

DESTITUTE PERSONS AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill makes miscellaneous amendments to the Destitute Persons Act 1910.

Clause 2 empowers the Magistrate to exercise his jurisdiction under the principal Act to make, vary, or enforce a maintenance order against a husband or wife in favour of the other spouse, or a maintenance order against a parent in respect of a child, notwithstanding that a petition for divorce, nullity, judicial separation, or restitution of conjugal rights is or has been presented to the Supreme Court by either party to the marriage. The Supreme Court's power to make an interim order for alimony or a final order for maintenance or alimony is not affected. Any order made by the Magistrate is deemed to be suspended by an interim order of the Supreme Court, and is deemed to be cancelled by a final order of the Supreme Court.

Clause 3 authorizes a Magistrate, in his discretion, where a separation order or an order of guardianship is or has been made, to vest in the husband or wife the tenancy of any dwellinghouse that is held by the other spouse and in which either of the parties resides. Except for the change of tenant, the landlord's rights are not to be affected. Provision is made for a reversion of the tenancy in the original tenant on a change of circumstances or on the death of the party in whom the tenancy has been so vested. The clause binds the Crown (where the Crown is the landlord).

Clause 4 provides that the landlord of a dwellinghouse which is the subject-matter of a vesting order under *clause 3* may apply to a Magistrate, within fourteen days after service of the order upon him, for the cancellation or variation of the order.

Clause 5 gives the landlord a right of appeal against a vesting order made under *clause 3*, if he has first applied for the cancellation or variation of the order under *clause 4* and his application has been refused. He may also appeal against the refusal of his application. The time allowed for appeals is not to run against any party to the proceedings until the landlord's application has been disposed of, or, if the landlord does not so apply, until the expiration of twenty-one days after the making of the vesting order.

Clause 6 increases from £200 to £500 the maximum security that a Magistrate may require to be given for obedience to a maintenance order.

Clause 7 authorizes a Magistrate to extend the operation of an order for the maintenance of any child who is or will be engaged in a course of education or training after the age of sixteen. At present such an order expires when the child attains that age. No extension is to be for more than one year at any one time, or to operate after the child attains the age of eighteen.

Clause 8 empowers the Registrar of a Magistrate's Court, on the application of either party to a maintenance order, to vary the order by changing the Court office into which moneys are payable under the order. Any party affected by the Registrar's decision may have it reviewed by a Magistrate, who may confirm, vary, or rescind it.

Clause 9 extends section 43 of the principal Act so as to make seamen's wages liable to attachment by order of the Magistrate. Under section 83 of the Shipping and Seamen Act 1908, those wages are protected from attachment.

Clause 10 extends section 44 of the principal Act so as to make workers' compensation moneys available as the subject of a charging order made by the Magistrate. Under section 60 of the Workers' Compensation Act 1922, compensation moneys cannot be charged.

Clause 11 provides that where moneys are payable under a maintenance order, or under an agreement enforceable under any Act as a maintenance order, to the Superintendent of the Child Welfare Division of the Department of Education, the certificate of the Superintendent as to the amount of arrears under the order or agreement is to be sufficient evidence, in the absence of proof to the contrary, of that amount in proceedings taken by him or on his behalf to enforce payment.

Clause 12 authorizes the making of regulations for the taking of evidence in any proceedings by a Magistrate or Registrar of any Magistrate's Court other than the Court in which the proceedings are taken. It replaces section 79 of the principal Act, which is limited to proceedings on a complaint, and under which an order for the taking of evidence elsewhere can be made only after the hearing of the complaint has actually commenced. The existing section is also limited in that an order cannot be made for the taking of such evidence before a Registrar.

Hon. Mr. Webb

DESTITUTE PERSONS AMENDMENT

ANALYSIS

Title.	7. Orders for maintenance of children may be extended to have effect beyond age of sixteen.
1. Short Title.	8. Power of Registrar of Magistrate's Court to vary orders as to Court into which moneys payable.
2. Powers of Magistrate as to maintenance orders when divorce suit pending.	9. Section 43 of principal Act (as to attachment of salary or wages) to apply to seamen's wages.
3. Power of Magistrate to vest tenancy of dwellinghouse in person in whose favour a separation or guardianship order is made.	10. Section 44 of principal Act (as to charging orders) to apply to compensation moneys.
4. Right of landlord to apply for cancellation or variation of vesting order.	11. Evidence of arrears under maintenance order or agreement made in favour of Superintendent of Child Welfare Division.
5. Appeals in respect of orders under <i>last two preceding</i> sections.	12. Regulations as to taking of evidence. Repeal.
6. Increase of maximum security that may be required for obedience to maintenance order.	

A BILL INTITULED

AN ACT to amend the Destitute Persons Act 1910.

Title.

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

1. This Act may be cited as the Destitute Persons Amendment Act 1951, and shall be read together with and deemed part of the Destitute Persons Act 1910 (hereinafter referred to as the principal Act).

Short Title.

See Reprint of Statutes, Vol. II, p. 896

Powers of
Magistrate as
to maintenance
orders when
divorce suit
pending.
1939, No. 13

2. (1) Subject to the provisions of this section, the jurisdiction conferred on a Magistrate by section seventeen or section twenty-six of the principal Act, or section six of the Domestic Proceedings Act 1939, to make an order for the maintenance by any person of that person's wife or husband or of any child or adopted child of either of them shall be exercisable, and all the provisions of the principal Act, including the powers to cancel, vary, suspend, or enforce any order, shall apply to any order so made, including any order made before and in force at the passing of this Act, notwithstanding that a petition is or has been presented to the Supreme Court, whether before or after the passing of this Act, by that person or by that person's wife or husband for divorce, nullity of marriage, judicial separation, or restitution of conjugal rights.

(2) Nothing in this section shall affect the power of the Supreme Court to make an interim order for alimony or a final order for maintenance or alimony.

(3) Any maintenance order to which subsection one of this section applies shall be deemed to be suspended while there is in force an interim order for alimony relating to the same parties, and shall be deemed to be cancelled by a final order for maintenance or alimony relating to the same parties.

(4) In this section,—

“Interim order for alimony” means an interim order made under section thirty-three of the Divorce and Matrimonial Causes Act 1928 or by virtue of any rule of law for the payment of moneys by way of alimony or otherwise pending the determination of a petition for divorce, nullity of marriage, or judicial separation:

“Final order for maintenance or alimony” means an order made under section nine or Part IV of the Divorce and Matrimonial Causes Act 1928 on the granting of a decree of divorce, nullity of marriage, judicial separation, or restitution of conjugal rights, directing that moneys or other property be secured or settled, or varying a settlement, or directing the periodical payment of any moneys by way of maintenance, alimony, or otherwise.

See Reprint
of Statutes
Vol. III, p. 878

3. (1) Where under section eighteen of the principal Act a Magistrate makes a separation order or an order of guardianship in favour of any person, the Magistrate making the order or any other Magistrate may at the same or any subsequent time, in his discretion, having regard to all the circumstances of the case, make an order vesting in that person the tenancy of any dwellinghouse, being a dwellinghouse within the meaning of the Tenancy Act 1948,—

Power of Magistrate to vest tenancy of dwellinghouse in person in whose favour a separation or guardianship order is made.

1948, No. 76

10 (a) Of which at the time of the making of the separation order or order of guardianship the husband or wife of that person is or was either the sole tenant or a tenant holding jointly or in common with that person; and

15 (b) Of which at the time of the making of the order under this subsection the husband or wife of that person is a tenant as aforesaid; and

(c) In which that person or the husband or wife of that person resides at the time of the making of the order under this subsection.

20 (2) On and after the taking effect of an order made under subsection *one* of this section, unless the tenancy is sooner lawfully determined, the person in whose favour it is made shall be deemed to be the tenant of the dwellinghouse upon and subject to the terms and conditions of the tenancy in force at the time of the making of the order.

25 (3) On the taking effect of an order made under subsection *one* of this section, unless the tenancy is sooner lawfully determined, the husband or, as the case may be, the wife of the person in whose favour it is made shall be deemed to have ceased to be the tenant of the dwellinghouse.

30 (4) The jurisdiction conferred on a Magistrate by subsection *one* of this section may be exercised in any case where a separation order or an order of guardianship has been made before the passing of this Act.

35 (5) Nothing in this section or in any order made thereunder shall be construed to limit or affect the operation of any enactment or rule of law for the time being applicable to any tenancy to which this section applies or to the dwellinghouse held under the tenancy, or to authorize any Magistrate to vary, except by vesting or revesting the tenancy pursuant to this section, 40 any express or implied term or condition of the tenancy.

(6) On the application of the husband or wife of any person in whom any tenancy is vested by an order under subsection *one* of this section, any Magistrate may, if in his opinion the circumstances have so changed since the making of the order that the tenancy should be revested in the person or any of the persons in whom it was vested before the making of that order, make an order cancelling the first mentioned order and revesting the tenancy accordingly. 5

(7) At any time after the death of any person in whom any tenancy is vested by any order made under subsection *one* of this section, the husband or wife of that person may, unless the tenancy has been determined by reason of the death of that person, apply to a Magistrate for an order revesting the tenancy in the applicant, and the Magistrate may make an order accordingly. 10 15

(8) On the taking effect of any revesting order under subsection *six* or subsection *seven* of this section, unless the tenancy is sooner lawfully determined, the person in whose favour it is made shall be deemed to be the tenant of the dwellinghouse upon and subject to the terms and conditions of the tenancy in force at the time of the making of the revesting order. 20

(9) Any order under this section may be made upon and subject to such terms and conditions, not inconsistent with this Act, as the Magistrate thinks fit. 25

(10) Every order under this section shall take effect on such date as may be specified in that behalf in the order, being a date not earlier than two months after the date of the making of the order: 30

Provided that it shall not in any case take effect—

(a) If it is made subject to the performance of any condition or the occurrence of any event specified in the order, until the condition is performed or the event occurs: 35

(b) If any application is made by the landlord under section *four* of this Act for the cancellation or variation of the order, and the order is confirmed with or without variation, until the order of confirmation is made or until such date as may be specified in that behalf in the confirming order: 40

(c) If there is an appeal to the Supreme Court against the order, or an appeal by the landlord against the refusal of a Magistrate to cancel or to vary the order, until the appeal has been determined.

5 (11) The jurisdiction of a Magistrate to make any order under this section may, if it is not exercised on the hearing of a complaint under section seventeen of the principal Act, be exercised on the application of any
10 person made *ex parte* or otherwise, but the Magistrate may on any such application direct that notice of the application shall be given to such persons as he thinks fit. For the purposes of section thirty-eight of the principal Act (which relates to rehearings) any
15 such application shall be deemed to be a complaint.

(12) Where any dwellinghouse to which any order made under this section relates is held under any registered lease, the Registrar of the Magistrate's Court in which the order is made shall, on the taking effect
20 of the order, send a copy of the order, sealed with the seal of the Court, to the District Land Registrar or, as the case may require, to the Registrar of Deeds, who shall, upon payment of the prescribed registration fee, register it in the prescribed manner. The said registra-
25 tion fee shall be payable by the person in whose favour the order is made.

(13) This section shall bind the Crown.

4. (1) Where any order vesting or revesting any tenancy is made under section *three* of this Act, the
30 Registrar of the Magistrate's Court in which the order is made shall forthwith cause to be served on the landlord of the dwellinghouse a copy of the order together with a notice in the prescribed form, signed by the Registrar, informing the landlord of his right to apply
35 to a Magistrate to have the order cancelled or varied under this section.

Right of landlord to apply for cancellation or variation of vesting order.

(2) The following provisions shall apply with respect to the service of the copy of the order and the notice:—

40 (a) They may be served by delivering them to the landlord personally or by posting them by registered letter addressed to him at his last known place of abode or business in New Zealand:

(b) If they are so posted as aforesaid they shall be deemed to have been served at the time when the registered letter would in the ordinary course of post be delivered:

(c) If the landlord is absent from New Zealand, they may be served as aforesaid on his agent in New Zealand. 5

(3) Within fourteen days after service of the notice, the landlord may apply to a Magistrate for the cancellation or variation of the order. 10

(4) Notice of any such application shall be given, in such manner as the Magistrate directs, to all parties to the proceedings in which the order was made, and every such party shall be entitled to be heard on the application. 15

(5) After hearing the application, the Magistrate may, in his discretion, cancel the order, or confirm it either unconditionally or subject to such variations or conditions as he thinks fit.

(6) Any application under this section may be disposed of in Chambers. 20

(7) Where any order is made under this section, the Registrar shall forthwith cause a copy of the order to be served, in the manner prescribed by subsection *two* of this section, on every party who was entitled to be heard on the application under this section, and the provisions of that subsection shall accordingly apply with the necessary modifications. 25

5. (1) Subject to the provisions of this section, the landlord of any dwellinghouse to which any order under section *three* of this Act relates shall be deemed for the purposes of section seventy-seven of the principal Act (which relates to appeals) to be a person prejudicially affected by the order, and shall accordingly be entitled to appeal under that section to the Supreme Court— 30 35

(a) Against the order:

(b) Against the refusal of a Magistrate to cancel the order on any application under section *four* of this Act:

(c) Against the refusal of a Magistrate to make any variation for which any such application as aforesaid is made. 40

(2) The landlord shall not, without the leave of the Supreme Court, be entitled to appeal against the order unless he has first applied to a Magistrate for the 45

Appeals in respect of orders under last two preceding sections.

cancellation or variation of the order as aforesaid and the Magistrate has refused to cancel the order or has refused to make the variation so applied for.

5 (3) The time allowed for an appeal against the order shall not begin to run against the complainant or applicant or defendant, or against any person affected or deemed to be affected by the order, and no such appeal may be commenced by any person, until the expiration of twenty-one days after the date of the
10 making of the order, or, in any case where an application is made by the landlord for the cancellation or variation of the order, until the landlord's application is disposed of.

(4) Nothing in subsection two of the said section
15 seventy-seven shall apply to any such order as aforesaid.

6. Section thirty of the principal Act is hereby amended by omitting from subsection four the words "two hundred pounds", in both places where those
20 words occur, and substituting in each case the words "five hundred pounds".

7. (1) This section shall apply to any maintenance order made, whether before or after the passing of this Act, under Part II or Part IV of the principal Act in respect of any child under the age of sixteen
25 years.

(2) The power of a Magistrate, under section thirty-nine of the principal Act, to vary any maintenance order, or to substitute a new order therefor, is hereby extended to include power to make an order varying
30 any maintenance order to which this section applies, or substituting a new order therefor, in accordance with the provisions of this section.

(3) If in any proceedings under the principal Act for the variation of any maintenance order to which
35 this section applies, or for the substitution of a new order therefor, it appears to the Magistrate—

(a) That the child for whose maintenance provision is made by the maintenance order will be or is engaged in a course of education or training after attaining or having attained the age of
40 sixteen years; and

Increase of maximum security that may be required for obedience to maintenance order.

Orders for maintenance of children may be extended to have effect beyond age of sixteen.

(b) That it is expedient that payments towards the maintenance of the child should be made or continue to be made after the child attains or has attained that age,—
 the Magistrate may, in the order of variation or, as the case may be, in the substituted order, direct that payments of a reasonable sum shall be made or continue to be made, at such times and in such manner as the Magistrate thinks fit, towards the future maintenance of the child for such period after the child attains or has attained the age of sixteen years as may be specified in the order of variation or substituted order, being a period not exceeding one year from the date of that order.

(4) The period specified in any order made under this section may from time to time be extended, by a subsequent order made under this section, for any further period not exceeding one year as aforesaid and expiring not later than the date when the child attains the age of eighteen years.

(5) Proceedings for any order under this section may be commenced, and any such order may be made, in respect of any maintenance order to which this section applies, notwithstanding that the maintenance order may have ceased to have effect, whether before or after the passing of this Act, by reason of the fact that the child has attained the age of sixteen years:

Provided that in any such case the period specified in any order under this section shall be a period expiring not later than the date when the child attains the age of eighteen years.

(6) The powers conferred by subsection *three* of this section may be exercised in respect of any proceedings, being proceedings for the variation of any maintenance order to which this section applies or for the substitution of any new order therefor, commenced and not completed before the passing of this Act.

8. The principal Act is hereby amended by inserting, after section thirty-nine, the following section:—

“ 39A. (1) Where moneys payable to any person under any maintenance order are directed by the order to be paid to the Registrar of a Magistrate’s Court,

Power of Registrar of Magistrate’s Court to vary orders as to Court into which moneys payable.

the person to whom the moneys are payable under the order, or the person against whom the order was made, may request the Registrar of any Magistrate's Court of civil jurisdiction to vary the order by directing that the payments shall thereafter be made to the Registrar of a Magistrate's Court other than that specified in the order, and the Registrar to whom the request is made may, in his discretion, vary the order accordingly.

“(2) Where any Registrar varies an order under this section, he shall endorse and sign a memorandum of his decision and of the date thereof on a copy of the maintenance order, and seal the memorandum with the seal of the Court; and thereupon the maintenance order shall be deemed to be varied accordingly.

“(3) Any party affected by any decision of a Registrar under this section may apply to a Magistrate to vary or rescind the decision, and the Magistrate may thereupon, in his discretion, confirm, vary, or rescind the decision.”

9. Section forty-three of the principal Act is hereby amended by repealing subsection fifteen, and substituting the following subsection:—

“(15) Nothing in section eighty-three of the Shipping and Seamen Act 1908, or in subsection one of section three of the Wages Protection and Contractors' Liens Act 1939, shall apply to any attachment under this section.”

Section 43 of principal Act (as to attachment of salary or wages) to apply to seamen's wages. See Reprint of Statutes, Vol. VIII, p. 294 1939, No. 27

10. Section forty-four of the principal Act is hereby amended by inserting, after subsection three, the following subsection:—

“(3A) Nothing in section sixty of the Workers' Compensation Act 1922 shall apply to any charge constituted under this section.”

Section 44 of principal Act (as to charging orders) to apply to compensation moneys. See Reprint of Statutes, Vol. V, p. 635

11. The principal Act is hereby further amended by inserting, after section forty-seven, the following section:—

“47A. Where any proceedings in any Court or before any Magistrate are taken by or on behalf of the Superintendent of the Child Welfare Division of the Department of Education to enforce payment of any

Evidence of arrears under maintenance order or agreement made in favour of Superintendent of Child Welfare Division.

moneys directed by any maintenance order to be paid to him, or any moneys agreed to be paid to him under any agreement that, under any Act, is enforceable as if it were a maintenance order, a certificate signed by the Superintendent specifying the amount of any moneys in arrear and unpaid under the order or agreement shall be accepted by the Court or Magistrate as sufficient evidence of the amount so in arrear and unpaid as at the date specified in the certificate, until the contrary is proved.”

Regulations as to taking of evidence.

1947, No. 16

12. (1) The principal Act is hereby further amended by repealing section seventy-nine, and substituting the following section:—

“ 79. Notwithstanding anything in section seventy-two of this Act or section twenty-seven of the Magistrates’ Courts Act 1947, any regulations made under this Act may provide for the taking of evidence on proceedings by complaint or application under this Act or by information for an offence under section sixty-one of this Act before the Magistrate or Registrar of any Magistrate’s Court, whether or not the complaint, application, or information was filed in the office of that Court, and any such regulations as aforesaid may contain such incidental provisions as the Governor-General thinks fit, including provisions for requiring the attendance of witnesses, the answering of questions and the production of documents.”

Repeal.
1939, No. 13

(2) Section sixteen of the Domestic Proceedings Act 1939 is hereby consequentially repealed.