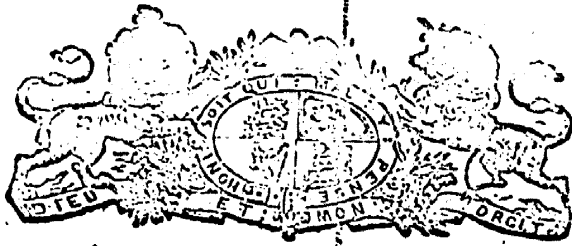


Repealed by Act. 7 - 1863.



1847.

No. 9.

ORDINANCE enacted by the Governor of South Australia, with the advice and consent of the Legislative Council thereof.

To amend the Laws relating to Masters and Servants.

[23rd July, 1847.]

WHEREAS it is expedient to make further provision to ensure the fulfilment of Engagements and for the determination of Disputes between Masters and Servants— Preamble.

BE IT THEREFORE ENACTED by THE GOVERNOR of South Australia, with the advice and consent of THE LEGISLATIVE COUNCIL thereof:

THAT from and after the passing hereof, an Ordinance passed on the Fifteenth day of November, One thousand eight hundred and forty-one, intituled "An Act for the Summary determination of Disputes between Masters and Servants," shall be and the same is hereby repealed and this Ordinance shall commence and take effect. Repeal of 6 Vict., No. 10.

II. AND

**Penishment for Ser-
vants not entering in-
to service according
to agreement, absent-
ing themselves, or
guilty of neglect, mis-
conduct, or misde-
meanor.**

**Justices may impri-
son or abate wages.**

**Servants obtaining
money under pre-
tence of service, or
advances of wages be-
yond the amount ac-
tually earned, may be
sentenced to impri-
sonment, with or
without hard labour,
for any period not
exceeding 3 months.**

II. AND BE IT ENACTED, that if any Person shall contract with another 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 (such Contract being in writing), or having entered into such service, shall absent himself therefrom before the term of his Contract (whether such Contract shall be in writing or not in writing), 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, then and in every such case it shall and may be lawful for any Two or more Justices of the Peace, on conviction, to commit every such Offender to the House of Correction, 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.

III. AND WHEREAS many Persons hire or engage themselves as Servants, and obtain money or goods as an advance on account of the Wages or Salary at which they have so engaged or hired themselves, under the pretence that they require such money or goods, either to enable them to pay the expences of their travelling to the place at which they have so hired or engaged to work or serve, or for some other purpose; and after having so obtained such money or goods, either neglect or refuse to go to the place at which they were so hired or engaged to serve; or having obtained money or goods as an advance of Wages or Salary beyond the sums actually earned, refuse or neglect to complete the term of service, or to perform or complete the work or labour for which they have agreed: BE IT ENACTED, that if any Person who shall enter into any Agreement either written or parol, to serve as a Servant for any time or period whatsoever, at and for any Wages or Salary whatsoever, or to do, perform, finish, or complete any work, job, or employment whatsoever, taken in task, by the piece or in gross, shall, under pretence of requiring the same to enable him to pay the expence of his journey to the place at which and where he has so engaged to serve, or under any other pretence whatsoever, 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 hired or employed 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 whatsoever, which he had engaged to perform or complete as aforesaid, it shall be lawful for any Two or more Justices of the Peace, on conviction, to commit every

every person so offending as aforesaid to the common Gaol or House of Correction, there to remain for any term not exceeding Three calendar Months, and at the discretion of such Justices, to be kept to hard labour for the whole or any part of the said term.

IV. AND BE IT ENACTED, that 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 of the Peace, shall forfeit and pay reasonable Damages for such Property so 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 be deemed to apply to any case of felonious injury to Property within the meaning of the Statute passed in the Parliament held in the seventh and eighth year of the reign of His MAJESTY King George the Fourth, intituled "An Act for consolidating and amending the Laws in England relative to Malicious Injuries to Property."

Penalty for Servants negligently or wilfully spoiling or losing Property.

Proviso.

V. AND BE IT ENACTED, that in all cases of Wages or Money due for Work not exceeding Thirty Pounds which shall be due and payable to any Servant, it shall be lawful for any Two or more Justices of the Peace to hear and determine the complaint, and to make such order for 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.

VI. PROVIDED ALWAYS AND BE IT ENACTED, that no levy shall be made for any Wages due by a person who has been adjudged Insolvent subsequent to such Wages becoming due: AND that any Person Imprisoned for non-payment 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 his Estate shall have been vested in the Official Assignee, under the Laws relating to Insolvency.

Proviso as to insolvents.

VII. AND BE IT ENACTED, that 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 dishonoured, no Servant shall thereby be deprived of any remedy given to him by this Ordinance 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

Servants paid in cheques, orders, or drafts, which had been dishonoured, to be entitled to recover the amount, with reasonable Damages.

of such cheque, draft, order, or note; and such Damages shall be recoverable as Wages due to such Servant.

Servants meeting with ill-usage or ill-treatment may recover Amends.

VIII. AND BE IT ENACTED, that it shall and may be lawful for any Two or more Justices of the Peace to 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 such Amends as aforesaid shall exceed the amount of Six Months' Wages of such Servant.

Proviso.

Provisions of this Ordinance to apply to labourers contracting for the performance of task work.

IX. AND BE IT ENACTED, that the provisions hereinbefore contained, as well with respect to Masters as Servants and Workmen, shall be deemed to extend and apply to all Artificers, Sawyers, Splitters, Sheep-shearers, and Persons engaged in mowing, reaping, or getting in of Hay or Corn, or in Sheep-washing, and other Labourers, who shall have contracted for the performance of work at a certain price, or taken in task by the piece or in gross.

Penalty for harbouring Servants already engaged.

X. AND BE IT ENACTED, that if any Person shall knowingly and unlawfully employ, retain, or harbour 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 of the Peace, for every such offence, forfeit and pay a sum not exceeding Twenty pounds.

Servants engaged in other countries for service in South Australia.

XI. AND WHEREAS Persons of the Labouring Class in the United Kingdom, in British Colonies, in the British East India Possessions, and in Foreign Countries, occasionally contract by Indenture or other written Agreement with Persons about to proceed to, or actually resident in South Australia, or with the Agents of such Persons, for service in the said Province: AND it is expedient, to prevent loss to parties making advances on the faith of such Contracts, and to limit and declare the effect thereof in manner after-mentioned: BE IT ENACTED, that the provisions of this Ordinance shall be deemed to extend and apply to all such Contracts as last aforesaid: PROVIDED that no Labourer shall be compelled to serve under any such Contract made out of the Province after reimbursement or tender shall have been made to the Master whom he may have contracted to serve, of all sums which may have been defrayed or advanced on account of the expences of the conveyance to the Province of the Labourer so contracting, and his wife and family, if any; and not in any case after the period of One year from the arrival of such Labourer in the Province: PROVIDED also, that on such reimbursement,

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ment or tender being made, and in any event, on the expiration of One year from and after the day of arrival in the Province of any such Labourer, the Contract, so far as respects the future service of such Labourer, shall determine, and be of no force or effect.

XII. AND BE IT ENACTED, that 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 cognisable in a Summary manner before Two or more Justices of the Peace, 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 commitment, as in the case of a Summary Conviction by Justices of the Peace: PROVIDED ALWAYS, that no such Indenture or Agreement shall be cancelled against the consent of the party in whose favour such decision is given. Jurisdiction of Justices.
 Proviso.

XIII. AND BE IT ENACTED, that all proceedings under this Ordinance shall be had and taken, and all Convictions, Adjudications, and Orders, shall be subject to appeal, in manner provided by any Ordinance or Law of the Province in force for the time being for regulating Summary Proceedings before Justices of the Peace, so far as such provisions shall be applicable. Proceedings to be according to the Laws for regulating Summary proceedings.

XIV. AND BE IT ENACTED, that 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 and may be had and made 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 Ordinance as if the same had been had and made 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 Partners, Agents, and Servants, to be considered Principals.
 Proviso.

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.

As to Married Women and Infants.

XV. AND BE IT ENACTED, that 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 Ordinance, such complaint may be lodged, and all further proceedings thereupon had, by and in the name of the Husband of such Married Woman, and of the Father or any of the kindred of any such Infant, or of the sureties of the Infant in any Indenture of Apprenticeship, or of any Person nominated by such Infant, if he shall not have any parent, kindred, or surety living within the Province; and all such proceedings shall be as effectual, valid, and binding as if such Married Woman was sole, and such Infants were of full age, and pursued by themselves the remedies provided by this Ordinance.

Warrant for apprehension may be issued without summons.

XVI. PROVIDED ALWAYS, AND BE IT ENACTED, that any one Justice of the Peace may, without issuing a Summons, forthwith issue his Warrant for the apprehension of any Person charged with any offence under this Ordinance, whenever good grounds for so doing shall be stated on Oath before him: AND that all complaints under this Ordinance may be heard and determined, whether or not any information in writing shall have been exhibited or taken by or before any Magistrate: PROVIDED ALWAYS, that such note or memorandum of the charge as is authorised to be used in the Courts of Police Magistrates, pursuant to the Ordinance in that behalf, shall be made and kept by every Justice of the substance of every Complaint for which a Summons or Warrant shall be issued: PROVIDED ALSO, that the Justices may, if they shall think fit, require an information in writing to be laid in any case in which it shall seem to be expedient.

And proceedings may be on short form of information.

Proviso.

Proviso.

Power to amend.

XVII. AND BE IT ENACTED, that it shall be lawful for any Justice of the Peace to amend any Information, Conviction, Award, Order, or Warrant of Commitment for any offence under this Ordinance at any time, whether before or after Conviction or Adjudication.

Not necessary to call the attesting Witness, or prove the handwriting of Agreements.

XVIII. AND BE IT ENACTED, that in any proceedings under this Ordinance, 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.

XIX. AND

XIX. AND BE IT ENACTED, that all Fines or Penalties incurred under this Ordinance shall be paid to the Colonial Treasurer, on behalf of HER MAJESTY, for the public uses of the Province and support of the Government thereof.

Appropriation of Penalties, &c.

XX. AND BE IT ENACTED, that no Conviction, Award, or Order under this Ordinance, 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.

Proviso.

XXI. AND BE IT ENACTED, that no Conviction shall be had under this Ordinance unless the Complaint be made within Six months from the time the Offence shall have been committed.

Limitation of Convictions.

XXII. AND BE IT DECLARED AND ENACTED, that nothing in this Ordinance 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.

Justices not to have Jurisdiction over their own Servants.

XXIII. AND WHEREAS this Ordinance may oft-times be of no effect from the difficulty of obtaining the attendance of Two Justices not interested in the matter in dispute: BE IT ENACTED, that it shall be lawful for the Governor, in the name and on behalf of HER MAJESTY, by notice published in *The Government Gazette*, from time to time, specially to nominate such Justices of the Peace as he may deem fit and proper to exercise singly summary jurisdiction under this Ordinance; and every Justice so specially nominated shall and may have and exercise all the jurisdiction, authority, and powers which are given to Two Justices of the Peace by this Ordinance.

Special Magistrates may exercise the powers of two Justices under this Ordinance.

XXIV. AND WHEREAS an Ordinance was passed on the Twentieth day of February, One thousand eight hundred and forty-four, "To Regulate the Whale Fishery Service in South Australia," in which reference is made to the hereinbefore first recited Ordinance, and to an Act of the Session of Parliament of the fifth and sixth years 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,"

Whalers and Seamen, 7 and 8 Vict. No. 7, 1844.

5 Vict. No. 10.

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

"Service," now repealed: BE IT ENACTED, that in the said Ordinance to regulate the Whale Fishery Service, where mention is made of the hereinbefore first recited Ordinance, the same shall be held to mean and apply to this Ordinance; and where mention is made of the said Act of Parliament, the same shall be held to mean and apply to an Act passed in the Session of Parliament of the seventh and eighth years of HER present MAJESTY, intituled "An Act to amend and consolidate the Laws relating to Merchant Seamen, and for keeping a Register of Seamen."

1 and 8 Vict., c. 112.

Construction of certain words in this Ordinance.

XXV. AND BE IT ENACTED, that throughout this Ordinance, unless when otherwise required by the context, the word "Master" shall extend to and include Employer, Male and Female, in the several cases to which this Ordinance is intended to apply; and the word "Servant" shall extend to and include all Agricultural and other Labourers, and Workmen, Shepherds, Stockmen, Artizans, Miners, and other Male Servants.

Apprentices.

Proviso.

XXVI. AND BE IT ENACTED, that all the Provisions of this Ordinance shall be construed to extend to Apprentices in the several occupations herein set forth: PROVIDED ALWAYS that no Indenture or Agreement shall be cancelled, or discharged in the case of any Apprentice, under the powers given by this Ordinance, 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.

FREDK. H. ROBE,
Lieutenant Governor.

Passed the Legislative Council this Twenty-third day of July, One thousand eight hundred and forty-seven.

W. L. O'HALLORAN,
Clerk of Council.