

*This PUBLIC BILL originated in the HOUSE OF REPRESENTATIVES, and, having this day passed as now printed, is transmitted to the LEGISLATIVE COUNCIL for its concurrence.*

*House of Representatives,  
28th August, 1893.*

[AS AMENDED BY THE LEGISLATIVE COUNCIL.]

*Hon. Mr. Reeves.*

WORKMEN'S WAGES.

ANALYSIS.

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A BILL INTITULED

AN ACT to consolidate and amend the Law relating to Workmen's Wages, and to make Better Provision for securing the Payment thereof. Title.

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

1. The Short Title of this Act is "The Workmen's Wages Act, 1893." Short Title.

10 2. In this Act, if not inconsistent with the context,— Interpretation.  
"Clerk of Court" means the Clerk of the Resident Magistrate's or District Court, and includes the Registrar and Deputy Registrar of the Supreme Court:

15 "Employer" means ~~a contractor, and includes any person by whom a contract is made with another person for the performance of work, or at whose request, or upon whose credit, or on whose behalf, with his privity or consent,~~

work is done, and includes also all persons claiming under him whose rights are acquired after the work in question is commenced :

"Contractor" ~~as regards an employer,~~ means a person who contracts directly with the employer for the performance of work for him ; ~~as regards a sub-contractor, the term means a person with whom the sub-contractor contracts to perform work;~~ and "sub-contractor" means a person who contracts with a contractor, or with another sub-contractor, for the performance of work for such contractor or sub-contractor :

"Court" means the Court in which any proceeding may be taken under this Act, and includes the Judge of any such Court, and a Resident Magistrate in any matter in which such Resident Magistrate has jurisdiction :

"Wages" includes any money or thing had or contracted to be paid, delivered, or given as a recompense, reward, remuneration, or consideration for any service, work, or labour rendered or done, or to be rendered or done, whether within a certain time or to a certain amount, or for a time or an amount uncertain, and whether payable daily, weekly, or monthly :

"Workman" means any person, male or female, and whether under or above the age of twenty-one years, in any manner engaged or employed in manual labour or in work of any kind, and whether his or her remuneration is to be according to time or by piece-work, or at a fixed price, or otherwise howsoever.

Workmen employed in manual labour to be paid weekly.

3. In the absence of an agreement in writing to the contrary, the entire amount of wages earned by or payable to any workman engaged or employed in manual labour shall be paid to such workman at intervals of not more than one week if demanded.

Wages to be first charge on money due to or in hands of contractor.

4. The wages due to workmen employed on any contract, work, or undertaking shall, subject to the employer's rights as mentioned in section *fifteen* hereof, be a first and paramount charge upon the moneys due to the contractor by the employer under or in respect of the contract, work, or undertaking : Provided that until service of notice of attachment, as hereinafter mentioned, the employer shall be at liberty to pay to the contractor all moneys which have accrued due and are payable by the employer to the contractor under or in respect of the contract, work, or undertaking.

Assignment of money due or received under contract to have no effect until wages paid to workmen.

5. Every assignment, disposition, or charge (legal or equitable) made or given by the contractor to any person whomsoever, other than his workmen for wages due to them, of or upon the moneys due or to become due to him under or in respect of the contract, work; or undertaking shall have no force or effect at law or in equity *until as against* all wages due and to accrue due to the workmen *have been fully paid and satisfied.*

Moneys received by contractor not to be attached, and to be applied in payment of wages due.

6. All moneys received by the contractor from the employer under or in respect of the contract, work, or undertaking shall not be liable to be attached or charged, except by the workmen as hereafter mentioned, until all wages due or to accrue due to the workmen

have been fully paid and satisfied; and the contractor shall apply all such moneys in payment of the wages due and to accrue due to the workmen.

7. The contractor shall keep a full and truthful account in writing of all such moneys received by him as aforesaid, and of the manner in which the same are disbursed or disposed of, and shall, on the application of any workman whose wages are more than eight clear days in arrear, and have not been paid when demanded, produce such account to such workman for his inspection, and such workman shall be at liberty to take a copy of or extracts from the said account.

Contractor to keep accounts and to produce same to workmen.

8. If the employer pay the contractor in advance, then in any proceedings by workmen against the employer under this Act the employer shall not be entitled to set off any such payments against the wages due to and claimed by the workmen.

Employer not to pay contractor in advance.

9. Any workman whose wages remain unpaid for twenty-four hours after they become due payable and have been demanded may serve the employer, or his attorney or agent, with a notice of attachment in the Form No. 1 set forth in the Schedule hereto, or to the effect thereof; and upon service thereof all moneys due and thereafter to become due and payable to the contractor shall be attached, and shall be retained by the employer until the Court in which the claim is heard shall direct to whom and in what manner the same are to be paid.

Workman whose wages are in arrear may attach moneys in hands of employer.

*New paragraph added.*

But any employer may pay into the aforesaid Court the sum mentioned in the notice of attachment, if such sum is an ascertained and fixed sum, and the receipt of the Clerk of such Court for the said sum shall be a full discharge to the employer of his liability under the attachment.

*Struck out.*

10. In the event of the workman obtaining judgment against his employer for the wages claimed, or any part thereof, he may obtain from the Court and serve upon the employer, or his attorney or agent, an order for the payment of the amount of the judgment in the Form No. 2 set forth in the said Schedule hereto, or to the effect thereof.

11. After service of such order, and until a discharge for the amount mentioned therein in the Form No. 3 in the Schedule hereto, or to the effect thereof, is produced to and a copy thereof left with the employer, the employer shall pay the workman the amount stated in the order out of the moneys attached; but no such payment shall be made to any workman under this section by the employer until the expiration of seven days after the service of such order.

*New clause.*

10. In the event of the workman obtaining judgment against the contractor for the wages claimed, or any part thereof, he may obtain from the Court an order, in the Form No. 2 in the Schedule hereto, or to the effect thereof, for the payment by the contractor's employer of the amount of the judgment, and may serve a copy of such order upon such employer or his attorney or agent.

Workman obtaining judgment against the contractor, Court may order employer to pay him.

## New clause.

Employer to pay workman when ordered.

11. At the expiration of seven days after service of such last-mentioned order, but not earlier, the employer shall, out of the moneys attached in his hands, pay the amount stated in such order to the workman, who thereupon shall give the employer a discharge for such amount in the Form No. 3 in the Schedule hereto. 5

Demands of workmen to be paid according to priority of notice.

Notices served within seven days deemed to be simultaneous.

12. All moneys attached as aforesaid shall be paid by the employer in priority according to the order of the service of the notices attaching such moneys; but all notices served within seven days of the first of such notices of attachment shall be deemed to be served simultaneously, for the purpose of securing the equal distribution of the moneys attached amongst all workmen serving such notices within the aforesaid seven days. 10

Simultaneous notices to rank equally among themselves.

13. All demands for wages of workmen who serve simultaneous notices as aforesaid shall rank equally among themselves, and shall be paid in full, unless the moneys attached in the hands of the employer are insufficient to meet them, in which case they shall abate in equal proportions between themselves. 15

Employer served with notice liable only for amount due by him to contractor.

14. The employer served with an order or orders under this Act shall not be liable to make good any demand made upon him to a greater extent than the sum which is actually due and owing by him to the contractor at the time of the service of such order or the payment thereunder. 20

In failure to pay workman may sue person served with notice.

15. If the employer served with notice of attachment and order for payment shall fail to pay as aforesaid, the workman may sue for and recover in his own name in any Court having jurisdiction in the matter the moneys attached by any proceeding which ~~his employer~~ *the contractor* might have taken had there been no attachment under this Act, subject to the right of the employer to set off against the workman's demand all moneys properly paid by the employer to the contractor under the contract prior to the service of the notice of attachment, and also all moneys ~~not being penalties in the nature of liquidated damages~~ which the contractor was at the time of the service of the notice of attachment liable to pay to the employer under the contract, or in consequence of any breach or non-performance thereof. 25 30 35

On satisfaction of demand, attachment of moneys to cease to operate.

16. Upon satisfaction of the workman's demand mentioned in any order for payment under this Act, or on the setting aside of such order, any attachment of moneys effected under this Act shall cease to be operative, but without prejudice to any *bona fide* payment by the employer served with an order for payment in accordance with such order previous to his receiving notice of such satisfaction or setting aside of the order. 40

Workman upon payment to sign a discharge.

17. The workman shall, upon the request of the person paying to him the demand specified in any order for payment under this Act, and at the time of receiving the same, sign a discharge therefor in the said Form No. 3 set forth in the Schedule hereto or to the effect thereof. 45

Act not to affect other remedies or vary rights between parties.

18. Nothing in this Act contained shall be construed to prejudice any other remedy which a workman may have against his contractor in respect of the debt due to him, or, save as expressly provided, to affect any right subsisting under any contract between any ~~employer of labour~~ *contractor* and the person employing him. 50

New clause.

18A. Nothing in this Act shall be construed to apply in respect of work done upon a moveable chattel by a workman who has a right of a lien thereon, and may retain or sell the same in payment of his work under the provisions of section forty-four of "The Contractors' and Workmen's Lien Act, 1892."

Act not to apply to personal chattels in possession of workman.

19. The Court shall have full power to inquire into, adjudicate upon, adjust, and settle in a summary manner all questions and disputes arising between the contractor and employer, or between workmen and the contractor or employer, or between the workmen *inter se*, and may summon before it and examine the parties and their witnesses, and may vary and rescind all such orders, and give all such directions respecting the matters brought before it as it may consider necessary.

Power of Court to determine all questions, &c.

20. In all proceedings under this Act the Court shall have power to award costs to any of the parties to such proceedings.

Court may award costs.

21. All proceedings in any Court under this Act shall be subject to the rules of the Court for the time being in force relating to other proceedings in the Court, so far as the same can be, and the Governor in Council may from time to time, subject to the provisions of this Act, make, revoke, and alter rules for carrying into effect the objects of this Act. Such rules shall be published in the *New Zealand Gazette*, and shall come into force on the date of such publication.

Rules of Court to apply.

Power to Governor to make rules.

22. All notices, orders, or documents by this Act required to be served on any person shall be served either personally or by registered letter addressed and posted to the last-known place of abode or business of such person, or shall be served in such manner and upon such person as the rules direct, or as the Court or the Judge thereof shall in any particular case by memorandum endorsed on the notice, order, or document served, direct. *Service by post shall not be deemed to have been effected until the time when the notice, order, or document would be delivered in the ordinary course of the post.*

Service of orders, notices, &c.

23. If the employer or contractor shall, by himself or the agency of any other person or persons, contravene or, *without good reason*, fail to comply with any of the provisions of this Act, such employer, contractor, or agent shall be deemed guilty of an offence under this Act, and be liable to a penalty not exceeding *fifty* pounds, or in default of payment thereof to imprisonment, with or without hard labour, for a period not exceeding three months.

Penalties.

(1.) Where an offence for which an employer or contractor is by virtue of this Act liable to a penalty has, in fact, been committed by some agent of the employer or contractor, or other person, such agent or other person shall be liable to the same penalty as if he were the employer or contractor.

Penalty on agent or contractor.

(2.) Where an employer or contractor is charged with an offence against this Act, he shall be entitled, upon information duly laid by him, to have any other person whom he charges as the actual offender brought before the Court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the employer or contractor proves to the satisfaction of the Court that he has used due diligence to enforce the execution of this Act, and that the said other person has committed the offence in question without his knowledge, consent, or connivance, the said other person shall be convicted of such offence, and the employer shall be exempt from liability.

If person other than contractor guilty of offence, power of contractor to exempt himself from penalty on conviction of actual offender.

Workmen in service of sub-contractor to have same rights and remedies as workmen in service of contractor against employer.

24. Where any work is let by a contractor to a sub-contractor every workman in the service of such sub-contractor shall have the same rights and remedies in all respects against the last-mentioned contractor as a workman in the service of a contractor has under this Act against the employer of such last-mentioned contractor. For the purpose of giving effect to this section all the foregoing provisions of this Act shall be read as if there had been enacted therein respectively the word "contractor" in the place of the word "employer," and the word "sub-contractor" in the place of the word "contractor."

Penalties to be recovered summarily.

25. All penalties under this Act may be recovered in a summary way before a Resident Magistrate, or two or more Justices of the Peace, in accordance with "The Justices of the Peace Act, 1882."

Act to be read with Truck Act and Contractors' and Workmen's Lien Act.

26. This Act shall be read with, and shall be subject to, the provisions of "The Truck Act, 1891," and any amendments thereof, and "The Contractors' and Workmen's Lien Act, 1892," and any amendments thereof.

Repeal.

27. "The Workmen's Wages Act, 1884," is hereby repealed: Provided that all proceedings commenced and pending under the said Act before the coming into operation of this Act may be continued and completed under the said Act as if the same had not been repealed.

Schedule.

## SCHEDULE.

### FORM No. 1.—NOTICE OF ATTACHMENT.

To [Name of employer].

TAKE notice that [Name of employer contractor] being indebted to me [or us] in the sum of £ [or, in the sums set opposite our signatures] for wages, you are hereby required to retain in your hands all moneys due or accruing due from you to the said [Name of employer contractor].

Dated this            day of            , 189 .

A.B., [Workman] ... £	[Amount owing].
C.D.,            "            ... £	"
E.F.,            "            ... £	"

### FORM No. 2.—ORDER FOR PAYMENT OF AMOUNT DUE TO WORKMEN.

In the            Court,            District.

Between A.B., plaintiff, and C.D., defendant.

To [Name of employer], of

The above-named plaintiff having on the            day of            , 189 , obtained a judgment in this Court against the above-named defendant for the sum of £            for wages, you are hereby ordered under "The Workmen's Wages Act, 1893," to pay to the plaintiff the aforesaid amount out of any moneys now due or from time to time becoming due from you to the defendant.

Dated this            day of            , 189 .

(Seal of Court.)

Clerk of Court.

### FORM No 3.—RECEIPT TO BE GIVEN BY WORKMAN ON PAYMENT OF HIS CLAIM.

I HEREBY acknowledge that the sum of £            , due to me by [Name of employer contractor], for which I obtained judgment in the            Court at            on the            day of            , 189 , under "The Workmen's Wages Act, 1893," has been fully paid by [Name of person paying—i.e., contractor or employer].

Dated this            day of            , 189 .

A.B., [Workman].