Community Interest and Labour Power: A Tale of Squatters, Shepherds and the Law

Maxine Darnell
School of Economic Studies, University of New England, Armidale

The mainstay of the pastoral industry, the worker recognised as the face of pastoral labour is the blue-singleted shearer. The shearer has, throughout Australian labour history been lauded and even worshipped- consider for a moment the reverence in which Jackie Howe is held. There is a need however to recognise that another group of pastoral labourers kept the industry afloat long before Jackie Howe even donned his first “bluey”. These labourers are the shepherds who controlled the sheep flocks of the squatters over vast acres of land in the decades prior to fencing. One group of shepherds in particular are of exceptional interest for the rarely acknowledged position they hold in colonial labour history and for the manner in which the law regulating their labouring conditions was changed, used and abused by their employers. The shepherds in question are the Chinese from Amoy (Xiamen) who were brought to the colony of New South Wales under indenture in the middle of the nineteenth century to watch over the squatters’ flocks.

This paper looks at the concept of labour and community from the perspective of how one community, the Squattocracy, utilised its political and legal power to ensure that it could acquire the type of labour they desired. Labour that was preferably cheap, yet by necessity servile. This “Tale of squatters, shepherds and the law” begins by discussing why the colonial squattocracy community found themselves considering and then importing Chinese labourers under indenture to serve as shepherds on the pastoral stations outside of the Bounds of Settlement. However, the squatters found that making the decision to use Chinese labour was really the easy part- ensuring the Chinese exhibited the required degree of servility was fraught with legal difficulties and impediments. These difficulties arose from various sections within the existing Master and Servants legislation. How the squattocracy community overcame these difficulties through using, and it must be said, abusing their political position within colonial society to regulate the labour of their Chinese shepherds is the primary focus of the rest of the paper.

Colonial shepherding, bore no relation to the idyll of a shepherd’s life as described by Thomas Carlyle, although it is difficult to imagine that a Scottish shepherd’s life even bore much in common with Carlyle’s description. Even for experienced European shepherds the gap between the type of shepherding to which they were accustomed and the conditions they encountered on colonial sheep stations was immense. English and Scottish shepherds were, it was argued, the least suitable for employment on colonial sheep stations as they “may have acquired habits or prejudices exceedingly difficult to shake off”. Weavers, button makers and the citizens of Manchester and Birmingham were deemed as having the greatest potential as colonial shepherds.¹

One life of a colonial shepherd was lonely, subject to the many vagaries of the weather and station supervisor, was poorly paid and was located at the bottom of the labouring hierarchy. Convicts had been the original colonial shepherds and this heritage, the low pay and difficult conditions of shepherding account for the resistance of many to undertaking shepherding, and the rate of absconding and sadly suicide amongst many of those employed as shepherds. The newspapers and Bench of Magistrate records note the death of many shepherds through suicide, an outcome of the lonely life and the effects that such a solitary life can have on a persons mind. The convict heritage and aligned aspects of colonial shepherding combined to inhibit this employment from being afforded the regard that one would expect in an economy so dependent upon the continued health and reproduction of its sheep population.

Squatters, especially those beyond the bounds of settlement were restricted in acquiring sufficient shepherds with the cessation of assignment and then transportation and a free labouring population which was adverse to signing contracts and crawling after sheep. These employers, although continuing to agitate for a resumption of transportation throughout the 1840s and into the 1850s, began to look beyond the shores of the Australian continent for a suitable source of labour. Geography, size of population, the abolition of slavery, and imperial connections and pretensions dictated that the obvious source was Asia, in particular India and China. In accordance with this a rarely acknowledged trade in indentured Chinese labourers began in 1847 to the colony of New South Wales, a trade which would bring approximately 3 500 labourers to the colony over the next six years. The arrival of these labourers was the culmination of many years agitation, organisation and continual justification of their actions by the larger pastoralists, a community of interest bound by marriage, and economic and political connections.

The Search for Servile Shepherds

The success of Australian wool in the British market in combination with the Squatting Act of 1836, led to a “Wool-rush” whereby ‘every able-bodied man thirsted for the bush and pined to ride in the dust behind a mass of smilling sheep.’² By 1839 the squatting movement had expanded to where approximately 4 380 persons were located beyond the boundaries, grazing 233 000 cattle and 982 000 sheep.³ In order to utilise the land they had claimed the squatters required labour, and in preference a large, cheap and relatively servile supply of labour, a form of labour that was in relatively short supply. Labour supply problems lay in the low rate of labour migration and the difficulty of acquiring labourers willing to leave the relative security and comfort of the British Isles for the promised lands of the Australian continent. Evidence of the near manic preoccupation with immigration and labour supply during the 1840s can be found in the number of Select Committees formed during the decade to enquire into and report on the state of the labour market. These committees presented reports in 1841, 1842, 1843, 1845 and 1847, a committee in 1846 inquired into the prospects of transportation being renewed, and another in 1846 conducted inquiries into distressed labourers- an indication one would think that the labour market was not as tight as the squatters were arguing at the time.

Although changes made to the assisted emigration scheme in 1835 brought in a new wave of assisted emigrants and therefore potential shepherds² two factors mitigated against the acceptance of this free labouring force. One was that this labour force was, as its name implies, free. For an employer class that had been accustomed to, or desired, a bound, servile labour force in the form of assigned convicts, the lack of power to retain and constrain the actions of these mass of possible employees was more than just irritating. The free emigrants were despised by the land owning class as they would ‘demand exorbitant wages, and more rations than they could possibly consume without waste ... [and] many of them
remain weeks and months in Sydney, out of employment... although in the meantime, eligible offers may have been made them. Another problem related to the Irish Catholic heritage of the majority of the emigrant population which upset the Protestant sensibilities of some within the colony. One emigration officer requested the English end of the operation 'not to send Irish, if English or Scotch emigrants can be obtained', as he had 'observed a prejudice against those from Ireland'. The understandable distaste for shepherding manifested by the free immigrants, a dislike on the part of the squatters for the available immigrants, and an inability to encourage labourers to sign contracts for periods longer than six months boded ill for the success of many flocks. The squatters loudly and often complained about 'instances of men... refusing to bind themselves under agreement...[and]... the slovenly manner in which the flocks are tended by these well-paid individuals'.

The cessation of assignment in 1839 and the abolition of transportation in 1840, combined with free labourers antipathy towards shepherding forced those wishing for a servile labour force equivalent to convicts to look elsewhere. Somewhat ironically the cessation of transportation led to calls for transportation to be resumed, and those making the loudest requests were those squatters who had arrived too late in the colony to be provided with assigned convicts. The focus of the calls for a resumption of transportation and assignment was on the transportation of exiles especially to the northern districts of the colony. The northern squatters in particular continued requesting the resumption of transportation well into the 1850s even though both the British and colonial governments had clearly over-ruled any resumption. Petitions for the resumption of transportation were equallled in number by petitions requesting and recommendations for the importation of labour from Asia. These latter argued that it was not just the deficiency of labour but also the suitability of British labourer as shepherds which threatened the continued viability of the colonial wool industry. The squatters argued that the antipathy of British labourers towards shepherding was in a sense understandable as 'the occupations of a shepherd are so light and simple, that to employ therein the great bodily powers of British labourers, would be a misapplication of strength.' Furthermore the squatters argued, the importation of Asian labourers to undertake shepherding would elevate 'the moral condition of the European squatters argued, the importation of Asian labourers to undertake shepherding would elevate 'the moral condition of the European... and to raise every European above the condition of what is called a working man'. A truly noble and altruistic ideal on the part of the squatting community!

Attempts in the late 1830s to satisfy the demand for shepherds by importing labourers from Asia were thwarted. The British Government on behalf of the East India Company prevented any large-scale importation of Indian labourers to the colony through legislation in 1837 and 1839. In the case of China, the attempts by firstly G. F. Davidson and then the Australian Agricultural Company to import Chinese labourers in the late 1830s were halted by the Opium War. Captain P. P. King of the Australian Agricultural Company had in 1839 'looked principally to Chinese, proposing to employ them as shepherds under their counrymen as overseers; I have been in correspondence with a gentleman in China on the subject.' A clear indication of the interest shown by the squatters in importing Chinese labourers is given by the numbers subscribing to Davidson's scheme, although it must be noted that Davidson unlike King thought that as 'shepherds, I doubt whether they would answer'. Amongst the 57 subscribers who paid an advance of £5 for each of the 600 Chinese labourers requested were, Davidson proudly announced, 'a number of the most influential Merchants and Settlers'.

The most public and concerted attempt to acquire Asian labourers came with the formation of the "Coolie Association" in September 1842, whose petition asserted that as 'there is no hope of a return to assignment within twelve months, or even two years; if there is no Emigration Fund; and the expedients for creating such a fund are set at nought... and bearing in mind the necessity of the case, IS THERE ANY OTHER COURSE TO PURSUE THAN TO STRIVE FOR THE INTRODUCTION OF ASIATIC LABOURERS'. The petition presented to the Colonial Secretary by this association in May 1843 was, it was proudly announced, 'signed by 686 persons, including a very large proportion of the land and stock in the colony, and 104 magistrates, out of a total number of 365'- the signatories on the petition reads like a who's who of the colonial squatting community. The petition essentially argued that the British Government should not only allow the importation of Asian labour to the colony but should also cover the costs incurred. The proportion of magistrates signing the petition may at first appear to indicate an impressive degree of support for the ideals of the association from the affamants of law in the colony. As with many statistics this one also belies the truth, as the majority of magistrates were also substantial land holders or the superintendents of stations. For example, in the New England district of the ten magistrates listed for the Bench at Armidale in 1858, nine were either squatters or the supervisor of a holding. In affirming their signatures to the Coolie Association's petition they, these "Merino Magistrates", were definitely not doing so as independent observers of the presiding labour market situation. Protection of personal and the general squatting community's economic interests were paramount in their support of the Coolie Association, a fact noted by Lord Stanley the Secretary for the Colonies in refusing to present the Association's petition to the British Government. In justifying his refusal Stanley argued that:

'...It being the most arduous if not the first point of duty of a government to consult for the permanent interests of a society as opposed to the immediate interests of the most active and powerful of its members, and to watch over the welfare of the many rather than the present advantage of the few; and to protect those whose property is in the power of labour against the rapacity of the rich; it is in my mind the evident duty of the British Government to oppose the application of any part of the revenue of New South Wales to the introduction of coolies...To introduce them at the public expense would be to countenance and affirm the favourite theory of all colonists, that the first settlers in a new country become the proprietors of it all; and the affairs of it are to be conducted for their benefit rather than for the benefit of the metropolitan state.'

Stanley's refusal to submit the petition, and the British government's 1843 reinforcement of the 1839 Act restricting the movement of Indian natives to those areas under the government of the East India Company effectively removed India from the sights of most prospective employers of Asian labour and focussed them on China. However, many squatters in the northern pastoral districts of the colony of New South Wales continued to form committees and petition various government functionaries in an attempt to acquire Indian labourers. Phillip Friell, a man whose life had been spent in India and the East India service personally imported Indian labourers in 1846, produced a pamphlet entitled The Advantages of Indian labour in the Australasian Colonies and was intimately involved in the formation of the "Indian Labour Association". Friell's dedication to the issue of Indian labour importation which he believed was possible by designating them as domestic servants rather than labourers, was in effect negated by a more concerted approach throughout the whole colony to importing Chinese labourers.

The effective closure of the Indian labour market occurred just as Amoy was being opened to trade, along with the other Treaty Ports, with the cessation of the Opium Wars. This
brought the Chinese labour market into direct purview of the colonials looking for a source of cheap, servile labour. It must be realised, as the squatters surely had, that the Chinese labour market, unlike the Indian market was not under the control of the East India Company. The increased possibility of importing Chinese labourers with the cessation of the Opium Wars was clearly perceived by Captain Hume who reported to Governor Gipps that one result of the cessation of war would be to bring ‘the subjects of the Chinese Empire and British Colonists into close contact’. The interest in the possibility of importing Chinese labour was such that the prospective importers and employers of Chinese labour funded a number of reconnaissance missions. These investigations all reported labour was readily, and cheaply available and that there were no known barriers to the importation of Chinese labourers from Amoy.

Sir Paul Edmund de Strzelecki wrote to Captain King of the Australian Agricultural Company in 1843 from Hong Kong that ‘labour of every description is cheap, good & better & quicker & of a more willing attitude, a better & cheerful nature than that which a European population of the same class ever would possess’. After a couple of years of quietude on the subject and no action on the part of King on the recommendations of Strzelecki, in December 1846 Adam Bogue as “a friend to many large sheep proprietors” whilst in Hong Kong wrote to F.D. Syme in Amoy. Bogue informed Syme that with the ‘great rise which has taken place in the price of labour’ he was confident that the ‘Australian colonies would take off ten thousand of these men every year’. In his reply to Bogue, Syme emphasised the importance of not ill-using or abusing the Chinese and outlined the contractual conditions under which the Chinese would emigrate to the colony. Interestingly, Bogue submitted his correspondence with Syme not only to the Sydney papers but also to the Hong Kong Register. This act, and the contents of the letters brought a rapid response from T.H. Layton the British Consul at Amoy who demanded to know whether or not Syme intended to ‘ship any coolies for any of the Australian or any other colonies’ a request that Syme refused on the basis of commercial confidence. Although the extensive correspondence between Layton and Syme was extremely acrimonious, and Bogue’s action in having the letters reprinted brought his mission into the public arena, the eventual outcome was to ensure that any questions regarding the ‘legality or illegality of deporting coolies of their own free will from China to any British colony (was) set at rest.’

Whilst Bogue was corresponding with Syme and organising the re-printing of these letters in colonial and Hong Kong newspapers, James Maclehose an ex-colonist with an agency in Hong Kong, was actively advertising in Sydney for written expressions of interest in the employment of ‘Steady and ingenious machinists in every trade, agricultural servants, gardeners, shepherds &c’. The northern district squatters were not left out of these negotiations as the Moreton Bay Courier kindly reprinted a ‘communication from a gentleman in Sydney to a friend residing in this district’ which had been written at the instigation of Messrs Tertius Campbell, Wentworth and Dr Nicholson. These and other ‘influential gentlemen’ the letter reported were ‘inclined to try the experiment’ of Chinese labour if supported. The letter also detailed the cost of introducing Chinese labour, queried the number of Chinese labourers the letter’s recipient would be likely to engage and concluded that the author had ‘hopes of seeing a regular stream of Chinamen brought down’. Other letters, especially those from George Rusden to Charles Nicholson, also praised the Amoy Chinese as labourers and shepherds and the ease and little expense of which they could be attained and newspapers printed letters praising the Chinese already imported and employed as shepherds.

Through these various reconnaissance missions, Bogue had impressed that the British government could not prevent the importation of Chinese into the colony, and the Chinese labour market was found to be readily accessible and affordable. Ironically, the major impediment to any successful importation from Amoy was found to exist within the colony, and specifically in the applicability of the existing Master and Servants Act to contracts signed with Chinese citizens once they reached the colony. A problem in regard to contracts signed outside of the colony had been brought to the attention of squatters in the Northern Districts. A case advertised in the Moreton Bay Courier dealt with labourers imported from Van Diemen’s Land. When brought before the magistrates for absconding the court found that the employer had no formal legal redress, as the men’s contracts having been signed elsewhere, were invalid in New South Wales. For anybody considering importing and employing labourers contracted outside of the colony and England this judgement was dire. As the squatters desired a labouring force which could be impelled through the law to remain on their holdings and watch over their sheep, the subject of contract validity was paramount in considerations of any labour market. Measures were therefore undertaken within the New South Wales Legislative Council to ensure contract applicability - which was not as easy as Messrs Campbell, Wentworth, Nicholson and the other influential gentlemen may have hoped.

The Master and Servants Act: Development and Manipulation

This law, introduced from England in 1828 in response to an expanding free labouring population, was regarded by 1840 as insufficient in scope to be effective in the colony and was therefore fully revised and rewritten. Major innovation within the 1840 legislation was the addition of the specific labouring term of shepherd as falling within the gamut of the act - surely an indication of the importance of shepherding to the colony. Another change was the extension of the act to cover those regions outside of the Bounded Settlement, taking in the newly settled and recognised pastoral districts, thereby allowing the squatters legal control over their non-convict employees. A major problem remained however, in that prospective employers could not force people to sign the contracts which would ensure that the labourers exhibited the required degree of servility.

In 1845 the existing law was a “dead letter”, as Magistrates were found not to have the power under the act to convict summarily. Doubts on the jurisdiction of magistrates had been raised in 1844 during a court case which convinced many magistrates to decline ‘to adjudicate in Master and Servants cases’. A Select Committee was therefore formed to ‘enquire into, and report upon’ the act. The amended act which arose from the deliberations of this Select Committee corrected the problem of jurisdiction; incorporated the 1840 provisions on absconding; strengthened the provisions regarding loss or destruction of property; introduced the concept of discharge certificates; and removed the two magistrate requirement in cases of fraudulent breach. Overall, the new act significantly reduced the power of the labourer in relation to the employer in the labour market, by constraining their movements through the discharge system; their behaviour through increased fines; and by ignoring the truck system which proliferated throughout the interior of the colony. This latter aspect the Select Committee reported was not ‘a fit subject for legislation’; an attitude that allowed employees to be drawn into debt through the purchase of goods from station stores at inflated prices against unearned income.

Although section 19 of the 1845 act provided for the imposition of fines on ‘any person or persons who shall employ retain harbour or conceal’ any servant engaged in the United
Kingdom, British colonies, the British East India possessions or foreign countries, the act did not specifically cover contracts signed outside of the colony.\textsuperscript{44} The 1845 Select Committee had broached this subject\textsuperscript{45} yet did not legislate to ensure that contracts signed outside of the colony were covered by the act. An oversight particularly in the eyes of those desirous of importing Chinese labourers under contract which was corrected by amendments to the act passed in 1847. It is possible that T.A. Murray, as the Chairman of the 1845 Select Committee stifled any further consideration of contracts signed overseas given his actions in this regard in 1847.

**The Amended Act of 1847**

The 1847 amendments were justified on the basis of problems with summary jurisdiction as stated within the preamble,\textsuperscript{46} and concentrated on the operation of the law with respect to contracts signed outside of the colony, yet in a way it can be assumed, that was contrary to the desires of the amendment's initiator, T.A. Murray. The problem of contract validity was eventually solved by the third section of the 1847 Act,\textsuperscript{47} however, the manner in which the clause was passed is as important to colonial labour history as the Act itself. This section brought under the operation of the act all contracts signed outside of the colony,\textsuperscript{48} and therefore provided the squatters with the legal power to constrain and retain any labourers that they may import from China. A power which they lacked until the 1847 amendments were passed.

However, the third section as enacted was in its effect diametrically opposed to its original intent, which was to prevent the importation of any Asiatic or South Sea Island labourers. The original third clause, which was derived from Section 19 of the 1845 Act, prompted a ‘very long discussion’ over whether or not ‘Coolies and natives of the South Sea Islands should be excluded’ from the operation of the Act.\textsuperscript{49} A vote taken to expunge the ‘words British East India Possessions, and in foreign countries’ from the clause, as per Murray's amendment, was won by ten votes to eight, despite Wentworth and Windeyer arguing that these words made no difference to the operation of the Act. This vote on 16 June effectively excluded agreements made with Chinese, Indian or other foreign labourers from the operation of the act.\textsuperscript{50} The same words were also expunged from section 7 which dealt with the poaching of indentured labourers.

Murray may have felt compelled to include the first draft of the third clause by John Foster's attempted amendment to the brief of the Immigration Committee, only one week prior to Murray's initiation of the 1847 amendments. Foster's amendment proposed the inclusion of an instruction for the Committee to enquire into whether it would be desirable to import Asiatic or South Sea Island labour and whether or not 'a tax should be imposed on all employers of Chinese labourers with the ability to effectively prosecute and benefit financially from cases where their Chinese labourers were poached.'\textsuperscript{51} These sections in collaboration with section 18 of the 1845 Act, which removed the need to prove a contract, and section 13 of 1847 which removed the requirement of a written warrant, provided employers with an extremely easy and easily exploited method of prosecution. Employers liability to prosecution was reduced by section 11 of the Act which set the limit of prosecution for non-payment of wages at six months; and that of magistrates by section 5 of the Act removed the need for employers to prove their case before the bench. Section 5 of the act removed the need for magistrates to hear both sides of a case, which removed or at least reduced problems of interpretation in the case of the Chinese labourers. Section 7 which expanded the provisions against harbouring or re-hiring of indentured servants, provided the employers of Chinese labourers with the ability to effectively prosecute and benefit financially from cases where their Chinese labourers were poached.\textsuperscript{52} The importing and contracting of Chinese labourers was able to be undertaken, hopefully profitably, but definitely legally.

The amendments of 1847, as well as legalising contracts signed with Chinese labourers also expanded the power of employers to prosecute their employees and reduced their need to prove their case before the bench. Section 5 of the act removed the need for magistrates to hear both sides of a case, which removed or at least reduced problems of interpretation in the case of the Chinese labourers. Section 7 which expanded the provisions against harbouring or re-hiring of indentured servants, provided the employers of Chinese labourers with the ability to effectively prosecute and benefit financially from cases where their Chinese labourers were poached.\textsuperscript{53} These sections in collaboration with section 18 of the 1845 Act, which removed the need to prove a contract, and section 13 of 1847 which removed the requirement of a written warrant, provided employers with an extremely easy and easily exploited method of prosecution. Employers liability to prosecution was reduced by section 11 of the Act which set the limit of prosecution for non-payment of wages at six months; and that of magistrates by section 13, which provided a time limit of three months for any actions directed at a magistrate over an adjudication. Once these amendments were made to the Master and Servants Act through ‘the providential readings and tact of Mr Wentworth’,\textsuperscript{54} the importing and contracting of Chinese labourers was able to be undertaken, hopefully profitably, but definitely legally.

The Master and Servants Act within the space of less than a decade was re-written and amended to not only ensure that the occupation of shepherding as the mainstay of the pastoral industry was completely covered, but also that Chinese labourers imported as labourers were specifically mentioned. The desires of the squatters to import cheap, servile labour in the form of either Chinese or Indian labourers were nearly thwarted by the actions of Murray in expunging reference to these groups from the act.
That Murray's actions were eventually thwarted by Wentworth provided those interested in importing Chinese labourers with the ability to proceed with their plans secure in the knowledge that the labourers could be effectively constrained in a position of servility. Although the Chinese labourers did not display all of the aspects of servility that the employers desired, the Master and Servants Act as it emerged after the 1847 amendments, was perceived to be of sufficient scope and strength to enforce sufficient servility. An argument that is given credence by the fact that the 1847 was extended until 1854, when only relative minor amendments were legislated.  

There is not the space here to detail the workings of the indenture system which bound the Chinese to their masters or how the squatters used and abused the Master and Servants Act, which they both wrote and adjudicated upon, to direct the labour of their indentured Chinese. That is a story for another time. It must however be acknowledged that not only did the 1847 amendments permit the importation of Chinese labourers, but the amended act effectively promoted, aided and abetted the trade in these labourers that was to occur over the six year period 1847 to 1853. Without the 1847 amendments and the security they offered over contracts signed overseas the trade would not have been profitable, especially for the importers. The squatters would not have employed any Chinese labourers if they had not constituted the bound and relatively cheap labour force the squatters had sought for so long. The importance of this act to the successful operation of the trade in Chinese labourers is illustrated within the fact that the people who performed the “locus pocus” upon the law in 1847, together with their relatives and business partners, promoted and conducted the trade; employed Chinese labourers; and adjudicated on their neighbour’s Chinese labourers. A community of influence and action that produced from within the Chinese labour market a servile labouring force and shepherds for the squatters’ flocks.

Endnotes

3 A third of those beyond the bounds were bonded convicts, with the inland expansion increasing wool exports from 2.25 million to 6 million pounds. Roberts, Squatting Age, p. 113.
4 Number of assisted emigrants: 2 664 in 1837; 6102 in 1838; 8416 in 1840; 6373 in 1840; and 20 103 in 1841. The number of free emigrants also rose from 813 to 2 380 over the corresponding time period, however, the majority were capitalised to some extent as the cost of a passage to the colony was prohibitive to most labourers. The comparatively lower cost of travelling to America made the Australian colonies less attractive to the un- or under-capitalised emigrant, which in turn continued to be recognised as a reason why the colonies had trouble attracting a constant flow of unassisted emigrants.
6 The Rev. J.D. Lang argued that ‘extensive emigration from that portion of the United Kingdom...[would]...hereafter most injuriously affect the peace and prosperity of the colonies’. J.D. Lang, Transportation and Colonization, London, A.J. Valpy, 1837, pp. iv-v.
8 Moreton Bay Courier (MBC) 15 August 1846.
11 M. H. Marsh, A Letter to the Colonists of Queensland, Salisbury, 1859, p. 28.
12 Act No. XXXII of 1837 and Act No. XIV of 1839 prohibited the indenturing of any “Native of India” outside of the territories governed by the East India Company.
13 Davidson’s advertisement was placed in The Australian 6 June 1837 and the Sydney Morning Herald (SMH) 12 and 17 June 1837.
17 The Australian, 19 September, 1842.
18 Gipps to Stanley, No. 63, 5 May 1843, Colonial Office Records (C.O) 201/331.
19 Bench of Magistrates, Armidale, 1844-1859.
22 Captain Hume’s Report, Governor Gipps Despatches 1843.
23 Sir P.E. de Stzeleceki to P.P. King, 26 July 1843, Phillip Parker King Letters, H.O. Lethbridge Collection, pp. 147-155. (Mitchell Library (ML) A3599-CY 1933)
24 A. Bogue to F.D. Syme 6 December 1846, SMH, 23 March 1847.
25 F.D. Syme to A. Bogue, 27 December 1846, SMH, 23 March 1847.
26 T.H. Layton to F.D. Syme, 23 June 1847, SMH, 25 April 1848.
27 F.D. Syme to T.H. Layton, 29 June 1847, SMH, 25 April 1848.
28 “Original Correspondence”, by A. Bogue, SMH, 25 April 1848.
30 “Chinese Immigration”, MBC, 10 April 1847.
31 Letters from G.W. Rusden to Sir C. Nicholson, 17 February 1848 and 28 February 1848, pp. 403-408. (ML A4304).
32 “Chinese Immigration” MBC, 29 July 1848.
33 Moreton Bay Courier (MBC), 12 September, 1846.
34 9 Geo. IV. 17 July, 1828, “An Act for the better Regulation of Servants Labores and Work People”.
35 Vic. XXIII, 20 October, 1840, “An Act to ensure the fulfilment of engagements, and to provide for the adjustment of disputes between Masters and Servants in New South Wales and its Dependencies”.
38 Vic. No. 27, sec's 16 and 17. Section 28 however removed the right of magistrates to adjudicate in cases involving their own servants.
39 Vic. No. 23, sec 3 provided for a penalty of up to three months imprisonment with hard labour for failure to appear, which was termed fraudulent breach of contract. Absconding after commencing work, which was covered by sec. 2, attracted a lesser punishment of loss of wages, a fine and imprisonment if the fine was not paid.
40 Vic. No. 27 sec. 4 provides for imprisonment for three months with the option of hard labour for ‘any servant [who] wilfully or negligently spoil or destroy...or negligently lose any cattle, sheep horses or other property belonging to or in charge of his employer’. 
41 9 Vic. No. 27 sec’s. 13 and 14, required that employees had to obtain a certificate of discharge, which they had to produce before they could be legally re-hired, and penalties for the forgery of discharges. Section 15 provided for a fine of £20 for anybody harbouring servants already engaged.

42 4 Vic. No. 27, sec. 16.


44 4 Vic. No. 27 sec. 20 did remove the need for contracts signed outside of the colony to be attested to by witnesses of the signing, and the ‘need to prove the handwriting of any such subscribing or attesting witness’.

45 J. Martin, a Sydney solicitor, in answering the question ‘Are you aware that agreements entered into with servants in other countries for New South Wales, are not binding here?’, answered, ‘Yes, except in the case of the Australian Agricultural Company’s Act’. Evidence of J. Martin, Select Committee on Master and Servant Act, 25 August, 1845, NSWLC V&P, 1845, p. 29.

46 Legislative Council Report, SMH, 26 May, 1847.

47 ‘An Act to Amend an Act intituled “An act to amend and consolidate the Laws between Masters and Servants in NSW”, 11 Vic. No. 9, 16 August, 1847.

48 The third clause reads: And whereas it was recited by the said Act among other things that “servants in the United Kingdom in British Colonies in the “British East India Possessions and in Foreign Countries occasionally “contract by indenture or other written agreement with persons “about to proceed to or actually resident in New South Wales” And whereas doubts have arisen whether such contracts by indenture or other written agreement are subject to the summary jurisdiction of Justices of the Peace and it is expedient to remove the said doubts Be it therefore declared and enacted That all such contracts by indenture or other written agreement shall be of the like force and effect within the said colony of New South Wales as if they had actually been made and executed by the respective parties thereto within the same and shall subject every such party for any breach thereof upon summary conviction by or before any two or more Justices to the like fines penalties and punishments as in and by the said recited Act are provided for any wilful violation of the provisions of any indenture or other written agreement actually made or executed within the said Colony or for any misdemeanor misconduct or ill-behaviour of any master or servant within the same Provided that no such contract shall be binding on any person to serve for a longer period than five years.

49 NSW Legislative Council Report, SMH 16 June 1847.


53 This proviso became section 15, which stated ‘that nothing in this or the said recited Act contained shall be deemed or construed to apply to any native of any savages or uncivilized tribe’. NSW Legislative Council Report, (13 July, 1847), SMH, Wednesday, 14 July, 1847.

54 Maitland Mercury (hereafter MM), 10 November, 1847.

55 Speech of the Attorney-General, Mr John Hubert Plunkett, NSW Legislative Council Report, (21 November, 1851), Empire, 24 November, 1851.


57 11 Vic. No. 9, sec. 7. Provided for summary adjudication in harbouring cases which involve ‘servants hired by indenture or other written agreement’ outside of the colony.

58 G. W. Rusden to C. Nicholson, 17 February, 1848, Macarthur Papers, Part V, pp. 403-408, Mitchell Library (MLA4304: CY1710)

59 14 Vic No. 25 1850 extended 9 Vic No. 27 and 11 Vic No. 9 until 31 December, 1852, and 16 Vic No. 10 further extended these acts until 31 December, 1854.