

WESTERN AUSTRALIA

ANNO DECIMO

VICTORIÆ REGINÆ

No. 16

An Ordinance to provide a Summary Remedy for Breach
of Contracts connected with the Fisheries of the
Colony. [Assented to 2nd September, 1847.]

Preamble

6 Vic. to be ex-
tended to Fishery
contracts

WHEREAS certain doubts have arisen concerning the decision of disputes between parties concerned in the bay whaling and other fisheries in this Colony, and whereas it is expedient to provide a summary remedy for such disputes: Be it therefore enacted by His Excellency the Governor of Western Australia and its Dependencies, by and with the advice and consent of the Legislative Council thereof, that the provisions of an Act passed in the sixth year of the reign of Her present Majesty, entitled 'An Act to provide a Summary Remedy in certain cases of Breach of Contract,' shall (except as hereinafter modified) apply and extend to all owners or persons fitting out or providing for the whale or other fisheries of or belonging to this Colony and all whalers and persons employed or engaged in any of the said

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services subject to the jurisdiction of the Colony : Provided that all the powers and authority which by the aforesaid Act are given to any two Justices may for the purposes of this Ordinance be exercised by one Justice : Provided also that no Justice who is beneficially or as agent for another interested in any particular fishery shall act or adjudicate in any matter concerning the same under this Ordinance.

Proviso, jurisdiction in one Justice

Proviso, Justice interested not to act

2. And be it enacted that articles of agreement between any owner or employer in the fisheries and the several whalers or persons engaged by him in such service shall be in writing and signed by the parties to be charged therewith, and all such articles entered into after the passing hereof shall be signed only in the presence of some Justice of the Peace, being distinctly read over to every party before he shall be required to sign the same, and such owner or employer shall within twenty-one days from the passing hereof and on or before the twentieth day of April in every year thereafter or as soon thereafter as may be practicable deposit the original articles so signed as aforesaid at the office of the Government Resident, who shall on payment of the sum of five shillings receive and retain the same in secure custody and permit from time to time on the payment of one shilling for each signature additional signatures to be made thereto, and allow inspection thereof to any party paying sixpence ; and shall on payment of ten shillings and on proof to his satisfaction of the signature of the parties sought to be charged or of the Justice or Justices attesting the same, grant to any person interested therein office copies of such articles certified as true copies under his hand and seal, which office copies so certified shall be sufficient evidence of the agreement the same as if the original articles were produced and proved according to law ; and whosoever shall wilfully neglect to deposit such articles in manner aforesaid shall on conviction forfeit and pay a sum not exceeding twenty pounds.

Articles of agreement to be deposited, &c.

3. And be it enacted that every owner or employer as aforesaid desirous to avail himself of the provisions hereof shall within two calendar months from the date of signing any such articles or from the passing of this Ordinance, insert a notice in the ' Government Gazette ' setting forth the name of every whaler or other person engaged by him in any fishery as aforesaid, and the capacity in which such person is employed, paying to the Printers of the ' Government Gazette ' a fee of five shillings for the insertion ; and no such whaler or person engaged as aforesaid whose name is not published in manner as aforesaid shall be bound by any such agreement.

Names of parties to be gazetted

4. And be it enacted that whosoever shall during the continuance of the term of service contracted for by any such articles knowingly or after two calendar months from the publication of the ' Gazette ' notice as aforesaid, employ and retain or assist in employing or retaining contrary to the true intent and meaning of such articles any whaler or person who shall have so bound himself to any service still unperformed, shall on conviction for every such offence forfeit and pay a penalty not exceeding fifty pounds.

Penalty for employing parties article, not exceeding £50.

5. And be it enacted that every such whaler or person bound under articles as aforesaid who shall engage or hire himself in the service of any other owner or employer against the consent of his master, and contrary to the intent and meaning of his articles, shall on conviction for every such offence be adjudged to forfeit to such

Articles whalers, &c., engaging elsewhere forfeit wages, &c., and to suffer imprisonment, &c.

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owner or employer any wages or lays then or thereafter payable or deliverable under the said articles or any part thereof, and in case any such whaler or person so breaking his agreement shall have received any advance against his lays or wages on faith of such agreement, such whaler or person shall on conviction forfeit and pay a sum equal to double such advance, and out of the moneys received the amount of such advance shall be paid to the employer or party who disbursed the same, and the residue thereof shall be paid to the use of Her Majesty, her heirs and successors, for the public uses of the Colony, and the offender may further be committed to prison for a period not exceeding three calendar months, and during that period to be kept to hard labour, as to the convicting Justice may seem reasonable.

Ordinance not to interfere with Merchant Seamen's Act

6. Provided always and be it enacted that nothing herein contained shall prevent any whaler or other person being engaged by his employer to serve as a seaman in accordance with the provisions of an Act of the Imperial Parliament of the fifth and sixth years of the reign of His late Majesty King William the Fourth, intituled 'An Act to amend and consolidate the Laws relating to the Merchant Seamen of the United Kingdom and for Forming and Maintaining a Register of all the Men engaged in that Service.'

Justice may retain fees, &c.

7. And be it enacted that all sums of money received by any Justice of the Peace under this Ordinance for the reception, inspection or certified copy of any such articles as aforesaid, shall or may be retained by such Justice for his own use and benefit.

Limitation of prosecutions three months

8. And be it enacted that all informations and proceedings for offences against this Ordinance shall be commenced within three calendar months after the offences thereby respectively charged shall have been committed.

FREDERICK CHIDLEY IRWIN,
GOVERNOR AND COMMANDER-IN-CHIEF.