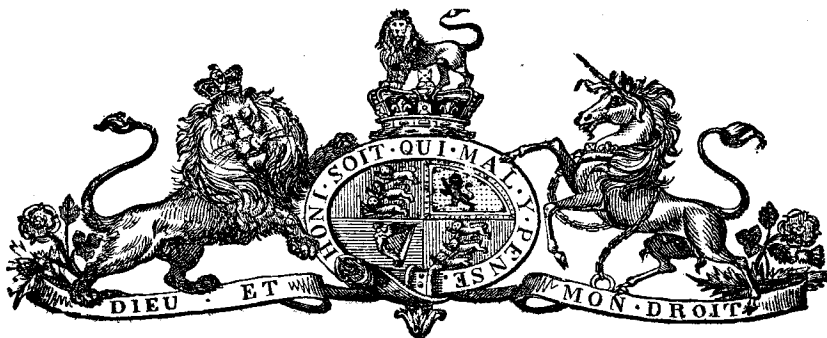


TASMANIA.



1863.

ANNO VICESIMO-SEPTIMO

VICTORIÆ REGINÆ,

No. 14.



AN ACT to provide for the Maintenance and Support of deserted Wives and Children in this Colony. [31 July, 1863.]

WHEREAS it is expedient to amend the Law relating to the maintenance and support of deserted Wives and Children in this Colony; Be it therefore enacted by His Excellency the Governor of *Tasmania*, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PREAMBLE,

1 If at any time it shall be made to appear to the satisfaction of any Justice of the Peace that any wife has been left by her husband, or that any child, whether legitimate or illegitimate, has been left by its father or mother, without means of support, it shall be lawful for such Justice, upon complaint by such wife, child, or any reputable person, to cause a Summons to be issued directing such husband or father or mother to appear before any Two Justices to show cause why such wife or child should not be supported by him; and in case it shall be made to appear to the satisfaction of such Justice, upon the oath of the said wife or of any reputable person, that there is reason to believe that such husband or father or mother will not attend in obedience to such Summons, it shall be lawful for such Justice, in place of issuing such Summons, to issue a Warrant for the husband's or father's or mother's apprehension in order to compel such appearance.

Where a wife or child is left without means of support, husband, &c. may be summoned to show cause why he should not support them.

Upon proof of desertion Warrant may issue in the first instance.

2 It shall be lawful for any Justice, on being satisfied by complaint upon the oath of some reputable person that any husband or father or mother is about to leave the Colony without making due provision for the maintenance of his wife or child, to issue a Warrant for the apprehension of such husband or father or mother to be dealt with as hereinafter provided.

Two Justices may hear and determine complaint.

3 It shall be lawful for any Two Justices to hear and determine every such complaint, upon the day appointed for hearing the same, in a summary way, whether the Defendant be present or not, provided that if the Defendant be not present, the due service of the Summons upon the Defendant, or that every endeavour has been made to serve the same, shall be proved upon oath (either oral, or by affidavit stating the mode and time and place of service), or if a Warrant shall be issued for his apprehension upon like proof that every effort has been made to execute the same; and such Justices may, by an Order in writing under their hands and seals, direct the Defendant to pay either weekly or monthly at their discretion, to such person, and in such manner for the use of such wife or child as they may think fit, such sum or allowance as they shall consider proper; and in every case of desertion of a child, where it shall appear to the Justices that the mother of such 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 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; and any Order made under this Section may be in the form in the Schedule (1) or to the like effect: Provided always, that nothing in this Act contained shall 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 hearing such complaint as aforesaid to the reasonable satisfaction of the Justices.

Liability of mother for child's maintenance.

Husband not liable for wife's maintenance in case of adultery by her.

Security for compliance with Order.

4 When an Order is made for the maintenance of any wife or child under this Act, it shall be lawful for the Justices, if they think fit, immediately upon pronouncing their decision, to require the defendant to enter into a Recognizance with Sureties for the due compliance with such Order; and in default of his immediately entering into such Recognizance with such Sureties as the Justices require, it shall be lawful for them to commit such defendant to some Gaol or House of Correction, there to be kept to hard labour until such Recognizance shall have been entered into, or the said Order complied with: Provided always, that no Recognizance or committal shall extend over a longer period than Twelve months.

Justices may authorise persons to receive annuity, &c. of Defendant to pay amount ordered.

5 Whenever any Order is made for the maintenance of any wife or child under this Act, it shall be lawful for the Justices making such Order, instead of or in addition to any sum or allowance by such Order directed to be paid, to authorise and direct some person to demand and receive any annuity or other income payable to such Defendant, or any money or moneys received or receivable, or held by any person or persons in trust, to be paid periodically, or by instalments, or otherwise, to or for such Defendant, or such portion of such annuity or income, or other money or moneys as such Justices shall think fit, and to appropriate the proceeds towards the payment of such allowance, annuity, or other moneys as aforesaid, in such manner as they shall from time to time direct;

and every payment made in pursuance of any such Order shall be as valid as if made to such Defendant, or by his authority or direction, and shall protect and indemnify any person acting in pursuance of such Order.

6 If it shall be made to appear to the satisfaction of any Two Justices by proof upon oath, without the previous issue either of a Warrant or Summons, that any husband or father or mother has left the Colony without making due provision for the maintenance of his wife or child, then it shall be lawful for such Justices, by an Order under their hands and seals, to authorise and direct some person forthwith to seize and sell such husband's or father's or mother's goods and chattels, and to demand and receive his rents, annuity, or other income, 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.

Where Defendant has left the Colony without making provision for wife's support, his goods, &c. may be seized.

7 It shall be lawful for the Defendant, or any Creditor of the Defendant, in any such proceeding as aforesaid, at any time, to apply to the Justices who shall have made any Order as aforesaid to revoke or vary such Order: Provided that such Defendant or Creditor shall, Seven days previous to making such application, give to such Justices and to the complainant, and to all parties to be affected thereby, notice in writing of his intention to do so, and of the time and place of making such application, and stating the grounds upon which he seeks to have such Order revoked or varied.

Defendant may apply to Justices who made Order to revoke or vary it.

8 It shall be lawful for the Justices by whom any Order as aforesaid shall have been made under this Act, 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 to be made for such wife's or child's support, or for investing and applying the proceeds of the goods or rents, annuity or other income, if any, directed to be sold or collected, or for ensuring the due appropriation of such allowance to the *bonâ fide* purposes of maintenance; and it shall be lawful for any Two Justices, in a summary way, to inquire into the disobedience or alleged disobedience of, or non-compliance with, any Order made under this Act, and to enforce compliance or punish the non-compliance with such Order by issuing a Warrant of Distress to levy the amount by such Order directed to be paid, and in default of sufficient distress by committal to some Gaol or House of Correction for any period not exceeding Six months with hard labour.

Proceedings for enforcing orders.

9 In any proceeding under this Act no man shall be taken to be the father of any illegitimate child upon the oath of the mother only; and every woman shall, for the purposes of this Act, be deemed and taken to be in fact the wife of the person 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, within Twelve months previous to the commission of the alleged offence.

Proof of paternity of illegitimate child, and of wifehood of woman.

10 Every Order made in pursuance of this Act shall forthwith be transmitted to the Clerk or Deputy Clerk of the Peace for the District in or nearest to which the same shall have been made, there to be kept by him among the records of the Court of General Sessions of the Peace.

Orders to be transmitted to the Clerk of the Peace for the District.

Wilfully deserting wife or children a misdemeanor.

11 Every person, being of sufficient means, who shall wilfully, and without lawful or reasonable cause or excuse, desert his wife or children, shall be guilty of a misdemeanor, and shall, upon conviction thereof, be liable to imprisonment with hard labour, in any Gaol or House of Correction, for any period not exceeding One year.

Provision for educating children.

12 In respect of every child for whose maintenance any Order is made under this Act, it shall be lawful for the Justices who made such Order, or any other Two Justices, with the consent of the mother if to be found, or without the consent of either parent if the child be without means of support, or the parent having the care thereof be of vicious and abandoned character, or an habitual drunkard, to cause such child to be placed in "The Queen's Asylum for Destitute Children," or other Institution approved by them to which the provisions of *The Queen's Asylum Act* shall, by the Governor in Council, be by Proclamation declared to apply, the Directors or Managers of which shall be willing to receive such child, there to remain subject to the provisions of the said Act; and thereupon the Justices who shall make any such Order as aforesaid may, by Order in writing, direct the allowance for such child's maintenance to be paid to the Superintendent or other Officer of such Institution, and may enforce the compliance with any such Order.

25 Vict. No. 5.

Children in respect of whom Orders made under this Act may be apprenticed.

13 It shall be lawful for any Two Justices, with the consent of either of the parents, if living and within the Colony, or without such consent if dead or out of the Colony, or if they shall be of vicious or abandoned character or habitual drunkards, to apprentice for any period not less than Five years, nor more than Seven years, any child in respect of whose maintenance any Order shall have been made under this Act, either to some trade or calling, or as agricultural labourers, or domestic servants, (such child having attained the age of fourteen years, and consenting to be so bound, but not otherwise); and every Indenture of apprenticeship may be in the form in the Schedule (2), or to the like effect, and shall be executed by the Justices and by the person to whom such child is to be bound, and such binding shall be as valid and effectual as if such child were of full age, and had bound himself: Provided that such Justices, previously to executing such Indenture, shall inform themselves as fully as they can of the child's age, which shall be inserted in the Indenture of apprenticeship; and in every proceeding, civil or criminal, the statements in any such Indenture that the same is made by Justices under the provisions of this Act, or that such child is of a certain age therein specified, shall respectively be deemed and taken to be true until the contrary is proved.

Proviso as to inserting child's age in indenture.

Assignment and re-assignment of apprentice.

14 In the event of the death of the person to whom any child is so bound, the Executors or Administrators of such person may, by and with the consent in writing, in the form in the Schedule (3) or to the like effect, of any Justice, assign any apprentice to any fit and proper person for the residue of the term mentioned in such Indenture of apprenticeship; and any Two Justices in case of such death, or upon the application of the person to whom such child is bound, may assign any apprentice to any other fit and proper person, and such assignment may be in the form in the Schedule (4) or to the like effect, or may absolutely revoke any such Indenture in any case upon proof of ill-usage of, or misconduct by, the apprentice, and may, if a suitable opportunity for so doing should offer, put out such apprentice anew: Provided that in every such case of assignment the person to whom any apprentice is so assigned, his Executors and Administrators,

shall be bound by all the covenants in the Indenture of apprenticeship in the same manner as if he had originally been a party to it, in lieu of the person to whom the apprentice was originally bound.

15 Subject to the provisions of this Act, the provisions of *The Magistrates Summary Procedure Act* shall apply to all proceedings under this Act; and any person aggrieved by any Order made under this Act may appeal therefrom in the manner directed by *The Appeals Regulation Act*, or by the Act 24 *Vict. No. 5*. Procedure.
19 Vict. No. 8.
Appeal.
19 Vict. No. 10.

16 On and after the day on which this Act commences and takes effect, the Act of Council of the 8th *William the 4th*, No. 9, shall be hereby repealed: Provided that such repeal shall not affect— Repeal of 8 Will.
4, No. 9.

- (1.) Anything duly done before this Act commences and takes effect:
- (2.) Any liability accruing before this Act commences and takes effect:
- (3.) Any punishment incurred or to be incurred in respect of any offence committed before this Act commences and takes effect:
- (4.) The institution of any legal proceeding, or any other remedy for enforcing any such liability, or punishment as aforesaid.

17 This Act shall commence and take effect on the First day of *September*, 1863. Commencement of
Act.

18 In referring to this Act it shall be sufficient to use the expression *The Deserted Wives and Children Maintenance Act*. Short Title.

S C H E D U L E.

(1.)

Sect. 3.

TASMANIA }
TO WIT. }

POLICE OFFICE,

WHEREAS complaint was made unto Esquire,
one of Her Majesty's Justices of the Peace for this Colony, that
being the wife [or child] of had then been left by the
said at in *Tasmania*, without the means
of support: And whereas, in pursuance of *The Deserted Wives and Children Maintenance Act*, we
and
being Two of Her Majesty's Justices of the Peace as aforesaid, having now duly
examined and inquired into the matter and circumstances of the said complaint, do
accordingly hereby order and adjudge him [or her] the said
[or him the said and her the said] to pay unto the
said [or into the hands of at in
Tasmania] weekly [or monthly] on every for her use [or for the
use of the said child] the sum of [or him the said
the sum of , and her the said the sum of]
the first of such weekly [or monthly] payments to be made on

Given under our hands at in *Tasmania*
aforesaid, this day of 18 . . .
J.P. (Seal.)
J.P. (Seal.)

Sect. 13.

(2.)

THIS INDENTURE made the day of 18 , between A.B., of and C.D. of being Two of Her Majesty's Justices of the Peace for *Tasmania* duly authorised under and by virtue of the provisions of *The Deserted Wives and Children Maintenance Act*, to apprentice children in respect of whose maintenance an order shall be made under the provisions of the said Act, of the one part, and E.F. of [*Hobart Town*, shoemaker] of the other part, WITNESSETH that the said A.B. and C.D. hereby bind G.H. in respect of whose maintenance an order was made under the hands and seals of under the provisions of the said Act, the said G.H. being a child of the age of years, as apprentice to the said E.F., to learn the trade or business of a [shoemaker], and with him [or her] to dwell, remain, and serve from the date of these presents till the day of , 18 , during all which time the said G.H. as such apprentice shall faithfully serve his [or her] said master [or mistress], and obey all his [or her] lawful commands, and shall not frequent public-houses or gaming-houses, nor absent himself [or herself] from the service of his [or her] said master [or mistress] by day or night, without his [or her] leave, but in all things as a faithful apprentice shall behave himself [or herself] towards his [or her] said master [or mistress], and all his [or hers] during the said term [*here add any further stipulations as to the duties of the apprentice*]: AND the said E.F. in consideration of the faithful service so to be performed by the said G.H., hereby covenants and agrees with the said A.B. and C.D., that, during the continuance of the said term he [or she] the said E.F. the said G.H. in the trade or business of a [shoemaker] will teach and instruct in the best manner in which he [or she] the said E.F. can; and will provide and allow the said G.H. good and sufficient meat, drink, lodging, apparel, medical attendance, and all other things necessary for the said G.H., and also permit the said G.H. to attend the place of worship of the denomination to which he belongs once each *Sunday*, if practicable [*here add any other terms on the part of the person to whom the Child is bound*], and that he [or she] the said E.F. shall not, nor will, during the said term, make over this Indenture, or the Apprentice bound hereby, without the consent and approbation by Law required in that behalf.

As witness our hands and seals.

Signatures of Justices	{	A.B. (Seal.)
		C.D. (Seal.)
Signature of Master or Mistress		E.F. (Seal.)

Sect. 14.

(3.)

I A.B., of , being one of Her Majesty's Justices of the Peace for *Tasmania*, duly authorised under and by virtue of the provisions of *The Deserted Wives and Children Maintenance Act*, hereby consent to, and approve of, the within-named G.H. being removed from the service of E.F. to that of I.K. upon the terms contained in the within-written Indenture.

Dated this day of 18 .

A.B.

Sect. 14.

(4.)

WE, A.B. of and C.D. of , being Two of Her Majesty's Justices of the Peace for *Tasmania*, duly authorised under and by virtue of the provisions of *The Deserted Wives and Children Maintenance Act*, do hereby assign G.H., the within-named Apprentice, to I.K.

Dated this day of 18 .

A.B.

C.D.