

New Zealand.

## DESTITUTE PERSONS.

1908, No. 45.

AN ACT to consolidate certain Enactments of the General Assembly relating to the Maintenance of Destitute Persons.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. (1.) The Short Title of this Act is “The Destitute Persons Act, 1908.” Short Title.

(2.) This Act is a consolidation of the enactments mentioned in the First Schedule hereto. Enactments consolidated.

(3.) All orders made under any of the said enactments, and in force on the coming into operation of this Act, shall be deemed to be made under this Act. Savings.

(4.) All matters and proceedings commenced under any of the said enactments, and pending or in progress on the coming into operation of this Act, may be continued, completed, and enforced under this Act.

2. In this Act, if not inconsistent with the context,—

“Charitable institution” includes an industrial school established under “The Industrial Schools Act, 1908”;

“Child” includes an illegitimate child and also a child adopted under Part III of “The Infants Act, 1908”;

“Destitute person” means a person unable to support himself by his own means or labour, and includes any lunatic or any sick or infirm person who has not an estate or sufficient estate applicable to his maintenance;

“Local authority” means the Council of any borough or county; and in counties where “The Counties Act, 1908,” is suspended means the several Town Boards and Road Boards therein;

Interpretation.

1894, No. 22, sec. 2

“Lunatic” means any lunatic as defined in “The Lunatics Act, 1908,” or any person received into and detained in any public or private establishment or house in New Zealand authorised or used for the reception of lunatics under the provisions of that Act; and the lunacy shall, for the purposes of this Act, be deemed to commence from the time such lunatic is found to be such, or from the date of such reception or detention as aforesaid:

“Maintaining” and “maintained” include lodging, feeding, clothing, teaching, or training:

“Maori” includes a half-caste:

“Minister” means the Minister of Justice, or other Minister of the Crown for the time being charged with the administration of this Act:

“Near relative” means the father, stepfather, grandfather, mother, stepmother, grandmother, children (other than stepchildren), grandchildren, and brothers of a destitute person, and includes their respective executors or administrators; and, as to any child, includes the person who has become the adopting parent thereof within the meaning of Part III of “The Infants Act, 1908,” and the wife or husband, as the case may be, and the executors or administrators of such person:

“Trustees” means the trustees, manager, Board, or governing body of any institution established, authorised, or used under or by any Act for the relief of sick, diseased, aged, incurable, or destitute persons, or for maintaining, teaching, or training in industrial pursuits deserted or destitute persons.

#### *Liability for Maintenance.*

Husband to  
maintain wife's  
children.  
1894, No. 22, sec. 4

3. Every husband whose wife at the time of their marriage had a child or children, whether legitimate or illegitimate, is liable to maintain such child or children as members of his family until they respectively attain the ages, if a boy, of sixteen years, and, if a girl, of eighteen years, and such child or children shall, for the purposes of this Act, be deemed to be the legitimate children of the husband and to form part of the husband's family.

Married woman  
liable for  
maintenance of her  
children.  
Ibid, sec. 5

4. (1.) A married woman having separate property is liable for the maintenance of her children and grandchildren to the extent of her separate property.

(2.) Nothing herein shall be deemed to relieve her husband from any liability imposed on him by law to maintain her children and grandchildren.

Married woman  
liable for  
maintenance of her  
husband.  
Ibid, sec. 6

5. Where the husband of any woman having separate property becomes destitute, a summons may be issued against the wife, and such order may be made and enforced against her for the maintenance of her husband out of her separate property as by the provisions of this Act may be made and enforced against a husband for the maintenance of his wife.

6. The near relative of a destitute person is liable, if of sufficient ability, to maintain such destitute person in the manner hereinafter mentioned.

7. (1.) On the complaint, on oath, of any reputable person, or of any destitute person, that such last-mentioned person is a destitute person, and has a near relative within New Zealand of sufficient ability to maintain him, any one Justice may summon such near relative to appear to answer such complaint.

(2.) Any Magistrate may hear and determine such complaint, and shall have power to examine on oath any near relative of a destitute person as to his ability to contribute to the maintenance of such person; and may also examine on oath any other person he thinks fit for the purpose of ascertaining the ability of such relative so to do.

(3.) The Magistrate, on being satisfied that the person by or on behalf of whom such complaint is made is a destitute person, and that the person summoned is his near relative, and is able to maintain or to contribute to his maintenance, may order such near relative to pay to the person and at the times and in the manner mentioned in the order a sum of money not exceeding twenty shillings a week for the maintenance of such destitute person.

Near relatives of destitute persons liable for maintenance.

1894, No. 22, sec. Adjudication. Ibid, sec. 8

Relatives may be examined as to their means.

Order for maintenance.

### *Illegitimates.*

8. (1.) On complaint on oath—

(a.) By the mother of any illegitimate child under fourteen years of age, or by any reputable person, that the father of such child has failed to provide for its maintenance; or

(b.) By any unmarried woman who is with child, or by any reputable person, that the alleged father of the child is about to leave New Zealand or the place where he or the aforesaid woman lives, and has made no adequate provision for the future maintenance of such child when born,—

any one Justice may summon the party charged to answer such complaint.

(2.) Whether the defendant appears or not, any Magistrate may inquire into such complaint, and, if satisfied that the defendant is the father of such child and that the complaint is true, may adjudge the defendant to be the father of such illegitimate child.

(3.) Every complaint made and summons issued under this section shall be made and issued within six years after the date of the birth of the illegitimate child in respect of which such complaint is made and summons issued:

Provided that where it is proved to the satisfaction of the Magistrate that the defendant has contributed to the maintenance of the child, or has since the birth of the child cohabited with its mother as man and wife, then a complaint may be made and summons issued at any time after the expiration of the said six years, if within the six months immediately preceding the date of the complaint the defendant has made any payment towards the maintenance of the child or has so cohabited with its mother.

9. (1.) On the hearing of such summons the said Magistrate, or any Magistrate at any time thereafter,—

Alleged father of illegitimate child may be summoned. Ibid, sec. 9 1905, No. 18, sec. 3

And adjudged to be father.

Limitation of proceedings. 1904, No. 32, sec. 7

1905, No. 18, sec. 2

Alleged father may be ordered to contribute to maintenance of child 1894, No. 22, sec.

- (a.) May make an order on the father for payment to the mother of the child, or to such other person as he thinks fit, for the maintenance of such child, of a sum of money at a rate not less than four shillings nor more than twenty shillings per week until the child arrives at the age of fourteen years, at such times and in such manner as he directs; and may also order the father to pay the expenses of and incidental to the birth of such child, whether it be born alive or dead, and the funeral expenses of the child if it has died on or before the making of the order, and the cost incurred in making any such order:
- (b.) In the case of an unborn child, may make an order requiring the father to find such good and sufficient surety as the Magistrate thinks fit that he will not leave his unborn child without adequate means of maintenance, and that he will pay the expenses of and incidental to the birth of such child, whether it is born alive or dead, and by such order may require him to pay the costs incurred in obtaining any such order; and may, in default of such surety being found, commit him to prison for any period not exceeding six months, with or without hard labour.

Evidence.

(2.) The evidence of the mother of any illegitimate child, or of any woman who is with child as aforesaid, shall not be necessary for the making of any such adjudication as aforesaid.

Corroboration.

(3.) No person shall be adjudged to be the father of an illegitimate child upon the evidence of the mother, or of a woman who is with child as aforesaid, unless such evidence be corroborated in some material particular by other testimony to the satisfaction of the Magistrate.

(4.) The Court hearing any appeal against an order made under this section shall hear the evidence of the said mother or woman, and such other evidence as she may produce or as may be tendered on her behalf, and any evidence tendered on behalf of the appellant; and shall not confirm the order appealed against unless the evidence of the said mother or woman is corroborated in some material particular by other testimony to the satisfaction of the Court.

Order for maintenance may be made against mother.

1894, No. 22, sec. 10

10. Where it appears to the Magistrate that the mother of an illegitimate child is able to contribute to its maintenance, he may direct that both the father and the mother shall so contribute, in such proportions respectively and in such manner as the Magistrate thinks fit; and, if it appears that the mother alone is of such ability, the Magistrate may make an order in respect of her alone.

In cases of death or lunacy of father or mother, how proceedings to be taken.

Ibid, sec. 11

11. (1.) Notwithstanding that the father or mother of an illegitimate child under fourteen years of age is dead or lunatic, the mother or other reputable person may make complaint on oath to any Justice that such deceased or lunatic person is the father or mother of such illegitimate child, and such Justice may issue a summons to the executor or administrator, committee, or other legal representative of such deceased or lunatic person to show cause why an order should not be made for the maintenance of the child out of the estate of such deceased or lunatic person.

(2.) The Magistrate may inquire into the matter of the complaint, and, if satisfied that the deceased or lunatic person is the father or mother of such illegitimate child, and that the estate of such deceased or lunatic person is sufficient, after payment of the debts of such person, to maintain or contribute to the maintenance of any such child, may make an order for the payment of moneys out of the deceased's or lunatic's estate under either of the last two preceding sections.

(3.) If it appears that the estate of a lunatic is not more than reasonably sufficient to maintain such lunatic, no such order shall be made.

(4.) The granting or refusing of an order under this section shall be in the discretion of the Magistrate; but no such order shall be made if such deceased or lunatic person has left a widow or husband, or a legitimate child or children, or both, and the effect of granting such order would be to deprive such widow, husband, child, or children wholly of means of support.

(5.) No order shall be made against any deceased father's or mother's estate under this section unless the complaint is made within six months from the death of such father or mother.

12. Where an order is made for the maintenance of an illegitimate child, the Magistrate may make an order for the payment of any additional sum not exceeding twenty-five pounds, to be applied, at such times and in such manner as he may direct, to the education or apprenticing of such child to some trade.

Additional sum not exceeding £25 may be ordered to educate illegitimate child.

1894, No. 22, sec. 12

13. (1.) The father, the mother, or the executor, administrator, committee, or other personal representative of such father or mother may at the time of making an order for maintenance, or at any time thereafter, apply to a Magistrate in a summary manner to fix a sum of money to be paid in satisfaction of any weekly or other payment as aforesaid; and such Magistrate may, if he deems it expedient so to do, fix a sum of money, not less than twenty pounds and not more than one hundred and fifty pounds, in lieu of and as compensation for any weekly or other payment as aforesaid.

Putative father, &c., may make composition.

Ibid, sec. 13

(2.) Payment of the sum so fixed shall be deemed and taken to be in full satisfaction and discharge of all liability on the part of the person paying the same for the future maintenance of such child.

14. The putative father of an illegitimate child maintained at the public cost at any charitable institution is liable to pay the whole cost of maintaining such child at the said institution, or so much thereof as has not been paid, notwithstanding that he has previously, under the provisions of this Act or of any former Act relating to destitute persons, or otherwise, paid to the mother of the child or to any other person any sum or sums for the maintenance of such child, or made any composition with any person in respect of such maintenance.

Maintenance of illegitimate child at public charitable institution.

Ibid, sec. 14

#### *Desertion of Wife or Children.*

15. (1.) Where a husband unlawfully deserts his wife, or refuses, neglects, or fails to provide her with adequate means of maintenance, or where a wife who has been deserted by her husband, or a

Desertion of wife or children indictable offence.

Ibid, sec. 15

mother who is a widow, deserts her children under the age of fourteen years, or refuses, neglects, or fails to provide them or any of them with adequate means of maintenance, or where a father deserts his children under the age of fourteen years, whether illegitimate or born in wedlock, or his wife's children as referred to in section three hereof, or refuses, neglects, or fails to provide them or any of them with adequate means of maintenance, and goes to reside beyond New Zealand, either temporarily or permanently, such husband, wife, widow, or father shall be liable to twelve months' imprisonment with hard labour.

(2.) In any of the cases specified in this section, if complaint be made on oath to a Magistrate by any reputable person, the Magistrate may, if satisfied that an offence has been committed within the meaning of this section, but not otherwise, issue his warrant for the apprehension of the person against whom complaint has been made.

(3.) No such warrant for apprehension shall be issued except by a Magistrate.

Husbands, fathers,  
or mothers  
deserting or leaving  
wife or children  
without  
maintenance.

1894, No. 22, sec. 16

16. (1.) Where a husband unlawfully deserts his wife, or refuses, neglects, or fails to provide her with adequate means of maintenance, or where a wife who has been deserted by her husband, or a mother who is a widow, deserts her children under the age of fourteen years, or refuses, neglects, or fails to provide them or any of them with adequate means of maintenance, or where any father deserts his children under the age of fourteen years, whether illegitimate or born in wedlock, or his wife's children as referred to in section three hereof, or refuses, neglects, or fails to provide them or any of them with adequate means of maintenance, if complaint thereof be made on oath to any Justice by the wife or by any reputable person, or, in case of the children, by the mother or any reputable person, such Justice may issue his summons to such husband, wife, widow, or father to show cause why he or she should not maintain his wife or his or her children.

(2.) Whether the defendant appears or not, or has or has not been served with a summons, any Magistrate present shall, in a summary manner, inquire into the matter of the complaint; and, if he is satisfied that the wife or the children, as the case may be, are deserted, or are in fact without adequate means of maintenance, and that the husband, or the mother as aforesaid, or the father is able to maintain her or them, or to contribute to her or their maintenance, such Magistrate shall make an order, in writing, directing him or her to pay, either weekly or monthly, and to such person and in such manner for her or their maintenance as the Magistrate thinks fit, such moderate sum or allowance, not exceeding one pound per week, for such wife, or for any one child until such child arrives at fourteen years of age, as he considers fit.

(3.) In addition to making such order, the Magistrate may commit the defendant to prison for any period not exceeding six months, with or without hard labour.

(4.) Any such order may be made to include the cost of bringing a husband, wife, widow, or father as aforesaid back to the place where the said order is made from any other place where he or she may for the time being be residing.

17. (1.) Every person who refuses, fails, or neglects to comply with an order made against him under the last preceding section, and goes to reside or is resident either permanently or temporarily in any of the Australasian Colonies, is liable on indictment to one year's imprisonment with hard labour.

Certain breaches of Act indictable when offender leaves New Zealand.  
1894, No. 22, sec. 17

(2.) No person convicted of an offence against this section shall be liable to any other penalty or punishment under this Act; but such conviction shall not prevent the making or operation of any order for the payment of money or the doing of any act by such person which may lawfully be made under this Act.

18. (1.) If complaint be made on oath to a Justice by any woman or by any reputable person that there is reasonable ground to believe that the husband of such woman intends to desert her or to leave her without adequate means of maintenance, or by the mother of any child, whether illegitimate or born in wedlock, or by any reputable person that there is reasonable ground to believe that the father or mother of such child intends to desert it or leave it without adequate means of maintenance, such Justice may issue his summons to such husband, father, or mother to show cause why he or she should not maintain his wife or his or her child, or may, in his discretion, issue his warrant for the apprehension of such husband, father, or mother.

Order may be made where husband, father, or mother intends to desert.  
Ibid, sec. 18

(2.) On the day appointed for the hearing, whether the defendant appears or not, any Magistrate shall inquire into the matter of such complaint; and, if he is satisfied that the defendant intends, or that there is reasonable ground to believe that he or she intends, to desert or leave such wife or child without adequate means of maintenance, such Magistrate may make an order for maintenance as hereinbefore mentioned.

19. Where reasonable cause is shown by or on behalf of a husband for his so deserting or failing to maintain his wife, the Magistrate may decline to make an order, unless it is proved to the satisfaction of the Magistrate that the wife is a destitute person.

Magistrate may refuse to make order where reasonable cause for desertion.  
Ibid, sec. 19

20. (1.) Where a husband has quitted his wife, or a father or mother his or her children or child, for a period exceeding sixty days, and has left during fourteen at the least of those days such wife or children or child without adequate means of maintenance, such husband, father, or mother shall, until proof is given to the contrary, be presumed to have unlawfully deserted such wife or children or child.

What shall be deemed desertion.  
Ibid, sec. 20

(2.) Nothing in this section shall be deemed to prevent the Magistrate from finding the fact of desertion on other evidence, or on proof of abandonment for a less period than sixty days, if he thinks fit.

21. A wife compelled to leave her husband's residence under reasonable apprehension of danger to her person, or under other circumstances that in the opinion of the Magistrate justify her withdrawal from such residence, shall, for the purposes of this Act, be deemed to have been deserted without reasonable cause.

Provision when wife compelled to leave her husband.  
Ibid, sec. 21

#### *General Provisions as to Orders.*

22. (1.) The Magistrate making an order under this Act touching the maintenance of any destitute person or child may, if he thinks fit, direct the Clerk of the Court to forward to the Registrar of

Registered orders to have priority.  
1904, No. 32, sec. 6

Deeds and the District Land Registrar of the district in which any land belonging to the person against whom the order is made is situate a duplicate of the order for the purpose of registration, and the Registrar shall register the same accordingly.

(2.) Thereupon the said order shall have priority over all other liabilities of the person against whom such order is made, and shall be a charge upon any land belonging to him in that district, to rank in priority next after any mortgage or other charge upon that land made previous to the date of the order.

Security for compliance with order.  
1894, No. 22, sec. 25

23. (1.) Where an order is made for the maintenance or support of any destitute person or child, whether illegitimate or not, the Magistrate making such order may order the defendant, either at the time of making such order or at any time thereafter, to lodge with the Clerk of the Court such sum of money as he deems sufficient, or to find good and sufficient security by bond to the Clerk of the Court, to enure for the benefit of the Clerk for the time being, with or without sureties to the satisfaction of the Magistrate, that he or she will comply with such order of maintenance, or that he or she will not desert or leave without adequate means of maintenance his said wife or her said husband, or his or her children, whether illegitimate or not.

(2.) In default of such deposit or security being respectively made or found, the Magistrate may commit such person to prison for any period not exceeding six months, if such order be not sooner complied with.

(3.) Every such bond shall be in the form or to the effect set forth in the Second Schedule hereto; and any one Justice, upon being satisfied that the same has been duly made and perfected, may order the discharge of the defendant from prison or custody.

(4.) A Magistrate may, on application to him, and on being satisfied that the condition of any such bond has been broken, order the aforesaid Clerk to assign the same to some person named in such order, and such person shall thereupon be entitled to sue upon the bond in his own name, as if the same had been originally given to him, and shall be entitled to recover thereon the full amount recoverable in respect of any breach of the conditions of the said bond.

When person imprisoned, order for maintenance of wife and children may be made.  
Ibid, sec. 28

24. (1.) Where, upon complaint by the husband, wife, father, mother, or children of any person, or by any reputable person on his, her, or their behalf, it appears that such first-mentioned person, not being a person convicted of any crime for which the punishment is imprisonment with hard labour for a term of three years or upwards, is imprisoned, and has a husband, wife, or children, whether illegitimate or not, and that such husband, wife, or children are without adequate means of maintenance, and that the person imprisoned has property that can be made available for the maintenance of such husband, wife, or children, the Magistrate may, if he thinks fit, and without issuing any summons or requiring the presence of the person so imprisoned, make such order for the maintenance of such husband, wife, or child as is hereinbefore mentioned.

(2.) No such order shall be made if it is proved that the estate of the person so imprisoned is not more than sufficient to pay his just debts.



25. (1.) Where any payment directed under any order hereinbefore authorised to be made is in arrear for one month, any Justice may, if he thinks fit, issue his warrant of distress for the purpose of levying the same, or so much thereof as then remains unpaid, and all proceedings may be had under "The Justices of the Peace Act, 1908," for the enforcement of such warrant as if it were for a fine adjudged upon a conviction, and any form of warrant under that Act may be altered to suit the circumstances of any case under this section.

Warrant of distress and order to receive rents, &c., and to sell property may be issued.

1894, No. 22, sec. 26

(2.) Such Justice may also by warrant authorise and direct some person to receive so much of the rents, profits, and income of the estate of the person against whom or whose estate such order is made, and to sell by public auction such portions of such estate, as the Justice from time to time directs.

(3.) In effecting any such sale the person so authorised as aforesaid shall have all the powers and authorities conferred on mortgagees by "The Land Transfer Act, 1908," or by "The Property Law Act, 1908," as the case may be.

(4.) No notice or demand shall be requisite before exercising such powers or any of them.

(5.) The warrant shall, so far as regards any purchaser or person dealing with the person so authorised, be conclusive evidence that the power to sell is vested in the person named therein.

(6.) Such rents and profits, and the net proceeds of any sale, shall be applied towards the maintenance of the husband, wife, child, or other person, as the case may be, in whose favour such order was made, in such manner as the Magistrate thinks fit.

(7.) The receipt of the person so authorised as aforesaid shall be a good discharge to any tenant or other person for all moneys paid by him, and acknowledged in such receipt to be paid.

26. Where any husband, father, mother, or near relative keeps himself or herself concealed or away from his or her usual place of abode, or goes or remains out of New Zealand, with intent to evade any payment ordered to be made, if the fact is proved on oath, the Magistrate, on complaint made to him for that purpose, may issue the warrant and give the authority mentioned in subsection two of the last preceding section without the previous issue of any warrant or summons.

Order may be issued without previous summons or warrant.

Ibid, sec. 27

27. (1.) Where an order is made for the maintenance of any child, whether illegitimate or born in wedlock, the Magistrate making the order, or any Magistrate at any time thereafter, upon the application of any reputable person, may appoint in writing some fit person, who, with his or her own consent, shall have the custody of such child.

Custody of children.

Ibid, sec. 29

(2.) Any Magistrate may revoke the appointment of such person, and may appoint another person in his or her stead, as occasion requires.

(3.) Every person so appointed to have the custody of any such child shall be empowered to apply for and recover all payments becoming due under any such order as aforesaid.

(4.) Where either the mother or father or putative father is willing and able to take the custody of and maintain any child, no

order shall be made giving the custody to any other person without the consent of such parents, unless such parent or parents is or are, in the opinion of the Magistrate, unfit to be intrusted with the custody of the child.

Supplemental orders may be made.

1894, No. 22, sec. 30

28. Where an order has been made touching the maintenance of any husband or wife, or of any child, whether illegitimate or born in wedlock, any Magistrate may from time to time, either upon or without any application for that purpose, make such order in writing as he thinks necessary for better securing the payment and regulating the receipt of the allowance directed for such husband's, wife's, or child's maintenance, or for investing and applying the proceeds of any property directed to be sold, or any rents, profits, or income directed to be received, or any money paid in lieu of and as compensation for any weekly or other payment, as provided by section thirteen hereof, or for insuring the due appropriation of such allowance to the purposes of such maintenance, or of the proper bringing-up and education of such child.

Separate orders may be made on different relatives.

Ibid, sec. 31

29. (1.) Nothing in this Act shall preclude the making of distinct orders, either by the same Magistrate or by different Magistrates, and either at the same time or at different times, upon different near relatives liable to contribute to the maintenance of a destitute person, so that an adequate sum in the whole shall be paid for the maintenance of such person, not in any case, however, exceeding a rate of one pound per week.

(2.) The fact that an order has been made for the full amount of one pound per week against one person shall not be ground for refusing to make an order for the full amount or any part thereof against another person liable; but, in the case of successive orders, the later order shall vary the former order to the requisite extent by discharging or reducing the liability of the persons ordered to pay under the preceding orders.

Any Magistrate may suspend or alter order.

Ibid, sec. 32

30. Any Magistrate may from time to time suspend, alter, vary, or cancel any order made under this Act, whether or not originally made by himself, and, if necessary, make a new order in substitution of any order so cancelled, and, within the limits fixed by this Act, increase or diminish the amount specified in any such order.

Any Magistrate may enforce order.

Ibid, sec. 33

31. Any Magistrate may at any time inquire into an allegation of disobedience of any order made under this Act, and may for that purpose summon and examine all proper parties and witnesses, and may either commit the offender to prison for any period not exceeding six months with or without hard labour, or may impose upon such offender a fine not exceeding fifty pounds.

#### *Recovery of Maintenance-moneys.*

Government or trustees may recover costs of maintaining deserted wife or child.

Ibid, sec. 34

32. (1.) The cost or proportion of cost of maintaining any deserted and destitute wife or child incurred by the Government, or by any local authority, or by the trustees of any benevolent institution may be recovered from the husband or father of such deserted wife or child; but not more shall be recovered than one pound per week for such wife or for each such child.

(2.) The information or complaint in such case may be made by any constable or any person authorised by the Minister or local authority or trustees.

33. (1.) If any deserted and destitute wife or child, or any destitute person, is maintained wholly or in part by the Government, or by any local authority, or by the trustees of any benevolent institution, the expense thereby incurred shall be deemed to be a debt due from such person to His Majesty, or to the local authority, or to the trustees, and shall bear interest at the rate of six pounds per centum per annum, computed from the time or respective times from which such expenses were incurred; and such debt and costs may be recovered in any competent Court at the suit of the Minister, or of the local authority, or of the trustees, or by any person authorised in writing by him or them.

Expenses of maintaining a destitute person to be recoverable as a debt.

1894, No. 22, sec. 35

(2.) The Magistrate, on the information or complaint of the Minister, or of any local authority, or trustees, may make an order on the employer of any person liable to maintain his deserted or destitute wife or child, attaching, for such period as the Magistrate thinks fit, such portion of the wages due to or earned by such person during that period as may be adjudged a reasonable contribution towards the maintenance of such deserted or destitute wife or child, and any moneys paid by the employer under such order shall be deemed to be wages paid to such person.

Wages may be attached for maintenance of destitute person.

1904, No. 32, sec. 2

(3.) If the employer makes default in complying with any such order, the amount ordered to be paid and not so paid may be recovered from him by the Minister, local authority, or trustees on whose application the order was made.

In default of payment, employer liable.

Ibid, sec. 3

34. (1.) If the husband or father of such wife or child, or such destitute person, has any property, the Minister, or local authority, or trustees, or any person instructed by him or them, may, in a summary manner, apply to a Magistrate for a warrant authorising such property or any part thereof to be let, or the rents, issues, and profits arising therefrom or from any part thereof to be collected, or such property or any part thereof to be sold, and the Magistrate may, if he is satisfied that such deserted wife or child or destitute person is so maintained as aforesaid, grant such warrant accordingly.

Warrant to let, sell, or collect rents of property of destitute persons, &c., may be granted.

1894, No. 22, sec. 36

(2.) Such warrant shall confer upon the person named in it all such powers, privileges, and rights over the property affected by the warrant as are expressed therein; and the person so authorised may exercise such powers, privileges, and rights as fully and effectually as the person maintained could himself exercise them.

(3.) A warrant authorising the sale of any land shall not be issued until the Magistrate is satisfied that the rents, issues, and profits of the property are insufficient to maintain such deserted wife or child or destitute person.

(4.) The purchase-money, rents, issues, and profits, and other moneys arising from such property, or from the part thereof affected by such warrant, shall be applied first in paying the expenses of and incidental to the letting, collecting, receiving, or selling of such property, and next in payment of the cost of the maintenance of such wife, child, or destitute person, not exceeding one pound for every week during which such person has been so maintained,

and the balance shall be paid to such person when he ceases to be maintained, or to his executors or administrators on his decease.

(5.) No deserted and destitute wife or destitute person while so maintained shall, without the consent of the Minister, or local authority, or trustees, as the case may be, alienate or otherwise dispose of (except by will) such property or any part thereof.

Cost of past maintenance may be recovered from after-acquired property.

1894, No. 22, sec. 37

35. (1.) Where the husband or parent of such wife or child, or such destitute person, or any near relative of such person, becomes able to repay and reimburse the amount or cost of such maintenance, or any part thereof, at any time within six years after the same first accrued due, any Magistrate, upon the information or complaint of the Minister, or local authority, or trustees, or of any person instructed by him or them, may inquire into the matter.

(2.) The Magistrate, if of opinion that such husband or father, or such destitute person, or any near relative of such person, is able to repay the whole or part of the amount or cost of such maintenance, may order him to pay to the aforesaid Minister, or local authority, or trustees such sum of money, either in one sum or by instalments, as in the judgment of the Magistrate he can reasonably afford and ought to contribute.

(3.) No order shall be made under this section against any one or more persons for the recovery of more than the cost of past maintenance for a period of two years.

Maintenance of person in a charitable institution to be paid to managers.

Ibid, sec. 38

36. Where a person in whose favour an order for maintenance is made under this Act is maintained by a charitable institution, the moneys made payable under such order shall be paid by the person directed by such order to pay the same to the managers of such institution, to be applied in defraying the expenses of such maintenance; and the managers shall have all powers given by this Act for enforcing payment of such moneys.

Enforcement of maintenance orders by attachment, &c.

1904, No. 32, sec. 4

37. (1.) Any order made under this Act or under any former Act relating to destitute persons, touching the maintenance of any destitute person or child, may be enforced in like manner as if it were a judgment for a debt under "The Magistrates' Courts Act, 1908"; and in particular the provisions of that Act relating to attachment of debts shall, *mutatis mutandis*, extend and apply to any such order.

(2.) The powers of enforcing payment conferred by this section are in addition to and not in substitution for the powers elsewhere conferred by this Act.

Public Trustee to contribute to maintenance in certain cases.

1894, No. 22, sec. 39

38. The Public Trustee shall, for the purposes of this Act, be deemed to be a near relative of any destitute person maintained partly or wholly by the Government, or by any local authority, or by the trustees of any charitable institution, where such person's near relative has died intestate; and he is hereby authorised to contribute, and shall contribute, out of the estate in his hands of any such intestate person, in the same manner in all respects as the person so dying intestate would have been liable to contribute had he been alive.

Near relative may recover moneys, &c., paid for maintenance.

Ibid, sec. 40

39. If a near relative (other than the father, stepfather, or stepmother) of any deserted and destitute wife or child pays, under the compulsion of an order made under the authority of this Act, any moneys for the maintenance of such wife or child, such near

relative shall be entitled in a summary manner to recover from the husband or father, as the case may be, of such wife or child all such moneys, with interest thereon at the rate of six pounds per centum per annum, and all costs incurred by him.

*Procedure.*

40. All proceedings under this Act may be taken in a summary manner under "The Justices of the Peace Act, 1908"; except that the fees specified in the Third Schedule to that Act shall not be taken in respect of such proceedings under this Act.

Summary proceedings.  
1894, No. 22, sec. 41

41. In proceedings under this Act the Magistrate may receive any evidence he thinks fit, whether the same is strictly legal evidence or not.

Evidence.  
Ibid, sec. 42

42. In any proceedings under this Act against a husband or a wife the wife and husband respectively shall be competent and admissible witnesses, and, except when defendant, compellable to give evidence.

Husbands and wives competent witnesses.  
Ibid, sec. 43

43. The provisions of "The Magistrates' Courts Act, 1908," relating to the taking of evidence of witnesses resident at a distance shall, *mutatis mutandis*, apply to proceedings under this Act in cases where the witness is resident fifty miles or upwards from the place where the proceedings are to be heard.

Witnesses resident at a distance.  
1904, No. 32, sec. 5

44. (1.) Upon the hearing of a complaint under this Act for the recovery from any near relative of any sum of money, the burden of proving that the person complained of is not a near relative, or that such relative is not of sufficient means, or that any destitute person is of sufficient means shall lie upon the defendant, who shall be competent and compellable to give evidence touching the matter of such complaint.

Burden of proof.  
1894, No. 22, sec. 44

(2.) This section does not apply to a complaint made under section eight hereof.

45. Successive judgment summonses for the recovery of moneys payable under any order made under this Act may be issued from time to time until such moneys are paid.

Successive judgment summonses.  
Ibid, sec. 45

46. (1.) Every person committed to prison for failure to comply with any order for maintenance made under this Act shall be discharged upon compliance with the terms of the said order.

Imprisonment not to satisfy debt for maintenance or previous costs incurred.

(2.) No imprisonment suffered by any person in consequence of such failure as aforesaid shall operate as an extinguishment of the debt or liability in respect of which such order was made; and in any subsequent proceedings against any such person in respect of such debt or liability the costs and expenses of any previous orders or warrants made or issued in connection therewith, including the expenses of conveying such person to or from the place of hearing, may be recovered in the same manner as if such costs and expenses had formed part of the original debt or liability, and may be added thereto.

Ibid, sec. 46

47. An order may be made under this Act for the recovery of moneys owing for the past maintenance of any destitute person, or destitute and deserted wife or child, or illegitimate child, notwithstanding that such person, wife, child, or illegitimate child may have died before the making of the order; and any such order may be

Posthumous orders may be made.  
Ibid, sec. 47

made to extend to the recovery of the expenses paid for the burial of such person, wife, child, or illegitimate child respectively.

Limitation of time for laying information or complaint.  
1894, No. 22, sec. 48

48. The limitation of time in "The Justices of the Peace Act, 1908," within which informations shall be laid or a complaint made shall not apply to any proceeding for the recovery of money under this Act; provided that such proceedings shall be taken within six years after such moneys have become due and payable.

Warrant for apprehension may be issued in the first instance.  
Ibid, sec. 49

49. A Justice before whom a complaint is made under this Act may, if he thinks fit, without issuing his summons in the first instance, issue his warrant to apprehend and cause the person complained of to be brought before some Justice, to be further dealt with according to law.

Execution of warrants.  
Ibid, sec. 50

50. Any warrant of apprehension issued by a Magistrate under this Act or for the purposes thereof may be executed either within or beyond the place or district wherein the said Magistrate exercises jurisdiction.

Summons, how served.  
Ibid, sec. 51

51. Every summons issued under this Act may be served on the person summoned either personally or (if he cannot be found) then at his last known place of residence, and the person serving the summons may make before any Justice affidavit of the service thereof, stating the mode and time and place of such service (and, if the summons has not been served personally, then that the person summoned cannot be found), and the Magistrate hearing the case may, if he thinks fit, receive such affidavit as sufficient proof of due service of the summons, and may thereupon either proceed in the case *ex parte*, or, at his discretion, issue a warrant to apprehend the person so summoned.

Appeal.  
Ibid, sec. 53

52. Any person aggrieved by any conviction or order made under the authority of this Act, or by the refusal of any Magistrate to make an order under the aforesaid authority, shall have the same right of appeal as is provided by "The Justices of the Peace Act, 1908."

Married women's protection orders may be enforced under this Act.  
Ibid, sec. 52

53. All the provisions of this Act relating to the enforcement of orders of any kind made under this Act shall apply to the enforcement of orders of any kind made under the provisions of Part II of "The Married Women's Property Act, 1908."

#### *Intercolonial Arrangements.*

Person deserting wife or children in other British possession may be arrested in New Zealand.  
Ibid, sec. 23

54. Where the Legislature of any British possession beyond the limits of the United Kingdom, the Channel Islands, and the Isle of Man, and other than New Zealand, makes provision whereby the offence of desertion of wife or children and going to reside beyond the limits of such possession is constituted an offence, whether punishable on indictment or otherwise by imprisonment for a term of twelve months or more, then and in every such case every person accused of such offence and coming to New Zealand may be there arrested and dealt with under the Imperial Act intituled "The Fugitive Offenders Act, 1881," and the Act of New Zealand intituled "The Magistrates' Courts Act, 1908."

SCHEDULES.

FIRST SCHEDULE.

ENACTMENTS CONSOLIDATED.

- 1894, No. 22.—“The Destitute Persons Act, 1894.”
- 1904, No. 32.—“The Destitute Persons Act Amendment Act, 1904.”
- 1905, No. 18.—“The Destitute Persons Act Amendment Act, 1905.”

SECOND SCHEDULE.

BOND THAT MAY BE TAKEN AS SECURITY UNDER “THE DESTITUTE PERSONS ACT, 1908.”

Section 23.  
1894, No. 22  
Schedule.

Know all men by these presents that I, A. B., of (the principal party), and E. F., of , and G. H., of , in New Zealand (sureties), are held and firmly bound unto the Clerk of the Court at (who, with his successors, is hereafter referred to as “the said Clerk”) in the penal sum of £ , to be paid to the said Clerk; for which payment to be well and truly made we bind ourselves and each of us, and our and each of our executors and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this day of , 19 .

WHEREAS , of , was, on the day of , 19 , charged before , Esquire, a Stipendiary Magistrate for New Zealand, sitting at , for that he [or she], the said , being the of of , a destitute person [or child] within the meaning of “The Destitute Persons Act, 1908,” has unlawfully deserted the said [or has failed to provide the said with adequate means of maintenance]:

And whereas the said was ordered to pay to the Clerk of the Magistrate’s Court at , for the support of the said , the sum of per , the first of such payments to be made on the day of , 19

Now, the condition of this bond is such that if the said shall comply with the conditions of such order in all respects then this bond shall be void and of none effect, but otherwise shall remain in full force and virtue.

Signed, sealed, and delivered by the said A. B., in the presence of	}	A. B.
Signed, sealed, and delivered by the said E. F., in the presence of	}	E. F.
Signed, sealed, and delivered by the said G. H., in the presence of	}	G. H.