

This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and having this day passed as now printed is transmitted to the HOUSE OF REPRESENTATIVES for its concurrence.

*Legislative Council,
11th September, 1877.*

[*Hon. D. Pollen.*]

Destitute Persons.

ANALYSIS.

- | | |
|---|---|
| <ul style="list-style-type: none"> Title. 1. Short Title. Repeal. 2. Interpretation. 3. Near relatives of destitute persons liable for their support. 4. Mode of proceeding. 5. Hearing and adjudication. 6. Father of illegitimate children may be summoned. 7. Father of illegitimate children may be adjudged to be the putative father, and order upon him for support of child made. 8. Order for support of illegitimate child may, in some cases, be made against the mother. 9. In cases of death or lunacy of father or mother of illegitimate child, how proceedings to be taken. 10. Order may be made for support of illegitimate child out of deceased or lunatic father or mother's estate. 11. In such cases the granting or refusing of the order, discretionary, and power to suspend, &c., order. 12. No order to be made against deceased father's estate, unless complaint is made within six months from father's death. 13. When illegitimate child is half-caste, additional sum of not exceeding £25 may be ordered to educate child. 14. Putative father, &c., may make composition. 15. No person to be taken to be the father upon the mother's evidence alone. 16. Husbands, fathers, or mothers deserting, or | <ul style="list-style-type: none"> leaving wife or children without support, may be summoned. 17. Order for maintenance may be made, and defendant imprisoned. 18. Order may be made when husband, father, or mother intends to desert. 19. Justices may refuse to make order where reasonable cause for desertion. 20. Warrant of distress, and warrant to receive rents, &c., of real or personal estate, and to sell real or personal estate, may be issued. 21. Effect of warrant. 22. Receipt of person authorized by warrant to be good discharge. 23. In certain cases warrants may be issued without previous issue of summons or warrant. 24. When person imprisoned, order for support of wife and children may be made. 25. Supplemental orders may be made. 26. Any Resident Magistrate may enforce order. 27. Sureties may be required for compliance with order. 28. Custody of children. 29. When person maintained in a charitable institution, maintenance money to be paid to managers. 30. Evidence. 31. What shall be deemed desertion. 32. Warrant for apprehension may be issued in the first instance. 33. Summons, how served. 34. Appeal. 35. When Act to come into operation. |
|---|---|

A BILL INTITULED

AN ACT relating to Destitute Persons, Illegitimate Children, and Deserted Wives and Children. Title.

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

1. The Short Title of this Act shall be "The Destitute Persons Short Title.
5 Act, 1877."

The Ordinance for the Support of Destitute Families and Illegitimate Children, passed by the Lieutenant-Governor and Legislative Repeal.
Council of New Zealand, is hereby repealed: Provided that this repeal
10 nor any order made, right, liability, penalty, or forfeiture accrued
or incurred, or any proceeding commenced under such enactment;
and such order, right, liability, penalty, forfeiture, or proceeding
shall and may be enforced, recovered, carried out, continued,
and completed under the said Act, and such Act shall for such pur-
15 poses, but not further, continue and take effect as if this Act had not
been passed.

Interpretation.

2. In this Act, if not inconsistent with the context, the following terms shall have the meanings hereinafter respectively assigned to them :—

“Near relative” means the father, stepfather, grandfather, mother, stepmother, grandmother, children (other than step-children) and brother, of a destitute person. 5-

“Destitute person” means a person unable to support himself or herself by his or her own means or labor.

“Lunatic” shall mean any person found lunatic by inquisition, or any person received into and detained in any asylum, hospital, or licensed house, under the provisions of “The Lunatics Act, 1868,” or any Act amending the same or passed for similar purposes; and the lunacy shall, for the purposes of this Act, be deemed to commence from the time such lunatic is found by inquisition to be such, or from the date of such reception or detention as aforesaid. 10-15

3. The near relative of a destitute person, shall, if such near relative is of sufficient ability, be liable to support every such destitute person in manner hereinafter mentioned.

4. On the complaint, on oath, of any respectable person, or of any destitute person, that such last-mentioned person is a destitute person, and has a near relative within the colony of sufficient ability to support such destitute person, it shall be lawful for any one Justice of the Peace to summon such near relative to appear to answer such complaint. 20

5. Any Resident Magistrate may hear and determine such complaint in a summary way. Such Resident 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 a near relative of the destitute person, and is able to support or to contribute to the support of such destitute person, may order such near relative to pay, towards the support of such destitute person, a sum of money at a rate not exceeding *twenty* shillings per week, to such person, at such times, and in such manner as the said Resident Magistrate may direct. Any Resident Magistrate may from time to time, in a summary way, suspend, alter, vary, or determine such order as to him shall seem meet. 25-30

6. On the complaint, on oath, made by the mother of any European or half-caste illegitimate child, under fourteen years of age, or on such complaint by any reputable person, that the father of such child has refused to provide for the support thereof, it shall be lawful for any one Justice to summon the party charged to answer such complaint. 35-40

7. Whether the defendant be present or not, any Resident Magistrate may in a summary manner inquire into such complaint, and, if satisfied that the defendant is the father of such child and of the truth of the complaint, may adjudge the man to be the putative father of such illegitimate child. The said Resident Magistrate may thereupon, or any Resident Magistrate at any time thereafter may make an order on such putative father for payment to the mother of the child, or to such other person as he may think fit, of a sum of money at a rate not less than *two* shillings or more than *ten* shillings per week until such child arrives at the age of fourteen years, at such times and in such manner as he may direct, for the support of such child. The Resident Magistrate may also order the putative father to pay the expenses of and incidental to the birth of such child, and the costs incurred in obtaining such order. The evidence of the mother of any illegitimate child shall not be necessary for the making of any such adjudication as aforesaid. 45-55

Near relatives of destitute persons liable for their support.

Mode of proceeding.

Hearing and adjudication.

Father of illegitimate children may be summoned.

Father of illegitimate child may be adjudged to be the putative father and order upon him for support of child made.

8. Where it shall appear to the Resident Magistrate that the mother of any such illegitimate child is able to contribute to its support, he may direct that she shall so contribute, as well as the father, in such proportions respectively and in such manner as such Resident Magistrate shall think fit: And if it shall appear that the mother only is of such ability, it shall be lawful for the Resident Magistrate to make an order in respect of her alone.

Order for support of illegitimate child may in some cases be made against the mother.

9. Notwithstanding that the father or mother of any 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 of the Peace 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, Public Trustee, or other legal representative of such deceased or lunatic person, to show cause why an order should not be made for the maintenance of such child out of the estate of such deceased or lunatic person.

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

10. The Resident Magistrate present may, in a summary manner, 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 support, or contribute to the support of any such child, may make such order for the payment of such moneys out of the deceased or lunatic's estate as is provided by sections *seven* and *eight*. If it appears that the estate of a lunatic is not more than reasonably sufficient to maintain such lunatic, no order shall be made. No order shall be made against a deceased or lunatic father's estate, unless such deceased or lunatic father and the mother of such illegitimate children were, at the time of such father's or mother's death or lunacy, cohabiting together.

Order may be made for support of illegitimate child out of deceased or lunatic father or mother's estate.

11. The granting or refusing of an order under the last preceding section shall be in the entire discretion of the Resident Magistrate: Provided, however, that no such order shall be made if such deceased or lunatic person has left a legitimate child or children, and the effect of granting such order will be to deprive such child or children wholly or materially of means of support. Any Resident Magistrate may, from time to time, in a summary manner, suspend, alter, vary, or determine such order as to them shall seem meet.

In such cases the granting or refusing of the order discretionary, and power to suspend, &c., order.

12. No order shall be made against any deceased father's estate under section *ten*, unless the complaint is made within six calendar months from the death of such father.

No order to be made against deceased father's estate unless complaint is made within six months from father's death.

13. Where an order shall be made for the maintenance of any illegitimate half-caste child, it shall be lawful for such Resident Magistrate to make an order for the payment of an additional sum not exceeding *twenty-five* pounds, to be applied at such times and in such manner as he may direct, to the education of such child in the English language.

Where illegitimate child is half-caste, additional sum of not exceeding £25 may be ordered to educate child.

14. The putative father or the executor, administrator, committee, Public Trustee, or other personal representative of such putative father or mother may require the Resident Magistrate, at the time of making an order for maintenance, or at any time thereafter may apply to any Resident 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 Resident Magistrate may fix a sum of money not less than *ten* pounds and not more than *one hundred* pounds, in lieu of, and as compensation for any weekly or other payment as aforesaid. 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 and support of such child.

Putative father, &c., may make composition.

No person to be taken to be the father upon the mother's evidence alone.

Husbands, fathers, or mothers deserting, or leaving wife or children without support may be summoned.

Order for maintenance may be made and defendant imprisoned.

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

Justices may refuse to make order where reasonable cause for desertion, &c.

Warrant of distress and warrant to receive rents, &c., of real or personal estate, and to sell real or personal estate, may be issued.

15. No person shall be taken to be the father of an illegitimate child upon the mother's evidence, unless corroborated in some material particular by other testimony to the satisfaction of the Resident Magistrate.

16. When any husband unlawfully deserts his wife, or leaves her without, or wilfully fails to provide her with, adequate means of support, or when any father or mother deserts his or her children under the age of fourteen years, or wilfully leaves them without, or wilfully fails to provide them with, adequate means of support; if complaint thereof be made on oath to any Justice, by the wife or by any reputable person on her behalf, or, in case of the children, by the mother, or any reputable person, such Justice may issue his summons to such husband, father, or mother, to show cause why he or she should not support his wife or his or her children.

17. Whether the defendant be present or not, any Resident Magistrate present shall, in a summary manner, inquire into the matter of the complaint; and if he be satisfied that the wife, or the children, as the case may be, are deserted or are in fact without adequate means of support, and that the husband, or the father or mother, is able to maintain her or them, or to contribute to her or their maintenance, such Resident Magistrate shall make an order, in writing, directing him or her to pay, either weekly or monthly, at his discretion, and to such person and in such manner for her or their maintenance as the Resident Magistrate thinks fit, such moderate sum or allowance, not exceeding *twenty* shillings per week, for such wife or any one child, until such child arrives at fourteen years of age, as he considers fit. In addition to making any such order, the Resident Magistrate may commit the defendant to any gaol for any period not exceeding six calendar months, with or without hard labour.

18. 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 support, 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 support, such Justice may issue his summons to such husband, father, or mother, to show cause why he or she should not support his wife or his or her child; or may, in his discretion, issue his warrant for the apprehension of such husband, father, or mother. And upon the day appointed for the hearing, whether the defendant be then present or not, any Resident Magistrate shall inquire into the matter of such complaint; and if he be satisfied that the defendant intends, or that there is any reasonable ground to believe that he or she intends, to desert or leave without adequate means of support such wife or child, such Resident Magistrate may make an order for maintenance as hereinbefore mentioned.

19. If reasonable cause be shown for the desertion or refusal to maintain a wife as aforesaid, the Resident Magistrate may, in his discretion, decline to make an order.

20. Whenever an order shall be made for the maintenance of any wife, child, or destitute person, and any payment thereby directed to be made shall be in arrear for one calendar month, any Justice may, in a summary manner, if he think fit in his discretion, issue his warrant of distress, and may by warrant authorize and direct some person to receive so much of the rents, profits, and income of the real and personal estate of the person against whom or whose estate such order shall be made, and to sell, by public auction, such portions of such real and personal estate as the Justice may from time to time direct. In effecting any such sale, the person so authorized as aforesaid shall have all the powers and authorities conferred on mortgagees

by the Conveyancing Ordinance, Session II., No. X., if the property sold shall not be under "The Land Transfer Act, 1870;" and if the same shall be under "The Land Transfer Act, 1870," then all the powers and authorities conferred upon mortgagees by that Act.

5 **21.** No notice or demand whatsoever shall be requisite before exercising such powers or any of them. The warrant shall, so far as regards any purchaser or person dealing with the person so authorized, be conclusive evidence that the power to sell is vested in the person named therein. Such rents and profits, and the net proceeds of any
10 sale, shall be applied towards the support of the wife, child, or other person, as the case may be, in whose favour such order shall have been made, in such manner as to the Resident Magistrate shall seem meet.

Effect of warrant.

15 **22.** The receipt of the person so authorized 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.

Receipt of person authorized by warrant to be good discharge.

20 **23.** When any husband, father, mother, or near relative keeps himself or herself concealed or away from his or her usual place of abode, or is absent with intent to evade any payment directed to be made by an order, if the fact be proved on oath, any Resident Magistrate on complaint made to him for that purpose, may issue the warrant and give the authority hereinbefore mentioned without the previous issue of any warrant or summons.

In certain cases warrants may be issued without previous issue of summons or warrant.

25 **24.** Whenever upon complaint it appears that any person, not being a convict as defined by "The Convicts Forfeiture Act, 1871," is imprisoned and has a wife or children, whether illegitimate or not, and that such wife or children are without adequate means of support, and that the person imprisoned has property which can be made available for the support of such wife or children, any Resident Magistrate may in his discretion if he thinks fit, in a summary manner, and without
30 issuing any summons or requiring the presence of the person so imprisoned, make such order for the maintenance of such wife or child as is hereinbefore mentioned. Such complaint may be made by the wife, father, mother, or children, or by any reputable person on his, her, or their behalf.

When person imprisoned, order for support of wife and children may be made.

35 No order shall be made if it be proved that the estate of the person so imprisoned is not more than sufficient to pay the just debts of such person. The *twentieth*, *twenty-first*, and *twenty-second* sections of this Act shall be deemed to apply to any order so made.

40 **25.** When any order has been made touching the support of any wife or child, whether illegitimate or born in wedlock, any Resident Magistrate may, in a summary way, with or without any application for that purpose, make, from time to time, such order in writing as he thinks necessary for better securing the payment and regulating the receipt of the allowance directed for such wife or child's support, or for investing and applying the proceeds of any real or personal property (if
45 any) directed to be sold or collected, or for ensuring the due appropriation of such allowance for the *bonâ fide* purposes of maintenance, or for causing the children to be properly brought up and educated.

Supplemental orders may be made.

50 **26.** Any Resident Magistrate may at any time inquire, in a summary way, into any 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 gaol for any period not exceeding six calendar months, with or without hard labour, or may impose upon such offender a fine of not exceeding *fifty*
55 pounds.

Any Resident Magistrate may enforce order.

60 **27.** Whenever an order is made for the maintenance and support of a wife or child, whether illegitimate or not, it shall be lawful for the Resident Magistrate making the order, in such order or by a separate order, or for any Resident Magistrate, at any time, to make an order requiring the defendant to find such good and sufficient surety,

Sureties may be required for compliance with order.

as the said Resident Magistrate shall think fit, 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 support, his or her said wife or children, whether illegitimate or not; and such Resident Magistrate may, in default of such surety being found, commit the defendant to gaol for any period not exceeding six calendar months, with or without hard labour. Any Resident Magistrate, upon being satisfied that such surety has been found and entered into, may order the discharge of the defendant from gaol and custody.

Custody of children.

28. Whenever under this Act an order is made for the maintenance of any child, whether illegitimate or born in wedlock, it shall be lawful for the Resident Magistrate making the order, or for any Resident Magistrate, at any time thereafter, in a summary manner, upon the application of any reputable person, to appoint, in writing, some fit person, who, with his or her own consent, shall have the custody of such child; and any Resident Magistrate may revoke the appointment of such person, and may appoint another person in his or her stead, as occasion may require; and every person so appointed to have the custody of any such child shall be empowered to make application, and do all things necessary for the receiving and recovering of all payments becoming due under any such order as aforesaid.

When person maintained in a charitable institution maintenance money to be paid to managers.

29. When any person in whose favour an order for maintenance shall be made under the provisions of this Act shall be maintained by any institution incorporated under "The Charitable Institutions Act, 1877," 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.

Evidence.

30. In proceedings under this Act, the Justice or Resident Magistrate may receive any evidence as to either of them may seem fit, whether the same shall be strictly legal evidence or not.

What shall be deemed desertion.

31. When any husband shall have quitted his wife, or any father or mother his or her children or child, for a period exceeding sixty days, during fourteen, at the least, of which such wife, or children or child, shall have been left by him or her without adequate means of support, such husband, father, or mother shall, *prima facie*, be deemed to have unlawfully deserted such wife, or children or child: Provided that nothing in this section shall prevent the Resident Magistrate from adjudging the fact of desertion on other evidence, or on proof of abandonment for a less period than sixty days, if he shall think fit. For the purpose of this Act, a wife compelled to leave her husband's residence under reasonable apprehension of danger to her person, or under other circumstances which may, in the opinion of the Resident Magistrate, reasonably justify her withdrawal from such residence, shall be deemed and taken to have been deserted without reasonable cause.

Warrant for apprehension may be issued in the first instance.

32. It shall be lawful for any Justice before whom a complaint is made under this Act, if he think fit, without issuing in the first instance his summons, to issue his warrant to apprehend and cause such person to be brought before some Justice, to be further dealt with according to law.

Summons how served.

33. Every summons issued under this Act may be served on the person summoned either personally or (if he or she cannot be found) at his or her last known place of residence, and the person serving such summons may make affidavit of the service thereof, stating therein the mode and time and place of such service (and, if not personally, that the person summoned cannot be found), before any Justice of the Peace, and such affidavit may be received by the Resident Magistrate investigating the case as sufficient proof of due

service of the summons, if he shall think fit, and such Resident Magistrate may thereupon proceed in the case *ex parte*, or, at his discretion, may issue a warrant to apprehend the person so summoned.

5 **34.** Any person aggrieved by any conviction or order made under the authority of this Act shall have the same right of appeal as is provided by "The Appeals from Justices Act, 1867," in all respects as if such conviction or order had been made by Justices of the Peace. Appeal.

35. This Act shall come into operation, in respect of persons of the aboriginal native race, in such districts and at such times as the When Act to come into operation.
10 Governor shall from time to time appoint. With respect to all other persons, it shall come into operation on the *first* day of *January*, one thousand eight hundred and seventy-eight.