

## CHAPTER 261.

## EMPLOYERS AND SERVANTS.

[Nos. I of 1853, XXVI of 1909, XVIII of 1922,  
XX of 1925.]

[22nd January, 1853.]

Short title.

1. This Ordinance may be cited as the Employers and Servants Ordinance.

Interpreta-  
tion.

2. Within the meaning and for the purposes of this Ordinance,—

- (a) all masters, mistresses, foremen, attorneys, agents, managers, and other persons engaged in the hiring, employing, or superintending the labour or service of any servant within the meaning of this Ordinance are “employers”;
- (b) all servants in husbandry, mechanics, artificers, handicraftsmen, labourers, persons employed in droghers, vessels, or boats, or otherwise, and all household or other domestic servants, laundresses, or other servants, are comprised within the term “servant”;
- (c) every labourer or mechanic employed upon any sugar, coffee, or other plantation, is a “servant in husbandry”;
- (d) any money or other thing paid, or contracted to be paid, delivered, or given as a recompense, reward, or remuneration for any labour or other service done or to be done, whether within a certain time or to a certain amount, or for a time or for an amount uncertain, is the “wages” of any servant aforesaid;
- (e) any agreement, understanding, or arrangement whatever on the subject of wages, whether written or oral, whether direct or indirect, to which any employer and any servant or other persons are parties, or are assenting, or by which they are mutually bound to each other is a “contract”;

(f) "defendant" also means "offender" and "offender" also means "defendant";

if it is necessary to put that construction in order to render the sense clear, or to give full and complete effect to any of the provisions of this Ordinance, unless it is otherwise specially provided for, or there is something in the subject or context repugnant to that construction.

3. If any servant in husbandry, sailor or boatman employed on colonial vessels and boats, menial servant, artificer, handicraftsman, or labourer, contracts with any employer to serve him for a time certain, or in any other manner whatsoever, and does not enter into or commence his service according to the contract, the contract being either in writing and signed by the contracting parties, or verbal and made in the presence of two credible witnesses, or, having entered into that service in pursuance of or under any contract in writing or not in writing, absents himself from his service, or refuses to fulfil it before the term of his contract has been completed (whether the contract is for a time certain or work certain, or under the provisions hereinafter in that behalf contained), except for some reasonable cause as hereinafter provided, or practises or is guilty of any fraud or deception in the performance of any work he is bound to perform, the offender, on conviction thereof, shall be punished by a fine not exceeding twenty-four dollars, and the court shall allow at least seven days for the payment of the fine.

Breach of contract by servant.

Penalty.

4. Any person aforesaid, who, by negligence or other improper conduct, loses, throws away, endangers, or damages the property of his employer, or endangers it by a careless or improper use of fire, or wilfully maims, wounds, or cruelly ill-uses any cattle or other live stock belonging to his employer or entrusted to his care, or by negligence suffers or occasions to be maimed, wounded, or cruelly ill-used any of those cattle or live stock, shall, on conviction thereof, be punished by a fine not exceeding twenty-four dollars or by imprisonment not exceeding thirty days.

Servant negligently damaging property of his employer.

Penalty.

5. Any person aforesaid who is guilty of any other wilful misconduct or ill-behaviour in the service, shall, on conviction thereof, forfeit and pay any sum not exceeding ten dollars.

Other wilful misconduct by servant.

Penalty.

6. The justice by and before whom any complaint is heard and determined may, in addition to any fine or imprisonment hereinbefore directed, abate the whole or any

Abatement of wages of servant on conviction.

part of the wages due to the person aforesaid, and direct them to be retained by and to the use of his employer; and if he is sentenced to imprisonment, no wages shall accrue to him during his imprisonment.

Employer  
ill-using  
servant.

7. Any employer who ill-uses anyone, or does not deliver to anyone any articles stipulated for, and which by the contract of service are to be furnished by the employer to the servant, or if the articles so furnished are not of the stipulated quantity or quality, shall on conviction thereof forfeit and pay any sum, not exceeding fifty dollars, including the reasonable costs of the servant, the convicting Justices think fit.

Penalty.

Duration of  
contract, and  
mode of  
termination  
thereof.

8.—(1) In the absence of any express agreement between the parties thereto to the contrary, the entering of any person into the service or employment of any one shall be deemed and taken to be a contract for one month certain from the time of entering on that service, the month to be deemed a lunar month in the case of agricultural labourers and a calendar month in all other cases.

(2) Every contract aforesaid shall be terminated by mutual consent of the parties, or by either party, at the expiration of the first or any subsequent month, on giving fourteen days' previous notice to the other party in writing or in the presence of a credible witness, or for any good and sufficient cause as hereinafter provided.

Employer  
wrongfully  
terminating  
contract for  
service for  
time  
uncertain.

9. Any employer who terminates any contract entered into with a servant for service for a time uncertain, except with the consent of the servant, or by giving fourteen days' notice as aforesaid, or for some good and sufficient cause, shall forfeit and pay, to the use of the servant, a sum equal to one month's wages, according to the rate of wages fixed by and between the parties, or, if the rate of wages has not been so fixed, then that sum which the justice or justices may consider fair and reasonable as and for a month's wages, regard being had to the class of the servant and the nature of the duties contracted to be performed, in addition to the wages due to the servant at the time of the termination of the contract.

Penalty.

Employer  
wrongfully  
terminating  
contract for  
time certain.

10. Any employer who, having engaged a servant for service for any period of time certain or for the performance of any particular work, puts him away or dismisses or discharges him, before the completion of his contract shall, unless able to prove reasonable and sufficient

cause for putting him away, forfeit to his use any sum, not exceeding twenty-four dollars, which the justice considers reasonable compensation for the wrong and injury done to him. Penalty.

11. Any labourer, servant, or other person, who, having entered into a contract in writing or otherwise to perform any job or work for the performance of which no specified time is agreed and having commenced it, suspends his labour thereon, or, by his example or persuasion, advises or otherwise induces anyone working with him to suspend labour thereon, shall for each offence, on conviction thereof, forfeit and pay to the employer a sum not exceeding fifty dollars, and shall moreover forfeit and lose to the employer every sum of money which would otherwise have been due and payable for any part or portion of the job or work which has been done and performed. Labourer delaying to complete job where work has been commenced.  
Penalty.

12.—(1) An employer may discharge a servant who is guilty of any misconduct, or wilful omission or neglect of duty, without notice and without payment of any wages beyond the wages due at the period of the discharge. Power to employer to discharge servant for misconduct.

(2) To any complaint made in respect of the discharge, the misconduct or wilful omission or neglect of duty proved shall be a sufficient answer; but the employer shall not be precluded by the fact of discharge from proceeding against the servant for any offence under the provisions of this Ordinance committed during his service.

13. On any complaint made by an employer against a servant for refusing or wilfully neglecting to perform his contract, he shall be at liberty to show by evidence in answer to the complaint that he terminated his service or contract in consequence of ill-usage by his employer, or for some other good and sufficient cause to be determined by the justice or justices. Right of servant to show ill-usage in answer to complaint by employer.

14. On any complaint made by an employer or a servant, the justice or justices by whom the complaint is heard may discharge the employer or servant from the contract or service, in addition to any other order made on the complaint, and shall, in case of discharge, award to the servant the whole of his wages, or any proportion of them appearing due to him which the justice or justices think reasonable, or shall authorise the employer to retain the whole or any Power to justice to discharge employer or servant from contract.

specified portion of the wages, and shall give to the employer or servant, as the case may require, a certificate of the discharge and award without any fee or consideration.

Right of employer to charge and recover rent in certain cases from labourer :

15.—(1) Whenever the use and occupation of any house, cottage, tenement, or room, form an ingredient in any contract of service with a labourer under contract, or are stipulated for or deemed a part of the consideration for any work or labour to be performed by him on any plantation the employer may demand, and, if need be, enforce, under the authority of any justice, by deduction of wages due or otherwise, payment by him, for each day that he has, without reasonable cause, absented himself from the service of his employer and kept possession of the house, cottage, tenement, or room, of any sum stipulated as the value, not exceeding sixteen cents per diem.

Notice to quit :

(2) After the application to the justice as aforesaid, the occupancy of the labourer shall cease and determine upon three clear days' notice to quit being given by the proprietor of the tenement or premises, or by any person by him duly authorised thereto.

Holding over :

(3) If anyone overholds possession of the tenement or premises after expiration of that notice, any justice may, and he is hereby authorised and required to do so, on complaint made and proof thereof given, issue his warrant directing any police officer or constable of the district in which the tenement or premises are situate to enter and take possession of them, and to eject any person therefrom :

Ejectionment :

Proviso.

Provided that, in the event of anyone proceeding to recover possession of the tenement or premises, otherwise than in the mode and manner pointed out by this Ordinance, he shall be subject and liable on complaint to the payment of a fine not exceeding twenty-four dollars.

Right of entry and reaping growing crops on provision grounds.

16. Whenever an employer grants to a servant the use and occupation of any piece of land for the growth of provisions, the permission to be valid must be in writing, and unless that permission contains a stipulation that the employer shall be at liberty to determine the grant at any time and to resume possession of the land without the servant being entitled to the growing crops, every servant to whom the use and occupation of any land is granted in the manner and for the purpose aforesaid shall, at any hour between six o'clock in the morning and four o'clock in the

afternoon of every day, within three months after his quitting or ceasing to be in the service, have the right of entering upon and reaping the growing crops on that land.

17.—(1) Where a contract of service within the purview of this Ordinance is made by anyone out of the colony but is to be performed in the colony, that contract of service shall be valid and binding, under and subject to the provisions of this Ordinance and of any other Ordinance in any way relating to contracts of service or to proceedings in connection with the breach thereof, in the same manner as if it had been entered into in the colony.

Validation of contract of service made out of the colony.

(2) A contract so entered into or any indorsement thereon, shall be admissible in evidence as *primâ facie* proof of any matter or thing contained therein in any proceeding relating to or affecting the contract or indorsement.

Use of contract as evidence in such case.

18. This Ordinance shall apply to servants introduced from outside the colony at the expense of the employer, unless expressly excluded by any law for the time being in force relating to immigrants.

Application of the Ordinance to servants introduced from outside the colony.

#### REGISTERED LABOURERS.

19. For the purposes of the three next ensuing sections of this Ordinance—

“labourer” means anyone registered in that capacity in the manner provided by the next ensuing section;

“employer” means anyone employing any person so registered as a labourer.

Meaning of “labourer” and “employer” in section twenty to twenty-two.

20.—(1) Any labourer who contracts with an employer to serve him, whether for a specific time or otherwise, and does not enter upon or commence his service according to his contract, or, having entered upon or commenced the service, absents himself therefrom, or refuses to fulfil the terms thereof, before its completion or before it has been lawfully terminated, shall, on summary conviction thereof, be liable to a penalty not exceeding ninety-six dollars, or to imprisonment, with or without hard labour, for any term not exceeding six months.

Labourers under contract not commencing service or absenting themselves therefrom.

Penalty.

(2) If the labourer so convicted has received from his employer any sum of money by way of advance of wages,

whether before or after the commencement of his service, he shall, in addition to the punishment aforesaid, be ordered to pay to his employer any sum remaining due and owing in respect of that advance at the date of his conviction, and, in default of payment thereof, shall be liable to be imprisoned, with or without hard labour, for any term not exceeding six months.

(3) The court before which any complaint under the two last preceding sub-sections is heard, may with the consent of the employer suspend the operation of any sentence passed thereunder for a period to be specified in the sentence or order, so that the labourer may enter upon and commence his term of service, or may return and complete it.

(4) If the labourer completes his term of service according to his contract (including any extra period which the court orders in respect of the period of his absence from the service or of his refusal to fulfil its terms), the sentence shall not be carried into effect, but if the labourer fails to enter upon or commence, or to complete, his service, the court, upon proof on oath thereof, may issue a warrant for his arrest and for the carrying into effect of the sentence.

Registration  
of contracting  
labourers :

**21.**—(1) No contract of service shall be enforced under the last preceding section unless—

- (a) it is in writing signed by both parties thereto, or has been entered into in the presence of two witnesses, and
- (b) the labourer who is to serve under it has been registered by the Commissioner of Lands and Mines, or by anyone appointed by the Governor in that behalf, and a certificate of the registration has been delivered to the labourer :

Proviso.

Extension of  
term of  
service.

Provided that—

- (i) where the contract is for a limited period, and the employer and labourer agree to continue the service after the expiration of that period, it shall not be necessary to register the labourer again, but the employer shall indorse on the expired certificate of registration a note that the contract of service has been extended, and as soon as possible thereafter notify the Commissioner of Lands and Mines, or some officer of his department, of the fact of the extension ; and

- (ii) the omission of the employer to notify the fact of the extension shall not prevent the labourer from enforcing his rights under the extended contract.

(2) Every registering officer shall keep a register in which he shall record the name of the employer, the date of registration, the name, colour, age, height, distinguishing marks (if any), and the nature and locality of employment, of all labourers, and of any other particulars necessary for identification purposes from time to time directed by the Governor. Register.

(3) The production of the register, or a certified extract therefrom under the hand of the registering officer, shall be deemed by all courts and for all purposes sufficient proof, until the contrary is made to appear, that the person therein named was duly registered as a labourer and for the period of service therein specified.

(4) The registering officer shall be entitled to a fee of twenty-four cents for every certified extract.

**22.**—(1) All wages due to a labourer shall be paid to him in cash, except deductions for advances, payments on orders given to him, or goods supplied to him for his personal use:— Mode of payment of wages:

Provided that— Proviso.

- (a) none of those deductions from the wages of a labourer employed on or in connection with a mining claim shall exceed the amount of one-third of his wages in any month; and
- (b) none of those deductions from the wages of a labourer employed on or in connection with a tract of land shall exceed fifteen dollars in any one month.

(2) Every employer shall pay all wages due to a labourer employed by him immediately they become due, and any employer failing to pay them within fourteen days after they become due shall on conviction thereof be liable to a penalty not exceeding fifty dollars. Penalty for non-payment.

(3) It shall be no defence to a complaint under this section that the employer had given an order on any other person for the payment of the wages.

(4) A complaint for an offence under this section may be prosecuted in the judicial district where the labourer was engaged.



(5) Nothing herein contained shall affect any proceeding for enforcing the payment of any wages due by an employer to his labourers.

Procedure.

23. Any offence against the provisions of the three last preceding sections may be heard and determined by the magistrate of the district in which the contract is made or by the magistrate of the district in which the offence is alleged to have been committed.

Aboriginal  
Indians.

24. Nothing in the four last preceding sections shall apply to any aboriginal Indians.

25. Nothing contained in the enactments of this Ordinance which precede sections nineteen to twenty-four hereof shall affect the operation of those sections, and those sections and enactments, so far as not inconsistent, shall be read and construed together.

Procedure.

26. All complaints, differences, and disputes arising under this Ordinance between employer and servant shall be heard and determined and shall be subject to appeal in the manner provided by the Ordinances for the time being in force regulating procedure before magistrates exercising summary jurisdiction and appeals from magistrates' decisions.

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