



Western Australia.

ANNO QUINQUAGESIMO QUINTO

VICTORIÆ REGINÆ.

No. XXVIII.

AN ACT to amend the Laws relating to
Masters and Servants.

[Assented to, 18th March, 1892.]

WHEREAS it is expedient to amend the Laws relating to Masters and Servants: 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 Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Preamble.

1. THIS Act may be cited for all purposes as "The Masters and Servants Act, 1892."

Short Title.

2. THE Act passed in the 6th year of the reign of Her Majesty, number 5, entitled "An Act to provide a summary remedy in certain cases of Breach of Contract," and "The Masters and Servants Amendment Ordinance, 1868," and "The Masters and Servants Amendment Act, 1886," are hereby repealed, except as to anything lawfully done thereunder; and this Act shall apply to all contracts, services, and employments made and entered into before the passing of this Act in respect of which no proceedings have, before the passing of this Act, been taken or instituted under the said

Repeal of Masters and Servants Acts 1842, 1868, and 1886:—
6 Vic., No. 5,
32 Vic., No. 8,
50 Vic., No. 20.

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repealed Acts, and all proceedings under such repealed Acts which may be pending at the time of the passing of this Act shall be continued, prosecuted, and completed as if this Act had not been passed.

Interpretation of terms.

3. IN this Act the following words and expressions shall have the several meanings hereby assigned to them, unless there be anything in the subject or context repugnant to such construction:—

The word “employer” shall include any person, firm, corporation or company, who has or have entered into a contract of service with any servant, workman, clerk, artificer, laborer, apprentice, or other person, and the steward, agent, bailiff, foreman, or manager of such person, firm, corporation, or company:

The word “employed” shall include any servant, workman, laborer, clerk, artificer, apprentice, or other person, whether under or above the age of twenty-one years, or whether a married woman or not, who has entered into a contract of service with any employer, either at salary or wages, or for any remuneration, whether in money or otherwise, or to perform work at a certain price by the piece or in gross:

The words “contract of service” shall include any contract between employer and employed, whether in writing or by parol, whereby the employer agrees to employ and the employed agrees to serve for any period of time, or to execute any work, and any indenture of or agreement for apprenticeship, whether such contract, indenture or agreement shall have been made or entered into before or after the passing of this Act, but subject to the provisions of the 2nd Section hereof as to proceedings pending at the passing of this Act on any contract, indenture or agreement made or executed before the passing of this Act:

The word “parties” shall include the employer and employed under any contract of service:

The word “writing” shall include printing:

The word “property” shall include all real and personal estate and effects used and employed under or affected by any contract of service or operations under the same, and any other real and personal estate belonging either to employer or employed.

Upon breach of contract, complaint may be made to a Justice.

4. WHENEVER the employer or employed shall neglect or refuse to fulfil any contract of service, or the employed shall neglect

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or refuse to enter upon or commence his service according to the contract, or shall absent himself from his service, or whenever any dispute, question, or difference shall arise as to the rights or liabilities of either of the parties, or touching any misusage, misconduct, ill-treatment, or injury to the person or property of either of the parties under any contract of service, or touching the loss or destruction of such property, the party feeling aggrieved may lay an information or complaint in writing before a Justice of the Peace, setting forth the ground of complaint, and the amount of wages, compensation, damage, or other remedy claimed for the breach or non-performance of such contract, or for any misusage, misconduct, ill-treatment, or injury to the person or property of the person complaining, or for the loss or destruction of such property; and upon such information or complaint being laid, the Justice taking the same shall issue, or cause to be issued, a summons to the party so complained against, setting forth the grounds of complaint, and the amount claimed for wages, compensation, damage, or other remedy as set forth in the said information or complaint, and requiring such party to appear at the time and place appointed in such summons, before any two or more Justices of the Peace, to answer the matter of the information or complaint, so that the same may be then and there heard and determined.

A summons to be issued.

5. WHENEVER the party complained against shall neglect or refuse to appear to any summons as aforesaid, a Justice may, after due proof on oath of the service of such summons, issue a warrant for the apprehension of such party, in order to the hearing and determining of the matter of the information or complaint.

If summons is disobeyed, a warrant may be issued.

6. IF at any time after the laying of the information or complaint it appears to a Justice that the party complained against is about to abscond, the Justice may issue a summons requiring the party complained against to appear before a Justice at a time and place therein appointed (such time being not later than twenty-four hours, exclusive of Sunday, from the date of the last mentioned summons), and to find good and sufficient security by recognizance or bond, with or without sureties, to the satisfaction of a Justice, for his appearance to answer the information or complaint; and if the party complained against fails to appear at the time and place so appointed, a Justice may issue a warrant for his apprehension, and if such party on appearing on the last-mentioned summons, or on being so apprehended, fails so to find security, a Justice may order him to be detained in safe custody until the hearing of the information or complaint; but on his so finding security he shall be set at liberty.

In case of intention to abscond, security to be found for appearance.

7. UPON the hearing of any information or complaint under the provisions of this Act, the Justices hearing the same, after due

Justices may order the contract to be ful-

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filled or annulled, or
may make other
order.

examination and upon proof of the matter of such information or complaint, by an order in writing under their hands, in their discretion, as the justice of the case may require, shall either make an abatement of the whole or of any part of the wages or other remuneration then already due to the employed, or shall direct the fulfilment of the contract of service with a direction to the party complained against to find forthwith good and sufficient security by recognizance or bond, with or without sureties, to the satisfaction of a Justice for the fulfilment of such contract, or shall annul the contract, discharging the parties from the same and apportioning the amount of wages or remuneration due up to the completed period of such contract; or where no amount of compensation or damage can be assessed, or where pecuniary compensation will not, in the opinion of the Justices, meet the circumstances of the case, shall impose a fine upon the party complained against, not exceeding in amount the sum of Twenty pounds, or shall assess and determine the amount of compensation or damage together with the costs to be made to the party complaining, inclusive of the amount of any wages or remuneration abated, and shall direct the same to be paid accordingly.

In default of fulfil-
ment of contract,
Justices may order
imprisonment;

And may assess com-
pensation.

8. IF the order shall direct the fulfilment of the contract and shall direct the party complained against to find good and sufficient security as aforesaid, and the party complained against shall neglect or refuse to comply with such order, a Justice may, if he shall think fit, by warrant under his hand, commit such party to any gaol, there to be confined and kept until he shall so find security; but nevertheless so that the term of imprisonment, whether under one or several successive committals, shall not exceed in the whole three months: Provided, always, that the Justices hearing the information or complaint as aforesaid may, if they think fit, assess and determine the amount of wages, compensation, or damage to be paid to the party complaining, and direct the same to be paid, whether the contract is ordered by them to be annulled or not; or, in addition to the annulling of the contract of service and discharge of the parties from the same, may, if they think fit, impose a fine as hereinbefore authorised: Provided, always, that no apprenticeship indenture or agreement shall be annulled except upon proof of ill-treatment of the apprentice by the master, or incompetency on the part of the master to teach such apprentice, or wilful neglect so to teach such apprentice, or incorrigible misconduct on the part of the apprentice: Provided, also, that the Justices if they rescind or annul any agreement or indenture of apprenticeship may, if they think fit, order the whole or any part of the premium paid on the binding of the apprentice to be repaid to the person or persons paying the same: Provided also, that nothing herein contained shall authorise the Justices to adjudicate where

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the amount claimed exceeds Fifty pounds, or to make an order for the payment of any sum exceeding Fifty pounds (exclusive of the costs incurred in the case), or to require security to an amount exceeding Fifty pounds from any defendant or his surety or sureties.

9. WHEN it is alleged by any party to a contract of service that the condition of a recognizance or bond entered into or given for the fulfilment of the contract under the provisions of this Act has not been performed, any Justice being satisfied thereof, after hearing the parties and the sureties (if any), or in the absence of any party or surety not appearing after summons in that behalf, may order that the recognizance or bond be enforced for the whole or part of the sum thereby secured as to the Justice may seem fit, and the sum for which the same is so ordered to be enforced shall be recoverable accordingly in a summary manner.

Enforcement of recognizance or bond for fulfilment of contract.

10. WHERE on the hearing of any information or complaint under this Act an order is made for the payment of money and the same is not paid as ordered, the same shall be recovered by distress of the goods and chattels of the party failing to pay, and in default thereof by imprisonment of such party; but no such imprisonment shall be for more than three months or be with hard labor.

Recovery of money by distress, and imprisonment in default.

11. FROM and after the expiration of the term of any such imprisonment as aforesaid, the amount of wages, fine, compensation, or damages, together with the costs so assessed and directed to be paid by any such order as aforesaid, shall be deemed and considered as liquidated and discharged, and such order shall be annulled accordingly, and the said parties exonerated from their respective obligations under the same. Provided always, that no wages or any portion thereof which may be accruing due to the employed under any contract of service after the date of such order shall be assessed under any such order or warrant of distress, or be seizable or arrestable under the same.

Imprisonment to be in discharge of compensation.

12. WHEN the Justices impose a fine or enforce any sum secured by a recognizance or bond under this Act, they may, if they think fit, direct that a part not exceeding one-half of such fine or sum when recovered shall be employed to compensate an employer or employed for any wrong or damage sustained by him by reason of the act or thing in respect of which the fine was imposed, or by reason of the non-fulfilment of the contract of service. If they shall not so direct as aforesaid, the whole of such fine or sum shall belong to Her Majesty, her heirs and successors, for the public uses of this Colony.

Application of fines and moneys recovered.

13. WHERE on the hearing of an information or complaint under this Act it appears to the Justices that any injury inflicted on

Punishment for aggravated misconduct, &c.

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the person or property of the party complaining, or the misconduct or ill-treatment complained of has been of an aggravated character, and that such injury, misconduct, or ill-treatment has not arisen or been committed in the *bonâ fide* exercise of a legal right existing, or *bonâ fide* and reasonably supposed to exist, and further that any pecuniary compensation or other remedy by this Act provided will not meet the circumstances of the case, then the Justices may, by warrant, commit the party complained against to gaol, there to be (in the discretion of the Justices) imprisoned, with or without hard labor, for any term not exceeding three months.

Dishonored cheques.

14. WHEN any wages or money due for work shall be paid to any employed by any cheque, draft, order, or note in writing upon any bank or any person, and shall be dishonored, no employed shall thereby be deprived of any remedy given to him by this Act for the recovery of his wages, but every such person 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.

Agents and partners to be considered as principals.

15. WHEN any contract of service shall have been made by, or any work shall be entrusted to, the management or superintendence of the steward, agent, bailiff, foreman, or manager of any employer, 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 steward, agent, bailiff, foreman, manager, or any one or more of such parties, and shall be as effectual, for all the purposes of this Act, as if the same had been had by or against the principals or all the parties: Provided that when any such proceeding shall be had against a steward, agent, bailiff, foreman, or manager in respect of any cause of complaint, not being for personal misconduct, all sums of money paid or satisfied by such steward, agent, bailiff, foreman, or manager, by virtue of any order of the Justices made in pursuance hereof, shall be recoverable by him against the employer 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 employer.

Married women and infants.

16. WHEN 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 agreement or indenture of apprenticeship, 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.

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17. THE provisions of this Act shall apply to all contracts of service by indenture or other written agreement made by any employer in the United Kingdom or in any of the dependencies or colonies thereof, or in foreign countries, with persons about to proceed to or actually resident within the Colony of Western Australia, for service in this Colony: Provided such contracts be not contrary to any law of the Colony relating thereto.

Application of Act to contracts made elsewhere for service in Western Australia.

18. UPON the hearing and determining of any information or complaint between employer and employed, and on any appeal, under the provisions of this Act, the respective parties to the contract of service, their husbands or wives, shall be deemed and considered as competent witnesses for all the purposes of this Act.

Parties to the contract of service to be competent witnesses.

19. NO wages or other remuneration shall become payable to, or recoverable by, any party for or during the time of his imprisonment under any warrant of committal under this Act.

Wages not payable during imprisonment.

20. NO levy shall be made for any wages or other remuneration due by an employer who has been adjudged bankrupt subsequent to such wages becoming due, and any employer imprisoned for non-payment of wages, and afterwards becoming bankrupt, 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 bankrupt.

Proviso as to bankruptcy.

21. NOTHING in this Act shall prevent employer or employed from enforcing their respective civil rights and remedies for any breach or non-performance of the contract of service by any action or suit in the ordinary courts of law or equity, in any case where proceedings are not instituted under this Act.

Nothing in this Act to prevent proceedings by action.

22. NOTHING in this Act contained shall authorise any Justice to exercise any jurisdiction in the case of any employed 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.

23. NOTHING in this Act shall interfere with the usual and accustomed mode of procedure in any court of criminal jurisdiction for the trial of indictable offences, relating to wilful and malicious injuries to persons or property committed by masters, workmen, servants or others, either at common law or under the several statutes made and now in force for the punishment of such offences, but so that no person shall be twice prosecuted for the same offence.

Saving for criminal informations or indictments.

24. WHENEVER in any Ordinance or Act now in force reference is made to any of the Acts or Ordinances hereby repealed, the same shall be held to mean and apply to this Act.

Application of this Act to other Acts.

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No objection to be allowed for defect in forms.

25. THE several forms in the Schedule hereto, or forms to the like effect, shall be valid and sufficient in law, and no objection shall be taken or allowed for any alleged defect therein, either in substance or in form.

Summary procedure.

26. ALL proceedings under this Act before Justices shall be conducted and regulated according to the provisions of an Act passed in the 14th year of the reign of Her Majesty, number 5, and entitled "An Ordinance to facilitate the performance of the duties of Justices of the Peace out of sessions within the Colony of Western Australia, with respect to summary convictions and orders"; and of any Act amending or altering the same, or for the time being in force with respect to the duties of Justices in that behalf, except so far as the same are altered by this Act.

Appeal to Supreme Court.

27. ANY party who shall feel himself aggrieved by any conviction or order under this Act may appeal therefrom to the Supreme Court of Western Australia or to any Judge thereof, and the Court or Judge shall have power to reverse, vary, or otherwise deal with such conviction or order, and to make such further or other order with respect thereto, under and according to the provisions of this Act, and to the costs before the Justices and of the appeal, as to the Court or Judge may seem fit, and such appeal shall be had according to the usual practice in appeals from the summary convictions and orders of Justices, or to such rules and orders of the Supreme Court as are applicable thereto.

Non-application of Act.

28. THIS Act shall not apply to any aboriginal within the meaning of "The Aborigines Protection Act, 1886," nor to seamen nor to apprentices to the sea service, nor shall it affect any of the provisions of the Merchant Shipping Acts or of any Act regulating the Pearl-shell Fisheries or of "The Aborigines Protection Act, 1886."

No imprisonment of woman or girl.

29. NOTHING in this Act contained shall authorise the imprisonment of any woman or girl.

Incorporation of Sections of "Shortening Ordinance."

30. SECTIONS C., G., and H. of "The Shortening Ordinance, 1853," shall be incorporated with and taken to form part of this Act to all intents and purposes, and in as full and ample a manner as if the said sections had been introduced and fully set forth in this Act.

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

ALEX. C. ONSLOW, Administrator.

SCHEDULE.

FORMS.

A.

Statement of the Matters or Grounds of Complaint for insertion in the Ordinary General Forms in use by Justices.

(a). *Neglecting to Fulfil Contract.*—That A.B., of _____ (hereafter called the said employed), being the servant [or workman, or artificer, or laborer, or apprentice] of the said C.D., of _____, (hereafter called the said employer), in his trade or business of a _____, under a certain contract [or apprenticeship] [or to execute certain works, namely— _____]* did on the _____ day of _____, at _____, in the said Colony, unlawfully neglect [or refuse] and has ever since neglected [or refused] to fulfil the said contract [or to enter upon or commence his service according to the said contract or apprenticeship, or has absented himself from the service of the said employer without just cause or lawful excuse]. [Conclude as in statement (e) below.]

(b). *Disputes as to Rights.*—Proceed to the asterisk (*) in (a), and then :—and that a certain question, difference, and dispute has arisen between them as to the right [or liability] of the said employed [or employer] under the said contract, namely [stating it], which the said employed [or employer] claims should, &c. [as the fact is]. [Conclusion as (e) below.]

(c). *Disputes as to Misusage, Misconduct, or Ill-treatment of either Party.*—Proceed to the asterisk (*) in (a), and then :—and that a certain question, difference, and dispute has arisen between them touching certain ill-usage which the said employed [or employer] committed [or inflicted] upon the said employer [or employed], [or touching certain misconduct which the said employed was guilty of] [or touching certain ill-treatment which the said employed or employer inflicted upon the said employer or employed], on the _____ day of _____, 18____, at _____, in the said Colony, namely, that the said [setting it out shortly]. [Conclusion as (e) below.]

(d). *Disputes as to Injury to Person or Property of either Party.*—Proceed to the asterisk (*) in (a) and then :—and that a certain question, difference, and dispute has arisen between them touching a certain injury which the said employed [or employer] inflicted to the person of the said employer [or employed] [or to _____, the property of the said employer [or employed], on the _____ day of _____, 18____, at the _____, in the said Colony [conclusion as in (e) below.]

(e). *Conclusion to either of the Forms (a), (b), (c), and (d).*—And the said complainant, the employer [or employed] further says that the amount of wages [or compensation] [or damage] which he claims for the said breach and non-performance of the said contract [or for the said misusage, misconduct, ill-treatment, or injury, as the case may be] is £ _____, and he prays that the said employed [or employer] may be summoned and adjudicated upon under section No. _____ of “The Masters and Servants Act, 1892.”

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B.

Forms of Adjudication upon Complaints, for insertion in the Ordinary General Forms of Conviction.

Do adjudge and order in pursuance of "The Masters and Servants Act, 1892," that:—

(a.) *Abatement of Wages.*—The sum of £ being the whole [*or a part*] of the wages now due to the said employed shall be abated therefrom. [*Costs as (f) below.*]

(b.) *Order for Fulfilment of Contract.*—The said employer [*or employed*] shall fulfil the said contract forthwith [and *if so*, that the said employed *or* employer shall forthwith find good and sufficient security by recognizance, himself in the sum of £ , and two sureties in the sum of £ each, or one surety in the sum of £ for the due fulfilment of the said contract]. [*Costs as (f) below.*]

(c.) *When Contract of Service or Apprenticeship annulled, Wages apportioned.*—The said contract [*or apprenticeship*] shall be annulled, and the said parties thereto be forthwith discharged from the same, and we do apportion the wages of £ to be due to the said employed to the completed period of the said contract; and we do order that the sum of £ [the whole or any part of the premium paid on an indenture of apprenticeship] be paid to [the party who has paid such premium]. [*Costs as (f) below.*]

(d.) *When Fine imposed.*—That the said employer [*or employed*] shall forfeit and pay the sum of £ . [*Costs as (f) below.*]

(e.) *Where Wages, Compensation, &c., assessed.*—Do assess, determine, and direct that the sum of £ shall be paid by the said employed [*or employer*] to the said employer [*or employed*] as and for wages [*or compensation*] [*or damages*] to him for the breach and non-performance of the said contract [*or as the case may be*]. [*Costs as (f) below.*]

(f.) *Costs in all Cases.*—And that the said employed [*or employer*] shall pay to the said employer [*or employed*] the sum of £ for his costs incurred in this behalf.

C.

(a.) *Statement of Complaint for Non-performance of Conditions of Recognizance given as Security for Fulfilment of Contract.*—Proceed as in form (A) and to the asterisk (*) in the statement (a) and then:—and the said employer [*or employed*] having neglected and refused to fulfil the said contract was duly summoned before [*describe the Justice*] on the day of and by him was in pursuance of section of "The Masters and Servants Act, 1892," ordered and directed to find security for the fulfilment of the said contract, and in obedience thereto the said employer [*or employed*] duly entered into his own recognizances in the sum of £ and E.F. and F.G., as his

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sureties, entered into a recognizance in the sum of £ each conditioned that the said employer [*or employed*] should forthwith fulfil the said contract ; but the said employed [*or employer*] has not performed the said condition or in any way fulfilled the said contract.

(*b.*) *Adjudication upon the last Complaint for Insertion in the usual General Form of Order.*—*After reciting in the past tense the statement of complaint (a):*—do adjudge and order in pursuance of section of the said Act that the said recognizances be estreated, and that the said employed [*or employer*] shall forthwith pay the sum of £ and that the said E.F. and F.G. the sum of £ each, and further each of them the sum of £ for the costs of the said employer [*or employed*] in this behalf, such sums to be respectively applied according to law.

D.

Forms of Adjudication in Aggravated Cases for insertion in the Ordinary General Forms of Conviction and Orders.

After reciting the conviction on one of the Complaints in form (A) applicable, say,—

And it appearing to us that the said injury so inflicted on the person [*or property*] of the said employed [*or employer, or the said misconduct or ill-treatment complained of*] was of an aggravated character, and did not arise [*or was not committed*] in the *bonâ fide* exercise of any legal right existing, or *bonâ fide* and reasonably supposed to exist.

And further that any pecuniary compensation or other remedy will not meet the circumstances of the case, do hereby, in pursuance of “The Masters and Servants Act, 1892,” adjudge the said employed [*or employer*] for his said offences to be imprisoned in the Gaol at [and there to be kept to hard labor] for the space of