

# New Zealand.

ANNO VICESIMO NONO

## V I C T O R I Æ R E G I N Æ.

### No. —.

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#### A BILL INTITULED

## AN ACT to ensure the fulfilment of Engagements and to provide for the adjustment of Disputes between Masters and Servants. Title.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled and by the authority of the same as follows—

I. The Short Title of this Act shall be "The Masters and Servants Act 1865." Short Title.

II. It shall be lawful for any two or more Justices of the Peace met and acting together to hear and determine in a summary manner all informations for penalties and all complaints differences or disputes which shall happen or arise under this Act whether the same be between any servant and his employer or master or the overseer or agent of such employer or master or between any persons whomsoever. Summary jurisdiction of Justices.

III. No conviction order or award shall be made under this Act unless complaint be made within six months from the time when the offence breach of agreement or cause of complaint arise. Limitation of complaints.

IV. If any servant shall contract with any person whomsoever to serve him for any time or times whatsoever or in any manner and shall not enter into or commence his service according to his contract (such contract being in writing) or having entered into such service shall absent himself from his service before the term of his contract Punishment for Servants not entering in service according to agreement absenting themselves or guilty of neglect misconduct or misdemeanor.

whether such contract shall be in writing or not in writing shall be completed or neglect to fulfil the same or be guilty of disobedience or of any other misconduct or misdemeanor in the execution thereof or otherwise respecting the same then and in every such case such servant shall be guilty of an offence under this Act and shall upon conviction thereof be liable to be imprisoned for a term not exceeding three months or in lieu thereof the convicting Justices may punish the offender by abating the whole or any part of his wages and may discharge him from his contract service or employment if be the desire of the master or employer or his manager agent or overseer that such servant shall be discharged but not otherwise Provided always that if it shall be established to the satisfaction of the Justices before whom complaint or information of any such breach of contract shall be made or laid that the terms of such contract were not such as a person knowing the circumstances of the Colony would have become bound by and that taking into account the expenses of living and cost of passage of and payment to such servant on account of wages with legal interest thereon a full or partial equivalent for such expenses cost payments and interest hath been rendered by the services actually performed by such servant it shall be lawful for such Justices to discharge such servant from such contract or to order such servant to return to service for such further period as the justice of the case may seem to require And in case of such return to service being ordered such servant shall during such further period of service be subject to the foregoing provisions of this Act.

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.

V. If any servant who shall enter into any agreement either written or oral with any master or with his agent or overseer for any time or period whatsoever at and for any wages or salary whatsoever or who shall have hired or engaged himself to any such master to do perform finish or complete any work job or employment whatsoever taken in task by the piece or in gross and under pretence of requiring the same to enable him to pay the expense of his journey to the place or places at which and where he has so engaged to serve such master or under any other pretence whatsoever shall obtain or procure from such master or his agent any sum of money or goods as an advance on account of the wages at which he shall so have 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 shall after obtaining the same neglect or refuse under any pretext whatsoever forthwith to go to the place or places at which he shall have been so hired or employed to work or serve such master during the time for which he shall have agreed or shall refuse to perform or complete any work job or employment whatsoever which he had engaged to perform or complete as aforesaid any servant so offending shall on conviction of such offence be liable to pay to the master any sum not exceeding thrice the amount so advanced and in default of payment to be imprisoned as hereinafter mentioned or to be imprisoned for any term not exceeding three calendar months and at the discretion of the convicting Justices 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.

VI. If any servant shall wilfully or negligently spoil or destroy any goods wares work or materials for work committed to his charge or shall wilfully or negligently injure or lose any cattle sheep horses or other property belonging to or in the charge of his employer every such offender being thereof lawfully convicted shall forfeit and pay reasonable damages for such property so spoiled destroyed injured or lost as aforesaid and in default of satisfaction of such damages shall be committed to gaol by such 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 mere negligent injury under this clause where any damages shall be assessed against any such offender the

Proviso.

mode of satisfying the same shall be in the discretion of the convicting Justices where it can be shown that any such offender has any means of satisfying such damages otherwise than by undergoing such term of imprisonment.

VII. In all cases of wages not exceeding thirty pounds which shall be due and payable and unpaid to any servant any two Justices may upon complaint thereof make such order for payment of the said wages with the costs incurred by the servant in prosecuting such claim as shall to such Justices appear reasonable and just Recovery of wages by distress and sale of goods. Provided always Proviso. that no warrant of execution shall issue or levy be made for any wages due by a person whose estate has been sequestrated subsequent to such wages becoming due.

VIII. Any person imprisoned for non-payment of wages shall be discharged out of custody so soon as his estate shall have been placed under sequestration in pursuance of any law of Bankruptcy or Insolvency. Any person so imprisoned to be discharged on becoming insolvent.

IX. If masters or employers reside at considerable distances from the districts or places where their business is carried on or are occasionally absent for long periods of time and during such residence or occasional absences entrust their business to the management and superintendence of agents overseers or other managers in either of the said cases it shall be lawful upon the complaint of any such servant for any two Justices to make and enforce 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 the sum of thirty pounds. When masters or employers are absentees their agents may be sued for wages.

X. If any artificer splitter fencer sheep-shearer or person engaged in mowing reaping or getting in hay or corn or in sheep-washing or other laborer who shall contract with any person whomsoever for the performance of a certain work at a certain price shall (except for the purpose of making complaint under section XI. of this Act or for other lawful cause) absent himself from his services before the termination or completion of his contract it shall be lawful for any two Justices to commit every such person to a common gaol there to be kept for any time not exceeding three months. Penalty for breach of contract by artificers &c.

XI. Upon any complaint of any artificer splitter fencer sheep-shearer person engaged in the reaping mowing or getting in of hay and corn or in washing sheep or other laborer who shall have contracted for the performance of a certain work at a certain price against any master or employer touching or concerning any misuse refusal of necessary provisions or furnishing provisions of bad quality non-payment of wages cruelty or other ill-treatment whatsoever of or towards any such artificer or other person as aforesaid two Justices of the Peace may make an order for the payment of such wages and such sum of money by way of amends as to such Justices shall then appear to be due or owing to any such artificer or other person as aforesaid as they shall think fair and reasonable. Artificers &c. may recover wages and amends.

XII. 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 in addition to his wages 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. Provided that such cheque draft order or note shall be given up to the master before the amount thereof or any damages shall be awarded for such dishonor. Servants paid in cheques orders or drafts which have been dishonored to be entitled to recover the amount with reasonable damages.

XIII. Upon complaint on oath of any servant against any master or employer for refusal of necessary provision or other ill-treatment Servants meeting with ill-usage or ill-treatment may recover amends.

whatsoever of or towards any such servant two Justices may after summons issued and parties heard make an order awarding such amends to be made to any such servant as they shall think fair and reasonable.

Servants to obtain discharges on the termination of service.

XIV. Upon the discharge of any servant or upon the termination of his service the master shall give to him if demanded a certificate of such servant's service and discharge which certificate shall be signed by the master or his agent and if the master or agent shall refuse to give such certificate to such servant he shall forfeit and pay a sum not exceeding five pounds. Provided that such discharge may be given by any Justice of the Peace where the master or agent refuses to give it without reasonable cause and that no master shall be bound to give such certificate in the case of any weekly servant employed within any city or town.

Penalty for harboring servants already engaged.

XV. If any person shall knowingly receive employ or entertain any servant already employed or retained by any other person and not lawfully discharged from such service or employment every person so offending shall for every such offence being lawfully convicted thereof forfeit and pay a sum not exceeding twenty pounds one-half thereof to be paid to the informer in such case. But no such knowledge shall be presumed from the absence of any certificate of discharge by a former employer or magistrate.

Justices to determine cases not hereinbefore provided for.

XVI. It shall be lawful for any two or more Justices of the Peace in any case not hereinbefore specially provided for to hear and determine in a like summary manner any complaint difference or dispute which shall happen and arise between any such servant and his master or employer or his overseer or agent and to make such order or award against either party in every such case as to such Justice shall seem meet and to cancel the indenture or agreement between the parties and to impose on either party a fine or penalty proportionable to the offence but not exceeding the sum of thirty pounds: Provided always that no such agreement or indenture shall be cancelled without the consent of the party in whose favor such decision is given.

Proviso.

Not necessary to call the attesting witness or prove the handwriting of agreements.

XVII. 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.

Persons engaging servants in other countries for service in New Zealand may prosecute any persons harboring them.

XVIII. If any servant in the United Kingdom in British Colonies in the British East India Possessions and in Foreign Countries shall contract by indenture or other written agreement with any person about to proceed to or actually resident in the Colony or with the agents of such person it shall be lawful for any person with whom any such servant shall have so contracted to serve as aforesaid to maintain an action against any person who shall employ retain harbor or conceal any such servant with intent to deprive the employer of any such person of his services or otherwise with intention to defraud or injure such employer and in case the plaintiff in any such action shall recover therein he in addition to the damages found shall be entitled to treble costs.

Penalty for hiring or employing servants already engaged.

XIX. If any person shall wilfully or knowingly hire or employ any such person whatsoever already employed or retained by any other person every person so offending shall for every such offence forfeit a sum not exceeding twenty pounds one half thereof to be paid to the informer.

Limitation of contracts.

XX. All such contracts by indenture or written agreement shall be of the like force and effect within the Colony as if they had been actually made and executed by the parties thereto within the same. Provided that no such contract shall be binding on any person to serve for a longer period than five years.

XXI. It shall be lawful for any two or more Justices upon complaint made upon oath to punish by fine or imprisonment or both any wilful violation of the provisions of such indentures or other written agreement as last aforesaid or any misdemeanor miscarriage misconduct or ill-behaviour of such servant in such his service or employment as aforesaid and also to hear and determine all complaints differences or disputes which shall happen and arise between any such servant and the person whom he shall have so contracted to serve as aforesaid and to make such order or award in every such case as to such Justices shall seem just.

Justices may punish for violation of indentures &c.

XXII. Throughout this Act unless when otherwise required by the context the word "servant" shall extend to and include all agricultural and other laborers and workmen shepherds stockmen and artizans domestic and other servants but nothing herein contained shall apply to any aboriginal native of the Colony.

Construction of certain words.

XXIII. Nothing in this Act contained shall be deemed or taken to authorise the committal of any female servant to any gaol.

Female servants not to be committed to gaol.

XXIV. All fines or penalties not hereinbefore specially appropriated shall be paid to Her Majesty and be brought to account by the Colonial Treasurer as ordinary revenue.

Appropriation of penalties &c.

XXV. Nothing in this Act contained shall be deemed or taken to authorise any Justice of the Peace to exercise any such jurisdiction as aforesaid in any case of any such servant as aforesaid who shall be in the service of any such Justice or in any case in which any such Justice may be directly interested.

Limitation of convictions.

XXXVI. The powers hereby vested in two or more Justices may be exercised by a Resident Magistrate.