve him as a servant for any time whatsoever, or in any manner, and shall not enter into or commence his service according to his contract, or having entered into such service, shall absent himself therefrom before the term of his contract shall be completed, or neglect to fulfil the same, or be guilty of any misconduct or misdemeanor in the execution thereof, or otherwise respecting the same, it shall be lawful for any two or more Justices, on conviction, to commit every such offender to the common gaol, there to remain for a reasonable time, not exceeding three calendar months; or in lieu thereof, to punish the said offender by abating the whole or any part of his wages.

Justices may imprison or abate wages.

Servants obtaining money under pretence of service, or advances of wages beyond the amount actually earned, may be sentenced to imprisonment, with or without hard labor, for any period not exceeding three months.

5. If any person who shall enter into any agreement, either written or parol, to serve as a servant for any period whatsoever, for any wages or salary, or to do, perform, finish, or complete any work, job, or employment, taken in task by the piece or in gross, shall, under pretence of requiring the same to enable him to pay the expense of his journey to the place at which and where he has so engaged to serve, or under any pretence, obtain or procure from his master any sum of money or goods, as an advance on account of the wages at which he shall have so engaged to serve, or in part of the amount for which he shall have agreed to perform any such work, job, or employment as aforesaid, and shall, after obtaining the same, neglect or refuse, without reasonable excuse, forthwith to go to the place at which he shall have been so engaged to work or to serve, during the time for which he shall have agreed, or shall refuse to perform or complete any work, job, or employment which he had engaged to perform or complete as aforesaid, it shall be lawful for any two or more Justices, on conviction, to commit every person so offending as aforesaid to the common gaol, there to remain for any term not exceeding three calendar months, and, at the discretion of such Justices, to be kept to hard labor for the whole or any part of the said term.

Penalty for servants negligently or wilfully spoiling or losing property.

6. If any servant shall wilfully or with culpable negligence spoil or destroy any goods, wares, work, or materials for work, committed to his charge or care, or injure or lose any cattle, sheep, horses, or other property belonging to or in the charge of his master, every such servant, on proof thereof by or before any two or more Justices, shall forfeit and pay reasonable damages for such property so spoiled,

Masters and Servants Act.—1863.

spoiled, destroyed, injured, or lost as aforesaid; but not exceeding the value thereof, and not exceeding in any case Twenty Pounds: Provided always that this clause shall not apply to any case of felonious injury to property. Proviso.

7. In all cases of wages or money due and payable to any servant, for work not exceeding Thirty Pounds, it shall be lawful for any two or more Justices to hear and determine the complaint, and to make such order for the payment of the said wages or money not exceeding Thirty Pounds, with the costs incurred by the servant in prosecuting such claim, as shall to such Justices appear reasonable and just. Recovery of wages.

8. No levy shall be made for any wages due by a person who has been adjudged insolvent, subsequent to such wages becoming due; and any person imprisoned for nonpayment of wages, and afterwards becoming insolvent, shall be discharged out of custody, so far as respects the non-payment of such wages, so soon as he shall have been duly adjudged insolvent and shall have obtained the protection of the Court of Insolvency. Proviso as to insolvents.

9. When any wages or money due for work 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. Servants paid in cheques, orders, or drafts, which had been dishonored, to be entitled to recover the amount with reasonable damages.

10. Two or more Justices may hear and determine any complaint of any servant against any master for refusal of necessary provision, or other ill-treatment whatsoever of or towards any such servant; and upon proof thereof upon oath to their satisfaction, to order and award such amends to be made to any such servant as they shall think fair and reasonable: Provided that in no case shall such amends as aforesaid exceed the amount of six months' wages of such servant. Servants meeting with ill-usage or ill-treatment may recover amends.

11. The provisions of this Act shall apply to all contracts by indenture or other written agreement made by persons in the United Kingdom, or any of the dependencies thereof, and in foreign countries, with persons about to proceed to, or actually resident in the said Province, or with the agents of such persons, for service in the said Province. Proviso.

12. The Emigration Agent in London for South Australia may enter into any agreement for hiring, on behalf of any person who shall have defrayed in whole or in part the cost of the passage of any emigrant to the said Province, with the person whose passage shall have been so defrayed. Servants engaged in other countries for service in South Australia.

13. In Emigration Agent in London to be agent under clause 11.

Masters and Servants Act.—1863.

Servants to be free from contracts on the expiration of one year, by repaying their masters' money spent for conveying them to the Colony.

13. In the case of any contract of hiring, made out of the said Province, it shall be lawful for any two or more Justices, after the expiration of one year from the commencement of service under such contract within the said Province, to put an end to such contract at the instance of the person contracting to serve under the same, upon payment by such servant to his master of such sum of money, not exceeding in any case the amount of any moneys paid or advanced on account of the conveyance to the said Province and outfit of such servant, his wife and family, if any, as in the opinion of such two Justices shall be a reasonable compensation to the master for any loss he may sustain by reason of the putting an end to such contract, and such matter shall be heard and determined by such Justices, in a summary manner.

Apprentices. Proviso.

14. All the provisions of this Act shall extend to apprentices: Provided always, that no indenture or agreement shall be cancelled or discharged, in the case of any apprentice, under the powers hereinafter conferred, except on proof to the satisfaction of the Justices of ill-treatment on the part of the master, or incorrigible misconduct on the part of the apprentice.

Penalty for harboring servants already engaged.

15. If any person shall knowingly and unlawfully employ, retain, or harbor any servant already employed or under contract to serve any other person, before the determination of such contract, every person so offending shall, on conviction before any two or more Justices, for every such offence, forfeit and pay a sum not exceeding Twenty Pounds.

Partners, agents, and servants, to be considered principals.

16. Where any contract shall have been made by, or any work or business shall be entrusted to the management or superintendence of the agent, overseer, or manager of any master, and also where two or more persons shall carry on business as partners, in every such case respectively the like proceedings shall be had by or against such agent, overseer, manager, or any one or more of such partners, and shall be as effectual for all the purposes of this Act as if the same had been had by or against the principal or all the partners: Provided that where any such proceeding shall be had against an agent, overseer, or manager, in respect of any cause of complaint, not being for the personal misconduct of such agent, overseer, or manager, all sums of money paid or satisfied by such agent, overseer, or manager, by virtue of any order of Justices made in pursuance hereof, shall be recoverable by him against the master from whom the same is adjudged to be due, or shall be allowed to him out of any money at the time of payment, or afterwards in his hands, belonging to such master.

Proviso.

As to married women and infants.

17. Where any married woman, or infant under the age of twenty-one years, shall have cause of complaint in any of the cases provided for by this Act, such complaint may be lodged, and all further proceedings thereupon had, by and in the name of such married woman or infant, or of the sureties of the infant in any indenture of apprenticeship,

Masters and Servants Act.—1863.

ticeship, or of any person nominated by such infant; and all such proceedings shall be as effectual, valid, and binding as if such married woman were sole, or such infant were of full age.

18. All disputes, differences, demands, and causes of complaint, arising out of the relation of master and servant, whether hereinbefore particularly provided for or not, shall be cognizable in a summary manner before two or more Justices, who are hereby empowered, on the complaint of any party aggrieved, to hear and examine the parties or their agents and their witnesses upon oath, to decide and determine all complaints and to make such order or award against either party, and to adjudge such satisfaction, damages, and costs to the party aggrieved, as in their discretion shall seem reasonable (but not exceeding the amount of Twenty Pounds unless expressly otherwise provided) and to enforce such order and award if necessary by cancelling the indenture or agreement between the parties, or by distress and sale of the goods of the person against whom the same shall be made, or in default of sufficient distress, by imprisonment in the common gaol for any period not exceeding three calendar months: Provided always that no such indenture or agreement shall be cancelled against the consent of the party in whose favor such decision is given.

Jurisdiction of Justices.

Proviso.

19. Nothing in this Act contained shall authorize any Justice to exercise any jurisdiction in the case of any servant who shall be in the service of such Justice, or in any case in which such Justice may be directly interested.

Justices not to have jurisdiction over their own servants.

20. In any proceedings under this Act, it shall not be necessary to prove due execution of any agreement, unless the party against whom such agreement is produced shall dispute the execution thereof on the ground of forgery, fraud, incapacity, or other like cause, and the *onus* of proving such forgery, fraud, or other like cause, shall lie on the party alleging the same.

Not necessary to prove execution of agreements except in case of forgery, &c.

21. For any offence against this Act any two Justices may, if it shall seem to them to meet the justice of the case, in lieu of the punishments hereby prescribed (but besides awarding an abatement or forfeiture of wages, if any), impose a penalty not exceeding Twenty Pounds, with costs, which shall be recoverable in a summary manner, according to the laws for regulating the proceedings of the Justices of the Peace.

Magistrates may, at discretion, punish offences by penalties.

22. No conviction, award, or order under this Act, nor any adjudication made on appeal therefrom, shall be quashed for want of form, or removed by writ of *certiorari*, or otherwise, into the Supreme Court of the said Province; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and that there be a good and valid conviction to sustain the same.

No *certiorari*.

23. Wherever,

Masters and Servants Act.—1863.

Whalers and seamen.
17 and 18 Vict., c. 104.
No. 7, 1844.

5 and 6 Wm. IV.,
c. 19.

17 and 18 Vict., c. 104.

Not to affect Ordinance
No. 8 of 1848.

Appropriation of
penalties.

Summary procedure.

Appeal.

23. Wherever, in an Ordinance passed on the twenty-eighth day of February, one thousand eight hundred and forty-four, "To regulate the Whale Fishery Service in South Australia," reference is made to an Ordinance, made and passed on the fifteenth day of November, 1841, intituled "An Act for the summary determination of disputes between Masters and Servants;" and to an Act of the Session of Parliament of the fifth and sixth years of the reign of his late Majesty King William the Fourth, intituled "An Act to amend and consolidate the Laws relating to the Merchant Seamen of the United Kingdom, and for forming and maintaining a Register of all the Men engaged in that service," which said Ordinance and Act of Parliament have been heretofore repealed, the same shall be held to mean and apply to this Act, and to an Act passed in the Session of Parliament of the seventeenth and eighteenth years of the reign of Her present Majesty, intituled "An Act to amend and consolidate the Laws relating to Merchant Shipping," respectively.

24. Nothing herein contained shall extend to repeal or alter an Ordinance No. 8 of 1848, "To provide by apprenticeship for the protection, guardianship, and advancement in life of Emigrant Orphan Children, and of other poor Children maintained at the public expense."

25. All fines or penalties incurred under this Act shall be paid to the Treasurer on behalf of Her Majesty, for the public uses of the said Province and support of the Government thereof.

26. All proceedings under this Act before Justices shall be conducted as appointed by, and shall be regulated under the Ordinance No. 6 of 1850, intituled "An Ordinance to facilitate the performance of the duties of Justices of the Peace out of Sessions, with respect to summary convictions and orders."

27. There shall be an appeal from any order or conviction of any Justices under this Act, or any order of Justices dismissing any information under this Act, which appeal shall be to the Adelaide Local Court of Full Jurisdiction only, and the proceedings on such appeal shall be conducted in manner appointed by the said Ordinance No. 6 of 1850 for appeals to Local Courts; but the Local Court of Adelaide aforesaid may make such order as to the payment of costs of appeal as they shall think fit, although such costs may exceed Ten Pounds.

In the name and on behalf of the Queen I hereby assent to
this Act.

D. DALY, Governor.