

ANNO OCTAVO

Gulielmi IV. Regis.

No 9.

By His Excellency SIR JOHN FRANKLIN Knight Commander of the Royal Hanoverian Guelphic Order, Knight of the Greek Order of the Redeemer, and a Captain in His Majesty's Royal Navy, Lieutenant Governor of the Island of Van Diemen's Land and its Dependencies, with the advice of the Legislative Council.

AN ACT to provide for the Maintenance of deserted Wives and Children.

WHEREAS several instances have occurred in this Colony 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 THEREFORE ENACTED** by His Excellency Sir John Franklin Lieutenant-Governor of the Island of Van Diemen's Land and its Dependencies with the advice of the Legislative Council 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 by her or any reputable Householder 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

Preamble.

Where a Wife is deserted &c. application may be made to a Justice.

be supported by him. *And* in any such case of actual desertion or of his having quitted his usual place of residence or threatened such desertion then it shall be lawful for the Justice upon proof of any of those circumstances on oath to issue a Warrant for the Husband's apprehension in order to compel such appearance.

II.—AND BE IT ENACTED that upon the day appointed for that purpose (whether the Party shall be taken on such Warrant or cannot 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 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 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.

The matter to be enquired into, and Order for Maintenance made, by Two Justices.

III.—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 in fact deserted or threatened to desert his Wife or hath quitted his usual residence with intent to desert her then 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 Colony (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.

IV.—AND BE IT ENACTED that (for the purposes of this Act) every woman shall be conclusively deemed and taken to be in fact the Wife of the Party complained against although never married if he shall be proved to have cohabited with her as his Wife and to have permitted her generally to assume that character.—*Provided* that nothing in this Act shall extend to render any Man liable for a Woman's Maintenance where he shall have put her away or separated himself from her for Adultery and her guilt shall be established upon such Inquiry as aforesaid to the reasonable satisfaction of the Sitting Justices.

A Woman acknowledged as a Wife, to be taken in fact to be so. No Maintenance if separated for Adultery.

V.—AND BE IT ENACTED that Complaint may be made as aforesaid (either by the Mother or any reputable Householder) 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 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

All the powers of the Act with respect to Wives extended equally to Children.

Child or Children and the like Order or Orders be made in respect thereof as are hereinbefore directed or authorized respectively with regard to the Desertion or Maintenance of a Wife.

VI.—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.

Provisions as to Illegitimate Children.

VII.—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 Childs 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 enquire into the disobedience or alleged disobedience of or noncompliance 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 enforcing Orders under this Act.

VIII.—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 the Act of this Island passed for regulating Summary Proceedings before Justices of the Peace so far as the provisions of that Act shall be applicable.

Proceedings for Penalties &c.

IX.—PROVIDED ALWAYS 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

Quarter Sessions may modify Orders.

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.

X.—AND BE IT ENACTED that it shall be lawful for any Two Justices of whom one shall be a Police Magistrate with the consent of either of the parents if living and within the Colony but if otherwise then without 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 and consenting to be so bound 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 farther proof.

Assignment or Revocation of Indentures.

XI.—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 one of them being a Police Magistrate 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 (with the consent of the Apprentice) 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.

Application of Penalties.

XII.—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 shall in his 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 to the use of His Majesty His Heirs and Successors (and payable for that purpose into the Colonial Treasury) for the better support of the King's Orphan Schools.

JOHN FRANKLIN.

Passed the Legislative Council the
twenty-first day of July one thousand eight hundred and thirty-seven.

ADAM TURNBULL,
Clerk of the Councils.