



WESTERN AUSTRALIA.

ANNO TRICESIMO SEPTIMO

VICTORIÆ REGINÆ.

No. XI.

AN ACT to repeal an Act intituled “ An Act to regulate the hiring and service of Aboriginal Natives employed in the Pearl Shell Fishery ; and to prohibit the employment of Women therein,” and to make other provisions in lieu thereof.

[Assented to, 24th July, 1873.]

WHEREAS it is expedient to repeal an Act passed in the thirty-fourth year of the reign of Her present Majesty No. 14 intituled “ An Act to regulate the hiring and service of aboriginal natives employed in the Pearl Shell Fishery : and to prohibit the employment of women therein,” and to make other provisions in lieu thereof ; Be it therefore enacted by His Excellency the Governor of Western Australia and its Dependencies by and with the advice and consent of the Legislative Council thereof as follows:—

Preamble.

1 THIS Act may be cited for all purposes as “ The Pearl Shell Fishery Regulation Act, 1873.”

Short Title.

Pearl Shell Fishery—Service of Aboriginal Natives in.

Repeal of 34th Vict., No. 14.

2 THE said recited Act passed in the thirty-fourth year of the reign of Her present Majesty intituled "An Act to regulate the hiring and service of aboriginal natives engaged in the Pearl Shell Fishery; and to prohibit the employment of women therein" shall be and the same is hereby repealed.

No person to employ aboriginal native in pearl shell fishing or carry him to sea without certain agreement.

Penalty.

Proviso as to agreement made under 34th Vict., No. 14.

3 FROM and after the passing of this Act no master of any ship or vessel or any other person shall employ any aboriginal native of the said Colony in the pearl shell fishery except he shall have entered into a separate written agreement with him and had the same endorsed as hereinafter mentioned. Any such master or other person who shall employ any such aboriginal native as aforesaid without having entered into such agreement and having the same endorsed as hereinafter mentioned, shall be guilty of an offence; and every such offence shall be cognizable by any two Justices of this Colony who shall on proof thereof inflict upon the offender a fine or penalty not exceeding Ten pounds. Provided always that where any agreement has been made and entered into and witnessed before the passing of this Act pursuant to the provisions of the said recited Act between any master and any aboriginal native such agreement shall be deemed to hold good and to bind the parties thereto until the thirtieth day of June next after the passing of this Act if such agreement is expressed to be made for so long a period; but it shall not be deemed to hold good or bind the parties thereto beyond that day although it may purport to do so; and so long as such agreement does so hold good and bind the parties thereto no master of a vessel or other person shall be deemed guilty of an offence or be punishable under this Section for employing in the pearl shell fishery any aboriginal native party to such agreement without having entered into an agreement and having the same endorsed pursuant to the provisions of this Act; And the engagement of any aboriginal native party to any such agreement made before the passing of this Act shall be deemed to expire on the said day for the purpose of determining any question arising out of the Ninth Section of this Act.

Form of agreement.

4 THE written agreement in the preceding Section mentioned shall be in the Form given in Schedule A to this Act or to the like effect and it shall contain all the terms and particulars in the said Form given.

Conditions under which such agreement shall be endorsed.

5 THE said endorsement shall be made by a Justice of the Peace or police constable or other person or persons duly appointed
in

Pearl Shell Fishery—Service of Aboriginal Natives in.

in that behalf by the Governor and shall be signed by the person making it and shall be in the Form given in Schedule B to this Act or to the like effect; But no Justice of the Peace police constable or other person appointed as aforesaid shall under any circumstances make such endorsement unless upon the following conditions:—

1. That he has satisfied himself that the aboriginal native proposing to become party to such agreement is a perfectly free and voluntary agent in the matter and not acting under any sort of fear coercion or constraint.
2. That he has satisfied himself that such aboriginal native thoroughly understands and assents to the terms and the nature of the proposed agreement.
3. That the proposed agreement is in the Form required by this Act or to the like effect and contains all the terms and particulars in the said Form given and is otherwise in accordance with this Act.
4. That the proposed agreement does not stipulate for the service of the aboriginal native party thereto for any period longer than twelve months from the day of the making thereof.
5. That where the aboriginal native proposing to become party to such agreement has been engaged in the pearl shell fishery within twelve months of the date of such agreement such Justice of the Peace police constable or other person appointed as aforesaid has satisfied himself that before the expiration of the engagement of such native the person who last had him in his service conveyed him back to the place or district to which such native belonged or that such native was with the sanction of a Justice of the Peace police constable or other person appointed as aforesaid as hereinafter provided for and at his own request taken and conveyed to some other place.
6. That the aboriginal native proposing to become party to such agreement is a male and in the judgment of the Justice of the Peace police constable or other person appointed as aforesaid physically fit for the work which he is employed to do.

Any endorsement made contrary to these conditions shall be utterly null and void to all intents and purposes. Every Justice of the Peace
police

Pearl Shell Fishery—Service of Aboriginal Natives in.

police constable or other person appointed as aforesaid who endorses any agreement pursuant to the provisions of this Act shall take and keep a copy of the same.

Penalty on Justice of the Peace or police constable endorsing agreement contrary to this Act.

6 ANY Justice of the Peace police constable or other person appointed as aforesaid who endorses any agreement to which any aboriginal native purports to be party contrary to the conditions set forth in the fifth Section of this Act shall forfeit and pay the sum of Twenty pounds together with full costs of suit to any one who may sue for the same in the Supreme Court of this Colony.

Penalty on employment of females in pearl shell fishery or employment of males in employments not stipulated for in the agreement.

7 NO master or owner of any ship boat or other vessel or any other person shall carry or allow to embark on board any ship boat or other vessel any female aboriginal native or shall employ any male aboriginal native in any work or service except that stipulated for in the agreement with him. Any person offending against this provision shall be deemed guilty of an offence which shall be cognizable before two Justices of the Peace and shall subject the offender to a fine or penalty not exceeding Twenty pounds.

Power to convey native back to place other than that agreed upon.

8 WHENEVER it shall happen that any aboriginal native is desirous when the time arrives for his master or employer to convey him back to the place or district to which such native belongs of being taken and conveyed to some other place in lieu thereof and his master or employer is willing to take and convey such native to such substituted place it shall be lawful for any Justice of the Peace police constable or other person appointed as aforesaid on being satisfied by personal examination of such native that he desires and prefers to be taken and conveyed to such substituted place to sanction such substitution; and such Magistrate police constable or other person appointed as aforesaid shall endorse a memorandum of such sanction on the back of the agreement between such master and such native and shall himself keep a written memorandum or record of such sanction.

Penalty on master neglecting to carry native back to place agreed upon.

9 ANY master of a ship or vessel or other person who shall neglect or refuse to carry any aboriginal native who has been party to any agreement with him back before the expiration of such agreement to the place or district to which such native belongs or to the place (if any) that has been substituted for the same with the sanction of a Justice of the Peace police constable or other person appointed as aforesaid as provided for in the next preceding Section shall

Pearl Shell Fishery—Service of Aboriginal Natives in.

shall be guilty of an offence which shall be cognizable before any two Justices of the Peace and subject the offender to a fine or penalty not exceeding Fifty pounds.

10 AND be it enacted that if it be made to appear to any Justice of the Peace that any aboriginal native or natives is or are illegally kept or detained against his or their will on any island or on board any ship hulk or other vessel or in any place on the mainland or that any physical constraint is exercised upon him or them such Justice shall forthwith cause such aboriginal native or natives to be brought before him; And in the order or warrant used for that purpose it shall not be necessary to describe the native or natives therein referred to by their names but he or they may be described in any other way; And if on such native or natives being brought before him it shall appear to such Justice that such native or natives is or are has or have been illegally kept or detained against his or their will or physically constrained as aforesaid such Justice shall order such native or natives to be at once released from such keeping detention or other restraint; And if such native or natives was or were under any engagement to serve any master under any agreement at the time of their being so kept or detained or physically constrained as aforesaid such master in respect of each such native shall be deemed to be guilty of an offence; And such offence shall be cognizable in a summary manner before two Justices of the Peace and on proof thereof such Justices shall impose on the person guilty thereof a fine or penalty not exceeding Ten shillings for every day that it shall appear to such Justices that each such native was kept or detained or physically constrained as aforesaid unless such master shall prove to the satisfaction of such Justices that such native was so kept or detained or physically constrained without his privity or consent; And moreover the person or persons actually so keeping or detaining such aboriginal native or natives or exercising constraint as aforesaid shall be guilty of an offence; And such offence shall be cognizable before two Justices of the Peace who on proof thereof shall impose on the party or parties offending a fine or penalty not exceeding Fifty pounds in respect of each such native kept or detained or physically constrained as aforesaid.

Proceedings to be taken in case of natives being kept under duress.

11 FROM and after the passing of this Act it shall be lawful for any Justice of the Peace or Officer of Customs or for any Superintendent of Police or other member of the Police Force in the Northern District of Western Australia with such assistants as he or they respectively may require at any time of the day or night to enter

Power to certain persons to board ships engaged in the pearl shell fishery.

Pearl Shell Fishery—Service of Aboriginal Natives in.

enter on board and search any ship boat or other vessel along the coast of the Northern District of Western Australia when and so often as he or they shall have reasonable ground for believing that such ship boat or other vessel is engaged or about to be engaged in the pearl shell fishery; And if a master of any ship boat or other vessel or any other person shall resist or wilfully obstruct any of the persons before mentioned while entering or endeavouring to enter on board or while on board such ship boat or other vessel or if any master or other person in charge of any ship boat or other vessel shall not when duly challenged by any boat containing any Justice of the Peace Officer of Customs Superintendent or other member of the Police or which he may reasonably suppose to contain any such persons forthwith bring-to such master or other person shall be guilty of an offence; And such offence shall be cognizable before two Justices of the Peace and shall subject the offender to a fine or penalty not exceeding Five pounds; Provided always that when such offence consists of resisting or wilfully obstructing a Justice of the Peace or neglecting to bring-to on the challenge of a Justice that Justice of the Peace by whom such offender is charged with having resisted or wilfully obstructed or on whose challenge he is charged with having neglected to bring-to shall not take any part in adjudicating on such alleged offence; Provided also that no such Justice of the Peace Collector of Customs or policeman shall stay on board any ship boat or vessel which he or they may have boarded under the powers aforesaid for a longer time than may be necessary for the purpose of observing how the persons employed on or in connection with such ship boat or other vessel are treated and for the purpose of searching the same.

Power to any Justice of the Peace when a ship is engaged in the pearl shell fishery without having proper stores, &c., to stop such ship.

12 POWER is hereby given to any Justice of the Peace in the said Northern District whenever it shall appear to him as the result of his own investigation or on the information of any Officer of Customs or Superintendent or other member of the Police Force that any ship boat or other vessel is engaged or about to be engaged in the pearl shell fishery without having on board what to such Justice shall appear to be a good and sufficient supply of food drink and articles of protection against cold and heat to serve an order on the master or other person in charge of such ship boat or other vessel forbidding him to go to sea or engage directly or indirectly in the pearl shell fishery until such master or other person shall have satisfied such Justice that he has a good and sufficient supply of food drink and articles of protection against cold and heat; Any master or other person in charge of any ship boat or other vessel disobeying any such order shall be guilty of an offence; and such offence

Pearl Shell Fishery—Service of Aboriginal Natives in.

offence shall be cognizable before two Justices of the Peace who on proof thereof shall impose on such master or other person a fine of not less than Twenty and not more than Fifty pounds and such Justice shall (and power is hereby given him to do so) detain or cause to be detained such ship boat or other vessel until such fine be paid.

13 THAT the provisions of this Act shall apply in the case of all aboriginal natives who shall be engaged for employment in any industry other than that of the pearl shell fishery which shall necessitate the removal or conveyance of such aboriginal natives by sea to the scene of such industry.

Act to apply to all natives conveyed by sea to scene of employment.

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

FRED. A. WELD, Governor.

SCHEDULES.

SCHEDULES.

Schedule A.

Form of Agreement between the Master or Owner of a Ship or any other person and an Aboriginal Native.

THIS Agreement, made on the _____ day of _____ 18 _____, between A.B. (*name of master*) of _____ and C. (*using the native name of the native*) an aboriginal native of Western Australia, witnesseth:—

1. The said C. agrees to serve the said A.B. as (*here state the capacity in which the native is to serve*).
2. Such service to last until _____.
3. C. is to begin work on the _____ day of _____.
4. A.B. is to give C. during the said service _____ lb. of flour, _____ of tea, &c., per day; and at the commencement of the service is to give him (1 blanket, 1 pair of trousers, &c., &c.)
5. Before or at the termination of such service A.B. is to give C. &c.
6. Before the expiration of the service hereby agreed upon, A.B. will convey C., or cause him to be conveyed, to _____, that being the place or district to which C. belongs.

Schedule B.

Pearl Shell Fishery—Service of Aboriginal Natives in.

Schedule B.

Form of Endorsement.

I, the undersigned, being a (*Justice of the Peace, or police constable, or one of the persons appointed to ensure the carrying out of "The Pearl Shell Fishery Regulation Act, 1873," as the case may be*) do hereby certify as follows:—

1. That the within agreement was this day entered into between A.B. and C., and respectively signed by them in my presence.
2. Before the said C. signed the same, I satisfied myself that the said C. was a perfectly free and voluntary agent in the matter, and was not acting under any sort of fear, coercion, or constraint.
3. That, before the said C. signed the same, I satisfied myself that the said C. thoroughly understood and assented to the terms and nature of the said agreement.
4. That the said C. is in my judgment a male aboriginal native physically fit for the employment agreed upon.
5. (That I satisfied myself that the said C. has not been engaged in the pearl shell fishery within twelve months of the date of this agreement *or* (That the said C. has been engaged in the pearl shell fishery within twelve months of the date of this agreement but I was perfectly satisfied that the said C. was, before the expiration of his said engagement, conveyed back to _____, such being the district or place to which, as I am informed and believe, the said C. belongs, *or*, conveyed back to _____, that being a place substituted for the district to which the said C. belongs, in accordance with the provisions of the ninth section of "The Pearl Shell Fishery Regulation Act, 1873.")

(Signed) A. B.,

Justice of the Peace.

or Police Constable.

or One of the persons appointed to ensure the carrying out of "The Pearl Shell Fishery Regulation Act, 1873."

Dated this _____ day of _____, 18____, }
at (*Roebourne*), Western Australia. }