



ANNO TERTIO

GEORGII V REGIS.

A.D. 1912.

No. 1110.

An Act to make better provision for dealing with Industrial Matters and Disputes, and for purposes consequent on such provision, including certain amendments of "The Factories Acts, 1907 to 1910."

[Assented to, December 19th, 1912.]

BE it Enacted by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I.

PART I.

PRELIMINARY.

1. This Act may be cited as "The Industrial Arbitration Act, 1912." Short title.

2. The provisions of this Act are arranged as follows:— Arrangement of Act.

PART I.—Preliminary:

PART II.—The Industrial Court:

DIVISION I.—The Constitution of the Court:

DIVISION II.—The Jurisdiction of the Court:

DIVISION III.—Procedure and Powers of the Court:

DIVISION IV.—Appeals to the Court:

PART III.—Industrial Agreements:

PART IV.—Lock-Outs and Strikes:

PART V.—Breaches of Awards and other Offences:

PART VI.—Miscellaneous.

3. In

*The Industrial Arbitration Act.—1912.***PART 1.****Interpretation.**

3. In this Act, unless inconsistent with the context or some other meaning is clearly intended,—

“Agriculture” (without limiting its ordinary meaning) includes horticulture, viticulture, and the use of land for any purpose of husbandry, including the keeping or breeding of live-stock, poultry, or bees, and the growth of trees, plants, fruit, vegetables, and the like :

Comm., 1904, s. 2.

“Association” means any trade or other union, or branch of any union, or any association, society, or body composed of or representative of employers or employés, or for furthering or protecting the interests of employers or employés :

“Award” means award of the Court made under this Act :

“Employé” means any employé in any industry, and includes any person whose usual occupation is that of employé in any industry :

Ibid. and 1910, s. 2.

“Employer” means any person, firm, company, or corporation employing one or more employés in any industry, whether on behalf of himself or any other person :

“Industrial agreement” means an industrial agreement made pursuant to this Act :

Cf. Comm., 1910, s. 2.

“Industrial dispute” means any dispute as to any industrial matter, and, without limiting the ordinary meaning of the foregoing definition, includes a threatened or impending or probable dispute as to any industrial matter ; and an industrial dispute within the meaning of this Act shall be deemed to have arisen in every case in which the Court in its discretion so decides :

N.Z., 82, 1908, s. 2.

“Industrial matters” means matters or things affecting or relating to work done or to be done, or the privileges, rights, or duties of employers or employés, or of persons who intend or propose to be employers or employés in any industry, not involving questions which are or may be the subject of proceedings for an indictable offence ; and, without limiting the ordinary meaning of the foregoing definition, includes all or any matters relating to—

(a) The wages, allowances, or remuneration of any persons employed or to be employed in any industry, or the piecework, contract, or other prices paid or to be paid therein in respect of that employment, including the wages, allowances, or remuneration to be paid for work done during overtime or on holidays, or for other special work, and also including the question whether piecework shall be allowed in any industry :

(b) The hours of employment in any industry, including the lengths of time to be worked to entitle employés therein to any given wages, allowances, remuneration, or prices, and what times shall be regarded as overtime :

(c) The

The Industrial Arbitration Act.—1912.

PART I.

- (c) The sex, age, qualification, or status of employés, and the mode, terms, and conditions of employment, including the question whether persons of either sex shall be disqualified for employment in an industry:
- (d) The number or proportionate number of apprentices and improvers that may be employed by an employer in any industry:
- (e) The relationship of master and apprentice:
- (f) The technical education or other training of apprentices:
- (g) The employment of children or young persons, or of any person or class of persons in any industry:
- (h) The right to dismiss or to refuse to employ or reinstate in employment any particular persons or class of persons in any industry:
- (i) Any claim of members of an association of employers to preference of service from unemployed members of an association of employés:
- (j) Any claim of members of an association of employés that members of such association shall be employed in preference to persons who are not members thereof:
- (k) Any established or alleged established custom or usage of any industry, either general or in any particular locality:
- (l) The interpretation of an award, or of an industrial agreement, or of a determination or order of a wages board, or of an agreement under section 48 of "The Factories Act Amendment Act, 1910": No. 1020 of 1910.
- (m) All matters with which wages boards appointed under the Factories Acts have power to deal under any Act now or hereafter in force:
- (n) All matters prescribed: Comm., 1910, s. 2.
- (o) All questions of what is fair and right in relation to any industrial matter having regard to the interests of the persons immediately concerned and of society as a whole:
- "Industry" means any business, trade, manufacture, undertaking, occupation, or calling, except agriculture, in which persons are employed for hire or reward, or in which they give their services for hire or reward, and includes any occupation or calling of any employé for hire or reward, whatever may be the business, trade, manufacture, undertaking, occupation, or calling of the employer, for the time being, of such employé, and also includes a branch of an industry and a group of industries, and any process, trade, business, occupation, or calling, or any group or part thereof, within the meaning of the Factories Acts: N.Z., 1904, s. 2.
Comm., 1910, s. 2,
altered.
- "Justice"

The Industrial Arbitration Act.—1912.

PART I.

“Justice” means Justice of the Peace for the State:

“Lock-out” (without limiting the meaning of the term) means the act of an employer in closing his place of business, or suspending or discontinuing his business or any branch thereof, or a refusal or failure by an employer to continue to employ any number of his employés, with intent—

- (a) To compel or induce any employés to agree to terms of employment, or comply with any demands made upon them by the said or any other employer; or
- (b) To cause loss or inconvenience to his employés, or any of them; or
- (c) To incite, instigate, aid, or abet, or procure any other lock-out; or
- (d) To assist any other employer to compel or induce any employés to agree to terms of employment, or comply with any demands made by him:

“Minister” means the Minister of Industry or other the Minister of the Crown for the time being discharging the duties of the office of Minister of Industry.

“Prescribed” means prescribed by this Act or by Rules of Court or Regulations:

“President” means President or Acting President of the Court.

“Registrar” means the Industrial Registrar appointed under this Act, and includes any Deputy Industrial Registrar so appointed:

“Regulations” means Regulations made under this Act:

“Rules of Court” means Rules made by the President under this Act:

“Strike” (without limiting the meaning of the term) means the act of any number of employés, who are or have been in the employment either of the same employer or different employers, in discontinuing that employment, or any work or kind of work connected therewith, whether wholly or partially, or in breaking their contracts of service, or in refusing or failing after any such discontinuance to resume or return to their employment, or any work or kind of work connected therewith, the said discontinuance, breach, refusal, or failure being due to or in pursuance of any combination, agreement, or understanding, whether expressed or implied, made or entered into by the said employés with intent—

- (a) To compel or induce any such employer to agree to terms of employment, or comply with any demands made by the said or any other employés; or
- (b) To cause loss or inconvenience to any such employer in the conduct of his business; or
- (c) To

The Industrial Arbitration Act.—1912.

PART I.

(c) To incite, instigate, aid, abet, or procure any other strike; or

(d) To assist employés in the employment of any other employer to compel or induce that employer to agree to terms of employment, or comply with any demands made by any employés:

“The Court” means the Industrial Court constituted by this Act:

“The Factories Acts” means “The Factories Act, 1907,” and any Acts now or hereafter in force amending that Act or substituted for that Act or for any such amending Act: No. 945 of 1907.

“This Act” includes Rules of Court and Regulations made under this Act:

“The State” means the State of South Australia:

“Wages board” or “board” means a wages board appointed or to be appointed under or pursuant to the Factories Acts.

4. The “Conciliation Act, 1894,” is hereby repealed.

Repeal of Act
No. 598 of 1894.

5. (1) “The Factories Acts, 1907 to 1910,” are hereby amended in manner set out in the Schedule to this Act.

Amendments of
Factories Acts.

(2) The said Acts shall in other respects be read and construed as varied in so far as may be necessary to give effect to the provisions of this Act.

6. Neither the repeal nor the amendments provided for by sections 4 and 5 hereof, of the Acts therein mentioned, shall— Saving.

(a) Affect the operation prior to the passing of this Act of any of the said Acts, or

(b) Alter the effect of anything done or suffered, or of the omission of anything, before the passing of this Act, or

(c) Affect any right, privilege, obligation, or penalty acquired, accrued, incurred, or imposed, or liable to be imposed under any of the said Acts, before the passing of this Act, or

(d) Affect any inquiry, any conciliation or arbitration proceeding, or any legal or other proceeding heretofore commenced or hereafter to be commenced in respect of any of such matters or things;

and any such inquiry or proceeding heretofore commenced may be continued and completed, and shall be of the same effect, as if this Act had not been passed:

Provided that any registration of an industrial union under the “Conciliation Act, 1894,” shall, upon the passing of this Act, cease to exist, except so far as may be necessary for the purpose of the continuance and completion of any such inquiry or proceeding. No. 598 of 1894.

7. The Court of Industrial Appeals constituted by “The Factories Act, 1907,” is hereby abolished, except for the purpose of continuing and completing any matter or proceeding instituted or commenced Court of Industrial
Appeals abolished.
No. 945 of 1907.

*The Industrial Arbitration Act.—1912.***PART I.**

commenced in the said Court before the passing of this Act and for giving effect to anything done in any such matter or proceeding; and, except for that purpose, all the jurisdiction, functions, powers, and duties of the said Court are hereby conferred and imposed upon, and shall henceforth be exercised and performed by, the Court constituted by this Act in manner provided by this Act.

PART II.**PART II.****THE INDUSTRIAL COURT.****DIVISION I.****DIVISION I.—THE CONSTITUTION OF THE COURT.**

Constitution of Court.
Com. 1904, ss. 11
and 12.

8. (1) There is hereby constituted a Court to be called the Industrial Court, which shall be a court of record and shall have a seal, which shall be judicially noticed.

(2) The Governor shall appoint a Judge of the Supreme Court or a person who is eligible for appointment as a Judge of the Supreme Court to be President of the Court.

(3) The Governor may, from time to time, appoint the President to be a temporary Judge of the Supreme Court, if and whenever, upon the certificate of the Chief Justice, it appears that judicial assistance in the Supreme Court is required. Whenever acting as such temporary Judge the President shall have all the jurisdiction and powers of a Judge of the Supreme Court.

(4) In case of the illness or absence of the President the Governor may appoint a Judge of the Supreme Court to act as President during such illness or absence; and whilst acting in that capacity such Judge shall have all the jurisdiction and powers of the President in addition to his jurisdiction and powers as a Judge of the Supreme Court.

(5) The President shall not be removed from office except in the same manner and upon such grounds as a Judge of the Supreme Court is by law liable to be removed from office; but the President may resign at any time.

(6) The President or Acting President shall constitute the Court; and, except where otherwise provided by this Act, all the powers and functions of the Court may be exercised by the President or Acting President sitting alone.

DIVISION II.**DIVISION II.—THE JURISDICTION OF THE COURT.**

Jurisdiction of Court.
Comm., s. 18.

9. The Court shall have jurisdiction to deal with all industrial matters and industrial disputes, pursuant to this Act.

President to act when-
ever his mediation
desirable.

10. The President shall have power as a mediator to deal with all industrial matters and industrial disputes in all cases in which it appears to him that his mediation is desirable in the public interest and the matter or dispute would, if submitted to the Court, be within its jurisdiction.

11. (1) The

The Industrial Arbitration Act.—1912.

PART II.

DIVISION II.

11. (1) The President may, whenever in his opinion it is desirable for the purpose of dealing with an industrial matter or preventing or settling an industrial dispute, summon any person to attend, at a time and place specified in the summons, at a conference presided over by himself.

Comm., 1904, s. 16.
S.A. 39, 49.

President may convene compulsory conference.

Comm., 1910, s. 3.

(2) Any person may be so summoned, notwithstanding that he is not engaged in or connected with the matter or dispute, if the President thinks that such person's presence at the conference is likely to assist in dealing with or settling the matter or to conduce to the settlement or prevention of the dispute.

(3) Any person so summoned shall attend the conference and continue his attendance thereat as directed by the President, and in default shall be liable to a penalty not exceeding Five Hundred Pounds, to be recovered and enforced in the same way as penalties for offences under Part IV.

(4) The conference may be held partly or wholly in public or in private, at the discretion of the President.

(5) Any person summoned under this section, who attends pursuant to the summons and continues his attendance as directed by the President, shall, unless he is or was engaged in or connected with the matter or dispute, be entitled to be paid by the Crown such (if any) amount as the President, having regard to the conduct of such person both before and at the conference, certifies to be a reasonable recompense for his expenses and loss of time.

12. The President may review, annul, rescind, or vary any act or decision of the Registrar in any manner which he thinks fit.

President may review decision of Registrar.

Comm., s. 17.
S.A., s. 76.

13. The Court shall have jurisdiction over all industrial matters and industrial disputes which are submitted to it—

Disputes of which the Court to have original jurisdiction.

(a) By the Minister or the Registrar as being proper, in the public interest, to be dealt with by the Court; or

Comm., 1904, s. 19.

(b) By an employer or employers of not less than twenty employés in any industry; or

N.S.W. 17, 1912,
s. 31.

(c) By not less than twenty employés in any industry; or

(d) By a report to the Court by a wages board or the Minister under section 22 of "The Factories Act Amendment Act, 1910";

No. 1020 of 1910.

and also over any industrial matter or industrial dispute as to which a conference has been held under section 11, and which, not having been finally and completely dealt with or settled at such conference, the President has referred to the Court: Provided that the Court shall not (except under the said section 22 or by way of appeal under the Factories Acts) have jurisdiction of any industrial matter or industrial dispute concerning any industry for which, at the time, a wages board has been or is in course of being appointed, and as to which matter or dispute such board has or will have jurisdiction.

DIVISION

The Industrial Arbitration Act.—1912.

PART II.

DIVISION III.

On hearing of industrial disputes assessors to assist President.

Cf. S.A. Factories Act, 1907, s. 127. Comm., 1904, s. 35.

DIVISION III.—PROCEDURE AND POWERS OF THE COURT.

14. (1) When the Court sits for the purpose of finally adjudicating upon an industrial dispute, the President may, if he thinks fit, be assisted by two assessors appointed in the following manner:—

- I. Within such time as the President specifies, such of the parties to the dispute as, in the opinion of the President, have interests in common with the employers shall nominate one of the assessors; and such of the parties to the dispute as, in the opinion of the President, have interests in common with the employés shall nominate the other assessor; and the President shall appoint the nominees as the assessors:
- II. No person shall be appointed an assessor unless he is, or within three years previous to his appointment has been, actually and *boná fide* engaged or employed either as an employer or as an employé in the industry or in any one of the industries in respect of which the dispute has arisen: Provided that if in any case by reason of the special circumstances of that case the President is of opinion that it is impracticable or inexpedient that one or both of the assessors should be so qualified he may appoint a person or persons not so qualified:
- III. If default is made in nominating either or both of the assessors within the time so specified, or if the parties consent, the Governor shall appoint one or both assessors, as may be necessary.

N.Z. 239, 1908, s. 30 (6).

(2) A person shall not be disqualified for appointment as an assessor on the ground that he is a party to the dispute or is a member of an association which is a party to the dispute.

Ibid., s. 34.

(3) If during the hearing of the dispute an assessor dies, or resigns his office, or is proved to the satisfaction of the President to be unable, by reason of sickness or any other cause, to act as assessor, the President shall, on the nomination, within a time specified by him, of the parties who nominated such assessor appoint another person to be assessor in his place, or in default of nomination within such time, or by consent of the said parties, the Governor shall appoint a person to be assessor.

Ibid.

S.A. Factories Act, s. 127.

(4) The powers and functions of the Court shall not be affected by any vacancy in the office of an assessor; and during such vacancy the Court may, so far as the President thinks fit, exercise all its powers and functions in the same manner as if such office were filled.

(5) Each assessor shall be paid a fee of One Pound for every day on which he attends the hearing.

(6) The provisions of this section shall not apply when the President is acting in the exercise of any power, function, jurisdiction, or duty by this Act conferred or imposed upon the President solely.

15. (1) In

*The Industrial Arbitration Act.—1912.*PART II.
DIVISION III.

15. (1) In the course of the hearing, inquiry, and investigation of an industrial matter or industrial dispute the Court shall make all such suggestions and do all such things as appear to it to be right and proper for dealing with the matter or bringing about the settlement of the dispute, by amicable agreement.

Conciliation.
Comm., 1904, s. 23.
S.A., s. 43.
N.Z., 231, 1903,
s. 35.

(2) If an agreement is arrived at, a memorandum of its terms shall be made in writing and certified by the President, and the memorandum when so certified shall be filed in the office of the Registrar, and, unless otherwise ordered and subject as may be directed by the Court, shall have the same effect as, and be deemed to be, an award of the Court.

Agreement to have effect of award.
Comm., 1904, s. 24

16. Any association represented before the Court on the hearing of an industrial matter or industrial dispute shall be deemed a party to the matter or dispute.

Association represented to be deemed party to dispute.
Comm., s. 26.

17. (1) The award of the Court in any industrial matter or industrial dispute shall be framed in such a manner as to best express the decision of the Court and to avoid unnecessary technicality, and shall, subject to any variation ordered by the Court, have effect within the locality or localities specified in the award, and continue in force for a period to be specified in the award, not exceeding three years from the date thereof.

Form, operation, and continuance of award.
Comm., 1904, s. 28.
S.A., s. 43.

(2) After the expiration of the period so specified, the award shall, unless the Court otherwise orders, continue in force until a new award has been made.

18. The award shall be binding on—

On whom award is to be binding.

(a) All parties to the industrial matter or industrial dispute who appear or are represented before the Court ;

(b) All parties who have been summoned to appear before the Court as parties to the matter or dispute, whether they have appeared in answer to the summons or not, unless the Court is of opinion that they were improperly summoned before it as parties ;

Comm., 1904, s. 29.
S.A., s. 53.
N.Z., s. 92 (2).

(c) All associations and persons on whom the award is at any time declared by the Court to be binding as a common rule ; and

(d) All members of associations which are bound by the award.

19. In any industrial matter or industrial dispute over which the Court has jurisdiction, the President may make any order which he thinks just as to—

Powers of President as to interlocutory matters.

(a) Any interlocutory proceeding to be taken before the hearing, the costs thereof, the issues to be submitted to the Court, the persons and associations to be served with notice of proceedings, particulars of the claims of the parties, admissions, discovery, interrogatories, inspection of documents or of real or personal property, examination of witnesses, and the place, time, and mode of hearing ; and

Comm., 1904, s. 32.

(b) Any

*The Industrial Arbitration Act.—1912.*PART II.
DIVISION III.Power to issue orders
to take evidence.

Ibid., s. 37.

Powers of Court.

N.Z., s. 82 (a), (b),
and 239, 1908, s. 35
(3).

Comm., 1904, s. 38.

Comm., 1910, s. 38A.

Comm., 1910, s. 38B.
Comm., 1904, s. 38.

(b) Any matter which, by Rule of Court, the President is empowered to hear or deal with when sitting in Chambers.

20. The Court may issue an order to any person to take evidence on its behalf in relation to any industrial matter or industrial dispute over which it has jurisdiction; and that person shall have all the powers of the Court in relation to the summoning of witnesses, the production of books and documents, and the taking of evidence on oath or affirmation or declaration.

21. The Court shall, as regards every industrial matter and every industrial dispute over which it has jurisdiction, have power—

(a) At or before the hearing to take steps to ascertain whether all persons who ought, in its opinion, to be bound by its award or order have been summoned to attend the proceedings;

(b) To direct that persons not summoned to attend the proceedings shall be so summoned, if the Court is of opinion, whether from the suggestion of parties or otherwise, that such persons should be so summoned;

(c) To hear and determine the dispute or matter in such manner in all respects as the Court, in its discretion, thinks best suited for that purpose;

(d) To allow the amendment, on such terms as it thinks fit, of the application or any subsequent proceeding;

(e) To make any order or award, and, without being restricted to the specific relief claimed by the parties to the dispute or matter, to include in any order or award any matter or thing which the Court thinks necessary or expedient for the purpose of preventing or settling the dispute or dealing with the matter:

Provided that the Court shall not have power to order or direct that, as between members of associations of employers or employes and other persons offering or desiring service or employment at the same time, preference shall in any circumstances or manner be given to members of such association or to persons who are not members thereof;

(f) To give any direction in pursuance of the hearing or determination;

(g) To declare, by award or order, that any practice, regulation, rule, custom, term of agreement, condition of employment, or dealing whatsoever determined by an award in relation to any industrial matter shall be a common rule of any industry:

Provided that the Court, before declaring a common rule, shall pay due regard to the extent to which the industries or the persons affected enter or are likely to enter into competition with one another:

Provided

*The Industrial Arbitration Act.—1912.*PART II.
DIVISION III.

Provided also that before any common rule is so declared, the President shall by notification published in the *Government Gazette* and in such other publications (if any) as the Court directs, specifying the industry and the industrial matter in relation to which it is proposed to declare a common rule, make known that all persons and associations interested and desirous of being heard may, on or before a day named, appear or be represented before the Court; and the Court shall hear all such persons and associations so appearing or represented;

- (h) To direct with due regard to local circumstances within what limits of area (if any) and subject to what conditions and exceptions (if any), a common rule so declared shall be binding upon the persons engaged in the industry whether as employers or employés, and whether members of an association or not;
- (i) To dismiss any dispute or matter or refrain from further hearing or from determining the dispute or matter if it appears that the dispute or matter is trivial, or that, in the public interest, further proceedings by the Court are not necessary or desirable;
- (j) To order any party to the dispute or matter to pay to any other party such costs and expenses, including expenses of witnesses, as are specified in the order;
- (k) To proceed to hear and determine the dispute or matter in the absence of any party thereto or other person who has been summoned or served with notice to appear therein;
- (l) To sit in any place for the hearing and determination of the dispute or matter;
- (m) To adjourn its sittings to any time and place;
- (n) To refer any technical matters or matters of account to an expert, and to accept his report as evidence;
- (o) To vary its orders and awards and to reopen any question;
- (p) To direct parties to be joined or struck out;
- (q) To correct, amend, or waive any error, defect, or irregularity, whether in substance or in form;
- (r) To extend any prescribed time;
- (s) To waive compliance with any Rule of Court; and
- (t) Generally to give all such directions and do all such things as it deems necessary or expedient in the premises.

22. The Court shall not have power to order or prescribe wages which do not secure to the employé affected a living wage. "Living wage" means a sum sufficient for the normal and reasonable needs of the average employé living in the locality where the work under consideration is done or is to be done. Living wage to be absolutely secured.

23. The

The Industrial Arbitration Act.—1912.

PART II.

DIVISION III.

Technical training of apprentices.

23. The Court in making any order or award relating to apprenticeship shall make such provisions as the Court thinks practicable with reference to the training of apprentices in technical schools or otherwise.

Evidence.

N.Z., s. 83.

24. With respect to evidence in proceedings before the Court the following provisions shall apply:—

(a) On the application of any of the parties, and on payment of the prescribed fee, or, by direction of the President, without any such application or fee, the Registrar shall issue a summons to any party, or parties, or other person, or persons, to appear and give evidence before the Court, and any number of witnesses' names may be inserted in one summons:

(b) The summons shall be in the prescribed form, and may require any person therein named to produce before the Court any books, papers, and other documents in his possession or under his control in any way relating to the dispute or matter:

And Comm., 1904, s. 86.

(c) All books, papers, and other documents produced before the Court, whether produced voluntarily or pursuant to summons, may be inspected by the Court, and also by such of the parties as the Court allows; but the information obtained therefrom shall not be made public without the permission of the Court: Provided that books, papers, and documents relating to any trade secret or the profits or financial position of any witness or party shall not, without his consent, be inspected by any person except the President; and that any parts of the books, papers, and documents which in the opinion of the President do not relate to any matter in issue may be sealed up:

Cf. N.Z., s 83.

(d) Every person who is summoned and duly attends as a witness shall be entitled to the prescribed allowance for his attendance and expenses: Provided that, until otherwise prescribed or except as otherwise prescribed, the allowance shall be according to the scale for the time being in force with respect to witnesses in civil actions in the Supreme Court:

N.Z. 239, 1908, s. 35 (3).

(e) The Court may accept, admit, and call for such evidence as in equity and good conscience it thinks fit, whether strictly legal evidence or not:

(f) Any party to the proceedings shall be competent and may be compelled to give evidence as a witness:

(g) The Court may, if it thinks fit, dispense with evidence on any matter on which all parties have agreed in writing as an industrial agreement, or on any matter as to which the Court deems evidence to be unnecessary:

(h) The Court may take evidence on oath, or affirmation, or declaration.

25. The

The Industrial Arbitration Act.—1912.

25. The Court may exercise any of its powers on its own motion or on the application of any party to the industrial matter or industrial dispute, or of any association or person bound by the award of the Court; but no order or award shall be varied and no submission shall be reopened except on the application of an association or person affected or aggrieved by the order or award, or claiming to be so affected or aggrieved.

PART II.
DIVISION III.

Powers may be exercised by Court on its own motion.
Comm., 1904, s. 39.

DIVISION IV.—APPEALS TO THE COURT.

26. With respect to—

- (a) Any appeal under the Factories Acts to the Court against a determination of a wages board,
- (b) Any reference under the Factories Acts by the Minister of Industry of a determination of a wages board, or
- (c) Any application under the Factories Acts to the Court to quash a determination of a wages board,

DIVISION IV.

Powers of Court on appeal from wages board under this Act or the Factories Acts.

the Court may take fresh evidence and shall have the same powers and discretions, and may make any award, order, or decision which the Court would have, or might make, in case of an industrial matter or industrial dispute submitted to the Court under section 13 of this Act, and all the provisions of this Act, *mutatis mutandis*, shall apply to any such appeal, reference, or application, and to any award, order, or decision made therein.

27. Notwithstanding anything in this Act, or in “The Factories Act, 1907,” as amended by this Act, the Court may, on application for further time, allow any such appeal, reference, or application, as mentioned in section 26 of this Act to be commenced or made within such (if any) further time as the Court deems proper.

Power to extend time for appeals, &c.
No. 945 of 1907.

PART III.

INDUSTRIAL AGREEMENTS.

28. Any association may make an industrial agreement under this Act with any other association, or with any person, as to any industrial matter, or in relation thereto.

Parties to industrial agreements.
Comm. 1904, s. 73.
N.Z., s. 25 (1).
Cf. S.A. 598, 1894, s. 28.

29. (1) Every industrial agreement shall be in writing, and shall be for a term to be specified therein, not exceeding three years from the date of the making thereof, and shall be in a form commencing as follows:—“This industrial agreement, made in pursuance of ‘The Industrial Arbitration Act, 1912,’ this day of _____, between _____”; and then the matter agreed upon shall be set out.

Term and form of agreement.
Ibid, s. 29.
N.Z., s. 25.

(2) The date of the making of the agreement shall be the date on which it is executed by the party who first executes it; and such date, and the names of all the original parties thereto, shall be truly stated therein.

Date of agreement.

30. (1) A

The Industrial Arbitration Act.—1912.

PART III.

Duplicate to be filed.
S.A., s. 30.
Comm., 1904, s. 76.

30. (1) A duplicate of every industrial agreement shall be filed in the office of the Registrar, and in the office of every association party thereto, within thirty days of the making thereof, and shall be open to inspection as prescribed by Rules of Court.

(2) The Registrar, if required by any person interested in any agreement so filed, shall investigate the matter in such manner as he thinks fit, and, if satisfied that such agreement has been duly made and executed pursuant to this Act by or on behalf of the parties thereto, shall give a certificate to that effect, which certificate shall be conclusive evidence that the fact is as stated therein.

Parties to agreement
may be added.

N.Z., s. 27.
Cf. S.A., s. 31.

31. At any time whilst an industrial agreement is in force any association or employer may become party thereto by filing in the office of the Registrar a notice in the form prescribed by Rules of Court, signifying concurrence with such agreement, and thereafter such association or employer shall be deemed to be a party thereto; and in the case of an association so becoming a party to an industrial agreement a copy of such agreement shall be filed in the office of such association within thirty days of its becoming a party thereto.

Effect of industrial
agreement.

Ibid.
Comm., 1904, s. 77.

32. Every industrial agreement shall during its continuance be binding on—

(a) All parties thereto; and

(b) All members at any time during such continuance of any association which is a party thereto.

Enforcement of
agreement.

Ibid., s. 78.

33. (1) Any association or person bound by an industrial agreement shall, for any breach or non-observance of any term of the agreement, be liable to a penalty not exceeding such amount as is fixed by the industrial agreement, and if no amount is so fixed then to a penalty not exceeding, in the case of an association, Two Hundred and Fifty Pounds, in the case of an employer (whether a party to the agreement or a member of such party) One Hundred Pounds, and in the case of an employé (whether a party to the agreement or a member of such party) Ten Pounds.

(2) Such penalties may be proceeded for and recovered in the same manner as penalties for the breach or non-observance of an award, and the provisions of subsections (2) to (4), inclusive, of section 49, *mutatis mutandis*, shall apply as if the breach or non-observance were in respect of an award.

Rescinding or varying
agreement.

Ibid., s. 79.

34. An industrial agreement may be rescinded or varied by any other industrial agreement made between the parties thereto for the time being.

Variation of agree-
ment by Court to
conform with common
rule.

Ibid., s. 80.

35. On the application in manner prescribed of any party to an industrial agreement, or of any association or person which or who, in the opinion of the Court, is bound by—

(a) Any determination of a wages board,

(b) Any

The Industrial Arbitration Act.—1912.

PART III.

(b) Any agreement under section 48 of "The Factories Act Amendment Act, 1910," or

No. 1020 of 1910.

(c) Any common rule declared under that Act,

the Court may order that such industrial agreement be varied so far as is necessary to bring it into conformity with such determination, agreement, or common rule; and such industrial agreement shall thereafter be deemed to be varied accordingly, and shall have effect as so varied.

36. In default of any express agreement to the contrary therein contained an industrial agreement shall, unless rescinded, and subject to any variation made as provided by this Part, continue in force after the expiration of the term specified therein until the expiration of one month after some party thereto has given written notice to the Registrar, and to the other parties thereto, of his desire to determine it.

Continuance of agreement unless terminated by notice. Ibid., s. 81.

37. An industrial agreement shall, for the purposes of this Act, be deemed to be made by an association, and a notice shall be deemed to be a notice under this Part of an association, if it is executed in the manner and by the officers or other persons prescribed by Rules of Court; and such Rules may prescribe the manner of execution, and the officers or other persons by whom an industrial agreement may be executed, by reference to rules of the association or otherwise; and may also prescribe in what circumstances a document shall, for the purposes of this Act, be deemed to be rules of an association, and any other matters which may be necessary or convenient for giving effect to the objects of this Part.

Manner in which industrial agreements may be executed.

PART IV.

LOCK-OUTS AND STRIKES.

PART IV.

38. Any person or association who or which does any act or thing in the nature of a lock-out, continues any lock-out, or takes part in any lock-out, shall be liable to a penalty not exceeding Five Hundred Pounds, or, in the case of a person, to imprisonment, with or without hard labor, for a term not exceeding three months.

Penalty for lock-out. Comm., 1904, s. 6.

39. Any person or association who or which does any act or thing in the nature of a strike, continues any strike, or takes part in any strike, shall be liable to a penalty not exceeding Five Hundred Pounds, or, in the case of a person, to imprisonment, with or without hard labor, for a term not exceeding three months.

Penalty for strike. Comm., 1904, s. 6.

40. When a lock-out or strike takes place, and a majority of the members of any association are at any time parties to the lock-out or strike, the association shall be deemed to have done an act in the nature of a lock-out or strike, according to the nature of the case.

When majority of members take part, association deemed guilty of lock-out or strike.

N.Z. 239, 1908, s. 6 (3).

41. Any

PART IV.

The Industrial Arbitration Act.—1912.

Association ordering members to refuse to offer or accept employment guilty of offence.

Comm., 1904, s. 8.

41. Any association of employers or employes which, for the purpose of enforcing compliance with the demands of any employers or employes, orders its members to refuse to offer or accept employment, or to continue to employ or be employed, shall be deemed to do an act in the nature of a lock-out or strike, according to the nature of the case, whether a lock-out or strike actually takes place or not.

Refusing to offer or accept employment upon terms of agreement or award deemed a lock-out or strike.

Comm., 1904, s. 7.

42. Any person who, being bound by an award or order of the Court, a determination, award, or order of a wages board, or an agreement under section 48 of "The Factories Act Amendment Act, 1910," as to employment in any industry, without reasonable cause or excuse, refuses or neglects to offer or accept employment, or to continue to employ or be employed, upon the terms of such award, order, determination, or agreement, shall be deemed to do an act in the nature of a lock-out or strike, according to the nature of the case.

Picketing prohibited. No. 109 of 1878.

43. Notwithstanding anything contained in the "Conspiracy and Protection of Property Act, 1878," any person who—

- (a) Attends at or near any workshop, factory, place of business, or other place where an industrial dispute is taking place, or is threatened or impending, or has taken place, or at or near the residence or place of business of any person, and
- (b) Induces or attempts to induce any other person to take part in such industrial dispute or in a lock-out or strike, or to do or abstain from doing any act, matter, or thing whereby any party to such industrial dispute, or any other person either directly or indirectly interested therein or connected therewith, may or might be injured in his trade, business, or calling,

shall be liable to a penalty not exceeding Twenty Pounds or to imprisonment, with or without hard labor, for a term not exceeding three months.

Injunction to restrain above offences.

Cf. N.S.W. 17, 1912, s. 48.

44. (1) When any association or person has been convicted of any offence constituted by this Part, the Court may, at the time of the conviction or subsequently, grant a writ of injunction to restrain such association or person from continuing or repeating such offence or committing any other offence constituted by this Part. Such writ may be granted on notice or *ex parte*, upon the application of an Inspector of Factories or of any member of the Police Force.

(2) If any person enjoined by any such writ, after service thereof, disobeys the same, he shall be guilty of a misdemeanor and shall be liable to be imprisoned, with or without hard labor, for a term not exceeding six months.

(3) If any association enjoined by any such writ, after service thereof, disobeys the same, such association shall be liable to a penalty for such disobedience not exceeding Five Hundred Pounds.

45. (1. Where

The Industrial Arbitration Act.—1912.

PART IV.

45. (1) Where a penalty is imposed on any person under section 39 or 43, the Court shall order that the amount of such penalty shall be a charge on any moneys which are then or which may thereafter be due to such person from his then or any past or future employer for wages or in respect of work done.

(2) Notwithstanding the provisions of "The Wages Attachment Act, 1898," such order on being made shall operate as a garnishee order, enforceable in the manner prescribed for the attachment of any such moneys. Provided that such order shall have effect only in respect of the surplus of the wages or other moneys as aforesaid due or to become due to such person above the sum of Two Pounds per week, in the case of a person who is married or is a widower or widow with a child or children under the age of twenty-one years, or above the sum of One Pound per week in the case of any other person.

(3) Notwithstanding anything in this Act or any other Act or law to the contrary, but subject as provided by subsection (2) hereof, after being notified of the making of such order, any such employer shall, as to any moneys then so due forthwith, and as to any moneys thereafter so becoming due as they respectively become due, pay such moneys into the Court in or towards satisfaction of the charge imposed by the order, until the same is fully satisfied; and such payments shall, to the extent thereof, be a discharge of any obligation, whether statutory or otherwise, on the part of the employer to pay such moneys to any person.

(4) No charge upon or assignment of his wages, or of moneys in respect of work done or to be done, whether then due or thereafter to become due, and whenever or however made by such person, shall have any force whatever to defeat or affect such order; and any such order may be made and shall have effect as if no such charge or assignment existed.

46. (1) Where a penalty is imposed on a person under this Part, and it appears that he was, at the time of his committing the offence, a member of an association, the Court, in addition to making any other order, may order such association, or the trustees thereof, to pay out of the funds thereof any amount of the penalty not exceeding Fifty Pounds, if the offence was under section 38, not exceeding Ten Pounds if the offence was under section 39, and not exceeding the amount of the penalty imposed if the offence was under section 43.

(2) The Court shall, before making such order, hear the said association, or the trustees or secretary thereof, and shall not make such order if it is proved to the satisfaction of the Court that the association has, by such means as appear reasonable, *bonâ fide* endeavored to prevent its members from committing offences under this Part in respect of the lock-out or strike or industrial dispute.

Amount of penalty for strike to be a charge on wages.

Ibid., s. 45 (2).

Cf. N.Z., 239, 1908, s. 20.

No. 697 of 1898.

Association may be made to contribute to payment of penalty.

Ibid., cl. 46.

47. (1) When

The Industrial Arbitration Act.—1912.

PART IV.

Offences may be tried on general summons.

N.Z., s. 111, (5), (6).

47. (1) When the Registrar certifies to the Court in writing that a lock-out or strike is taking place or is threatened or impending, the Court may, after the President has appointed a special day for the hearing of evidence respecting the matters so certified, issue summonses to all persons and associations suspected of having committed any of the offences constituted by this Part, directing them to attend at a time and place therein mentioned; and the Court may, without any information or complaint being laid or made or any other summons being issued, deal with any such persons or associations shown to have been guilty of any such offences as if they had been specifically charged by information with such offences.

(2) Such summonses may be served by registered letter or in any manner in which a summons in summary proceedings before Justices may be served, or in manner prescribed by Rules of Court, or in manner ordered under section 75.

(3) Nothing in this section shall be deemed to exclude any other manner of proceeding in respect of such offences or for the recovery of penalties.

Proceedings under this Part to be in the Court.

N.Z., 239, 1908, s. 21.

48. Proceedings in respect of offences under this Part shall be taken and prosecuted in and be heard and determined by the Court, in manner prescribed by Rules of Court.

PART V.

PART V.

BREACHES OF AWARDS AND OTHER OFFENCES.

Penalty for breach of award.

49. (1) Any association or person which or who commits a breach or non-observance of an award, whether by contravening or failing to observe the same or otherwise, shall be liable to a penalty not exceeding, in the case of an association Two Hundred and Fifty Pounds, in the case of an employer One Hundred Pounds, and in the case of an employé Ten Pounds.

Injunction against further offences.

Cf. N.S.W., 17, 1912, s. 50(3).

(2) When any association or person is convicted of an offence under subsection (1) hereof, the Magistrate, if of opinion that the breach or non-observance was committed in wilful defiance of the award, may, on motion or without motion, and in addition to any penalty imposed, grant a writ of injunction to restrain such association or person from committing any further or other breach or non-observance of the award.

(3) If such person disobeys the said writ he shall be guilty of a misdemeanor and shall be liable to imprisonment, with or without hard labor, for any period not exceeding three months.

(4) If such association disobeys the said writ it shall be liable to a penalty for such disobedience not exceeding Two Hundred and Fifty Pounds.

50. (1) When

The Industrial Arbitration Act.—1912.

PART V.

50. (1) When an employé does any work for which the wages or rate of payment has been fixed by an award, the employer of such person in respect of such work shall, subject to the provisions of section 45, pay such employé the full amount of such wages or rate in money without any deduction, and in default thereof shall be guilty of committing a breach of such award.

Penalty for not paying wages fixed by award.

Cf. S.A. Factories Act, 1907, s. 123.

(2) The Magistrate by whom any person is convicted of such breach may, in addition to imposing a penalty therefor, and without motion in that behalf, order that the defendant shall pay to the employé the difference between the amount paid and that which should have been paid as required by subsection (1) of this section.

Recovery of deficiency.

Cf. S.A. Factories Amendment Act, 1910, s. 47.

(3) The penalty so imposed shall be deemed to be increased by the amount so ordered to be paid, and such amount may be recovered accordingly.

(4) Nothing in this section shall affect any other remedy of the employé.

51. (1) If an employer dismisses any employé from his employment or injures him in his employment, by reason merely of the fact that the employé—

Employer not to dismiss employé on account of taking benefit under the Act.

(a) Is an officer or member of an association ;

Cf. Comm., 1909, s. 2.

(b) Is not a member of an association ; or

(c) Is entitled to the benefit of an award, an industrial agreement, a determination of a wages board, or an agreement under section 48 of "The Factories Act Amendment Act, 1910":

No. 1020 of 1910.

he shall be liable to a penalty not exceeding Twenty Pounds.

Onus on employer.

(2) In any proceeding for an offence under this section it shall lie upon the employer to show that any employé, proved to have been dismissed or injured in his employment whilst an officer or member of an association, or whilst not such a member, or whilst entitled as aforesaid (according to the nature of the case), was dismissed or injured in his employment, for some reason other than that mentioned in this section.

52. (1) If any employé ceases work in the service of an employer by reason merely of the fact that the employer—

Employé not to cease work on account of employer taking benefit under the Act.

(a) Is a member or officer of an association ;

Ibid.

(b) Is not a member of an association ;

(c) Is entitled to the benefit of an award, an industrial agreement, a determination of a wages board, or an agreement under section 48 of "The Factories Act Amendment Act, 1910"; or

No. 1020 of 1910.

(d) Employ

*The Industrial Arbitration Act.—1912.*PART V.

(d) Employs or has employed a person who is not or was not a member of an association :

he shall be liable to a penalty not exceeding Ten Pounds.

Onus on employé.

(2) In any proceeding for an offence under this section it shall lie upon the employé, proved to have ceased work in the service of an employer—

(a) Whilst the employer was an officer or member of an association, or whilst he was not such a member, or whilst he was entitled as aforesaid, or

(b) Who employs or has employed a person who is or was not a member of an association

(according to the nature of the case), to show that he ceased to so work for some reason other than that mentioned in this section.

Contempt by witness,
N.Z., s. 83 (f).

Comm., 1904, s. 84.

53. If any person who has been duly served with a summons to appear and give evidence before the Court or any person or tribunal by or under this Act empowered to take evidence, and to whom payment or tender has been made of any travelling expenses to which he is entitled, fails to duly appear, or if any such person or any person who has appeared or appears as a witness—

(a) Refuses to be sworn or make affirmation or declaration as a witness, or

(b) Refuses to answer any question which he is required by the Court or such person or tribunal as aforesaid to answer, or

(c) Refuses to produce any book, paper, or document which he is required by the Court or such person or tribunal as aforesaid to produce,

he shall be liable to a penalty not exceeding Fifty Pounds, or to imprisonment with or without hard labor for any term not exceeding three months, unless he shows, to the satisfaction of the Court or such person or tribunal as aforesaid, that there was good and sufficient cause for such failure or disobedience.

PART VI.

PART VI.

MISCELLANEOUS.

Proceedings of Court
or board to be in
public unless other-
wise directed.

54. The proceedings of the Court shall be conducted in public, provided that at any stage of the proceedings the Court, of its own motion or on the application of any of the parties, may direct that the proceedings be conducted in private; and in such case all persons (other than the parties, their representatives, the officers of the Court, and the witness under examination) shall withdraw.

55. The

The Industrial Arbitration Act.—1912.

PART VI.

55. The Crown may, where, in the opinion of the Minister, the public interests are or would be likely to be affected by the award, order, decision, or determination of the Court, intervene in any proceedings before the Court and make such representations as it thinks necessary in order to safeguard the public interests.

Intervention by the Crown.
N.S.W., 17, 1912, s. 30.

56. An industrial dispute shall not be deemed to have ceased on the ground that, in consequence of such dispute, the relationship of employer and employé has ceased as between the parties thereto or any of them.

Industrial dispute not deemed to have ceased in certain circumstances.
New.

57. (1) The Court may give such directions for the representation of parties as it deems proper; but, except as by this section provided, no party shall be represented by a solicitor or agent.

Representation of parties at hearing.
Cf. S.A. Factories Act, 1907, s. 132.

(2) By the direction of the Court, or with the consent of both parties, either party may, at its or his own cost, be represented by a solicitor or agent.

58. When any penalty is imposed in any proceedings in the Court, or any costs or other sum is by the Court ordered to be paid, and no other provision is made in this Act or in Rules of Court for the recovery thereof, a certificate in the prescribed form, under the hand of the Registrar and the seal of the Court, specifying the amount payable and the respective parties or persons by and to whom the same is payable, may be filed in any Court having civil jurisdiction to the extent of such amount, and shall thereupon, according to its tenor, be enforceable in all respects as if it were a judgment of such Court.

Recovery of penalties and other sums ordered by the Court.
S.A., s. 56.
N.Z., 239, 1908, ss. 22 and 23.

59. Every person or association who or which is directly or indirectly concerned in the commission of any offence against this Act, or incites, instigates, or counsels, or aids, abets, or takes part in, or encourages the commission of any such offence, or the continuance thereof, shall be deemed to have committed that offence, and shall be punishable accordingly.

Counselling or procuring offences.
Comm., 1904, 87.
S.A., 82.
N.Z., 239, 1908, ss. 5, 6.

60. Any attempt to commit an offence against this Act shall be an offence against this Act punishable as if the offence had been committed.

Attempts to commit offences.
Comm., 88.

61. Any association or person guilty of any contravention of any provision of this Act, whether by commission or omission, shall, except where some penalty or punishment is specifically provided, be liable to a penalty not exceeding, in the case of an association, One Hundred Pounds, or, in the case of a person, Ten Pounds.

General penalty.

62. (1) Where a penalty is imposed under this Act on an association, or an association is under this Act ordered to pay any sum, then, for the recovery of such penalty or sum, process may be issued and executed against the property of such association, or any property

Recovery of penalty imposed on association.
Comm., 1904, s. 47.

The Industrial Arbitration Act.—1912.

PART VI.

property in which such association has a beneficial interest, whether vested in trustees or howsoever otherwise held, in the same manner as if the association were an incorporated company and the absolute owner of the property or interest.

(2) For the purposes of this section the property of an association shall be deemed to include the property of any association forming or forming part of the first-mentioned association, or in which it has a beneficial interest, whether vested in trustees or howsoever otherwise held.

In default of association, penalty may be recovered from members.

N.Z., 239, 1908, s. 24.

63. Where a penalty is imposed under this Act on an association, or an association is, under this Act, ordered to pay any sum, then if such penalty or sum is not fully paid within one month thereafter all persons who were members of such association at the time when the offence was committed or the order was made, shall be jointly and severally liable to pay such penalty or sum in the same manner as if the conviction or order had been made against them personally; and all proceedings in pursuance of the conviction or order may be taken against them, or any of them, accordingly, save that no person shall be liable under this section for a larger sum than Five Pounds in respect of any one conviction or order.

Proceedings for offences generally.

64. (1) Except where otherwise provided, proceedings in respect of offences against this Act shall be by information or complaint, which shall be heard and determined in a summary manner by a Special Magistrate.

(2) Unless or except so far as otherwise prescribed, such proceedings shall be regulated by, and penalties imposed therein shall be recovered and enforced as provided by, the Ordinance No. 6 of 1850 and any amendment thereof, or any Act for the time being regulating the duties of Justices of the Peace in summary proceedings: Provided that for the purposes of cases stated or to be stated by a Magistrate on questions of law, all references in Part III. of the Act No. 298 of 1883-4 to the Supreme Court and the Master thereof shall be read as references to the Court and the Registrar respectively.

Appeal from Magistrate or Justices to the Court.

65. (1) There shall be an appeal from—

- (a) Any conviction by a Special Magistrate under this Act;
- (b) Any order of a Special Magistrate dismissing any information or complaint under this Act; or
- (c) Any other order made by a Special Magistrate in proceedings under this Act.

(2) Such appeal shall be to the Court.

(3) The proceedings on such appeal shall, unless and until otherwise prescribed by Rules of Court, be regulated, *mutatis mutandis*, by the Ordinance No. 6 of 1850 and any amendment thereof, or any other Act in force regulating appeals to Local Courts, and for that

The Industrial Arbitration Act.—1912.

PART VI.

that purpose all references in the said Ordinance or any such Act to a Local Court shall be read as references to the Court: Provided that—

- i. The Court on upholding a conviction or substituting a new conviction may, if it thinks that the punishment imposed is not sufficiently severe, increase the term of imprisonment or the penalty, as the case may be, to such term or amount, not exceeding that permitted by this Act, as the Court deems proper :
- ii. The Court may make such order concerning costs as it deems proper, and the amount of costs ordered may exceed Ten Pounds.

66. Notwithstanding anything in this Act or in any other law or any practice to the contrary—

Court to be guided by equity and good conscience.

(a) The Court, in the exercise of any jurisdiction, duty, power, or function conferred or imposed by or under this Act, shall be governed in its procedure and in its judgments, awards, orders, and decisions by equity, good conscience, and the substantial merits of the case, without regard to technicalities or legal forms or the practice of other Courts ;

Comm., 1904, s. 25 and 1910, s. 6.

(b) The Court, in the exercise of any such jurisdiction, duty, power, or function, shall not be bound by any rules or practice as to evidence, but may inform its mind on any matter in such manner as it thinks just :

Provided that this section shall not apply to proceedings in respect of offences against this Act.

67. The Court may rescind or vary any award, order, decision, direction, appointment, reference, or other act made or done by it.

Court may rescind or vary any of its acts. Cf. N.S.W., 3, 1908, s. 39.

68. (1) Subject to the provisions of section 67, any award, order, or decision of the Court, whether acting in its original or appellate jurisdiction, and whether under this Act or the Factories Acts, shall be final, and shall not be removable to any other Court by *certiorari* or otherwise ; and no award, order, decision, or proceeding of any kind whatever of the Court shall be challenged, appealed against, reviewed, quashed, or called in question in any other Court or tribunal on any account whatever other than excess or want of jurisdiction.

Decision of Court to be final.

Cf. N.S.W., 17, 1912, s. 58.

Comm., 1904, s. 31.

N.Z., 82, 1908, s. 96 (2).

S.A., s. 79.

(2) Notwithstanding anything in this section, the President may, if he thinks fit, in any proceeding before him, at any stage and upon such terms as he thinks fit, state a case for the opinion of the Supreme Court upon any question arising in the proceeding which in his opinion is a question of law.

(3) The Supreme Court shall hear and determine the question, and remit the case with its opinion to the President, and may make such order as to costs as it thinks fit.

69. When

The Industrial Arbitration Act.—1912.

PART VI.

Adjournments of Court.
N. S. W. 17, 1912, s. 57.

69. When the President is unable to attend at the time appointed for the hearing of any industrial dispute or industrial matter or for any proceeding, the Registrar may adjourn the Court, and also adjourn any business set down for the day to such day and time as he deems convenient.

Reserved decision may be read by Registrar.

70. (1) In any proceeding before the Court it may reserve its decision.

Ibid., s. 59.

(2) Where a decision has been so reserved, the same may be given at any continuation or adjournment of the Court, or at any subsequent holding thereof, or the President may draw up such decision in writing, and, having signed the same, forward it to the Registrar; whereupon the Registrar shall notify the parties of his intention to read the same at some specified time and place, and he shall read the same accordingly, and thereupon such decision shall be of the same force and effect as if it had been pronounced by the President.

Costs may be ordered in all proceedings under the Act.

71. The Court may, subject to section 57, in any proceeding whatsoever before it under this Act, make such order as to the costs of such proceeding and for the payment thereof as may by it be deemed proper, and may assess the amount of such costs.

Penalty for wilfully false statement.

72. Whosoever wilfully makes on oath, affirmation, or declaration, in any proceeding of any kind under this Act any false statement knowing the same to be false, shall be guilty of perjury, and may be proceeded against and punished accordingly.

Evidence of award.
Comm., 1904, s. 16.
N.Z., s. 96.

73. An office copy of an award, order, decision, direction, appointment, reference, or other act of the Court, purporting to be sealed with the seal of the Court, and certified to be true under the hand of the Registrar, shall be received in all Courts and tribunals and before all persons as evidence of the award, order, decision, direction, appointment, reference, or other act, without proof of the seal of the Court or of the signature of the Registrar; and it shall not be necessary to prove any condition precedent entitling the Court to make or do the award, order, decision, direction, appointment, reference, or other act.

Rules of Court.

74. (1) The President may make rules—

Cf. Comm., 1909, s. 3.

N.Z., 127.

(a) Regulating the practice and procedure and forms to be followed and used in, or in connection with, or for the purposes of proceedings before the Court, and in, or in connection with, or for the purposes of enforcing judgments, convictions, decisions, awards, orders, and other acts given, made, and done by the Court;

(b) As to the publication of its awards, orders, decisions, and other acts, and the effect of such publication;

(c) For recovering penalties imposed, and enforcing orders for attachment, and orders for the payment of any moneys made under this Act;

(d) Prescribing

The Industrial Arbitration Act.—1912.

PART VI.

- (d) Prescribing the fees and expenses to be paid to witnesses ;
- (e) Prescribing what (if any) fees shall be paid in respect of any proceeding in the Court, and the party by whom such fees shall be paid ;
- (f) Prescribing what travelling expenses shall be payable to assessors ;
- (g) Prescribing the powers and duties of the Registrar, also of other officers so far as the same relate to matters within the jurisdiction of the Court ;
- (h) As to all things which this Act contemplates shall or which this Act provides may be prescribed by Rules of Court ; and
- (i) All such rules as may be necessary or convenient for the full and effective exercise of the jurisdiction, duties, powers, and functions of the Court, or for giving effect to the judgments, convictions, decisions, awards, orders, and other acts given, made, or done by the Court or the Registrar or other officer of the Court.

(2) Subject to such rules and this Act, the practice and procedure of the Court shall be as directed by the President making the particular direction.

(3) All such rules—

- (a) Shall be published in the *Government Gazette* ;
- (b) From the date of such publication, or from a later date fixed by the instrument whereby the same are made, shall (subject as by subsection (4) hereof provided) be of the same effect as if they were contained in this Act, and shall be judicially taken notice of without further evidence than the production of a copy of the *Government Gazette* purporting to contain a copy thereof ; and
- (c) Shall be laid before both Houses of Parliament within fourteen days after such publication, if Parliament is in Session, and if not, then within fourteen days after the commencement of the next Session.

(4) If either House of Parliament passes a resolution disallowing any such rule, of which resolution notice has been given at any time within fourteen sitting days of such House after such rule has been laid before it, such rule shall thereupon cease to have effect, but without affecting the validity or curing the invalidity of anything done, or of the omission of anything, in the meantime.

This subsection shall apply notwithstanding that the said fourteen days, or some of them, do not occur in the same Session or Parliament as that in which the rule is laid before such House.

75. When

The Industrial Arbitration Act.—1912.

PART VI.

Special mode of service may be directed.

Comm. Statutory Rules, No. 71, 1905. r. 6^o.

75. When it is made to appear to the President that personal or other service of any summons, notice, or other document in connection with or for the purposes of any proceeding in or intended to be brought in the Court cannot promptly be effected in manner prescribed, the President may in his discretion make any order for substituted or other service or the substitution for service of notice by letter, telegram, public advertisement, or otherwise, which he deems necessary or convenient; and in such case compliance with such order shall be sufficient service.

Powers of entry by Court for examination of factories, etc.

N.Z., s. 120.

Comm., 1904, s. 41.

76. (1) The President and, upon being authorised in writing by the President, any officer of the Court or any other person, without any other warrant than this Act, may at any time during working hours—

(a) Enter any place or premises or any ship or vessel of any kind whatsoever, wherein or in respect of which any industry is carried on or any work is being or has been done or commenced, or any matter or thing is taking or has taken place in relation to which any industrial dispute or industrial matter exists or is threatened or impending or will probably arise, or any award has been made, or any offence against this Act is suspected;

(b) Inspect and view any work, material, machinery, appliances, article, matter, or thing whatsoever, being in such place, premises, ship, or vessel;

(c) Interrogate any person or persons who may be in or upon such place, premises, ship, or vessel in respect of or in relation to any matter or thing hereinbefore mentioned.

(2) Every person who hinders or obstructs the President, or any officer of the Court or other person, in the exercise of any power conferred by or under this section, or who refuses to the President, or any officer of the Court, or other person authorised as aforesaid, entrance during any such time as aforesaid to any such place, premises, ship, or vessel, or refuses to answer any question put to him as aforesaid, shall be liable to a penalty not exceeding Fifty Pounds.

Provision for aged, slow, &c., workers.

Cf. Factories Act, 1907, ss. 103 and 104.

77. All the provisions of the Factories Acts with regard to aged, slow, inexperienced, and infirm workers shall, *mutatis mutandis*, apply in all cases where wages or rates of payment are fixed by the Court, either in its original or appellate jurisdiction: Provided that in such cases the appeal from a refusal of the Chief Inspector of Factories to grant a licence shall be to the President.

Awards to prevail over contracts in cases of conflict.

N.Z., 239, 1908, s. 69.

78. Every award shall prevail over any contract of service or apprenticeship in force on the coming into operation of the award, so far as there is any inconsistency between the award and the contract; and the contract shall thereafter be construed and have effect as if it had been modified, so far as necessary, in order to conform to the award.

79. (1) The

The Industrial Arbitration Act.—1912.

PART VI.

79. (1) The Governor shall appoint an Industrial Registrar, and such (if any) Deputy Industrial Registrars, clerks, and other officers as he deems necessary for carrying out the purposes of this Act.

Registrar and other officers.

(2) The Registrar and such other officers shall have such powers and duties as are prescribed, and also, in connection with any industrial dispute or industrial matter over which the Court has jurisdiction or any proceeding in the Court, such powers and duties as are directed by the Court.

W.A. Ind. Con., &c., Act, 1902, s. 67.

80. (1) It shall be the duty of Inspectors of Factories appointed under the Factories Acts to see that the provisions of awards and orders of the Court are duly observed.

Inspectors and their duties.
N.Z., s. 100.

(2) In the discharge of such duty an inspector may require any employer or employé to produce for examination any wages books or overtime books necessary for the purposes of this section; and, in addition, every such inspector shall have and may exercise all the powers conferred on Inspectors of Factories by sections 108 and 109 of "The Factories Act, 1907"; and those sections and sections 110 to 113 inclusive of the said Act shall, *mutatis mutandis*, extend and apply to such inspectors when acting under this Act.

No. 945 of 1907.

(3) Any inspector who, except for the purposes of this Act, and in the exercise of his functions under this Act, discloses to any person any information which, in the exercise of such functions, he acquires, shall be liable to a penalty not exceeding Fifty Pounds.

81. (1) The Governor may make all such regulations as may be necessary or convenient for carrying out the provisions and objects of this Act, except as to matters with respect to which the President has power to make Rules of Court.

Regulations made by the Governor.
Comm., 1904, s. 92.

(2) Any such regulation may fix penalties, not exceeding in any case Ten Pounds, for the breach of the same or any other regulation so made.

(3) All such regulations—

- (a) Shall be published in the *Government Gazette* ;
- (b) From the date of such publication, or from a later date fixed by the order making the same, shall (subject as by subsection (4) hereof provided) be of the same effect as if they were contained in this Act; and
- (c) Shall be laid before both Houses of Parliament within fourteen days after such publication, if Parliament is in Session, and if not, then within fourteen days after the commencement of the next Session.

(4) If either House of Parliament passes a resolution disallowing any such regulation, of which resolution notice has been given at any time within fourteen sitting days of such House after such regulation

*The Industrial Arbitration Act.—1912.*PART VI.

regulation has been laid before it, such regulation shall thereupon cease to have effect, but without affecting the validity or curing the invalidity of anything done, or of the omission of anything, in the meantime.

This subsection shall apply notwithstanding that the said fourteen days, or some of them, do not occur in the same Session or Parliament as that in which the regulation is laid before it.

Expenses to be paid
out of moneys pro-
vided by Parliament.

82. All moneys required for the purposes of this Act shall be paid out of moneys provided by Parliament.

In the name and on behalf of His Majesty, I hereby assent to
this Bill.

DAY H. BOSANQUET, Governor.

The Industrial Arbitration Act.—1912.

SCHEDULE.

A.—“The Factories Act, 1907,” is amended as follows:—

Sec. 5.

Section 3—For the line reading “Division XIII —Court of Industrial Appeals” the line “Division XIII.—Industrial Court” is substituted.

Section 6—The following definitions are added, namely:—

“Industrial Court” or “Court” means the Industrial Court constituted by “The Industrial Arbitration Act, 1912”:

“The Registrar” means the Industrial Registrar appointed under “The Industrial Arbitration Act, 1912,” and includes any Deputy Industrial Registrar appointed under that Act.

“President” means President or the Acting President of the Industrial Court.

Section 79—For “Court of Industrial Appeals” at the end of the section the words “Industrial Court” are substituted.

Section 91, subsection (1)—In the third line the words “the Court” are substituted for the word “Justices.”

Section 93—The following words are added at the end of subsection VI.:—

“and may, subject to the provisions of “The Factories Act Amendment Act, 1910,” include in the form of indenture of apprenticeship such provisions as the Board thinks practicable with reference to the training of apprentices in technical schools.”

Section 105, subsection (2), (b)—For “Court of Industrial Appeals” the words “Industrial Court” are substituted.

Section 125—

I. For the first two lines the following provision is substituted, namely:—

“(1) The Industrial Court, in addition to its jurisdiction and functions under ‘The Industrial Arbitration Act, 1912,’ shall have and exercise the jurisdiction and functions of”

II. Subsections (2) and (3) are repealed.

Sections 126 and 127 are repealed.

Section 128—For the words “and at any time” at the end of the section the words “within six weeks after the publication of the determination in the *Gazette*” are substituted.

Section 129—The words “at any time” are struck out, and the words “within six weeks after the publication of the determination in the *Gazette*” are added at the end of the section.

Section 130—After the word “shall” in the second line the following words are inserted:—“Unless the Court on application in manner prescribed by Rules of Court under ‘The Industrial Arbitration Act, 1912,’ so directs,”

Section 136 is repealed.

Section 137—

I. In subsection (1) for subdivisions (a) and (b) the following words are substituted, namely:—“Shall be final, and shall not be removable to any other Court by *certiorari* or otherwise, and, subject to subsections (2) and (3) of section 140A, shall not be challenged, reviewed, quashed, or called in question in any other Court or tribunal on any account whatever other than excess or want of jurisdiction”:

II. In subsection (2) the words “may either give such leave or” are struck out.

After section 140 the following sections are inserted, namely:—

140A. (1) Any order, decision, or other proceeding of any kind whatever of the Court shall be final, and shall not be removable to any other Court by *certiorari* or otherwise; and no such order, decision, or other proceeding shall

Decision of Court to be final.

The Industrial Arbitration Act.—1912.

shall be challenged, appealed against, reviewed, quashed, or called in question in any other Court or tribunal on any account whatever other than excess or want of jurisdiction.

(2) Notwithstanding anything in this section, the President may, if he thinks fit, in any proceeding before him, at any stage and upon such terms as he thinks fit, state a case for the opinion of the Supreme Court upon any question arising in the proceeding which in his opinion is a question of law.

(3) The Supreme Court shall hear and determine the question, and remit the case with its opinion to the President, and may make such order as to costs as it thinks fit.

Court to be guided
by equity and good
conscience.

140B. Notwithstanding anything in this Act or in any other law or any practice to the contrary, the Court in the exercise of any jurisdiction or function conferred or imposed by this Act—

(a) Shall be governed in its procedure and in its judgments, orders, and decisions by equity, good conscience, and the substantial merits of the case, without regard to technicalities or legal forms or the practice of other Courts; and

(b) Shall not be bound by any rules or practice as to evidence, but may inform its mind on any matter in such manner as it thinks just.

Section 145—For the words “two or more Justices of the Peace in a summary way” the words “the Court in the manner and within the time prescribed by Rules of Court made under ‘The Industrial Arbitration Act, 1912,’” are substituted.

Section 146 is repealed.

Section 147—

1. For subsection (1) the following is substituted:—“(1) Proceedings under section 145 may be instituted by any person interested”:
11. For “Justices” in subsection (2) the word “Court” is substituted:
111. For “informant” in subsection (2) the words “person instituting the proceedings” are substituted:

Section 148—

1. In subsection (1) after the word “may” in the second line the words “within six weeks after the publication thereof in the *Gazette*” are inserted:
11. In subsection (1) for “Court of Industrial Appeals” the words “Industrial Court” are substituted.

Section 152 is repealed.

Sections 158 and 159 are repealed.

Section 164—At the end of the section add: “Provided that if the offence is against any of the provisions of Part VIII., the fine or penalty shall be recovered before a Special Magistrate.”

Section 165—The following words are added:—“Provided that for the purposes of cases stated or to be stated by a Magistrate or Justices on questions of law, all references in Part III. of the Act No. 298 of 1883-4, to the Supreme Court and the Master thereof shall be read as references to the Industrial Court and the Registrar thereof respectively.”

Section 167—For subsections (2), (3), and (4) the following subsections are substituted, namely:—

(2) Such appeal shall be to the Industrial Court.

(3) The proceedings on such appeal shall, unless and until otherwise prescribed by Rules of Court made under “The Industrial Arbitration Act, 1912,” be regulated by the Ordinance No. 6 of 1850 and any amendment thereof, or any other Act in force regulating appeals to Local Courts, and for that purpose all references in the said Ordinance or any such Act to a Local Court shall be read as references to the Industrial Court: Provided that such Court may make such order concerning costs as it deems proper, and the amount of costs ordered may exceed Ten Pounds. Section

The Industrial Arbitration Act.—1912.

Section 168 is repealed.

B.—“The Factories Act Amendment Act, 1910,” is amended as follows:—

Section 22—For “Court of Industrial Appeals” wherever they occur, the words “Industrial Court” are substituted.

Section 25, subsection (2)—For “Court of Industrial Appeals” in subdivision II., the words “Industrial Court” are substituted.

Section 48, subsection (3)—For “Court of Industrial Appeals” the words “Industrial Court” are substituted.

C.—In any regulations made under “The Factories Act, 1907,” or under “The Factories Acts, 1907 to 1910,” and also, as far as practicable, in any determinations or other acts or decisions of a wages board or of the Court of Industrial Appeals made, done, or given under that Act or those Acts, any references to the Court of Industrial Appeals shall be read as references to the Industrial Court constituted by this Act, references to the Judge shall be read as references to the President or Acting President of the Industrial Court, and references to the Registrar of the said Court of Industrial Appeals shall be read as references to the Industrial Registrar or a Deputy Industrial Registrar appointed under this Act.