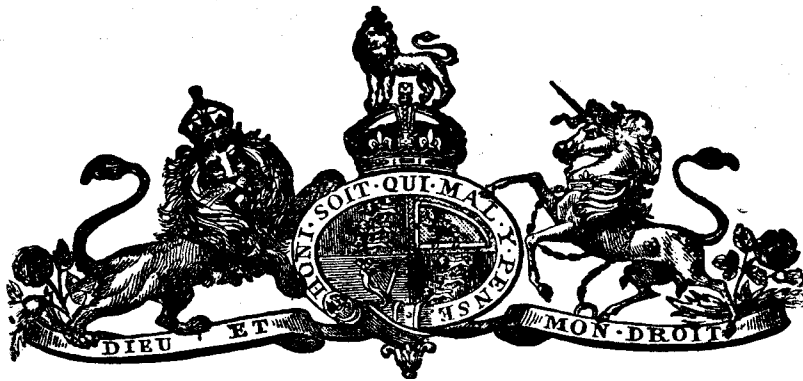


TASMANIA



1909.

ANNO NONO

EDWARDI VII. REGIS,

No. 26.

ANALYSIS.

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| <ol style="list-style-type: none"> 1. Short title. 2. By and to whom orders may be applied for. 3. Powers of magistrate or justices. 4. Limitation of powers. 5. Magistrate or justices may vary or discharge order. 6. Procedure. | <ol style="list-style-type: none"> 7. Enforcement of orders for payment of money. 8. Magistrate or justices may refuse an order in cases more fit for Supreme Court. 9. Appeal. 10. Judges to make rules. 11. Act to apply to married men. |
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AN ACT to confer Summary Jurisdiction upon Magistrates in reference to Married Persons. [22 December, 1909.]

A.D. 1909.

BE it 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:—

1 This Act may be cited for all purposes as “The Summary Jurisdiction (Married Persons) Act, 1909.” Short title.

4d.]

Summary Jurisdiction (Married Persons).

A.D. 1909.

By and to whom orders may be applied for.

60 Vict. No. 10,
s. 2 (W.A.).60 Vict. No. 15,
s. 3 (N.Z.).**2** Any married woman whose husband—

- i. Shall have been convicted of an aggravated assault upon her, within the meaning of Section Forty of the Act, 27 *Victoriae*, No. 5 : or
- ii. Shall have deserted her : or
- iii. Shall have been guilty of persistent cruelty to her, or wilful neglect to provide reasonable maintenance for her or her infant children whom he is legally liable to maintain, and shall by such cruelty or neglect have caused her to leave and live separately and apart from him : or
- iv. Shall be guilty of habitual drunkenness : or
- v. Shall have been guilty of adultery unless she has condoned or connived at, or by her wilful neglect or by her misconduct conduced to such adultery—

may apply to—

(a) A police magistrate ; or

(b) Any Two or more justices of the peace sitting in petty sessions and acting in and for the city or municipality in which any such conviction has taken place, or in which the cause of complaint shall have wholly or partly arisen—

for an order or orders under this Act.

Powers of
magistrate or
justices.*Ibid.* (W.A.), s. 3.*Ibid.* (N.Z.), s. 4.**3** The said magistrate or justices, upon an application under this Act, may make an order or orders containing all or any of the provisions following, viz. :—

- i. A provision that the applicant shall live apart from her husband (which provision, while in force, shall have the effect in all respects of and shall be deemed to be a decree of judicial separation on the ground of cruelty) :
- ii. A provision that the legal custody of any children of the marriage between the applicant and her husband, while under the age of Sixteen years, be committed to the applicant :
- iii. A provision that the husband shall pay to the applicant personally, or for her use to a clerk of petty sessions, or to a third person on her behalf, such weekly sum as the magistrate or justices, having regard to means both of the husband and wife, shall consider reasonable :
- iv. A provision for payment by the applicant or the husband, or both of them, of such court fees, costs, and expenses as the magistrate or justices may think fit.

Limitation of
powers.*Ibid.* (W.A.), s. 4.*Ibid.* (N.Z.), s. 5.**4** No orders shall be made under this Act on the application of a married woman if it is proved that she has committed an act of adultery : Provided that her husband has not condoned, or connived

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at, or by his wilful neglect or by his misconduct conduced to such act of adultery.

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5 Any—

i. Police magistrate : or

ii. Two or more justices sitting in petty sessions, and acting in and for the city or municipality in which any order under this Act is made—

Magistrate or justices may vary or discharge order.

Ibid. (W.A.), s. 5.*Ibid.* (N.Z.), s. 6.

may, on the application of the married woman or of her husband, and upon cause being shown upon fresh evidence to the satisfaction of the magistrate or justices at any time, alter, vary, or discharge any such order, and may upon any such application from time to time increase or diminish the amount of any weekly payment ordered to be made.

If any married woman upon whose application an order shall have been made under this Act—

i. Voluntarily resumes cohabitation with her husband ; or

ii. Commits an act of adultery

such order shall, upon proof thereof, be discharged.

6 All applications under this Act shall be made by way of complaint on oath under "The Magistrates Summary Procedure Act," the provisions whereof shall apply.

Procedure.

19 Vict. No. 8.

Ibid. (W.A.), s. 6.*Ibid.* (N.Z.), s. 7.

7 The payment of any moneys directed to be paid by an order under this Act may be secured or enforced in the same manner as the payment of moneys is secured or enforced under the provisions of "The Deserted Wives and Children Maintenance Act, 1873."

Enforcement of orders for payment of money.

Ibid. (W.A.), s. 7.*Ibid.* (N.Z.), s. 9.

8 If, in the opinion of the magistrate or justices, any of the matters in question between the parties would be more properly dealt with by the Supreme Court, the magistrate or justices may refuse to make an order under this Act, and in such case no appeal shall lie from such decision.

Magistrate or justices may refuse an order in cases more fit for Supreme Court.

Ibid. (W.A.), s. 8.*Ibid.* (N.Z.), s. 11.

9—(1.) Save as hereinbefore provided, an appeal shall lie from any order or the refusal of any order by a magistrate or justices under this Act to the Supreme Court.

Appeal.

Ibid. (W.A.), s. 9.*Ibid.* (N.Z.), s. 12.

(2.) Every appeal to the Supreme Court may be heard by one judge.

10 The judges of the Supreme Court may from time to time make, alter, suspend, and rescind rules or orders to regulate the practice and procedure of the Supreme Court under this Act, and until such rules or orders are made, and so far as any such rules or orders when made do not apply, the provisions of "The Appeals Regulation Act," as to appeals from justices, shall apply to appeals under this Act.

Judges to make rules.

Ibid. (W.A.), s. 9.*Ibid.* (N.Z.), s. 12.

19 Vict. No. 10.

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Act to apply to
married men.

11 The provisions of this Act shall also apply so as to entitle a married man to the benefit thereof and to make his wife liable and subject to the provisions thereof; and for the purposes of this section the words "married man" or "husband," or any similar expression or reference, shall, *mutatis mutandis*, be read throughout the Act in lieu of the words "married woman" or "wife," or any similar expression or reference, and the words "married woman" or "wife," or any similar expression or reference, shall be read in lieu of the words "married man" or "husband," or any similar expression or reference.