

EMPLOYERS AND EMPLOYÉS ACT 1928.

An Act to consolidate the Law relating to Employers and Employés. 19 GEORGE V.
No. 3673.

[12th February, 1929.]

BE it enacted by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):—

1. This Act may be cited as the *Employers and Employés Act 1928*, and shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the *Government Gazette*, and is divided into Parts as follows:—

PART I.—Councils of Conciliation ss. 3-24.

PART II.—Recovery of Debts due by Contractors ss. 25-33.

PART III.—Liability of Employers for Injuries to Employés ss. 34-41.

PART IV.—Disputes between Employers and Employés ss. 42-52.

PART V.—Conspiracy and Protection of Property ss. 53-62.

PART VI.—Servants' Characters ss. 63-65.

PART VII.—Attachment of Wages ss. 66-69.

2. The Acts mentioned in the First Schedule to this Act to the extent thereby expressed to be repealed are hereby repealed. Such repeal shall not affect any liability civil or criminal incurred or any right acquired or any matter or thing done under the said repealed Acts or any of them before the commencement of this Act.

PART I.—COUNCILS OF CONCILIATION.

3. In this Part unless inconsistent with the context or subject-matter—

“Clerk” means clerk of a Council of Conciliation;

“Council” means a Council of Conciliation for any particular trade or trades in any district;

“District” means in the case of the city of Melbourne the area comprised in a circle the radius of which as taken from the Post-office (corner of Bourke and Elizabeth

*Employers and
Employés Act
1916.*

Short title
commencement
and division.

Repeal.
First Schedule.

Interpretation.
Id. s. 3.

“Clerk.”

“Council.”

“District.”

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"Employer."

"Trade."

"Workman."

streets) Melbourne is of the length of ten miles and in all other cases a circle the radius of which as taken from the municipal buildings of the municipal district at which the council is proposed to meet is of the length of twenty miles ; but no district in respect of any particular trade shall include any part of any other district for which there may be a council for such trade ;
 "Employer" where used in reference to a district means an employer in any particular trade who has carried on business in such district in such trade for at least six months immediately before doing any act done by him pursuant to this Act ;

"Trade" includes occupation, employment or calling ;

"Workman" when used in reference to a district means a workman in any particular trade who has worked at such trade in such district for at least six months immediately before doing any act done by him pursuant to this Act and who has worked at such trade for at least five years.

Power to
Governor in
Council to
license
Councils of
Conciliation.

Ib. s. 4.

See 30 & 31
Vict. c. 105 s. 1.

4. (1) Any number of employers and workmen in any district at a meeting specially convened for that purpose may agree to form a council for such district for the particular trade or trades of such employers and workmen or any of them.

(2) Such employers and workmen may thereupon jointly petition the Governor in Council to grant them a licence to form a Council of Conciliation.

(3) Such petition shall set forth the proposed number of members of such council and also the names occupation and residence of the petitioners and the place at which the council is to meet and the manner in which the expenses of such council and of the registration herein-after directed are to be provided for.

(4) Upon receipt of such petition the Governor in Council may if he thinks fit grant such licence, provided that notice of the said meeting and notice of such petition previously to such meeting and previously to the receipt of such petition have been published in the *Government Gazette* and in one or more newspapers circulating in the district for which such council is proposed to be constituted.

Councils to
consist of not
less than two nor
more than ten
employers and
workmen and a
chairman.

Ib. s. 5.

5. (1) A council shall consist of equal numbers of employers and workmen and a chairman and there shall be not less than two employers and two workmen nor more than ten employers and ten workmen in every council.

(2) The number of employers and workmen to constitute a council and the trade or trades for which such council is to be formed shall be inserted in the licence.

(3) No undischarged or uncertificated bankrupt or insolvent or person convicted of felony perjury or other infamous crime shall be qualified to be or continue to be a member of any council.

Petitioners for
council to elect
first council.

Ib. s. 6.

6. (1) The persons whose names occupations and abodes are attached to the petition praying for a licence shall within thirty days after such grant of licence proceed to the election of a council from among themselves on a day and a time and place to be determined by the Governor in Council and the said council shall remain in office until the election of a new council in its stead.

(2) Every election of a member of the council shall be advertised in the *Government Gazette* and in one or more newspapers circulating in the district in which such council is elected. Employers and Employés Act 1918.

7. If the employers or workmen in any district at any time omit or fail to take steps for the formation of a council or to elect a council for any particular trade or to elect a chairman the Governor in Council may appoint a council or chairman (as the case may be) and such appointed council shall have the like powers as if such council had been elected by the employers and workmen of the trades interested, and for the purposes of this Act such appointed council shall be deemed to have been elected pursuant to this Act and such appointed chairman shall have the like powers as if he had been elected by the council and shall be deemed to have been elected pursuant to this Act. If no election Governor in Council may appoint. *Ib.* s. 7.

8. The Governor in Council may at any time enlarge or contract the district in and for which a council may carry out the provisions of this Act, but no such enlargement or contraction shall take place except upon a petition of a majority of the employers and workmen engaged in the trade or trades of the council to be affected. Power of Governor in Council. *Ib.* s. 8.

9. (1) Every council shall elect its own chairman and appoint its own clerk and such other officer or officers as it may deem requisite and may at any time remove such clerk officer or officers. Chairman and officers. *Ib.* s. 9.

(2) The chairman shall not be one of the employers or workmen of which the council consists but he shall be elected by the council as soon as practicable after the council is formed, and unless he sooner dies resigns or becomes disqualified shall remain in office until the election of a new council, and so long as he remains chairman he shall be a member of the council. Chairman.

(3) The chairman shall preside at all meetings of the council and may take part in all deliberations of the council but shall have no vote therein.

(4) Whenever the office of chairman becomes vacant the council shall forthwith elect another person as chairman who shall be chairman for the unexpired portion of his predecessor's term of office.

10. The clerk appointed by the council for any particular trade or trades in any district shall continue in office as clerk of such council and any council succeeding such council until a new appointment of clerk is made in his stead, and he shall keep a record of all the council's proceedings and do and perform such other duties as this Act may authorize or as such council may require. Continuance in office of clerk. *Ib.* s. 10. See 30 & 31 Vict. s. 14.

11. (1) When any dispute or difference exists between employers and workmen in the course of their employment and arising from and incident thereto, it shall if a council for the particular trade exists in the district where such dispute or difference has arisen be brought in the first place before a council for arrangement. Employer or workman may bring dispute or difference before council. *Ib.* s. 11.

(2) Either the employer or workmen or both may bring such matter before the council by any written letter of complaint addressed to the chairman of such council.

*Employers and
Employés Act
1916 s. 12.*
Duties of
council.
Committee of
conciliation.

12. (1) When in any district any matter in dispute or difference in such district between employer and workmen in any trade for which such council is formed is brought before any council it shall be in the first place referred to a committee of conciliation consisting of one employer and one workman who are members of such council and who shall be appointed by the council to act as such committee, and such committee shall endeavour to reconcile the parties in difference.

If committee
unable to
reconcile,
reference to
council.

(2) If such committee is unable to effect such reconciliation it shall refer the same to the council as a contested matter.

To be heard by
the council.
Quorum of
council.

(3) Such contested matter shall be heard by the council at a meeting at which a quorum is present.

(4) Such quorum shall consist of at least half the members of the council and also the chairman and such members shall comprise equal numbers of employers and workmen.

Duties of
council in a
contested
matter.
Ib. s. 13.

13. At the hearing of such contested matter evidence on both sides may be given on oath (such oath to be administered by the chairman) in the presence of all parties or such of the parties as may appear to the council sufficiently to represent all the parties interested or may be given without oath as to such council seems fit, and books and papers may be called for and every means used to show to the parties in difference what ought to be done in the matter in dispute, and such council may make any written suggestion and recommendation in the matter it deems advisable.

When council
may refer to
arbitration.
Ib. s. 14.

14. If notwithstanding such endeavour by the council the parties in difference are still unreconciled and such council at any subsequent meeting to be called specially for that purpose determines by a vote of at least three-fourths of the members present that such contested matter is a matter proper for arbitration such council may by any instrument in writing signed by the chairman refer the matter in dispute to the arbitration and award of some indifferent person to be appointed by the council and approved by the said parties as arbitrator in such matter.

Power of
arbitrator.
Ib. s. 15.

15. (1) The arbitrator may make such inquiries or obtain such evidence on oath or otherwise as he deems fit from the parties interested or any other persons and shall deliver his award by forwarding the same to the clerk who shall lay the same before the council at its next meeting, but if there is no meeting to be held within seven days after receipt of the award by the clerk he shall forthwith call a special meeting of the council to be held not more than seven days from the date of such receipt.

Duty of council
as regards
award.

(2) The council shall on receipt by it of the award inform the person or persons interested therein or so many of them as may reasonably be considered by it to represent all the parties interested of the purport and effect of such award, and any such person or persons may take extracts from or a copy thereof; but no such award shall be taken into or enforced by any court of law.

No counsel &c.
to attend
hearings without
consent.
Ib. s. 16.
See 30 & 31 Vict.
c. 105 s. 7.

16. No counsel solicitor or agent shall be allowed to attend at any hearing before a committee of conciliation nor before a council nor before an arbitrator unless both parties consent thereto.

17. In any district for which there has once been a council a council shall be elected on the first Monday in November in each year, and the persons so elected shall remain in office until the election of a new council.

Employers and Employés Act 1915 s. 17.
New council to be elected every year.
See 30 & 31 Vict. c. 105 s. 8.
Extraordinary vacancies.
Ib. s. 18.

18. In case of vacancies occurring in any council before the periodical election caused by the death resignation removal from the district or disqualification of any member, an election shall take place within fourteen days and another member shall be elected to fill up the said vacancy from the class to which the member so dying resigning removing or becoming disqualified belonged, and the member so elected shall serve until the time appointed for the appointment of a new council.

19. All persons in any district qualified to sign a petition for a council shall be entitled to be registered as voters for the election of such council, and shall be qualified to be elected as members of such council, but the employers shall appoint their portion of the council and the workmen appoint their portion of such council.

Qualification of electors.
Ib. s. 19.

20. (1) The clerk of each council shall keep a register of every person recognised by any body of workmen connected with the trade or trades and claiming to have his name inscribed on the register as a voter for such council whether employer or workman (but distinct from each other).

Register of voters to be kept.
Ib. s. 20.
See *ib. s. 10.*

(2) The register shall contain the name occupation and abode of each person engaged in the particular trade or occupation as set forth in the licence permitting the formation of such council; and the clerk shall register the same immediately or be liable to be fined for neglect; and every such council is hereby empowered to fix and determine the amount of such fine.

(3) In case it appears to any such council that any person ought not to be so registered such council shall strike the name of such person off such register.

21. The clerk of each council shall be the returning officer at elections of members of such council at the periodical elections; he shall convene meetings of employers and meetings of workmen by advertisement fourteen clear days previous to the first day of November, and each body of employers and body of workmen shall at such meetings proceed to nominate and elect members to such council for the ensuing year commencing on such first day of November.

Meetings of employers and workmen to elect the council.
Ib. s. 21.
See *ib. s. 11.*

22. If the number of candidates exceeds the number to be elected an election shall be held not later than fourteen days from the day of nomination. Every election shall be held pursuant to by-laws made for any district or as may be directed by the Governor in Council, and such election shall be by ballot.

In case a poll is demanded council to appoint time and place.
Ib. s. 22.
See *ib. s. 12.*

23. The clerk shall within seven days after the day of nomination where there has been no contest and within three days where a poll has been taken declare the number of votes given to each candidate, and those having received the largest number of votes shall be declared duly elected.

Election to be declared within seven days of nomination.
Ib. s. 23.
See *ib. s. 13.*

*Employers and
Employés Act
1915 c. 24.*
To make by-laws
&c.

See 30 & 31 Vict.
c. 105.

24. (1) Every council elected under this Act may from time to time make by-laws for all or any of the following purposes, namely:—

- (a) prescribing a list of fees which shall be charged for any proceeding and other expenses under this Act;
- (b) for the guidance of their clerk or other officers;
- (c) for the conduct of elections of members of council;
- (d) for regulating the despatch of business; and
- (e) generally for carrying into effect the objects of this Act.

(2) Such by-laws shall not be deemed legal and binding in law unless and until they have been approved by the Governor in Council and published in the *Government Gazette*.

PART II.—RECOVERY OF DEBTS DUE BY CONTRACTORS.

Workman suing
contractor may
obtain certificate
of cause of debt.
Ib. s. 25.
Second
Schedule.

25. If in any proceeding in any court of competent jurisdiction any sum is found due and payable by the defendant for work and labour and the character of the work and the locality in which it has been done appear from the evidence, the presiding judge or justice shall upon the plaintiff's application sign and deliver to him a certificate of the cause of debt in the form in the Second Schedule, which for the purposes of this Part shall be conclusive; but no such certificate shall be given if the work appears to have been done upon a movable chattel of such a description that it would be practicable for a workman to have a lien thereon by retaining the same in his actual possession.

If debt to
workman be due
for work for
which money is
due to
contractor,
workman may
by serving notice
require payment
thereof.
Ib. s. 23.
Third Schedule.

26. If the work done is work or part of or incidental to work for the doing of which any moneys may be due or accruing due to the defendant in such proceeding (hereinafter referred to as the contractor) under any express or implied contract with any third person, the plaintiff in such proceeding (hereinafter referred to as the workman) may obtain payment of the sum mentioned in the certificate out of such moneys by serving on such third person (hereinafter referred to as the contractee) a notice in the form in the Third Schedule together with a copy of the certificate issued to him as aforesaid.

Service of notice
to operate as
assignment to
workman of debt
due to
contractor.
Ib. s. 27.

27. Upon service as aforesaid all moneys due or to accrue due as aforesaid from the contractee to the contractor to the amount of the workman's debt specified in the certificate shall be deemed to be effectually assigned by the contractor to the workman, but subject to any prior assignment thereof under this Part binding upon the contractor and contractee at the time of service being effected upon the contractee as aforesaid.

After service
debt to workman
to be paid by
contractee out of
moneys due to
contractor.
Ib. s. 28.
Fourth
Schedule.

28. After such service and until a discharge for the workman's said debt in the form in the Fourth Schedule has been produced to and a copy thereof left with the contractee, he shall satisfy such debt out of the moneys assigned as aforesaid by paying to the workman upon his application the said moneys as they become due and payable.

29. The priority of assignments as aforesaid shall be determined by the order of service of notice on the contractee; but all notices served within seven days of the first notice served in respect of the same contractor in any one year shall be deemed to be served at the same time for the purpose of securing the equal distribution of moneys due and accruing due to the contractor amongst all workmen serving notice within such period of seven days rateably in proportion to the amount of their respective debts until payment of all in full, and until such period of seven days has expired no workman's debt shall be paid by the contractee out of such moneys.

*Employers and
Employés Act
1915 s. 29.
Debts of
workmen serving
notice within
seven days of
first notice to be
paid rateably
without priority.*

30. If the contractee fails to pay as aforesaid, the workman may sue for and recover in his own name the moneys assigned as aforesaid as if the assignment of the debt due to the contractor was valid at law, and by any proceeding which the contractor might have taken had there been no assignment under this Part, subject to any defence which would have been available against the contractor in such proceeding except a defence founded on the act of the contractee after service upon him of the copy certificate and notice aforesaid.

*If contractee fail
to pay, workman
may sue for and
recover moneys
due to
contractor.
Ib. s. 30.*

31. Upon satisfaction by any other means than as aforesaid of the whole or part of the workman's debt mentioned in any certificate under this Part, or on the setting aside of the judgment or order in respect of which any such certificate has been given, any assignment effected under this Part in respect of such debt shall in the whole or in part cease to be operative, but without prejudice to any *bonâ fide* payment or other dealing by the contractee on the footing of such assignment prior to notice and sufficient evidence of such satisfaction or setting aside having been given to him, and so far as may be necessary to such payment or dealing such assignment shall continue in force.

*On satisfaction
of debt due to
workman
assignment of
debt due to
contractor to
cease to operate.
Ib. s. 31.*

32. The workman shall upon the request of the contractor or contractee paying to him the debt specified in the certificate sign a discharge therefor in the form in the Fourth Schedule, and any workman refusing to sign a discharge as aforesaid if tendered for signature at the time of payment shall forfeit and pay to the contractor or contractee so tendering a sum equal to the amount of the payment, such penalty to be recoverable before a court of petty sessions.

*Workman upon
payment shall
sign a discharge
in the form of
the Fourth
Schedule.
Ib. s. 32.
Fourth
Schedule.*

33. Nothing in this Part shall be construed to prejudice any other remedy which the workman may have against the contractor in respect of the debt due to him, or save as expressly provided to affect any right subsisting under any contract as aforesaid or otherwise between the contractor and contractee.

*This Part not to
prejudice other
remedies of
workman or vary
rights between
contractor and
contractee.
Ib. s. 33.*

PART III.—LIABILITY OF EMPLOYERS FOR INJURIES TO EMPLOYÉS.^(a)

34. In this Part unless inconsistent with the context or subject-matter—

*Interpretation.
Ib. s. 34.
43 & 44 Vict.
c. 42 s. 8.
"Employer."*

"Employer" includes a body of persons corporate or unincorporate:

(a) A claim for compensation under Part III. and a common law claim for damages in respect of the same injuries may be joined in the one action; and where this is done the plaintiff is not bound to elect at the trial which remedy he will pursue.

Per Madden, C.J.—The jury should be told by the judge that their verdict should be as to one cause of action or the other, and that the plaintiff cannot have judgment as to both.—*Stephens v. The Austral Otis Engineering Company*, 27 V.L.R., 724.

*Employers and
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1915.*

"Person who has
superintendence
intrusted to
him."

"Workman."
38 & 39 Vict.
c. 60 s. 10.

"Person who has superintendence intrusted to him" means a person whose sole or principal duty is that of superintendence:

"Workman" means a railway servant and any person (other than a domestic servant) who being a labourer servant in husbandry journeyman artificer handicraftsman or otherwise engaged in manual labour whether under the age of twenty-one years or above that age has entered into or works under a contract with an employer, whether the contract is made before or after the passing of this Act is express or implied oral or in writing, and is a contract of service or a contract personally to execute any work or labour but shall not include any person coming under the operation of Division two of Part III. of the *Mines Act 1928*.

*Remedies of
workman
against
employer.*
70. s. 35.
43 & 44 Vict.
c. 42 s. 1.

35.^(a) Where after the commencement of this Act personal injury is caused to a workman—

(1) By reason of any defect in the state or condition of the ways^(b) works machinery or plant connected with or used in the business of the employer;^(c) or

(a) The effect of this and the next following section is to put the workman in the same position as one of the public with the same rights and the same liabilities and with the same obligations of proof to sustain his charge against the employer. The plaintiff was injured by the giving way of a piece of machinery which he himself had fixed under instructions from his employer. The plaintiff admitted that this was a dangerous and imperfect mode of fixing it, and that any one would have known it was dangerous, but said that he never thought of it himself, but would have known it if his attention had been drawn to it. The judge, at the trial in the county court, left the question to the jury whether the plaintiff knew of the defect, and the jury found in the negative; but the judge refused to put the question of contributory negligence to the jury. *Held*, that there was evidence of contributory negligence which should have been left to the jury.—*Davidson v. Wright*, 13 V.L.R., 351.

A servant was employed to go up and down a high structure for the purpose of oiling the wheels of a machine that moved along on a lower staging; the master did not provide a ladder or any means of access for going up and down, and the servant was in the habit of lowering an oil-can with a piece of rope and scrambling down the woodwork himself; whilst occupied in lowering the can the travelling winch, which was worked on the upper portion of the structure whence the servant had to descend, struck and injured the servant. *Held* (in answer to a question put by the judge of the county court), that if the insufficiency of means of access was an obvious fact, it would not be the duty of the defendant (the master) to provide safer means of access, and the master would not be liable for the accident.—*Collins v. Munro*, 14 V.L.R., 1.

(b) As to some of the essential attributes of a "way" within the meaning of this section—see *Power v. Dalgety & Co.*, 1920 V.L.R., 592.

(c) In an action by an employé against his master for damages for injuries received through the breakage of machinery or works, the fact that after the accident the employer replaces such machinery or works by other more suitable material is not admissible as evidence to show that the master knew before the accident that such machinery or works were defective.—*Dodd v. Dunton*, 16 V.L.R., 531.

In an action brought by the plaintiff under this sub-section against the defendants for injuries caused by a defect in the plant connected with or used in the business of the defendant, the jury found that the injuries were caused by the defect in the plant and also by the negligence of a fellow servant. *Held*, that the terms of the section are not confined to cases where the defect complained of is the sole cause of the injury, but that it is sufficient if it be proved that such defect was a direct, proximate, and efficient cause.—*Bean v. Harver and Co.*, 18 V.L.R., 388.

A rope, hook, and bucket connected together, and used to lower cement down a sewerage shaft, were "plant" within the meaning of the *Employers and Employés Act 1890*, and an insecure fastening of one to another was a defect in such plant.

In an action in the county court by an employé against his employer for injuries sustained through the negligence of a fellow employé, the particulars given pursuant to one of the Rules of the County Court stated that L. was the person in the employer's service to whom was intrusted the duty of seeing the plant was in proper condition. The only evidence of this was that L. was a "ganger" in the service of the employer on the works where the accident happened, that he gave orders to the workmen, and could have seen the plant, a defect in which caused the accident: *Held*, by *Madden, C.J.*, and *Hood, J.* (*Holroyd, J.*, dissenting), that this was not evidence fit to go to a jury, that L. was the person so intrusted. Evidence was given by

- (2) By reason of the negligence of any person in the service of the employer who has any superintendence intrusted to him whilst in the exercise of such superintendence;^(a) or
- (3) By reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform and did conform, where such injury resulted from his having so conformed; or
- (4) By reason of the act or omission of any person in the service of the employer done or made in obedience to the rules or by-laws of the employer, or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf; or
- (5) By reason of the negligence of any person in the service of the employer who has the charge or control of any signal points locomotive engine or train upon a railway,

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the workman or in case the injury results in death the legal personal representatives of the workman and any persons entitled in case of death shall have the same right of compensation and remedies against the employer as if the workman had not been a workman of nor in the service of the employer nor engaged in his work.

36. A workman shall not be entitled under this Part to any right of compensation or remedy against the employer in any of the following cases (that is to say):—

*Exceptions to
amendment of
law.*

Ib. s. 36.

*43 & 44 Vict.
c. 42 s. 2.*

- (1)^(b) Under sub-section (1) of the last preceding section unless the defect therein mentioned arose from or had not been discovered or remedied owing to the negligence of the employer or of some person in the service of the employer and intrusted by him with the duty of seeing that the ways works machinery or plant were in proper condition:
- (2) Under sub-section (4) of the last preceding section unless the injuries resulted from some impropriety or defect in the rules by-laws or instructions therein mentioned:

the plaintiff that R. was a person so intrusted. The plaintiff having been non-suited, a new trial was refused by the judge of the county court, and no application was made by the plaintiff to amend his particulars on appeal from the refusal: *Held, by Madden, C.J., and Hood, J. (Holroyd, J., dissenting), that an amendment might now be made, and a new trial ordered, but only on conditions; and the plaintiff not consenting to these conditions, that the appeal should be dismissed: By Holroyd, J., the amendment should be made, and, if necessary, a new trial ordered.—Monahan v. Moore, 23 V.L.R., 230.*

(a) "Superintendence" means or at least includes general management; and a general manager who selects incompetent workmen to perform a particular piece of work within the scope of his superintendence is guilty of negligence whilst in the exercise of his superintendence, whether he be present during the performance of the work or not.—*Behn v. McDougall, 14 A.L.T., 47.*

In an action under the corresponding section of Act No. 1087 by the representative of a man who was killed by the explosion of a charge during blasting operations at a quarry.

Held, on the evidence, by Griffith, C.J., and Barton, J. (Isaacs, J., dissenting), that the plaintiff was properly non-suited.—Footscray Quarries Proprietary Ltd. v. Nicholls, 14 C.L.R., 321.

(b) See *Monahan v. Moore*, note to section 35. *Per Higinbotham, C.J.*—"This sub-section does not take away or alter the obligation lying on the plaintiff, if proof is given that his injury is caused by his own voluntary act. It provides that he shall not have a right of action against his employer in any case where he knew of the defect or negligence and neglected within a reasonable time to inform his employer, unless he was aware that his employer already knew of the defect or negligence. If the employer was so aware, then the obligation on the employer would be again set up, and he would be bound to remove it."—*Davidson v. Wright, 13 V.L.R. at page 357.*

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Provided that where a rule or by-law has been approved or has been accepted as a proper rule or by-law by any department of the Government or by any registrar or officer under or by virtue of any Act of Parliament, it shall not be deemed for the purposes of this Part to be an improper or defective rule or by-law :

- (3) In any case where the workman knew of the defect or negligence which caused his injury and failed within a reasonable time to give or cause to be given information thereof to the employer or some person superior to himself in the service of the employer, unless he was aware that the employer or such superior already knew of the said defect or negligence.

*Limit of time for
recovery of
compensation.
Ib. s. 37.
43 & 44 Vict.
c. 42 s. 4.*

37. An action for the recovery under this Part of compensation for an injury shall not be maintainable unless notice in writing that injury has been sustained is given within three months and the action is commenced within six months from the occurrence of the accident causing the injury, or in case of death within twelve months from the time of death: Provided always that in case of death the want of such notice shall be no bar to the maintenance of such action if the judge is of opinion that there was reasonable excuse for such want of notice.

*Money payable
under penalty to
be deducted
from compensa-
tion under this
Part.
Ib. s. 38.
Ib. s. 5.*

38. There shall be deducted from any compensation awarded to any workman or representatives of a workman or persons claiming by under or through a workman in respect of any cause of action arising under this Part any penalty or part of a penalty which may have been paid in pursuance of any other Act of Parliament to such workman representatives or persons in respect of the same cause of action; and where an action has been brought under this Part by any workman or the representatives of any workman or any person claiming by under or through such workman for compensation in respect of any cause of action arising under this Part and payment has not been previously made of any penalty or part of a penalty under any other Act in respect of the same cause of action, such workman representatives or persons shall not be entitled thereafter to receive any penalty or part of a penalty under any other Act in respect of the same cause of action.

*Limit of sum
recoverable as
compensation.
Ib. s. 39.
Ib. s. 3.*

39. The amount of compensation recoverable under this Part shall not exceed such sum as may be found to be equivalent to the estimated earnings during the three years preceding the injury of a person in the same grade employed during those years in the like employment and in the district in which the workman is employed at the time of the injury.

*Trial of actions.
Ib. s. 40.
Ib. s. 6.*

40. Every action for recovery of compensation under this Part shall be brought in the county court. Such court shall have jurisdiction to give damages to any amount that may be considered just, subject to the limitation prescribed in this Part. Upon the trial of any such action in a county court before a judge without a jury one or more assessors may be appointed for the purpose of ascertaining the amount of compensation.

For the purpose of regulating the conditions and mode of appointment and remuneration of such assessors and all matters of procedure relating to their duties and also for the purpose of consolidating any actions under this Part in a county court and otherwise preventing multiplicity of such actions, rules and orders may be made varied and repealed from time to time in the same manner as rules and orders for regulating the practice and proceedings in other actions in county courts.

*Employers and
Employés Act
1916.*

41. Notice in respect of an injury under this Part shall give the name and address of the person injured and shall state in ordinary language the cause of the injury and the date at which it was sustained, and shall be served on the employer or if there is more than one employer upon one of such employers.

*Mode of serving
notice of injury.
Ib. s. 41.
43 & 44 Vict.
c. 42 s. 7.*

The notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served.

The notice may also be served by post by a registered letter addressed to the person on whom it is to be served at his last-known place of residence or place of business, and if served by post shall be deemed to have been served at the time when a letter containing the same would be delivered in the ordinary course of post, and in proving the service of such notice it shall be sufficient to prove that the notice was properly addressed and registered.

Where the employer is a body of persons corporate or unincorporate the notice shall be served by delivering the same at or by sending it by post in a registered letter addressed to the office or if there is more than one office any one of the offices of such body.

A notice under this section shall not be deemed invalid by reason of any defect or inaccuracy therein unless the judge who tries the action arising from the injury mentioned in the notice is of opinion that the defendant in the action is prejudiced in his defence by such defect or inaccuracy, and that the defect or inaccuracy was for the purpose of misleading.

PART IV.—DISPUTES BETWEEN EMPLOYERS^(a) AND EMPLOYÉS.

42. In this Part—

“Employé” shall not include a domestic servant but save as aforesaid shall mean any person who being a labourer shepherd stockman servant in husbandry journeyman artificer handicraftsman miner or otherwise engaged in manual labour whether under the age of twenty-one years or above that age has entered into or works under a contract with an employer whether the contract is made before or after the passing of this Act is express or implied oral or in writing and is a contract of service or a contract personally^(b) to execute any work or labour.

*Meaning of
“employé.”
Ib. s. 42.
38 & 39 Vict.
c. 90 s. 10*

(a) An incorporated company is an “Employer” within the meaning of this Part.—*Outtrim Howitt and British Consolidated Coal Company v. Gregory,*

28 V.L.R., 586.

(b) See note to section 44.

*Employers and
Employés Act
1916 s. 43.*

Power of county
court as to
ordering of
payment of
money set-off
and rescission
of contract and
taking security.

38 & 39 Vict.
c. 90 s. 3.

43. In any proceeding before a county court in relation to any dispute between an employer and an employé arising out of or incidental to their relation as such (which dispute is hereinafter referred to as a dispute under this Part) the court may in addition to any jurisdiction it might have exercised if this Act had not passed exercise all or any of the following powers (that is to say):—

- (1) It may adjust and set off the one against the other all such claims on the part either of the employer or of the employé arising out of or incidental to the relation between them as the court finds to be subsisting whether such claims are liquidated or unliquidated and are for wages damages or otherwise; and
- (2) If having regard to all the circumstances of the case it thinks it just so to do it may rescind any contract between the employer and the employé upon such terms as to the apportionment of wages or other sums due thereunder and as to the payment of wages or damages or other sums due as it thinks just; and
- (3) Where the court might otherwise award damages for any breach of contract it may if the defendant is willing to give security to the satisfaction of the court for the performance by him of so much of his contract as remains unperformed, with the consent of the plaintiff, accept such security and order performance of the contract accordingly in place either of the whole of the damages which would otherwise have been awarded or some part of such damages.

The security shall be an undertaking by the defendant and one or more surety or sureties that the defendant will perform his contract subject on non-performance to the payment of a sum to be specified in the undertaking.

Any sum paid by a surety on behalf of a defendant in respect of a security under this Part together with all costs incurred by such surety in respect of such security shall be deemed to be a debt due to him from the defendant; and where such security has been given in or under the direction of a court of petty sessions then any such court may order payment to the surety of the sum which has so become due to him from the defendant.

Jurisdiction of
justices in
dispute between
employers and
employés.
Ib. s. 44.
Ib. s. 4.

44. (a) A dispute under this Part between an employer and an employé may be heard and determined by a court of petty sessions and in a proceeding in relation to any such dispute such court may order payment of any sum which it finds to be due as wages or damages

(a) The complainants were gas-fitters, brass-founders, &c., and sued the defendant in petty sessions for balance due under a special contract in writing entered into between the parties. The justices made an order in favour of the complainants for part of the amount sued for, but clearly showed by their order that they had come to the conclusion on the evidence before them that the special contract had not been fully performed. The defendant obtained an order nisi to review their decision. *Held*, that notwithstanding the provisions of this Act, the justices

had no jurisdiction to deal with the case.—*Brown and Co. v. Combs*, 14 A.L.J., 137.

A. agreed with B. to do certain work for B.—to paint some trucks according to specification. B. accepted this offer.

Held, that this was a contract whereby A. was not bound to do any of the work personally but might get it done by deputy; that therefore he was not an employé within the meaning of the definition in this Part, and consequently the justices had no jurisdiction under section 5 of a former Act (section 44 of this Act) to adjudicate

or otherwise, and may exercise all or any of the powers by this Part conferred on a county court; provided that in relation to any such dispute a court of petty sessions—

- (1) Shall not exercise any jurisdiction where the amount claimed exceeds Fifty pounds; and
- (2) Shall not make an order for the payment of any sum exceeding Fifty pounds exclusive of the costs incurred in the case; and
- (3) Shall not require security to an amount exceeding Fifty pounds from any defendant or his surety or sureties.

45. Any dispute between an apprentice to whom this Part applies and his master arising out of or incidental to their relation as such (which dispute is hereinafter referred to as a dispute under this Part) may be heard and determined by a court of petty sessions.

Jurisdiction of justices in disputes between masters and apprentices.
Ib. s. 45.
38 & 39 Vict. c. 80 s. 6.

46. In any proceeding before a court of petty sessions in relation to a dispute under this Part between a master and an apprentice the court shall have the same powers as if the dispute were between an employer and an employé and the master were the employer and the apprentice the employé and the instrument of apprenticeship a contract between an employer and an employé and shall also have the following powers:—

Powers of justices in respect of apprentices.
Ib. s. 46.
Ib. s. 6.

- (1) It may make an order directing the apprentice to perform his duties under the apprenticeship; and
- (2) If it rescinds the instrument of apprenticeship it may if it thinks it just so to do order the whole or any part of the premium paid on the binding of the apprentice to be repaid.

Where an order is made directing an apprentice to perform his duties under the apprenticeship a court of petty sessions may from time to time, if satisfied after the expiration of not less than one month from the date of the order that the apprentice has failed to comply therewith, order him to pay a penalty of not more than Twenty pounds.

upon a dispute between A. and B. touching the contract.—*McElroy v. Australian Forge and Engineering Company Proprietary Limited*, 24 V.L.R., 953.

The mere fact that a coal miner is paid so much per ton for the coal won by him does not constitute him an independent contractor.

In proceedings before the court of petty sessions under this Part the court has jurisdiction to give costs, notwithstanding that the Governor in Council has not made any rules under section 49 for "regulating" the costs of such proceedings.

A contract between a company and each of its workmen was embodied in a set of rules, one of which provided that "Every man shall give to and receive from the manager fourteen days' notice before termination of employment pro-

vided the rules are observed by the manager and workmen."

Held (per Madden, C.J., and Hood, J.; a Beckett, J., dissenting), that any workman was entitled if the manager had committed a breach of the rules at any time during the course of such workman's employment to terminate such employment without giving the said notice, even though such breach did not directly affect him; but that he ought to give some intimation to the manager of his intention to do so.

The measure of damages in an action by the lessee of a colliery against one of its coal miners (a participator in a strike) for breach of contract in terminating his employment without proper notice, considered.—*The Outtrim Howitt and British Consolidated Coal Company v. Gregory*, 28 V.L.R., 586.

*Employers and
Employées Act
1915 s. 47.*

*Order against
surety of
apprentice and
power to friend
of apprentice to
give security.*

*38 & 39 Vict.
c. 90 s. 7.*

47. In a proceeding before a court of petty sessions in relation to a dispute under this Part between a master and an apprentice if there is any person liable under the instrument of apprenticeship for the good conduct of the apprentice that person may if a court of petty sessions so directs be summoned in the like manner as if he were the defendant in such proceeding to attend on the hearing of the proceeding, and the court may in addition to or in substitution for any order which the court is authorized to make against the apprentice order the person so summoned to pay damages for any breach of the contract of apprenticeship to an amount not exceeding the limit (if any) to which he is liable under the instrument of apprenticeship.

A court of petty sessions may if the person so summoned or any other person so summoned is willing to give security to the satisfaction of such court for the performance by the apprentice of his contract of apprenticeship accept such security instead of or in mitigation of any punishment which it is authorized to inflict upon the apprentice.

*Mode of giving
security.*

Fb. s. 48.

Ib. s. 8.

48. A person may give security under this Part in a county court or court of petty sessions by an oral or written acknowledgment in or under the direction of the court of the undertaking or condition by which and the sum for which he is bound in such manner and form as may be prescribed by any rule for the time being in force, and in any case where security is so given the court in or under the direction of which it is given may order payment of any sum which may become due in pursuance of such security.

The Governor in Council may at any time after the passing of this Act make rules with respect to giving security under this Part.

*Summary
proceedings.*

Fb. s. 49.

Ib. s. 9.

49.^(a) Any dispute or matter in respect of which jurisdiction is given by this Part to a court of petty sessions shall be deemed to be a matter on which courts of petty sessions have authority by law to make an order on complaint in pursuance of the *Justices Act 1928*, but any complaint in respect of any dispute or matter over which jurisdiction is given to a court of petty sessions by this Part shall not be deemed to be a complaint for an offence nor an information within the meaning of the *Justices Act 1928* nor shall such dispute or matter be deemed to be a criminal proceeding; but such dispute or matter shall be deemed to be a cause of action subject to the same procedure (so far as the same may be applicable) as the causes of action declared by the *Justices Act 1928* to be civil debts recoverable summarily:

Provided that where an apprentice fails to appear to answer a complaint in any proceeding under this Part a warrant to apprehend such apprentice and bring him before the court of petty sessions may be issued and enforced, and such court may then take such steps to compel the attendance of such apprentice as though such complaint were an information within the meaning of the said Act; and all powers by this Part conferred on courts of petty sessions shall be deemed to be in addition to and not in derogation of any powers conferred upon such courts by the *Justices Act 1928*:

(a) See note to section 44.

Provided also that an order made by a court of petty sessions under this Part for the payment of any money shall not be enforced by imprisonment except in the manner and under the conditions prescribed by Part III. of the *Imprisonment of Fraudulent Debtors Act 1928*.

*Employers and
Employés Act
1915.*

The Governor in Council may at any time after the passing of this Act make rules for carrying into effect the jurisdiction by this Part given to courts of petty sessions, and in particular for the purpose of regulating the costs of any proceedings in courts of petty sessions with power to provide that the same shall not exceed the costs which would in a similar case be incurred in a county court.

50. In the case of a person under the age of eighteen years or a woman employed in any place which is a factory within the meaning of the *Factories and Shops Act 1928* any forfeiture on the ground of absence or leaving work shall not be deducted from or set off against a claim for wages or other sum due for work done before such absence or leaving work except to the amount of the damage (if any) which the employer may have sustained by reason of such absence or leaving work.

*Set-off in case
of factory
workers.
Ib. s. 50.
38 & 30 Vict.
c. 90 s. 11.*

51. Where any employer resides at a distance from the place at which his business is carried on or is absent therefrom and has intrusted his business to the care of agents overseers or other managers any employé of such employer may take proceedings for non-payment of wages against the agent overseer or manager of such employer; and such proceedings may be carried on and judgment be given or order made thereon as if the contract out of which the claim arises had been made with such agent overseer or manager; provided however that such judgment or order may (subject to the provisions of this Part) be enforced in the same manner as any other judgment or order in civil proceedings in the county court or under the *Justices Act 1928* (as the case may be) against the property or person of the employer but shall not be enforced against the property or person of such agent overseer or manager.

*Manager &c. of
absent employer
may be sued for
wages.
Ib. s. 51.*

52. This Part in so far as it relates to apprentices shall apply only to an apprentice to the business of an employé as defined by this Part upon whose binding either no premium is paid or the premium (if any) paid does not exceed Thirty pounds and to an apprentice bound under the provisions of section seven or eleven of the *Master and Apprentice Act 1928*.

*Application to
apprentices
Ib. s. 52.
Ib. s. 12.*

PART V.—CONSPIRACY AND PROTECTION OF PROPERTY.

53. In this Part—

“Municipal authority” means and includes the Melbourne and Metropolitan Board of Works an Authority under the *Water Act 1928* and the council of the city of Melbourne city of Geelong or of any city town borough or shire.

*Definition of
“municipal
authority”
“company”
“contractor.”
Ib. s. 53.*

Any municipal authority or company or contractor who has obtained authority by or in pursuance of any general or particular

Ib. s. 14.

*Employers and
Employés Act
1918.*

Act of Parliament to supply the streets of any city town borough or shire or of any part thereof with gas or electric light or other species of light or which is required by or in pursuance of any general or particular Act of Parliament to supply water on demand to the inhabitants of any city town borough or shire or any part thereof shall for the purposes of this Part be deemed to be a municipal authority or company or contractor upon whom is imposed by Act of Parliament the duty of supplying such city town borough or shire or part thereof with gas or water or electric light or other species of light.

*"Maliciously"
in this Act
construed as in
section 240 of
Crimes Act
1928.*

*Ib. s. 64.
38 & 39 Vict.
c. 86 s. 15.*

*Amendment of
law as to con-
spiracy in trade
disputes.
Ib. s. 56.
Ib. s. 3.*

54. The word "maliciously" used in reference to any offence under this Part shall be construed in the same manner as it is required by section two hundred and forty of the *Crimes Act* 1928 to be construed with reference to any offence committed under Division three of Part I. of such last-mentioned Act.

55. An agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute between employers and employés shall not be indictable as a conspiracy if such act committed by one person would not be punishable as a crime.

Nothing in this section shall exempt from punishment any persons guilty of a conspiracy for which a punishment is awarded by any Act of Parliament.

Nothing in this section shall affect the law relating to riot unlawful assembly breach of the peace or sedition or any offence against the State or Sovereign.

A crime for the purpose of this section means an offence punishable on indictment or presentment or an offence which is punishable on summary conviction and for the commission of which the offender is liable under the statute making the offence punishable to be imprisoned either absolutely or at the discretion of the court as an alternative for some other punishment.

Where a person is convicted of any such agreement or combination as aforesaid to do or procure to be done an act which is punishable only on summary conviction and is sentenced to imprisonment the imprisonment shall not exceed three months or such longer time (if any) as may have been prescribed by the statute for the punishment of the said act when committed by one person.

*Breach of con-
tract by persons
employed in
supply of light
or water.
Ib. s. 66.
Ib. s. 4.*

56. Where a person employed by a municipal authority or by any company or contractor upon whom is imposed by Act of Parliament the duty or who has otherwise assumed the duty of removing dealing with or treating the sewage of any city town borough or shire or of supplying any city town borough or shire or any part thereof with gas or electric light or any other species of light or water wilfully and maliciously breaks a contract with that authority or company or contractor knowing or having reasonable cause to believe that the probable consequences of his so doing either alone or in combination with others will be to deprive the inhabitants of that city town borough or shire wholly or to a great extent of their supply of gas or electric light or other species of light or water or to interfere with the sewage thereof

he shall on conviction thereof by a court of petty sessions or on indictment or presentment as hereinafter mentioned be liable either to a penalty of not more than Twenty pounds or to imprisonment with or without hard labour for a term of not more than three months.

*Employers and
Employés Act
1915.*

Every such municipal authority company or contractor as is mentioned in this section shall cause to be posted up at the gasworks electric lighting works waterworks or other works (as the case may be) belonging to such authority or company or contractor a printed copy of this section in some conspicuous place where the same may be conveniently read by the persons employed, and as often as such copy becomes defaced obliterated or destroyed shall cause it to be renewed with all reasonable despatch.

Every municipal authority company or contractor who or which makes default in complying with the provisions of this section in relation to such notice as aforesaid shall be liable to a penalty of not more than Five pounds for every day during which such default continues, and every person who unlawfully injures defaces or covers up any notice so posted up as aforesaid in pursuance of this Part shall be liable to a penalty of not more than Forty shillings.

57. Every person who wilfully and maliciously breaks a contract of service or of hiring knowing or having reasonable cause to believe that the probable consequences of his so doing either alone or in combination with others will be to endanger human life or cause serious bodily injury or to expose valuable property whether real or personal to destruction or serious injury shall on conviction thereof by a court of petty sessions or on an indictment or presentment as hereinafter mentioned be liable either to a penalty of not more than Twenty pounds or to imprisonment for a term of not more than three months with or without hard labour.

*Breach of
contract
involving injury
to persons or
property.
Jb. s. 57.
35 & 39 Vict.
c. 86 s. 5.*

58. Every employer or master being legally liable to provide for his employé or apprentice necessary food clothing medical aid or lodging who wilfully and without lawful excuse refuses or neglects to provide the same whereby the health of the employé or apprentice is or is likely to be seriously or permanently injured shall be liable either to a penalty of not more than Twenty pounds or to imprisonment with or without hard labour for a term of not more than six months.

*Penalty for
neglect by
employer to
provide food
clothing &c. for
employé or
apprentice.
Jb. s. 58.
Ib. s. 6.*

59. Every person who with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing wrongfully or without legal authority—

*Penalty for
intimidation or
annoyance by
violence or
otherwise.
Jb. s. 59.*

- (1) uses violence to or intimidates such other person or his wife or children or injures his property ; or
- (2) persistently follows such other person about from place to place ; or
- (3) hides any tools clothes or other property owned or used by such other person or deprives him of or hinders him in the use thereof ; or
- (4) watches or besets the house or other place where such other person resides or works or carries on business or happens to be or the approach to such house or place : or
- (5) follows such other person with two or more other persons in a disorderly manner in or through any street or road,

Ib. s. 7.

*Employers and
Employés Act
1915.*

shall on conviction thereof by a court of petty sessions or on indictment or presentment as hereinafter mentioned be liable either to a penalty of not more than Twenty pounds or to imprisonment with or without hard labour for a term of not more than three months.

*Meaning of
watching or
besetting.*

Ib. s. 59.

60. Attending at or near the house or place where a person resides or works or carries on business or happens to be or the approach to such house or place in order merely to obtain or communicate information shall not be deemed a watching or besetting within the meaning of the last preceding section.

*Power for
offender under
this Part
to be tried
on indictment or
presentment
and not by court
of petty sessions.*

Ib. s. 61.

*38 & 39 Vict.
c. 86 s. 9.*

61. Where a person is accused before a court of petty sessions of any offence made punishable by this Part and for which a penalty amounting to Twenty pounds or imprisonment is imposed the accused may on appearing before a court of petty sessions object to being tried for such offence by a court of petty sessions, and thereupon the justices present shall deal with the case in all respects as if the accused were charged with an offence punishable only on indictment or presentment and the offence may be prosecuted on indictment or presentment accordingly.

*Saving as to sea
service.*

Ib. s. 62

Ib. s. 16.

62. Nothing in this Part shall apply to seamen or to apprentices to the sea service.

PART VI.—SERVANTS' CHARACTERS.

63. Every person who—

*Personation of
master &c. or
giving false
character to
servant.*

*Imperial Acts
Application
Act 1922 s. 69.
32 Geo. III.
c. 50 s. 1.*

(a) falsely personates any master or mistress or the executor administrator wife relative housekeeper agent or servant of any such master or mistress and either personally or in writing gives any false forged or counterfeited character to any person offering himself or herself as a servant into the service of any person or persons ;

*Falsely asserting
in writing that
a servant has
been hired for
a period of hire
or in a station.*

Ib. s. 2.

(b) knowingly and wilfully pretends or falsely asserts in writing that any servant has been hired or retained for any period of time whatsoever or in any station or capacity whatsoever other than that for or in which he or she has hired or retained such servant in his or her service or employment or for the service of any other person ;

*Falsely asserting
a servant had
been discharged
at any time
or had not been
hired in any
previous service.*

Ib. s. 3.

(c) knowingly and wilfully pretends or falsely asserts in writing that any servant was discharged or left his or her service at any other time than that at which he or she was discharged or actually left such service or that any such servant has not been hired or employed in any other service contrary to truth ;

*Person offering
himself as
servant and
pretending to
have served
when he has
not served or
with a false or
altered
certificate.*

Ib. s. 4.

(d) offers himself or herself as a servant asserting or pretending that he or she has served in any service in which such servant has not actually served or with a false forged or counterfeit certificate of his or her character or in any wise adds to or alters effaces or erases any word date matter or thing contained in or referred to in any certificate given to him or her by his or her last or former actual master or mistress or by any other person duly authorized by such master or mistress to give the same ;

(e) having been in service when offering to hire himself or herself as a servant in any service whatsoever falsely and wilfully pretends not to have been hired or retained in any previous service as a servant,
shall be liable to a penalty of not more than Ten pounds.

Imperial Acts Application Act 1922.

Person offering himself for service who having been before in service pretends not to have been in such service.

32 Geo. III. c. 56 s. 5.

Penalty and application.

Ib. s. 6.

Offenders discovering accomplices before information indemnified.

Ib. s. 70.

Ib. s. 8.

Appeal.

Ib. s. 71.

Ib. s. 10.

64. If any servant who has been guilty of any of the offences aforesaid before any information has been laid against him or her for such offence discovers and lays an information against any person or persons concerned with him or her in any offence against the last preceding section every such servant so discovering and laying an information shall thereupon be discharged and indemnified from and against all penalties and punishments to which at the time of such information he or she might be liable by the last preceding section for or by reason of such his or her own offence.

65. Any person who feels himself or herself aggrieved by any conviction under the last preceding section but one may appeal from such conviction to the next practicable Court of General Sessions in the manner and in the conditions prescribed by any law now or hereafter to be in force relating to appeals from justices to Courts of General Sessions.

PART VII.—ATTACHMENT OF WAGES.

66. In this Part unless inconsistent with the context or subject-matter—

Interpretation.

Wages Attachment Act 1927 s. 2.

“Wages” includes wages salary payment by piece-work and any money due or contracted to be paid or given as a recompense reward remuneration or consideration for any service work or labour rendered or done or to be rendered or done.

“Workman” includes any person in any manner personally engaged or employed in manual labour or in work of any kind whether as an independent contractor or otherwise and whether his wages are to be according to time or by piece-work or at a fixed price or otherwise howsoever.

67. No order shall be made by any court judge or justice for the attachment of the wages of any married clerk servant labourer or workman except as hereinafter mentioned.

No order to be made for attachment of wages not exceeding £3 per week.

Ib. s. 3.

Liability to attachment.

Ib. s. 4.

68. If the amount of wages of any such married person exceeds the rate of Three pounds per week, whether payable at a yearly monthly weekly or daily rate or by the piece or at a fixed price or otherwise howsoever, any surplus above that rate per week shall be liable to attachment according to the law in force apart from this Part and not otherwise; but no costs or expenses of any such attachment other than sums paid for court fees or stamps shall be chargeable against such person except in cases where the total amount of such wages exceeds the rate of Five pounds per week.

Wages Attachment Act 1927 s. 5.
Saving.

69. Nothing in this Part shall affect the provisions of section two hundred and eight of the *Railways Act 1928* or section forty-four of the *Water Act 1928* or any other enactment or law under which salary wages or other payments are not liable to attachment.

SCHEDULES.

Section 2.

FIRST SCHEDULE.

Number of Act.	Title of Act.	Extent of Repeal.
2646 ...	<i>Employers and Employés Act 1915</i> ...	The whole.
3270 ...	<i>Imperial Acts Application Act 1922</i> ...	Part III. Division 12.
3537 ...	<i>Wages Attachment Act 1927</i> ...	The whole.

Section 25.

SECOND SCHEDULE.

(a) Name of defendant
(b) Name of plaintiff.
(c) State generally the actual employment of the plaintiff e.g. bricklayer labourer shipwright.
(d) Describe generally the thing upon or in respect of which the plaintiff has been employed e.g. The house No. 23 Collins-street, Dorn No. 1 for Coliban Water Supply. The brig *Dart*.
(e) Signature

In pursuance of Part II. of the *Employers and Employés Act 1928* I hereby certify that on the _____ day of _____ the sum of £ _____ was in a proceeding before me ascertained to be due and payable by (a) to (b) _____ for work and labour done by him as (c) upon (d) _____

As witness my hand this _____ day of _____ 19 _____

(e) _____

Presiding { Judge
or
Justice.

THIRD SCHEDULE.

Section 26.

To (a)

(a) Name and address of contractor.
(b) Name and address of contractor.

Take notice that the work specified in the certificate a copy of which is served here-with having been done in performance of an agreement entered into with you by (b) who has failed to pay me for such work, you are hereby required under Part II. of the *Employers and Employés Act 1928* to pay me on demand the amount specified in the certificate out of any moneys now due or from time to time becoming due from you to the said (c) under the said agreement, and on your failing so to do you will under the said Part of the said Act be liable to legal proceedings at my suit to obtain payment.

As witness my hand this _____ day of _____ 19 _____

(d) Signature of workman

(d) _____

Sections 28 & 32.

FOURTH SCHEDULE.

I hereby acknowledge that the debt of £ _____ certified to be due to me by _____ in a certificate issued under Part II. of the *Employers and Employés Act 1928*, and dated the _____ day of _____ 19 _____ has been fully discharged.

As witness my hand this _____ day of _____ 19 _____

(a) Signature of workman.

(a) _____