

Hon. Sir P. A. Buckley.

DESTITUTE PERSONS.

THIS is a consolidation of the existing law as to destitute persons, with additions to render the measure more complete.

“The Married Women’s Property Act, 1884,” having declared a wife to be liable for the maintenance of her destitute husband, this Bill has been amended throughout accordingly, the words “husband” or “wife” being inserted in all cases where formerly the husband alone was liable.

Clause 4 is taken from the law of South Australia, and will commend itself as fixing the liability for maintenance of a woman’s children upon her husband.

Clause 9, as to illegitimates, is extended in an important particular, by enabling any woman with child by a man who seeks to leave the colony to have him brought before a Magistrate, and require security from him for the maintenance of her unborn child.

Clauses 15 and 16, as to runaway husbands, are made to apply equally to wives or widows who are the sole support of their children, so as to prevent children being left on the community for support by the desertion of their natural protectors.

Clause 22 is copied from the English Act, 41 Vict., c. 19, s. 4, and grants the Magistrate power to make an order that a wife shall not be bound to cohabit with a husband who has committed an aggravated assault upon her if he shall think her future safety to be imperilled.

Clause 23 provides for the reciprocal surrender of runaway husbands or wives by colonies which have similar laws on the point.

Clause 24 defines the priority of orders for the maintenance of a wife and children over all other liabilities of the husband, and also over all his legatees in certain cases.

Clause 25 is amended by leaving the Magistrate to determine the nature and form of the security to be required under the clause.

Clause 31: A paragraph is added for the purpose of enabling an apportionment of a maintenance order amongst the persons liable to contribute thereto.

Clause 35: The rate of interest of a debt is reduced to six per cent., in accordance with the rate allowed by the Supreme Court.

Clause 37 authorises the recovery of past maintenance moneys from persons subsequently becoming capable of paying, but not exceeding two years’ maintenance in the whole.

Clauses 41 and 44 to 47 are amplifications of the present law in matters of procedure which do not require special comment, as they severally explain themselves.

CONSOLIDATION BILL.

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,
14th August, 1894.*

Hon. Sir P. A. Buckley.

DESTITUTE PERSONS.

ANALYSIS.

- Title.
1. Short Title.
 2. Interpretation.
 3. Act to apply to Natives.
- Liability for Maintenance.*
4. Husband to maintain wife's children.
 5. Married woman liable for maintenance of her children.
 6. Married woman liable for maintenance of her husband.
 7. Near relatives of destitute persons liable for maintenance.
 8. Adjudication. Relatives may be examined as to their means.
- Illegitimates.*
9. Father of illegitimate children may be adjudged to be the putative father, and order made for maintenance.
 10. Order for maintenance of illegitimate child may be made against the mother.
 11. In cases of death or lunacy of father or mother of illegitimate child, how proceedings to be taken.
 12. Additional sum not exceeding £25 may be ordered to educate illegitimate child.
 13. Putative father, &c., may make composition.
 14. Maintenance of illegitimate child at public charitable institution.
- Desertion of Wife or Children.*
15. Desertion of wife or children indictable offence.
 16. Husbands, fathers, or mothers deserting or leaving wife or children without maintenance may be summoned.
 17. Certain breaches of Act indictable when offender leaves the colony.
 18. Order may be made where husband, father, or mother intends to desert.
 19. Magistrate may refuse to make order where reasonable cause for desertion.
 20. What shall be deemed desertion.
 21. Provision when wife compelled to leave her husband.
 22. If husband convicted of aggravated assault, Magistrate may order that wife be not bound to cohabit, &c.
- Intercolonial Arrangements.*
23. Person deserting wife or children in other colony may be arrested in New Zealand.
- General Provisions as to Orders.*
24. Orders to have priority.
 25. Magistrate may require security for compliance with order, and in default may commit to prison.
26. Warrant of distress and order to receive rents, &c., of real or personal estate, and to sell real or personal estate, may be issued.
 27. In certain cases order may be issued without previous issue of summons or warrant.
 28. When person imprisoned, order for maintenance of wife and children may be made.
 29. Custody of children.
 30. Supplemental orders may be made.
 31. Separate orders may be made on different relatives.
 32. Any Magistrate may suspend or alter order.
 33. Any Magistrate may enforce order.
- Recovery of Maintenance-moneys.*
34. Government or local authority may recover costs of maintaining deserted wife or child in a summary manner.
 35. Expenses of maintaining a destitute person to be recoverable as a debt.
 36. Warrant to let, sell, or collect rents of property of destitute person, &c., may be granted.
 37. Cost of past maintenance may be recovered from after-acquired property.
 38. When person maintained in a charitable institution maintenance-money to be paid to managers.
 39. Public Trustee to contribute to maintenance in certain cases.
 40. Near relative of deserted wife or child may recover moneys, &c., paid for maintenance.
- Procedure.*
41. Summary proceedings.
 42. Evidence.
 43. Husbands and wives competent witnesses.
 44. Onus of proof.
 45. Successive judgment summonses.
 46. Imprisonment not to satisfy debt for maintenance or previous costs incurred.
 47. Posthumous orders may be made.
 48. Limitation of time for laying informations or complaints.
 49. Warrant for apprehension may be issued in the first instance.
 50. Execution of warrants.
 51. Summons, how served.
 52. Married women's protection orders may be enforced under this Act.
 53. Appeal.
 54. Repeals.
- Schedule.

A BILL INTITULED

Title.

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

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:— 5

Short Title.

1. The Short Title of this Act is "The Destitute Persons Act, 1894."

Interpretation.

1877, No. 44, s. 2.

2. In this Act, unless the context otherwise requires,—

"Charitable institution" includes an industrial school established under "The Industrial Schools Act, 1882": 10

"Child" includes an illegitimate child and also a child adopted under "The Adoption of Children Act, 1881":

"Destitute person" means a person unable to support himself or herself by his or her 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: 15

"Local authority" means the Council of any borough or county; and in counties where "The Counties Act, 1886," is suspended the several Town Boards and Road Boards therein: 20

"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: 25

"Lunatic" means any lunatic as the same is defined in "The Lunatics Act, 1882," 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 "The Lunatics Act, 1882"; 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: 30 35

"Magistrate" means a Stipendiary Magistrate appointed under "The Magistrates' Courts Act, 1893":

"Maintaining" and "maintained" includes lodging, feeding, clothing, teaching, or training:

"Minister" means the Minister of Justice, or such other Minister of the Crown as, for the time being, may be charged with the administration of this Act: 40

"Native" means any person of the Native aboriginal race, and includes half-castes:

"Near relative" means the father, stepfather, grandfather, mother, stepmother, grandmother, children (other than step-children), 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 45 50

meaning of "The Adoption of Children Act, 1881," and the wife or husband, as the case may be, and the executors or administrators of such person.

3. This Act shall apply throughout the colony in respect of all persons of the aboriginal native race and of all half-castes in the same manner as it applies to Europeans and other persons not Natives.

Act to apply to Natives.
1877, No. 44, s. 43.

Liability for Maintenance.

4. Every husband whose wife has a child or children at the time of his marriage, whether such child or children are legitimate or illegitimate, is liable to maintain such child or children as a part of his family, until such child or children shall respectively attain the ages, if a boy, of sixteen years of age, 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 such husband, and to constitute part of such husband's family.

Husband to maintain wife's children.

5. A married woman having separate property is subject to all such liability for the maintenance of her children and grandchildren as the husband is now by law subject to for the maintenance of her children or grandchildren.

Married woman liable for maintenance of her children.
1884, No. 10, s. 24.

But nothing herein contained shall relieve her husband from any liability imposed on him by law to maintain her children and grandchildren.

6. Where the husband of any woman having separate property becomes destitute, a summons against the wife may be issued, 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.

Married woman liable for maintenance of her husband.
Ib., s. 23.

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

Near relatives of destitute persons liable for maintenance.

8. 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 the colony of sufficient ability to maintain such destitute person, any one Justice of the Peace may summon such near relative to appear to answer such complaint.

1877, No. 44, s. 3.
Adjudication.
Ib., s. 5.

(1.) 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 destitute person; and may also examine on oath any other person he may think fit for the purpose of ascertaining the ability of such relative so to do.

Relatives may be examined as to their means.
1883, No. 26, s. 4.

(2.) Such 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 maintain or to contribute to the maintenance of such destitute person, may order such near relative to pay towards the maintenance of such destitute person a sum of money at a rate

1877, No. 44, s. 5.

not exceeding twenty shillings a week to such person, at such times and in such manner as the said Magistrate may direct.

Illegitimates.

Father of illegitimate children may be adjudged to be the putative father, and order made for maintenance.
1877, No. 44, s. 6.

9. On the complaint, on oath, made by the mother of any illegitimate child under fourteen years of age, or on such complaint by any reputable person, that the father of such child has refused, *neglected, or failed* to provide for the maintenance thereof; or

On the complaint, on oath, made by any unmarried woman who may be with child by any man, or on such complaint by any reputable person, that the aforesaid man is about to leave the colony or the place where 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.

Ib., s. 7.

(1.) Whether the defendant be present or not, any Magistrate may 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.

Ibid.

(2.) The said Magistrate thereupon, or any Magistrate at any time thereafter,

(a.) 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 four shillings or 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 may direct, for the maintenance of such child; and may also order the putative 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 obtaining any such order:

(b.) In the case of an unborn child, may make an order requiring such putative father to find such good and sufficient surety as the said Magistrate shall think fit that he will not leave without adequate means of maintenance his unborn child, and that he will pay the expenses of and incidental to the birth of such child, whether it shall be born alive or dead, and by such order may require the putative father to pay the costs incurred in obtaining any such order; and such Magistrate may, in default of such surety being found, commit the putative father to prison for any term not exceeding six months, with or without hard labour.

Ibid.

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

(4.) No person shall be adjudged to be the father of an illegitimate child upon the evidence of the mother, *or of a woman who may be with child as aforesaid*, unless corroborated in some material particular by other testimony, to the satisfaction of the Magistrate. 1877, No. 44, s. 15.

(5.) 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.

10. Where it shall appear to the Magistrate that the mother of any illegitimate child is able to contribute to its maintenance, he may direct that she shall so contribute, as well as the father, in such proportions respectively and in such manner as such Magistrate shall think fit; and, if it shall appear that the mother only is of such ability, the Magistrate may make an order in respect of her alone. Order for maintenance of illegitimate child may be made against the mother. *Ib.*, s. 8.

11. 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. *Ib.*, s. 9.

(1.) Any 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 such order for the payment of such moneys out of the deceased's or lunatic's estate as is provided by the *last-preceding two sections*. *Ib.*, s. 10.

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

(2.) The granting or refusing of an order under this section shall be in the entire 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 will be to deprive such widow, *husband*, child, or children wholly of means of support. *Ib.*, s. 11.

(3.) 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. *Ib.*, s. 12.

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

1877, No. 44, s. 13.

Putative father, &c., may make composition.

Ib., s. 14.

12. Where an order shall be made for the maintenance of any illegitimate child, the Magistrate may 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 or apprenticing of such child to some trade.

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13. The putative father, the mother, or the executor, administrator, committee, Public Trustee, or other personal representative of such putative father or mother, may apply to the Magistrate at the time of making an order for maintenance, or at any time thereafter may apply to any 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 shall deem 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.

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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.

Maintenance of illegitimate child at public charitable institution.

1886, No. 7, s. 3.

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

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Desertion of Wife or Children.

Desertion of wife or children.

1884, No. 21, s. 4.

15. Where any husband unlawfully deserts his wife, or leaves her without, or refuses, neglects, or fails to provide her with, adequate means of maintenance, or where any wife who has been deserted by her husband, or any mother who is a widow, deserts her children under the age of fourteen years, or leaves them or any of them without, 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 four, or leaves them or any of them without, or refuses, neglects, or fails to provide them or any of them with, adequate means of maintenance, and goes to reside beyond the Colony of New Zealand, either temporarily or permanently, such husband, wife, widow, or father shall be deemed to be guilty of an offence punishable by imprisonment with hard labour for a term of twelve months.

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In any of the cases specified in this section, if complaint be made on oath to a Magistrate by any reputable person, such 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 such complaint has been made.

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No such warrant for apprehension shall be issued except by a Magistrate. 1884, No. 21, s. 5.

5 16. Where any husband unlawfully deserts his wife, or leaves her without, or refuses, neglects, or fails to provide her with, adequate means of maintenance, or *where any wife who has been deserted by her husband, or any mother who is a widow*, deserts her children under the age of fourteen years, or leaves them or any of them without, 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* 10 *fourteen years, whether illegitimate or born in wedlock, or his wife's children as referred to in section four*, or leaves them or any of them without, 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 15 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.

Husbands, fathers, or mothers deserting or leaving wife or children without maintenance may be summoned. 1877, No. 44, s. 16.
1884, No. 21, s. 2.

20 (1.) Whether the defendant be present 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 be 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 25 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 at his discretion, and to such person and in such 30 manner for her or their maintenance as the 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.

1877, No. 44, s. 17.
1884, No. 21, s. 3.

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

40 (2.) 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.

45 17. Every person who refuses, fails, or neglects to comply with an order for maintenance 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, shall be deemed to be guilty of an indictable offence punishable by imprisonment with hard labour for a term of twelve months.

Certain breaches of Act indictable when offender leaves the colony. 1883, No. 26, s. 2.

50 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

Ib., s. 3.

the payment of money or the doing of any act by such person which may lawfully be made under this Act.

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

1877, No. 44, s. 18.

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 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. 5 10

Upon the day appointed for the hearing, whether the defendant be then present or not, any 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 such wife or child without adequate means of maintenance, such Magistrate may make an order for maintenance as hereinbefore mentioned. 15 20

Magistrate may refuse to make order where reasonable cause for desertion. *Ib.*, s. 9.

19. If reasonable cause be shown for such desertion, or for the refusal, *neglect, or failure* to maintain a wife as aforesaid, the Magistrate may, in his discretion, decline to make an order, unless it shall be established to the satisfaction of the Magistrate that she is a destitute person. 25

What shall be deemed desertion. *Ib.*, s. 38.

20. When any husband has 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 maintenance, such husband, father, or mother shall, *prima facie*, be deemed to have unlawfully deserted such wife or children or child. 30

Nothing in this section shall prevent the 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.

Provision when wife compelled to leave her husband. *Ibid.*

21. 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 Magistrate, reasonably justify her withdrawal from such residence, shall be deemed and taken for the purposes of this Act to have been deserted without reasonable cause. 35 40

If husband convicted of aggravated assault, Magistrate may order that wife be not bound to cohabit. 41 *Vict.*, c. 19, s. 4.

22. If a husband shall be convicted before a Magistrate, summarily or otherwise, of an aggravated assault, within the meaning of any Act relating to offences against the person, upon his wife, the Magistrate before whom he shall be so convicted may, if satisfied that the future safety of the wife is in peril, order that the wife shall be no longer bound to cohabit with her husband, and such order shall have the force and effect in all respects of a decree of judicial separation on the ground of cruelty; and on the making of such order the wife shall be deemed to have been deserted without reasonable cause. Such order, or any separate order, may further provide,— 45 50

(1.) That the legal custody of any children of the marriage shall, in the discretion of the Court or Magistrate, be given to the wife for the term of the subsistence of the order ;

(2.) *That the husband shall pay the wife's costs of the proceedings :*

Provided always, that no order for payment of money by the husband, or for the custody of children by the wife, shall be made in favour of a wife who shall be proved to have committed adultery, unless such adultery has been condoned ; and that any order for payment of money, or for the custody of children, may be discharged by the Magistrate by whom such order was made, or by any other Magistrate acting as aforesaid, upon proof that the wife has since the making thereof been guilty of adultery.

Intercolonial Arrangements.

23. Whenever 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 Act of the Imperial Parliament shortly intituled "The Fugitive Offenders Act, 1881," and the Act of New Zealand intituled "The Fugitive Offenders Jurisdiction Act, 1883."

Person deserting wife or children in other colony may be arrested in New Zealand.

General Provisions as to Orders.

24. The Magistrate making any order under this Act touching the maintenance of any destitute person or child may, if he think fit, direct the Clerk of the Court to file a duplicate of such order in the Supreme Court, and 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 such person, to rank in priority next after any mortgage or other charge upon the said land made previous to the date of the order, and also shall have priority over all bequests or devises under any will or other testamentary disposition of the aforesaid person in case he or she shall die leaving property without making sufficient provision in such will or otherwise for such aforesaid maintenance.

Orders to have priority.

25. Whenever 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 subsequent thereto, to lodge in the Court with the Clerk thereof such sufficient sum of money, or to find such good and sufficient security by bond to the Clerk of the Magistrate's Court held at the place at which such last-mentioned order is made, to enure for the benefit of the Clerk for the time being, with or without sureties to the satisfaction of the Magistrate then present, or present at the adjourned hearing, 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

Magistrate may require security for compliance with order, and in default may commit to prison.
1877, No. 44, s. 27.
Amended.

or her said husband, or his or her children whether illegitimate or not; and such Magistrate may, in default of such deposit or security being respectively made or found, commit such person to prison for any period not exceeding six months, if such order be not sooner complied with. 5

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

Any Magistrate may, on application to him, and on being satisfied 10 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 said 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 15 respect of any breach of the conditions of the said bond.

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

1877, No. 44, s. 20.

26. Whenever any payment directed under any order hereinbefore authorised to be made shall be in arrear for one month,—

Any Justice may, if he think fit in his discretion, issue his warrant of distress for the purpose of levying the same, or 20 so much thereof as shall then remain unpaid, and all proceedings may be had under “The Justices of the Peace Act, 1882,” for the enforcement of any such warrant as if it were for a penalty adjudged upon a conviction, and any form of warrant under that Act may be altered to suit the 25 circumstances of any case under this section; and

May also by warrant authorise 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 30 public auction such portions of such real and personal estate, as the Justice may from time to time direct.

(1.) In effecting any such sale, the person so authorised as aforesaid shall have all the powers and authorities conferred on mortgagees by “The Property Law Consolidation Act, 35 1883,” if the property sold shall not be under “The Land Transfer Act, 1885,” and, if the same shall be under the Act last mentioned, then all the powers and authorities conferred upon mortgagees by that Act.

(2.) No notice or demand whatsoever shall be requisite before 40 exercising such powers or any of them. 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. 45

Ib., s. 21.

(3.) 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 has been made, in such manner as to the Magistrate shall seem meet. 50

Ib., s. 22.

(4.) 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.

27. 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 from the colony with intent to evade any payment directed to be made by an order, if the fact be proved on oath, any
5 Magistrate, on complaint made to him for that purpose, may issue the warrant and give the authority mentioned in the *last-preceding* section without the previous issue of any warrant or summons.

In certain cases order may be issued without previous issue of summons or warrant.
1877, No. 44, s. 23.

28. Whenever, upon complaint by the *husband*, wife, father, mother, or children of any person, or by any reputable person on
10 his, her, or their behalf, it appears that such 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
15 means of maintenance, and that the person imprisoned has property which can be made available for the maintenance of such *husband*, wife, or children, any Magistrate may in his discretion, 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
20 such *husband*, wife, or child as is hereinbefore mentioned.

When person imprisoned, order for maintenance of wife and children may be made.
Ib., s. 24.

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 provisions of section *twenty-six* shall be deemed to apply to any order so made.

29. Whenever an order is made for the maintenance of any
25 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
30 such child. And any Magistrate may revoke the appointment of such person, and may appoint another person in his or her stead, as occasion may require.

Custody of children
Ib., s. 28.

Every person so appointed to have the custody of any such child shall be empowered to make application, and do all things necessary
35 for the receiving and recovering of all payments becoming due under any such order as aforesaid.

Where either the mother or father or putative father is willing and able to maintain and take the custody of any child, no order shall be made giving the custody to any other person or persons without
40 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 such child.

30. When any order has been made touching the maintenance of any *husband*, wife, or of any child whether illegitimate or born
45 in wedlock, any Magistrate may, 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 *husband's*, wife's, or child's maintenance, or for investing and applying the proceeds of any real or personal property (if any) directed to be sold or
50 collected, or of any money paid in lieu of and as compensation for

Supplemental orders may be made.
Ib., s. 25.

any weekly or other payment, as provided by section *thirteen*, or for insuring 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.

Separate orders
may be made on
different relatives.
1883, No. 26, s. 5.

31. Nothing in this Act contained shall preclude the making of 5
distinct orders, either by the same 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 mainten-
ance of such person, not in any case, however, exceeding a rate of 10
twenty shillings per week.

The fact that an order has been made for the full amount of
twenty shillings per week against one person shall not be ground for
refusing to make an order for the full amount or any part of it against 15
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 person or persons ordered to pay under
the preceding order or orders.

Any Magistrate
may suspend or
alter order.
1886, No. 7, s. 4.

32. Any Magistrate may from time to time suspend, alter, vary,
or cancel, as to him shall seem meet, any order made under this Act, 20
whether such order was or was not originally made by himself, and,
if necessary, may make a new order in substitution of any order so
cancelled; and may, within the limits fixed by this Act, increase or
diminish the amount fixed in any such order.

Any Magistrate
may enforce order.
1877, No. 44, s. 26.

33. Any Magistrate may at any time inquire into any allegation 25
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 exceed-
ing six months, with or without hard labour, or may inflict upon such
offender a penalty not exceeding fifty pounds. 30

Recovery of Maintenance-moneys.

Government or
local authority may
recover costs of
maintaining
deserted wife or
child in a summary
manner.
Ib., s. 29.

34. The cost or proportion of cost of maintaining any deserted
and destitute wife or child incurred by the Government of the colony
or by any local authority or by the trustees of any benevolent insti- 35
tution may be recovered from the husband or father of such deserted
wife or child; but not more shall be recovered than after the rate of
twenty shillings per week for each child or wife. The information or
complaint in such case may be made by any constable or by any
person authorised by the Minister or local authority or trustees.

Expenses of main-
taining a destitute
person to be recover-
able as a debt.
Ib., s. 32.

35. If any deserted and destitute wife or child, or any destitute 40
person, is maintained wholly or in part by the Government of the
colony, 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 Her Majesty, the local authority, or trustees,
and shall bear interest at the rate of *six* pounds per centum per 45
annum, computed from the time or respective times from which such
expenses were incurred; and such debt and costs may be recovered in
any Court of competent jurisdiction at the suit of the Minister

or local authority or trustees, or by any person authorised in writing by him or them.

5 **36.** If any deserted and destitute wife or child, or any destitute person, is maintained wholly or in part by the Government of the colony, or by any local authority, or by the trustees of any benevolent institution, and the husband or father of such wife or child or such destitute person has any real or personal property, the Minister or local authority or trustees, or any person instructed by the Minister or local authority or trustees, may, in a summary manner, apply
10 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 any part thereof to be collected, or the sale of such property or any part thereof to be made, and such Magistrate may, if he is satisfied that such deserted wife or child or destitute person is so
15 maintained as aforesaid, grant such warrant accordingly.

Warrant to let, sell, or collect rents of property of destitute person, &c., may be granted. 1877, No. 44, s. 33.

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

(2.) No warrant authorising the sale of any land shall be issued until the Magistrate is satisfied that the rents, issues, and profits of the real and personal estate are insufficient to maintain such deserted wife or child or destitute person.
25

Ib., s. 35.

(3.) The purchase-money, rents, issues, and profits, and other moneys arising from such real or personal 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 such property, and next in payment of the cost of the maintenance of such wife, child, or destitute person, not exceeding *twenty* shillings 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.
30
35

Ib., s. 34.

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
40 by will) such property or any part thereof.

37. In any case in which any deserted and destitute wife or child or any destitute person is being or has been maintained wholly or in part by the Government of the colony, or by any local authority, or by trustees of any benevolent institution, and the husband or parent
45 of such wife or child, or such person, or any near relative of such person, shall at any time within six years thereafter be of sufficient ability to repay and reimburse the amount or cost of such maintenance or part thereof, any Magistrate, upon the information or complaint of the Minister, or local authority, or trustees, or any person
50 instructed by the Minister, or local authority, or trustees, may inquire into the matter, and, if he shall be of opinion that such husband or

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

father, or such person, or any near relative of such person, is of sufficient ability to repay the whole or part of the amount or cost of such maintenance, may order such husband or father, or such person, or any near relative of such person, to pay to the aforesaid Minister, or local authority, or trustees such sum of money, either in one sum or by instalments, as in his judgment such husband or father, or such person or near relative of such person, can reasonably afford and ought to contribute towards the past maintenance of such wife or child or person respectively. 5

But 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. 10

When person maintained in a charitable institution maintenance-money to be paid to managers.
1877, No. 44, s. 36.

38. When any person in whose favour an order for maintenance shall be made under the provisions of this Act shall be maintained by any 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. 15

Public Trustee to contribute to maintenance in certain cases.
1885, No. 46, s. 73.

39. 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 of the colony, or by any local authority, or by the trustees of any benevolent institution, in the place of his or her actual near relative who has died intestate; and he is hereby authorised 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. 20

Near relative of deserted wife or child may recover moneys, &c., paid for maintenance.
1877, No. 44, s. 30.

40. If the near relative (other than the father, stepfather, or stepmother) of any deserted and destitute wife or child shall, under the compulsion of an order made under the authority of this Act, pay 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 such moneys, with interest thereon at the rate of *six* pounds per centum per annum, and all costs which he shall be put to. 30

Procedure.

Summary proceedings.

41. All proceedings under this Act may be taken in a summary manner under "The Justices of the Peace Act, 1882"; subject, however, that the fees specified in the Third Schedule of that Act shall not be taken in respect of such proceedings under this Act. 40

Evidence.
Ib., s. 37.

42. In proceedings under this Act, the Magistrate may receive any evidence as to him may seem fit, whether the same be strictly legal evidence or not.

Husbands and wives competent witnesses.
1886, No. 7, s. 2.

43. 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. 45

Onus of proof.

44. Upon the hearing of any complaint for the recovery from any near relative of any sum of money under this Act, the onus of proving that the person complained of is not a near relative, or that 50

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.

5 But this section shall not apply to any complaint made under section *nine*.

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.

10 46. Every person committed to prison for failure to comply with any order for maintenance made under the provisions of 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.

But 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.

15 47. Any 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 such order; and any such order may be made to extend to the recovery of the expenses paid for the burial of such person, wife, child, or illegitimate child respectively.

Posthumous orders may be made.

25 48. The limitation of time in "The Justices of the Peace Act, 1882," under 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 shall have become due and payable.

Limitation of time for laying informations or complaints. 1877, No. 44, s. 31.

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

Warrant for apprehension may be issued in the first instance. *Ib.*, s. 39.

40 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.

Execution of warrants.

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

Summons, how served. *Ib.*, s. 40.

Married women's protection orders may be enforced under this Act. 1877, No. 44, s. 41.

Appeal. *Ib.*, s. 42.

Repeals.

Schedule.

Sec. 25.

52. 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 "The Married Women's Property Protection Act, 1880."

53. 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, 1882."

54. The Acts hereunder enumerated are hereby repealed.

1877, No. 44.—The Destitute Persons Act, 1877.

1883, No. 26.—The Destitute Persons Act 1877 Amendment Act, 1883.

1884, No. 21.—The Destitute Persons Act 1877 Amendment Act, 1884.

1886, No. 7.—The Destitute Persons Acts Amendment Act, 1886.

1884, No. 10.—The Married Women's Property Act, 1884. *In part—namely,* sections twenty-three and twenty-four.

SCHEDULE.

BOND WHICH MAY BE TAKEN AS SECURITY UNDER "THE DESTITUTE PERSONS ACT, 1894."

Know all men by these presents that I, _____, of _____ (the principal party), and _____, of _____, and _____, of _____, in the Colony of New Zealand (*sureties*), are held and firmly bound unto the Clerk of the Court at _____ (who, with his successors, is hereinafter 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 heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this _____ day of _____, 189 _____.

WHEREAS _____, of _____, was, on the _____ day of _____, 189 _____, charged before _____, a Stipendiary Magistrate for the Colony of New Zealand, sitting at _____, for that he [*or she*], the said _____, being the _____ of _____, a destitute person [*or child*] within the meaning of "The Destitute Persons Act, 1894," has unlawfully deserted the said _____ [*or has* _____ 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 _____, 189 _____:

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, otherwise shall remain in full force and virtue.

Signed, sealed, and delivered by the said _____, in the presence of _____.

Signed, sealed, and delivered by the said _____, in the presence of _____.

Signed, sealed, and delivered by the said _____, in the presence of _____.