

No. V.

DESERTED WIVES
AND CHILDREN.

An Act to provide for the Maintenance of Deserted Wives and Children. [21st July, 1840.]

Preamble.

Where a wife is
deserted &c. appli-
cation may be made
to a Justice.

WHEREAS several instances have occurred in the Colony of New South Wales and its Dependencies of persons deserting either their wives or their children (and in some cases both) and leaving them without adequate means of support and it is expedient to provide a remedy in future for such cases Be it enacted by His Excellency the Governor of New South Wales with the advice of the Legislative Council thereof That if after the passing of this Act it shall at any time be made to appear to the reasonable satisfaction of any Justice of the Peace that any married woman hath been (whether before or after the passing of this Act) unlawfully deserted by her husband or hath been left by him without means of support it shall be lawful for such Justice upon complaint on oath by her or any reputable person on her behalf to cause a summons to be issued directing the husband to appear before two Justices to shew cause why she should not be supported by him and in any such case of desertion it shall be lawful for the Justice upon proof thereof on oath to issue a warrant for the husband's apprehension in order to compel such appearance.

The matter to be
inquired into and
order for mainte-
nance made by two
Justices.

2. And be it enacted That upon the day appointed for such appearance (whether the party shall have been taken on such warrant or cannot after strict inquiry and search be found to be taken thereon or shall appear upon such summons or having been summoned shall fail to appear) such two Justices or any other two Justices then sitting shall proceed to inquire into the matter of such complaint and if they shall be satisfied that the wife is in fact without means of support and that her husband is able to maintain her or to contribute to her maintenance then such Justices shall make an order in writing directing him

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him to pay either weekly or monthly at their discretion (and to such person or in such manner for her use as they may think fit) such moderate sum or allowance as they shall consider proper Provided that upon any application by or on behalf of the husband or the wife or for any other cause it shall be lawful for the Justices to postpone or adjourn the inquiry from time to time as they shall deem it expedient.

3. And be it enacted That if in any case it shall appear to the Justices (in addition to the particulars last aforesaid) that the husband hath deserted his wife it shall be lawful for them in and by such order as aforesaid to authorize and direct some person forthwith to seize and sell such husband's goods and chattels and to demand and receive his rents or such portion of them respectively as the said Justices shall think fit and to appropriate the proceeds towards the payment of such allowance in such manner as they shall from time to time direct and the like order may be made and authority be given by any two Justices upon complaint made for that purpose before them in any case where the husband shall have left the said Colony or any of its respective Dependencies in which he shall have theretofore usually resided (and that fact shall appear on oath to them) without the previous issue either of a warrant or summons.

In certain cases the party's goods &c. may be seized and sold.

4. And be it enacted That any woman making complaint to any Justice of having been actually deserted as aforesaid by her husband or left by him without sufficient means of support shall produce before such Justices appointed to inquire into the matter of such complaint direct evidence of her marriage with the person against whom the complaint is made or in case of her inability to produce such direct evidence to the satisfaction of the Justices aforesaid shall make affidavit before them setting forth the time place and circumstances of the said marriage and her affidavit shall be deemed sufficient to authorize such Justices to make an order for her maintenance by her husband in the manner provided by this Act and such order shall continue in force until it be rescinded by the same or any two other Justices upon such proof as they shall deem sufficient being given before them of the falsity of the averments sworn to by the woman as hereinbefore directed Provided that it shall be in the discretion of the Justices upon any reasonable cause shewn for such desertion or refusal of maintenance to decline making any such order.

Woman complaining of being deserted or left without adequate means of support to produce before the Justices hearing such complaint direct evidence of her marriage or make affidavit setting forth the time place and circumstances of her marriage with the man complained against.

5. And be it enacted That any woman who shall falsely depose in such affidavit as aforesaid to the fact of her marriage with any man for the purposes of obtaining from the Justices an order for any sum or allowance to be made by such man for or towards her support shall on conviction thereof suffer such punishment as may by law be inflicted on persons convicted of wilful and corrupt perjury.

Penalty for falsely deposing.

6. And be it enacted That where any married woman who is under an unexpired sentence or order of transportation shall have been deserted or left without support by her husband the like proceedings may be had and the like order made as aforesaid on the application of the Principal Superintendent of Convicts or of the Chief Constable of the district in which such woman usually resided.

On application of the Principal Superintendent of Convicts or of the Chief Constable of the district in which any such woman may reside the like proceedings may be had in the case of a convict married woman as in other cases.

7. And be it enacted That complaint may be made as aforesaid (either by the mother or any reputable person) in case of the desertion by any father of his child or children or where any child shall have been left by the father without adequate means of support and the like proceedings may thereupon in every such case be taken against the father and such inquiry be had touching his ability to maintain such child or children and the like order or orders be made in respect thereof

All the powers of the Act with respect to wives extended equally to children.

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thereof as are hereinbefore directed or authorized respectively with regard to the desertion or maintenance of a wife.

Provisions as to
illegitimate children.

8. And be it enacted That the preceding section shall extend to and include illegitimate children as well as children born in wedlock Provided that no man shall be taken to be the father of any illegitimate child upon the oath of the mother only Provided also that in every case where it shall appear to the Justices that the mother of an illegitimate child is able to contribute to its support it shall be lawful for them to direct that she shall so contribute as well as the father in such proportions respectively and in such manner as such Justices shall think fit and if in any such case it shall appear that the mother only is of such ability it shall be lawful for the Justices to make an order in respect of her alone.

Proceedings for
enforcing orders
under this Act.

9. And be it enacted That it shall be lawful for the Justices by whom any order shall have been made under this Act touching the support of any wife or child or for any other two Justices from time to time in a summary way (with or without any application for that purpose) to make such orders in writing as they may think necessary for better securing the payment and regulating the receipt of the allowance directed for such wife's or child's support or for investing and applying the proceeds of the goods or rents if any directed to be sold or collected or for ensuring the due appropriation of such allowance to the *bonâ fide* purposes of maintenance or for causing the child or children to be properly brought up and educated and any one Justice shall have power at any time in a summary way to inquire into the disobedience or alleged disobedience of or non-compliance with any such order or with any order made by any Court of Quarter Sessions as hereinafter mentioned and for that purpose to summon and examine all proper parties and witnesses and to enforce compliance or punish the non-compliance with such order either by committal of the offending party until the same shall have been complied with or by the imposition of a fine not less than five pounds nor more than fifty pounds.

Proceedings for
penalties &c.

10. And be it enacted That all proceedings under this Act whether before two Justices or one Justice shall be had and taken and all summonses to parties and witnesses and warrants (where necessary) for enforcing the same shall be issued and served or executed respectively and all such fines as aforesaid shall be imposed and recovered and every person feeling aggrieved by the imposition of any such fine or by any order of any two Justices under this Act shall be entitled to appeal therefrom upon the terms and in the manner and form respectively which are prescribed by an Act of the Governor and Council of the said Colony passed in the fifth year of the reign of His late Majesty King William the Fourth intituled "*An Act to regulate summary proceedings before Justices of the Peace*" so far as the provisions of the said Act shall be applicable.

Quarter Sessions
may modify orders.

11. Provided always and be it enacted That it shall be lawful for any Court of Quarter Sessions holden for the district within which any order under this Act shall have been made (whether an appeal against the same shall have been entered or not) to quash confirm or vary any such order either in the whole or in part at their discretion or to substitute a new order in lieu thereof and for that purpose every order made by any two Justices under this Act shall be transmitted by such Justices under their hands and seals to the Clerk of the Peace of the district within twenty days next after the making of such order.

Two Justices may
bind any child as
an apprentice.

12. And be it enacted That it shall be lawful for any two Justices sitting in Petty Sessions with the consent of either of the parents if living and within the Colony but if otherwise then without such

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such consent to bind by indenture and put out any child in respect of whose maintenance any order shall have been made under this Act (such child having attained the age of thirteen years but not otherwise) an apprentice until he or she shall attain the age of twenty-one years to any master or mistress willing to receive such child in any trade business or employment whatsoever and every such binding shall be as effectual in the law to all intents and purposes as if the child had been of full age and had bound himself or herself to be such apprentice Provided that such two Justices previously to executing such indenture shall inform themselves as fully as they can of the child's age which age shall be inserted in such indenture and shall thereupon for the purposes of this provision be taken to be the child's true age without further proof.

13. And be it enacted That in the event of the death of any such master or mistress his or her executor or administrator may (with the approbation of any one Justice) assign any such indenture for the residue of the term then unexpired therein and any two Justices sitting in Petty Sessions may in case of such death or upon the application of the master or mistress in any other case assign any such indenture to any other person or may absolutely revoke any indenture in any case upon proof of ill usage of the apprentice and put out such apprentice anew Provided that in every such case of assignment the assignee shall be as much bound to perform the several covenants of the indenture as if he or she had been the master or mistress originally named therein.

Assignment or revocation of indenture.

14. And be it enacted That no conviction order warrant or other matter made or purporting to be made by virtue of this Act shall be quashed for want of form or removed by *certiorari* or otherwise into the Supreme Court and no warrant or commitment shall be held void by reason of any defect therein Provided that it be therein alleged that the party has been convicted and that there be a good and valid conviction to sustain the same.

Convictions not to be quashed for want of form nor removed by *certiorari*.

15. And be it enacted That no action at law shall lie against any Justices of the Peace for any matter or thing which may be done or commanded by them in pursuance of the provisions of this Act or Ordinance unless there be direct proof of corruption or malice and unless such action be commenced within three calendar months after the cause of action or complaint shall have arisen and if any Justice or Justices shall be sued for any matter or thing done in pursuance of this Act or Ordinance the defendant or defendants in any such action may plead the general issue and give this Act or Ordinance and the special matter in evidence.

Limitation of actions against Justices.

16. And be it enacted That the amount of every fine imposed under this Act shall be appropriated and applied as follows that is to say one moiety thereof as the Justice or Justices as the case may be shall in his or their discretion direct either wholly for the use of the wife or child in respect of whose maintenance the original order shall have been made or partly for that use and partly for the use of the informer or party prosecuting and the other moiety thereof shall be paid into the hands of the Colonial Treasurer and be appropriated to the use of Her Majesty Her Heirs and Successors for the public uses of the said Colony and the support of the Government thereof.

Application of penalties.