

[AS REPORTED FROM LABOUR BILLS COMMITTEE.]

Hon. Mr. Hislop.

TRUCK.

ANALYSIS.

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A BILL INTITULED

AN ACT to prohibit the Payment of Wages in Goods or otherwise than in Money. Title.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. The Short Title of this Act is "The Truck Act, 1890;" and it shall come into operation on the day of one thousand eight hundred and ninety. Short Title.

2. In this Act, unless inconsistent with the context,— "Contract" includes any agreement, understanding, device, contrivance, collusion, or arrangement whatsoever on the subject of wages, whether written or oral, direct or indirect, to which the employer and workman are parties, or are assenting, or by which they are mutually bound to each other, or whereby either of them shall have endeavoured to impose an obligation on the other of them: Interpretation.

"Employer" includes any master, manager, foreman, clerk, or other person engaged in the hiring, employment, or superintendence of the service, work, or labour of any workman within the meaning of this Act:

"Money" means coin of the realm of Great Britain and Ireland current in New Zealand, and includes the notes of any joint-stock bank or association carrying on the business of a banker in New Zealand under the authority of any charter issued or granted by the Crown and actually in force, or under any Act of the General Assembly now or hereafter in force : 5

"Wages" include any money or thing had or contracted to be paid, delivered, or given as a recompense, reward, or remuneration for any service, work, or labour done or to be done, whether within a certain time or to a certain amount, or for a time or an amount uncertain : 10

"Workman" means any person being a clerk, shop assistant, journeyman, artificer, handicraftsman, miner, seaman, labourer, servant in husbandry, domestic servant, or other wise in any manner employed in work of any kind or in manual labour, whether under the age of twenty-one years or above that age. 15

Wages to be payable in money.

3. (1.) In every contract hereafter to be made with any workman the wages of such workman shall be made payable in money only, and not otherwise, and, if by agreement, custom, or otherwise a workman is entitled to receive, in anticipation of the regular period of the payment of his wages, an advance as part or on account thereof, it shall not be lawful for the employer to withhold such advance or make any deduction in respect of such advance on account of poundage, discount, or interest, or any similar charge. 20 25

No deduction for interest.

Contracts to be void if in contravention of this section.

(2.) If in any such contract the whole or any part of such wages shall be made payable in any manner other than in money, or shall provide for any deduction or charge as aforesaid in respect of any advance of the whole or a part of the wages of such workman, such contract shall be and is hereby declared illegal and void so far as any promise or consideration made or given by or arising out of the same relates to the payment of such wages otherwise than in money, or as to making any such deduction or charge as aforesaid; and such promise or consideration shall be deemed to be severable from the other part of the contract, which shall otherwise be and remain in force. 30 35

No contract to stipulate as to mode of spending wages.

4. No employer shall, directly or indirectly, by himself or his agent, impose as a condition, express or implied, in or for the employment of any workman any terms as to the place, or the manner in which, or the person with whom any wages or portion of wages paid to the workman are or is to be expended; and no employer shall, by himself or his agent, dismiss any workman from his employment for or on account of the place at which, or the manner in which, or the person with whom any wages or portion of wages paid by the employer to such workman are or is expended or fail to be expended. 40 45

All wages to be paid in money.

5. The entire amount of the wages earned by or payable to any workman shall be actually paid to such workman in money, and not otherwise, at intervals of not more than one month if demanded; and every payment made to any such workman by his employer of or in respect of any such wages by the delivering to him of goods, or otherwise than in money, except as hereinafter mentioned, shall be and is hereby declared illegal and void; and every workman 50

shall be entitled to recover from his employer in any Court of competent jurisdiction the whole or so much of the wages earned by such workman as shall not have been actually paid to him by his employer in money.

5 6. In any action to be hereafter brought or commenced by any workman against his employer for the recovery of any sum of money due to such workman as his wages,—

No set-off to be allowed for goods supplied to workman by employer.

10 (1.) The defendant shall not be allowed to make any set-off or counter-claim, nor to claim any reduction of the plaintiff's demand, by reason or in respect of any goods had or received by the plaintiff as or on account of his wages, or by reason or in respect of any goods sold, delivered, or supplied at any shop, store, house, or premises kept by or belonging to such employer, or in the profits of which such employer shall have any share or interest.

15 (2.) Nor shall the defendant be entitled to any set-off or counter-claim in respect of any goods supplied to the plaintiff by any person under any order or direction of the plaintiff or his agent.

20 7. (1.) No employer shall have or be entitled to maintain any action in any Court against any workman for or in respect of any goods sold, delivered, or supplied to any such workman by any such employer whilst in his employment as or on account of his wages, or for or in respect of any goods sold, delivered, or supplied to such workman at any shop, store, house, or premises kept by or

Employer not to have action for goods supplied to workman.

25 belonging to such employer, or in the profits of which such employer shall have any share or interest.
 (2.) Nor shall the employer of a workman, or any agent of such employer, or any person supplying goods to the workman under any order or direction of such employer or agent, be entitled to maintain any action in any Court for or in respect of any goods supplied by such employer or agent, or under such order or direction, as the case may be:

30 Provided that nothing in this section shall apply to any exceptions expressly provided for by this Act.

35 8. No deduction shall be made from a workman's wages for sharpening or repairing tools, except by agreement ~~not forming part of the condition of hiring.~~

No deduction from wages for sharpening or repairing tools, &c.

40 9. Nothing herein shall be construed to prevent or render invalid any contract for the payment, or any actual payment, to any workman of the whole or any part of his wages in a cheque, draft, or order in writing for the payment of money to the bearer on demand, drawn upon any person, company, or association carrying on the business of a banker in New Zealand ~~within twenty miles of the place~~ where such cheque, draft, or order shall be so paid, if such workman shall freely consent to receive such cheque, draft, or order; but all payments so made with such consent shall, for the purposes of this Act, be as valid as if made in money:

Payment of wages may be made by cheque.

50 Provided that if wages shall be paid to any workman by a cheque, draft, or order in writing as aforesaid, and the same shall be dishonoured, such workman shall be entitled to recover from his employer such reasonable damages as he may have sustained in consequence of

Remedies of workman.

the dishonour of such cheque, draft, or order in writing, and such damages shall be recoverable in any Court of competent jurisdiction, and in addition to any wages due or payable to such workman :

Proviso struck out.

Provided further that if such cheque, draft, or order in writing has been drawn or made by an agent of an employer (~~however such agency may arise~~), *by the authority, express or implied, of such employer*, the remedy of the workman in respect of such damages or wages, or either of them, ~~may, at his option, be had, taken, and enforced either against such employer or against such agent~~ *shall be against such employer as if such draft, cheque, or order had been made or signed by such employer.*

New Clause.

9A. Service of any legal process for or incidental to the recovery of wages or damages for non-payment thereof, or on any cheque, draft, or order given in respect of such wages, may be effected on the employer by leaving such process with, or delivering the same to, the manager or overseer for the time being of the works at or in respect of which such wages shall have been earned. This section shall not affect any other mode of service allowed by law.

10. Where articles are made by a person at his own house or otherwise, without the employment of any person under him except a member of his own family, this Act shall apply as if he were a workman, and the shopkeeper, dealer, trader, or other person buying the articles in the way of trade were his employer; and the provisions of this Act with respect to the payment of wages shall apply as if the price of an article were wages earned during the seven days next preceding the date at which any article is received from the workman by the employer.

11. If the employer of any workman shall, by himself or the agency of any other person or persons, directly or indirectly enter into any contract or make any payment hereby declared to be illegal and void wholly or in part, or if the employer or his agent contravenes or fails to comply with any of the foregoing provisions of this Act, such employer or agent, as the case may be, shall be deemed guilty of an offence, and be liable to the following penalties :—

For the first offence, a penalty ~~of not less than ten pounds and not exceeding twenty pounds~~ ;

For the second offence, a penalty ~~of not less than twenty pounds and not exceeding fifty pounds~~ ;

And for a third offence shall be deemed guilty of a misdemeanour, and, being found guilty thereof, shall be punished by a penalty not exceeding *one hundred pounds*, or, at the discretion of the Court, may be imprisoned for any term not exceeding *three months*.

12. (1.) Where an offence for which an employer is by virtue of this Act liable to a penalty has, in fact, been committed by some agent of the employer or other person, such agent or other person shall be liable to the same penalty as if he were the employer.

(2.) Where an employer is charged with an offence against this Act, he shall be entitled, upon information duly laid by him, to have any other person whom he charges as the actual offender brought before the Court at the time appointed for hearing the charge, and if, after the commission of the offence has been proved, the employer

Articles made by persons working on their own account to be paid for in money and not by barter.

Penalties for breaches of Act.

Penalty on agent of employer.

If person other than employer guilty of offence, power of employer to exempt himself from penalty on conviction of actual offender.

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proves to the satisfaction of the Court that he has used due diligence to enforce the execution of this Act, and that the said other person had committed the offence in question without his knowledge, consent, or connivance, the said other person shall be convicted of such offence, and the employer shall be exempt from liability.

13. All penalties under this Act may be recovered in a summary way before a Resident Magistrate or two or more Justices of the Peace, in accordance with "The Justices of the Peace Act, 1882;" but nothing herein shall apply to an offence declared to be, or a penalty recoverable in respect of, a misdemeanour.

Penalties to be recovered summarily.

14. (1.) No person shall be punished as for a second offence under this Act of a like nature with the first offence under this Act unless ten days at the least shall have intervened between the conviction of such person for the first and the conviction of such person for the second offence; but each separate offence committed by any such person before the expiration of the said term of ten days shall be punishable by a separate penalty as though the same were a first offence:

Provisions as to second and third offences.

(2.) And no person shall be punished as for a third offence under this Act unless ten days at the least shall have intervened between the conviction of such person for the second and the conviction of such person for the third offence; but each separate offence committed by any such person before the expiration of the said term of ten days shall be punishable by a separate penalty as though the same were a second offence:

(3.) And the fourth or any subsequent offence which may be committed by any such person against this Act shall be inquired of, tried, and punished in the manner hereinbefore provided in respect of any third offence.

15. (1.) If the person or persons preferring any information under this Act shall not be able, or shall not see fit, to produce evidence of any previous conviction or convictions, any such offender shall be punished for each separate offence by him committed against the provisions of this Act by an equal number of distinct and separate penalties as though each of such offences were a first or second offence, as the case may be;

If no evidence of a previous conviction, offence deemed to be separate.

(2.) And no person shall be proceeded against or punished as for a second or as for a third offence at the distance of more than two years six months from the commission of the next-preceding offence.

Limit of time for prosecution.

16. It shall be sufficient evidence of a previous conviction under this Act, whether summarily or on indictment, if a certificate signed by the proper officer having the custody of the record of such previous conviction, or of the proceedings of the Court in which such conviction was obtained, shall be produced to any Court inquiring of a second or third offence, or in any case where it may be necessary to prove such previous conviction, in which certificate shall be stated in a compendious form the general nature of the offence for which such previous conviction was had, and the date of such conviction; and it shall not in any case be necessary to prove the signature or official status of the officer signing or giving such certificate, or that the said conviction was not quashed, or reversed on appeal, or otherwise howsoever.

Evidence of a previous conviction.

Partner not to be liable in certain cases.

17. No person shall be liable to be convicted of any offence against this Act committed by his co-partner in business, and without his knowledge, privity, or consent; but it shall be lawful, when any penalty or sum for wages, or any other sum, is ordered to be paid under the authority of this Act, and the person or persons ordered to pay the same shall neglect or refuse to do so, to levy the same by distress and sale of any goods or chattels belonging to any co-partnership concern or business in the carrying-on of which such wages may have become due or such offence may have been committed. 5

Judgment and execution against partners.

18. In all proceedings to recover any sum due for wages, it shall be lawful in all cases of co-partnership for the Court, at the hearing of any action for the non-payment thereof, to give judgment against any one or more co-partners for the payment of the sum appearing to be due, and in such case the service of a copy of the summons or other process upon one or more of such co-partners shall be deemed to be service upon all; and any execution or other process may be had and enforced upon any such judgment in accordance with the ordinary law and practice affecting such Court. 10 15

Inspectors of factories and workrooms, and of mines, to enforce Act.

19. It shall be the duty of inspectors of factories and workrooms and inspectors of mines to enforce the provisions of this Act within their districts so far as respects factories and workrooms and mines inspected by them respectively; and such inspectors shall for this purpose have the same powers and authorities as they respectively have for the purpose of enforcing the provisions of any Acts now or hereafter in force relating to factories, workrooms, or mines, and all expenses incurred by them under this section shall be defrayed out of moneys provided by the General Assembly. 20 25

Act not to apply in certain cases.

20. This Act shall not extend or apply in the following cases: -

- (1.) Where an employer, or his agent, supplies or contracts to supply to any workman any medicine or medical attendance, or any fuel, materials, tools, appliances, or implements to be by such workman employed in his trade, labour, or occupation; 30
- (2.) Where such employer, or his agent, supplies or contracts to supply to any workman any hay, corn, or other provender to be consumed by any horse or other beast of burden employed by any such workman in his trade, labour, or occupation; 35
- (3.) Where such employer, or his agent, demises to any workman the whole or any part of any tenement at any rent to be therein reserved, or allows such workman the use of a tenement as part of his wages or in addition to his wages, or any other allowance or privilege in addition to money wages as a remuneration for his services; 40
- (4.) Where such employer supplies or contracts to supply to any such workman any victuals dressed or prepared under the roof of such employer, or any drink, not being of an intoxicating nature, and there consumed by such workman; 45
- (5.) Nor to prevent such employer from making or contracting to make any deduction or stoppage from the wages of any such workman for or in respect of any such rent, 50

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medicine, medical attendance, fuel, materials, tools, im-
plements, hay, corn, provender, victuals, or drink ~~dressed,~~
~~prepared,~~ and consumed as aforesaid: Provided that no
such deduction or stoppage shall exceed the real and true
value of such fuel, materials, tools, implements, hay, corn,
provender, and victuals, or drink;

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(6.) Nor shall prevent any employer from advancing to any work-
man any money to be by him contributed to any friendly
society, life-assurance company or association, savings-
bank, or other society or association whatever, or from
advancing any money for the relief of such workman or
his wife or family in sickness; nor from deducting or con-
tracting to deduct any such sum or sums of money as
aforesaid from the wages of such workman;

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(7.) *To persons employed in agricultural or pastoral pursuits.*
Provided that nothing in this section shall apply to any contractor or
sub-contractor for any work, executed under the General Government
of the colony, or any local authority, or to any contractor or sub-con-
tractor for any railway or road-making work.