

GOVERNMENT NOTIFICATION.—No. 774.

His Excellency the Governor has given his assent, in the name and on behalf of His Majesty the King, to the following Ordinances passed by the Legislative Council:—

Ordinance No. 45 of 1902, entitled—An Ordinance to amend the Law relating to Employers and Servants.

Ordinance No. 46 of 1902, entitled—An Ordinance to authorize the making of Bye-laws by the “Star” Ferry Company Limited.

By Command,

F. H. MAY,
Colonial Secretary.

Colonial Secretary's Office, Hongkong, 17th December, 1902.

No. 45 of 1902.

An Ordinance to amend the Law relating to Employers and Servants.

(LS)

HENRY A. BLAKE,
Governor.

[17th December, 1902.]

BE it enacted by the Governor of Hongkong, with the advice and consent of the Legislative Council thereof, as follows:—

Repeal.

1. The Ordinances mentioned in the Schedule to this Ordinance are hereby repealed to the extent specified in the third column thereof.

Interpretation.

2. In this Ordinance the following words and expressions shall have the meaning assigned to them respectively unless there be something in the context repugnant thereto namely:—

“Contract of service” shall mean any contract, whether in writing or verbal, to work personally for any period of time.

“Employer” shall include any person, firm, corporation or company who, or which, enters into any contract of service with any servant as next hereinafter defined, and the agent of every such person, firm, corporation, or company.

“Servant” shall include every person above the age of sixteen years being a mechanic, artificer or other handiworkman, engine-driver or fireman; boatman, any person engaged for service on board any launch, cargo-boat, fishing-junk, or trading-junk; messenger, lift attendant, godown-keeper, tallyman, watchman, labourer, servant in husbandry or manufacture; coachman, groom or other stable servant; gardener or other garden servant, bearer of private chair, puller or propeller of private jinricksha, water carrier; domestic menial or other house servant whether ordinarily employed in or out of doors; who enters into a contract of service with an employer.

“Magistrate” shall mean a Police Magistrate.

Person over 16 years of age may contract.

3. Any person over the age of sixteen years may enter into a contract of service under this Ordinance.

Contract if verbal to be monthly unless within exceptions.

4. In the absence of any agreement in writing to the contrary every contract of service (except in the case of hire by the day, job, or journey) shall be deemed to be a contract for one month renewable from month to month and every such contract shall be deemed to be so renewed unless such contract shall be determined in the manner prescribed in the section next succeeding.

Every servant under such contract shall, in addition to any service which he may have specially contracted to perform, be deemed to have contracted to perform all such additional light duties as he may reasonably be called upon by his employer to perform.

Determination of monthly contract.

5. Every such contract may be determined (1) by either party thereto giving to the other notice to determine such contract at the termination of one calendar month from the date of such notice; or (2) at any time without notice by the employer paying to the servant in lieu of such notice the wages, if any, due to him for the time he has served and a further sum of money equal to one month's wages from the date of the determination of such contract.

6. A contract of service for more than one month shall be in writing and shall be executed in the manner herein-after prescribed.

Contract for more than one month to be in writing. To be executed in duplicate—servant entitled to duplicate.

7. Every such contract shall be executed in duplicate in the presence of a Magistrate, or in the case of any sailor boatman or other person engaged for service on any cargo boat or fishing or trading junk before the European Police Officer in charge of the Police Station of the District in which such contract is made, who shall before the execution thereof explain to the servant the nature of such contract and upon the execution thereof shall endorse thereon his certificate that such contract has been duly explained by him to such servant and thereafter shall deliver such duplicate to such servant.

8. No such contract shall be for a longer period than (five) years if made beyond the Colony nor for a longer period than (three) years if made within the Colony.

Limitation of duration of contract.

9. Any person beyond the Colony desiring to enter into a contract to serve within the Colony may do so in writing in the presence of two witnesses who shall certify as such witnesses that the contract was, before the execution thereof, duly explained to the party or parties executing the same.

Contract made beyond Colony for execution within.

10. Every such contract shall clearly express therein the time for which it is to endure; the wages to be paid; the nature of the service to be performed; the sum of money (if any) to be chargeable against and deducted from the wages; and that the employer is bound to provide regular work at stipulated wages for the servant.

What conditions shall be stated therein.

11. Any Magistrate, upon proof that such contract has been duly executed, may, if so desired by the parties thereto, endorse such contract as acknowledged before him and thereupon such contract shall be valid and binding within the Colony as a contract of service in writing executed within the Colony.

Endorsement of contract by Magistrate.

12. Every question between the parties to any contract of service respecting wages or alleged disobedience of lawful orders, negligence, carelessness, injury to property, insolence, abusive or insulting language or other alleged misconduct in the course of service under such contract; and every question respecting any alleged refusal or neglect to enter upon or commence service under any such contract, or respecting alleged unlawful absence from service under any such contract, or other alleged failure to fulfil the terms thereof; and every question respecting any alleged wrongful determination of any such contract shall be heard and determined by a Magistrate in a summary manner in accordance with procedure for the time being prescribed by law.

Questions between parties to be determined by Magistrate in a summary manner.

13. If it be made to appear to a Magistrate that there is good ground for believing that any party against whom a complaint has been made under this Ordinance, has absconded or is about to abscond, such Magistrate may issue a warrant to apprehend such party and detain him in custody until the hearing of such complaint, unless such party shall give security to the satisfaction of such Magistrate for his appearance to answer such complaint.

Magistrate may issue warrant to arrest absconding party to contract.

14. On the hearing of any complaint for the recovery of wages the Magistrate may order that the whole or any part of any wages claimed be withheld or that the whole or any part of any wages, with such an amount not exceeding ten days' wages in addition as may seem just, shall be paid by way of compensation to the servant for unpaid wages.

Power of Magistrate over wages.

15. On the hearing of any complaint for wrongful determination of any contract of service the Magistrate may order any wages due on the contract to be paid or withheld either wholly or in part and may, if he sees fit, order the party in default to pay to the other party any sum not exceeding one month's wages by way of compensation for the wrongful determination of the contract.

Power of Magistrate in cases of wrongful determination of contract.

16. On the hearing of any complaint for refusal to enter upon or commence service under any contract of service or for unlawful absence from service or for disobedience to lawful orders, negligence, carelessness, injury to property, insolence, abusive or insulting language or other misconduct the Magistrate may order the party complained

Power of Magistrate to fine or imprison.

against to pay a fine not exceeding fifty dollars or in default to be imprisoned with or without hard labour for any term not exceeding three months and may order that the whole or any part of such fine be paid by way of compensation to the party complaining.

Power of Magistrate to order security for fulfilment of written contract.

17. On any complaint by a party to a written contract of service that the other party neglects or omits to fulfil the contract or omits or refuses to enter on or commence service, or absents himself from service the Magistrate may, in addition to any other penalty authorised by this Ordinance, order the party complained against to fulfil the contract, and may, if he thinks fit, order such party to find security for the fulfilment of such contract and in default of such security to pay a fine not exceeding fifty dollars or in default of payment to be imprisoned with or without hard labour for any term not exceeding three months.

Power to Magistrate to punish for wilful breach of contract causing or likely to cause serious loss.

18. Every servant whether in combination with others or not who wilfully breaks a contract of service under this Ordinance knowing or having reasonable cause to believe that the probable consequences of doing so, will be to cause the stoppage of work in any factory, field or place in such a manner as may be attended with serious loss to the owner of the factory, field or place or serious inconvenience to the public shall on conviction before a Magistrate in a summary manner be liable to a penalty not exceeding one hundred dollars or in default of payment to imprisonment with or without hard labour for any term not exceeding six months.

Wages ordinarily payable monthly.

19. The wages of a servant shall, in the absence of agreement to the contrary, be payable monthly.

Forfeiture of wages.

20. No wages shall be payable to any servant for any period of his term of service during which he has undergone sentence of imprisonment.

Absence while in prison or without leave not deemed part of period of service under written contract.

21. If any servant under a written contract of service shall, during the continuance of such contract, have been sentenced to imprisonment or shall have been convicted for having absented himself without leave such period of imprisonment or absence shall be endorsed on the contract by the Magistrate by whom such servant may be sentenced to imprisonment or before whom such servant shall be proved to have been absent without leave and the period of such imprisonment or absence shall not be deemed to be a part of the service of such servant and he shall be compellable at the option of his employer to serve for the full period for which he had contracted to serve and shall for such extended period continue to be under the provisions of this Ordinance.

Parties, their husbands and wives competent as witnesses.

22. On the hearing of any complaint under this Ordinance the parties to the contract of service and their husbands and wives shall be competent as witnesses.

Existing contracts.

23. Every contract of service though in force at the coming into operation of this Ordinance shall nevertheless be subject to the provisions thereof and the parties thereto shall be entitled to the benefit of such provisions.

Saving civil remedy in cases of breach or non-performance of contract.

24. Nothing in this Ordinance shall be construed to deprive an employer of his right to dismiss a servant summarily for cause nor to deprive an employer or a servant of his civil remedy for the breach or non-performance of any contract of service in any case where proceedings for such breach or non-performance are not instituted by him under this Ordinance.

Saving of criminal proceedings in certain cases.

25. Nothing in this Ordinance shall prevent the application of the Criminal Law of the Colony to the parties to a contract of service provided that no person be punished twice for the same offence: and any prosecution commenced under this Ordinance may be withdrawn before judgment and a fresh prosecution be instituted under the Criminal Law of the Colony applicable to the circumstances.

26. Nothing in this Ordinance contained shall be deemed to affect in any way the provisions of the Merchant Shipping Act (Imperial 1894) or the Merchant Shipping Consolidation Ordinance with reference to the engagement of seamen and to agreements therewith made by masters of ships.

27. This Ordinance may be cited for all purposes as
The Employers and Servants Ordinance, 1902.

Passed the Legislative Council of Hongkong, this 9th
day of December, 1902.

C. CLEMENTI,
Acting Clerk of Councils.

Assented to by His Excellency the Governor, the 27th
day of December, 1902.

F. H. MAY,
Colonial Secretary.

SCHEDULE.

Ordinances Repealed.

Number and Year of Ordinance.	Short Title.	Extent of Repeal.
14 of 1845.	An Ordinance to repeal Ordinance 5 of 1844 entitled An Ordinance for the Preservation of Good Order and Cleanliness within the Colony of Hongkong and its Dependencies and to make other Provisions in lieu thereof.	Section 3 (3).
2 of 1902.	The Private Coolie Ordinance, 1902.	The whole.