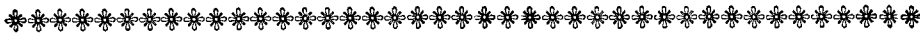


ANNO DECIMO-NONO

# VICTORIÆ REGINÆ,

No. 28.



*By His Excellency SIR HENRY EDWARD FOX YOUNG, Knight,  
Captain-General and Governor-in-Chief of the Island of  
Tasmania and its Dependencies, with the Advice and Consent  
of the Legislative Council.*

## AN ACT to amend the Law relating to Masters, Servants, and Apprentices. [7th February, 1856.]

**W**HEREAS the Law relating to Masters, Servants, and Apprentices PREAMBLE.  
requires Amendment—Be it therefore enacted by His Excellency the  
Governor of the Island of *Tasmania* and its Dependencies, with the  
Advice and Consent of the Legislative Council thereof, as follows:—

**1** In the Construction and for the Purposes of this Act,— Construction.

The Term “Labourer” shall extend to Artificers, Mechanics, “Labourer.”  
Tradesmen, Manufacturers, Journeymen, Handicraftsmen, Farm  
Labourers, Shearers, Fencers, Sawyers, Splitters, and all other  
Workmen and Labourers of every Class or Description what-  
soever :

The Term “Servant” shall extend to and include all Persons so “Servant.”  
as aforesaid comprehended under the Term “Labourer,” and  
also all Grooms, Coachmen, Shepherds, Herdsmen, Working  
Overseers, Storemen, Porters, Gardeners, and also all menial,  
domestic, farming, and other Servants of every Class or  
Description whatsoever :

- “Apprentice.” The Term “Apprentice” shall extend to and include every Person, of any Age, bound by Deed to serve as an Apprentice or Servant in any Trade, Business, Occupation, or Capacity whatsoever, and upon whose binding out no larger Sum than Fifty Pounds shall have been paid :
- “ Master.”  
“ Employer.” The Term “ Master” shall extend to and include “ Mistress,” and the Term “ Employer” shall mean any Person, male or female, by or on behalf of whom any Contract or Agreement shall have been made with any Servant for the Performance of any Work :
- Relation of Master and Servant. The Relation of Master and Servant shall be deemed to commence immediately upon the Agreement or Engagement for Service being made or entered into, and notwithstanding the Servant shall not have entered upon or commenced the Service, and shall be deemed to continue until the lawful Termination of the Service.
- Short Title. **2** In referring to this Act, in other Acts of Council and in legal Proceedings and otherwise, it shall be sufficient to use the expression “ *The Master and Servant Act, 1856.*”
- 18 Vict., No. 8, repealed. **3** The *Master and Servant Act*, 18 Vict., No. 8, is hereby repealed, except as to Offences upon which Convictions have been made before the passing of this Act.
- Act to extend to Servants and Labourers engaged before the passing and above the age of 16. Age not necessary to be proved. **4** The provisions of this Act shall extend to all Servants, Apprentices, and Labourers, whether engaged, bound, or employed before or after the passing thereof, and shall extend to all Servants and Labourers above the Age of Sixteen Years : Provided, that it shall not be necessary in any Proceeding under this Act to allege or prove that any Servant or Labourer is above the Age of Sixteen Years ; but in case the Servant or Labourer shall allege that he is not above that Age, the Burthen of Proof of such Allegation shall lie on him.
- Husband or Parent may put an End to Service entered into without Consent. **5** It shall be lawful for the Husband of any married Woman, and for the Parent or Guardian of any Infant under the Age of Eighteen Years, having entered into any Engagement, or become bound as a Servant or Apprentice, without the Consent of such Husband, Parent, or Guardian, as the Case may be, to terminate the Service by giving a Month’s Warning for that purpose to the Master ; and on the Expiration of such Warning such Service shall be deemed to be terminated, and any Deed, Contract, or Agreement relating thereto shall thenceforth be void.
- A Month’s Warning necessary to determine an indefinite Service. **6** Where the Term or Period of Service of any Servant shall be or become indefinite as to Duration, such Service shall not be terminable by either Party by less than a Month’s previous Warning unless otherwise expressly agreed.
- Wages to be payable quarterly. **7** The Wages of Servants and Apprentices shall, in all Cases whatsoever, unless otherwise expressly agreed, be deemed to be due and payable quarterly.
- Punishment of Offences committed by Servants. **8** If any Servant engaged by or on behalf of any Master shall not enter upon his Master’s Service according to such Engagement, or shall absent himself from his Master’s Service before the lawful Termination thereof, or shall refuse to perform the same, or shall not perform the same in a diligent and careful Manner, or shall disobey any lawful Command of his Master, or of any Person by his Master in that behalf

authorised, or shall be guilty of any other Misconduct in the execution of his Service, or relating thereto, or during the Continuance thereof, excepting only in the case of a male Servant, Apprentice, or Labourer, those Acts of Misconduct provided for by Sections 11 and 12 of this Act, every Servant in any Case so offending, being convicted thereof before any Two or more Justices of the Peace, upon Complaint made by or on behalf of such Master, shall be liable to a Penalty not exceeding Ten Pounds, or to forfeit the whole or any Portion of the Wages due or accruing, or, at the Discretion of such Justices, to both such Punishments.

**9** If any Apprentice shall absent himself from his Master's Service without his Leave, or be guilty of any other Misconduct in, or relating to, or during the Term of his Service, every Apprentice in any such Case so offending, being convicted thereof before two Justices of the Peace upon Complaint made by or on behalf of such Master, shall be liable to a Penalty not exceeding Ten Pounds, or to forfeit the whole or any Portion of any Wages that may be due or accruing not exceeding Ten Pounds, or, at the Discretion of such Justices, to both such Punishments.

Punishment of Offences by Apprentices.

**10** If any Labourer having contracted with any Employer for the Performance of any Work shall not commence such Work according to his Contract, or shall absent himself from such Work before the Completion thereof according to his Contract, or shall return such Work unfinished, or shall not perform the same in a diligent and careful Manner and according to his Contract, or shall be guilty of any other Misconduct in the Execution of such Work, or relating thereto, or during the Continuance of such Contract, every Labourer in any such Case so offending, being convicted thereof before two Justices of the Peace upon Complaint made by or on behalf of such Employer, shall be liable to a Penalty not exceeding Ten Pounds, or to forfeit the Whole or any Portion of the Money due or accruing under such Contract, or, at the Discretion of such Justices, to both such Punishments.

Punishment of Labourers for Breach of Contract, &c.

**11** If any male Servant, Apprentice, or Labourer shall make use of any profane or obscene Language to or in the Presence or Hearing of his Master or Employer, or any of the Family of such Master or Employer, or shall assault or conduct himself in a violent Manner towards his Master or Employer or any of the Family of such Master or Employer, or shall be drunk or disorderly on the Premises occupied by his Master or Employer, every such Servant, Apprentice, or Labourer in any case so offending, being convicted before any two or more Justices of the Peace, upon Complaint made by or on behalf of such Master or Employer, shall be liable to a Penalty not exceeding Twenty Pounds, or at the Discretion of such Justices to Imprisonment with hard Labour for any Period not exceeding Three Months; and it shall be lawful for such Master or Employer, or any of his Family, to give the Servant, Apprentice, or Labourer so offending into the Custody of any Constable, who is hereby required to take such Servant, Apprentice, or Labourer into his Custody without a Warrant, and to convey him as soon as may be before a Justice of the Peace, and in the mean time to detain him in Custody, and the Justice before whom such Servant, Apprentice, or Labourer shall be brought is hereby authorised either to discharge him, or to remand him for hearing before two Justices of the Peace; and such Servant, Apprentice, or Labourer shall be dealt with by such Justices in the same Manner as if he had been brought before them by virtue of a Summons or Warrant issued for that Purpose under the Authority of this Act.

Male Servants guilty of violent Conduct &c. may be given in charge to a Constable.

Labourer employed about a House punishable for Misconduct on Complaint of Occupier.

**12** If any male Servant, Apprentice, or Labourer, employed by his Master or Employer to perform any Work about any House or Premises in the Occupation of any other Person, shall make use of any profane or obscene Language to or in the Presence or Hearing of the Occupier of such House or Premises or any of his Family, or shall be drunk or guilty of any violent or disorderly Conduct in such House or on such Premises, or shall be guilty of any violent Conduct towards such Occupier or any of his Family, every Servant or Labourer in any such case so offending, being convicted thereof before two Justices of the Peace upon Complaint made by or on behalf of such Occupier, shall be liable to a Penalty not exceeding Twenty Pounds, or at the Discretion of such Justices to Imprisonment with hard Labour for any Period not exceeding Three Months.

Period of Absence without Leave or Imprisonment not to be counted in that of Service, but Servant to return and complete Service.

**13** Neither the Period of Absence without Leave, nor that of Imprisonment for or in consequence of the Non-payment of any Penalty imposed by this Act for any Offence under this Act, shall be accounted Part of the Period or Term of Service of any Servant or Apprentice, but such Servant or Apprentice shall, on being found at any Time within Twelve Months after such Absence, or immediately on the Expiration of any such Imprisonment, as the Case may be, return to and continue in his Master's Service for such Period as is equal to the Period of Service which was unexpired when he absented himself or was imprisoned, whichever may have first happened; and the Period of Service after such Absence or Imprisonment shall be deemed to be a Part and Continuation of the original Service; and in case, and as often as, such Servant or Apprentice shall fail or refuse so to return to and continue in such Service for such Period as aforesaid, he shall be liable to be punished as for Misconduct during his Service.

Upon Complaint being established, Magistrate authorised, at the Request of Complainant, to discharge Servant, &c.

**14** It shall be lawful for the Justices before whom and to whose Satisfaction any Complaint under this Act shall be established, whether against any Master or Employer, or against any Servant, Apprentice, or Labourer, and upon the Request of the Complainant or Defendant, besides any Order, Award, or Punishment by this Act authorised in any such Case, to order the Discharge of such Servant, Apprentice, or Labourer from his Service, Employment, or Contract, and to order any Deed or Instrument relating to such Service or Employment to be cancelled; and the same shall immediately on the making of such Order be deemed to be cancelled, and shall thenceforth be void without actual Cancellation.

Mode of Procedure against Servants, &c.

**15** Upon Complaint made to any Justice of the Peace by or on behalf of any such Master, Employer, or Occupier against any such Servant, Apprentice, or Labourer as aforesaid for any Offence under this Act, it shall be lawful for such Justice to issue his Summons, and in the case of a male Servant, Apprentice, or Labourer, where it shall be proved to such Justice to be necessary, his Warrant, to bring the Servant, Apprentice, or Labourer so complained against before any two Justices of the Peace, and such Justices are hereby empowered to hear and determine such Complaint, and upon Conviction to sentence the Offender to such Punishment as by this Act is in such case authorised.

If Name of Servant or Labourer unknown, he may be apprehended without naming him in Warrant.

**16** In case the Name of any Servant or Labourer alleged to have committed any Offence punishable under this Act shall not be known to the Complainant, it shall be lawful for such Complainant in his Complaint to give such Description as he is able of such Servant or Labourer, whereupon it shall be lawful for the Justice to issue his Summons, and in the case of a male Servant or Labourer, where it shall be proved

to such Justice to be necessary, his Warrant, against such Servant or Labourer by such Description, and all such Proceedings may lawfully be had upon such Summons or Warrant as if the Name of the Servant or Labourer had been contained therein.

**17** It shall be lawful for the Justice before whom any male Servant, Apprentice, or Labourer shall be brought by virtue of any Warrant issued under the Authority of this Act, to commit such Servant, Apprentice, or Labourer to Prison for any Period not exceeding Seven Days, there to be detained until the Complainant can be heard, in order that reasonable Notice may be given to the Complainant to appear and substantiate such Complaint, unless such Servant, Apprentice, or Labourer shall enter into Recognizance before such Justice, with such sufficient Surety and in such reasonable Penalty as such Justice shall approve, to appear before any two or more Justices at such Time and Place as such Justice shall appoint.

Power to Magistrates to remand Servants apprehended.

**18** It shall be lawful for the convicting Justices at the hearing of any Case under this Act to award the Whole or any Part of any Penalty or Sum forfeited or imposed upon any Servant, Apprentice, or Labourer to the Master of such Servant, Apprentice, or Labourer by way of Compensation for any Loss or Injury which shall be satisfactorily proved to such Justices at such hearing to have been sustained by such Master in consequence of the Offence or Act in respect of which such Penalty shall be imposed.

Disposal of Penalties by way of Compensation.

**19** Upon Complaint made to any Justice of the Peace by any Servant, Apprentice, or Labourer, against any Master or Employer concerning the Non-payment of Wages due, or of Money owing for Work done, where the Wages or Money demanded do not exceed Thirty Pounds, it shall be lawful for such Justice to summon such Master or Employer to appear before any two Justices of the Peace, and any two such Justices are hereby authorised to hear and determine such Complaint, and, in case the same shall be established to their Satisfaction, to order the Payment, within such reasonable Period as they shall think proper, by the Defendant to the Complainant of such Wages or Money as shall appear to be due, and also of such Sum of Money not exceeding Five Pounds as Compensation for the Non-payment of such Wages or Money as he shall think reasonable.

Mode of Procedure against Masters upon Complaint of Servants for Non-payment of Wages.

**20** Upon Complaint made to any Justice of the Peace by any Servant, Apprentice, or Labourer against any Master or Employer of having used any abusive, profane, or obscene Language to or in the Presence or hearing of Complainant, or concerning any Misusage, Refusal of sufficient and wholesome Food or other Necessaries, or Neglect to provide the same, or any Ill-treatment whatsoever, it shall be lawful for such Justice to summon such Master or Employer to appear before any two Justices of the Peace, and any two such Justices are hereby authorised to hear and determine such Complaint, and, in case the same shall be established to their Satisfaction, to order the Payment, within such Period as they shall think proper, by the Defendant to the Complainant of such Sum of Money, not exceeding Thirty Pounds, as in the Discretion of such Justices shall appear a reasonable Compensation to the Complainant for the Injury.

Mode of Procedure on Complaints by Servants, &c. against Masters for Ill-treatment.

**21** In default of Payment of any Penalty or Sum of Money under this Act, other than Wages awarded under Section 19, the Person adjudged to pay such Penalty or Sum of Money shall be liable to Imprisonment with or without hard Labour for One Month

Punishment in default of Payment of Penalty.

unless such Penalty or Sum of Money be sooner paid, and with or without Solitary Confinement, for any Period of the same Time, not exceeding Seven Days at any one Time.

Limitation of Proceedings.

**22** All Proceedings under this Act shall be commenced within Twenty-one Days after the Act complained of, excepting only Proceedings for the Recovery of Wages.

Magistrates Summary Procedure Act to apply.

**23** Subject to the Provisions of this Act, the Provisions of the *Magistrates Summary Procedure Act* shall apply to all Proceedings under this Act: Provided that no female Servant or Apprentice, of whatever Age, nor any male Servant or Apprentice under the Age of Sixteen Years, shall in any Case be imprisoned under the Provisions of this Act, but the Proof that any Defendant does not exceed the Age of Sixteen Years shall lie upon him.

Costs to be paid by losing Party.

**24** The Costs attending every Conviction or Adjudication under this Act, not exceeding in any Case the Sum of Three Pounds, shall be assessed by the Justices convicting or adjudicating, and shall be paid by the Party against whom the Conviction or Adjudication is made; and such Costs, where payable by any Master or Employer, shall on Non-payment be levied by Distress and Sale of his Goods, and where payable by any Servant, Labourer, or Apprentice, may be deducted out of any Wages or Money then or thereafter due or accruing.

*Certiorari* taken away.

**25** No Conviction or Adjudication under this Act shall be held bad for Want of Form, or removed by Writ of *Certiorari* or otherwise into the Supreme Court; and no Warrant of Commitment or Distress shall be held void by reason of any Defect therein, provided that there be a Conviction or Adjudication valid in Substance to sustain the same.

Agreements for Service made in the United Kingdom or elsewhere valid without a Stamp.

**26** Every Deed or other Agreement in Writing heretofore or hereafter made and entered into in the *United Kingdom* or elsewhere out of the Colony, by which any Servant above the Age of fourteen Years has been or shall be engaged by or on behalf of any Master for the Service of such Master in the Colony, shall in all Courts in the Colony be valid and effectual without a Stamp, and shall be of the same Force and Effect, and shall subject the Parties thereto to the same Consequences, as if the same had been made and entered into within the Colony, and all the Provisions of this Act shall extend to such Parties immediately upon Arrival in the Colony.

Facilitates the Proof of such Deeds and Agreements.

**27** In order to facilitate the Proof of any such Deed or Agreement in Writing so made or entered into in the *United Kingdom* or elsewhere out of the Colony, the Production thereof, with Evidence that the Person alleged to have entered into the same as Servant arrived in the Colony subsequently to the Date thereof, and that such Person bore or was called or known by the Name mentioned therein, or had in any Manner admitted having made or entered into, or being under or bound by any Deed, Agreement, or Engagement for Service with the Master named therein, shall, in all Courts in the Colony, without Proof of the Execution of such Deed or Agreement, be sufficient *prima facie* Evidence of such Deed or Agreement, and that the same was made and entered into by the Parties alleged to have done so, any Law or Usage to the contrary in anywise notwithstanding.

Term of Service and Wages of

**28** The Term or Period of Service, and the Wages, mentioned in any such Deed or Agreement made out of the Colony, shall, unless

otherwise expressed therein, be deemed to commence upon the Arrival of the Servant in the Colony.

Servant engaged abroad to commence on arrival.

**29** Any Master having, whether under Government Regulations or otherwise, contributed any Sum towards the Passage-money or Outfit of any Servant engaged by him or on his behalf in the Colony, or in the *United Kingdom* or elsewhere out of the Colony, is hereby authorised, unless otherwise agreed, to deduct such Sum from the Wages of such Servant as the same accrue due, by Instalments not exceeding half the Amount of Wages accruing due at any one Time: Provided, that it shall not be lawful for such Servant to quit such Master's Service, but such Service shall be deemed to continue notwithstanding the Expiration of the Term originally agreed upon, until such Sum shall have been fully liquidated.

Master having contributed towards Passage-money of Servant entitled to deduct the same from Wages.

Servant not to quit Service till Contribution paid.

**30** Where any Sum of Money on account of Wages has been paid in advance by any Master to any Servant, or for his Use and at his Request or with his Consent, such Servant shall not quit his Master's Service, but the Service shall be deemed to continue notwithstanding the Expiration of the Term originally agreed upon, or of a Warning sufficient otherwise to determine the same, until the Sum so paid in Advance has been fully liquidated.

Where any Advance on account of Wages Servant not to quit Service until Advance liquidated.

**31** Upon the Discharge of any Servant, or upon the Termination of his Service, he shall receive from his Master, and the Master is hereby required to give to him, a Certificate of such Servant's Service and Discharge, which Certificate shall be signed by the Master or his Agent; and if the Master or Agent shall refuse to give such Certificate to such Servant, he shall forfeit and pay a Penalty not exceeding Twenty Pounds: Provided that such Discharge may be given by any Justice of the Peace where the Master or Agent refuses to give it without reasonable Cause; and that no such Certificate shall be necessary in the case of any Servant employed for any Period less than Fourteen Days.

Servants to obtain Discharges on the Termination of Service.

**32** After the Thirty-first day of *March*, 1856, every Servant entering into new Service shall produce and deliver to the Master or Employer, or his Overseer or Agent, into whose Service he so enters, a Certificate of his Discharge from the Place in which he has been last employed, since the passing of this Act, for a Period not less than Fourteen Days, unless he be a Person entering into Service in the Colony for the first Time; and any Master or Employer, or his Overseer or Agent, employing or entertaining any Servant who had been previously in Service without requiring and receiving such Discharge as aforesaid, shall, being lawfully convicted thereof by or before any two or more Justices of the Peace, forfeit and pay for every such Offence the Penalty of Five Pounds, One Half thereof to be paid to the Informer in such Case.

And to produce and deliver such Discharges to their Employers when entering into new Engagements.

**33** If any Person shall knowingly and wilfully pretend or falsely assert 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 which or in which he shall have hired or retained such Servant in his Service or Employment, or for the Service of any other Person, or shall knowingly and wilfully pretend or falsely assert in writing that any Servant was discharged, or left his Service at any other Time than that at which he was discharged or actually left such Service, or that any such Servant had not been hired or employed in any previous Service, contrary to Truth, then and in either of the said Cases such Person shall forfeit and pay a Penalty not exceeding Twenty Pounds, One Half thereof to be paid to the Informer in such Case.

Penalty for giving false Certificates or false Discharges.

Punishment for employing or harbouring Servants, &c.

**34** If any Person shall knowingly hire, employ, retain, harbour, conceal, or entertain any Servant or Apprentice so engaged or bound as aforesaid to any Master before the lawful Termination of his Service, or any Labourer having so as aforesaid contracted with any Employer before the Completion of his Contract, every Person so offending, being convicted thereof in a summary Way before any two or more Justices of the Peace, shall for every such Offence forfeit and pay a Penalty not exceeding Fifty Pounds, whereof One Moiety shall be paid to the Informer or Complainant for his own Use, and the other Moiety to the Colonial Treasurer in aid of the General Revenue: Provided, that it shall be lawful for the Defendant to appeal from such Conviction if he thinks fit.

Facilitates Mode of Redress for the Seduction of female Apprentices and Servants under Age.

**35** Whenever any Action shall be brought by any Parent, Guardian, or other Person by Law entitled to bring such Action, against the Master of any female Apprentice or Servant under Age, for the alleged Seduction by such Master of such female Apprentice or Servant whilst in his Service, it shall not be necessary to aver that such female Apprentice or Servant was or continued to be the Servant of such Parent, Guardian, or other Person by Law entitled to bring such Action, or to give Evidence of any Service or constructive Service of any such female Apprentice or Servant with such Parent, Guardian, or other Person by Law entitled to bring such Action, but every such Action shall and may be maintained without such Averment or Proof as aforesaid, any Law or Usage to the contrary in anywise notwithstanding.

Supreme Court to appoint a Person to sue in such Cases on behalf of female Apprentices and Servants.

**36** If any female Apprentice or Servant having been so seduced as aforesaid shall have no Parent, Guardian, or other Person who by Law can become the Plaintiff in any such Action against the Master of such female Apprentice or Servant, it shall be lawful for the Supreme Court of *Tasmania* or for any Judge thereof, upon Application in that behalf made by such female Apprentice or Servant, or by any Person authorised for that Purpose by such female Apprentice or Servant, to appoint some Person to sue on behalf of such female Apprentice or Servant as Plaintiff in any such Action, and upon any such Application it shall be lawful for such Court or Judge at the Discretion of such Court or Judge to order that such Person shall be so admitted to sue *in formâ Pauperis*; and in any such Action as last aforesaid it shall not be necessary to aver that such female Apprentice or Servant was and continued to be the Servant of such Person so appointed to sue as Plaintiff as aforesaid, or to give evidence of any Service or constructive Service of any such female Apprentice or Servant with such Person, but every such Action shall and may be maintained without such Averment or Proof as aforesaid, any Law or Usage to the contrary in any wise notwithstanding.

*In formâ Pauperis* if necessary.

MICHAEL FENTON, *Speaker*.

Passed the Legislative Council this fourth day of February, one thousand eight hundred and fifty-six.

FR. HARTWELL HENSLOWE,  
*Clerk of the Council*.

In the name and on the behalf of Her Majesty I assent to this Act.

H. E. F. YOUNG,  
*Governor*.

*Government House, Hobart Town,*  
7th February, 1856.