Legislative Council.

21° VICTORIÆ, 1857.

# A BILL

## To amend the Act for the Maintenance of Deserted Wives and Children.

WHEREAS it is expedient to amend the Act passed in the fourth year of the reign of Her Majesty intituled "*An Act to provide* "*for the maintenance of deserted Wives and Children*": Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows:— Preamble. 4 Vic. No. 5.

1. It shall be lawful for any Justice of the Peace on being satisfied by oath that any husband has in violation of the said Act deserted his wife or that any child has been so deserted by its father or mother or that any husband father or mother is about to remove from the Colony or to remote parts within the same to defeat the provisions of the said Act or any Order made in pursuance thereof or of this Act to issue a warrant for the apprehension of such husband father or mother to be dealt with as hereinafter or as in the said Act is mentioned. Warrant may issue in the first instance in certain cases.

2. Every summons issued under the said Act may be served on any such husband father or mother either personally or (if he or she cannot be found) at his or her last or most usual known place of residence and the party serving such summons may make affidavit of the service thereof stating therein the mode of such service (and if not personally that the defendant cannot be found) before any Justice of the Peace and such affidavit may be received by the Justices investigating the case as sufficient proof of due service thereof if they shall think fit and such Justices may thereupon proceed in the case *ex parte* or may issue a Warrant to apprehend the defendant so summoned. Affidavit of service of summons to be sufficient to proceed *ex parte*.

3. When an Order is made for the maintenance of any wife or child it shall be lawful for the Justices if they think fit immediately on pronouncing their decision to require the party against whom such Order Justices may order party to give security for payment of amount ordered.

is made to enter into a recognizance with sureties for the due performance of such Order and in default of the person's immediately entering into such recognizance with such sureties as the Justices require it shall be lawful for them to commit such party to gaol there to remain until such recognizance shall have been entered into or the said Order complied with Provided always that no such recognizance shall extend over a longer period than twelve months. 5

Deserted wife may acquire separate property.

4. In all cases where it shall appear by any adjudication against a husband under the recited Act that he has unlawfully deserted his wife and notice thereof shall be published in the *New South Wales Government Gazette* under the hand of one of the Convicting Justices, it shall be lawful for such wife thenceforth to carry on any business or employment and to receive acquire and retain or sell convey devise and dispose of any property real or personal and to enter into contracts as if she were an unmarried woman and such husband shall not have any interest in or power over any property which his wife may acquire after publication of such notice but such married woman and her property shall be liable to all actions suits and proceedings in respect of matters occurring after such publication as if she were unmarried. 10 15

Facilitating evidence of desertion.

5. Where any husband shall in fact have quitted his wife or any parent his or her children or child for a period exceeding sixty days during at the least seven of which such wife or children or child shall have been left by him or her without means of support such husband or parent shall *primâ facie* be deemed to have unlawfully deserted such wife or children or child And it shall be lawful for the Justices in any case to make an Order for the maintenance of a child by its father or alleged father on the oath of the mother only if such Justices shall think it reasonable and just so to do. 20 25

Certain cases of wilful desertion.

6. If any husband shall after the passing of this Act wilfully and and without lawful or reasonable cause or excuse leave his wife or any parent shall after the passing of this Act wilfully and without lawful or reasonable cause or excuse leave any of his or her children without means of support such husband or parent being able to maintain the wife or child (as the case may be) so left the husband or parent so offending shall be deemed guilty of a misdemeanor. 30 35

7. Provided that no father shall be liable under the last preceding section in respect of any illegitimate child unless an Order shall have been duly made for the maintenance by him of such child and he shall have neglected for the space of two days to comply with such Order and

provided

provided also that no husband or parent shall be liable under the same section if any Order has been made on behalf or at the instance of the wife or child for her or its maintenance unless such husband or parent shall have neglected for the space of two days to comply with such Order in some particular which he or she ought to have complied with.

Provision for educating children.

8. In respect of every child for whose maintenance an Order is made under the aforesaid Act it shall be lawful for any two Justices with the consent of the mother if to be found or without the consent of either parent if the child be without means of support or the parent having the care thereof be of vicious and abandoned character or an habitual drunkard to cause such child to be placed in the Destitute Children's Asylum or any other Public Establishment approved of by them the Directors or Managers of which shall be willing to receive such child there to remain subject to the By-Laws or Rules and Regulations of the Institution and thereupon and thereafter from time to time the same or any two other Justices (or any one Police Magistrate) may by order or orders in writing direct the allowance for such child's maintenance to be paid to some officer of such Institution and may for that purpose exercise all the powers given to Justices or in certain cases to one Justice by the ninth section of the Act hereby amended.

Varying orders of maintenance.

9. The power given to the Court of Quarter Sessions by the eleventh section of the said Act of varying an Order for maintenance either of the wife or of any children or child may upon the application either of the wife or any such child or of the husband or parent be exercised from time to time by any two Justices Provided that notice of every such application be given before the adjudication to all parties to be affected thereby, in such manner as such Justices shall direct.

The two Acts incorporated.

10. This Act shall so far as is consistent with the contents and subject matter thereof be taken as part of and be construed with the said recited Act and the same may be cited for all purposes as "The Deserted "Wives and Children Act of 1840 as amended by the Act of 1857."

**Legislative Council.**

21° Victoriæ, 1857.

# A BILL

## To amend the Act for the Maintenance of Deserted Wives and Children.

(*As Amended in Select Committee.*)

WHEREAS it is expedient to amend the Act passed in the fourth year of the reign of Her Majesty intituled "*An Act to provide* "*for the maintenance of deserted Wives and Children*": Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows:— Preamble. 4 Vic. No. 5.

1. It shall be lawful for any Justice of the Peace on being satisfied by oath that any husband has in violation of the said Act deserted his wife or that any child has been so deserted by its father or mother or that any husband father or mother is about to remove from the Colony or to remote parts within the same to defeat the provisions of the said Act or any Order made in pursuance thereof or of this Act to issue a warrant for the apprehension of such husband father or mother to be dealt with as hereinafter or as in the said Act is mentioned. Warrant may issue in the first instance in certain cases.

2. Every summons issued under the said Act may be served on any such husband father or mother either personally or (if he or she cannot be found) at his or her last or most usual known place of residence and the party serving such summons may make affidavit of the service thereof stating therein the mode of such service (and if not personally that the defendant cannot be found) before any Justice of the Peace and such affidavit may be received by the Justices investigating the case as sufficient proof of due service thereof if they shall think fit and such Justices may thereupon proceed in the case *ex parte* or may issue a Warrant to apprehend the defendant so summoned. Affidavit of service of summons to be sufficient to proceed *ex parte*.

c 42— 3.

NOTE.—The Clause *ruled through* has been expunged; the figures in *heavy type* indicate the consequent alterations in the numbers of the Clauses.

Justices may order party to give security for payment of amount ordered.

3. When an Order is made for the maintenance of any wife or child it shall be lawful for the Justices if they think fit immediately on pronouncing their decision to require the party against whom such Order is made to enter into a recognizance with sureties for the due performance of such Order and in default of the person's immediately entering into such recognizance with such sureties as the Justices require it shall be lawful for them to commit such party to gaol there to remain until such recognizance shall have been entered into or the said Order complied with Provided always that no such recognizance shall extend over a longer period than twelve months.

Deserted wife may acquire separate property.

4. In all cases where it shall appear by any adjudication against a husband under the recited Act that he has unlawfully deserted his wife and notice thereof shall be published in the *New South Wales Government Gazette* under the hand of one of the Convicting Justices, it shall be lawful for such wife thenceforth to carry on any business or employment and to receive acquire and retain or sell convey devise and dispose of any property real or personal and to enter into contracts as if she were an unmarried woman and such husband shall not have any interest in or power over any property which his wife may acquire after publication of such notice but such married woman and her property shall be liable to all actions suits and proceedings in respect of matters occurring after such publication as if she were unmarried.

Facilitating evidence of desertion.

5. Where any husband shall in fact have quitted his wife or any parent his or her children or child for a period exceeding sixty days during at the least seven of which such wife or children or child shall have been left by him or her without means of support such husband or parent shall *primâ facie* be deemed to have unlawfully deserted such wife or children or child And it shall be lawful for the Justices in any case to make an Order for the maintenance of a child by its father or alleged father on the oath of the mother only if such Justices shall think it reasonable and just so to do.

Certain cases of wilful desertion.

6. **5.** If any husband shall after the passing of this Act wilfully and and without lawful or reasonable cause or excuse leave his wife or any parent shall after the passing of this Act wilfully and without lawful or reasonable cause or excuse leave any of his or her children without means of support such husband or parent being able to maintain the wife or child (as the case may be) so left the husband or parent so offending shall be deemed guilty of a misdemeanor.

Proviso.

7. **6.** Provided that no father shall be liable under the last preceding section in respect of any illegitimate child unless an Order shall have been duly made for the maintenance by him of such child and he shall have neglected for the space of two days to comply with such Order and provided also that no husband or parent shall be liable under the same section if any Order has been made on behalf or at the instance of the wife or child for her or its maintenance unless such husband or parent shall have neglected for the space of two days to comply with such Order in some particular which he or she ought to have complied with.

Provision for educating children.

8. **7.** In respect of every child for whose maintenance an Order is made under the aforesaid Act it shall be lawful for any two Justices with the consent of the mother if to be found or without the consent of either parent if the child be without means of support or the parent having the care thereof be of vicious and abandoned character or an habitual drunkard to cause such child to be placed in the Destitute Children's Asylum or any other Public Establishment approved of by them the Directors or Managers of which shall be willing to receive such child there to remain subject to the By-Laws or Rules and Regulations of the Institution and thereupon and thereafter from time to time the same or any two other Justices (or any one Police Magistrate) may by order or orders in writing direct the allowance for such child's maintenance to be paid to some officer of such Institution and may for that purpose exercise all the powers given to Justices or in certain cases to one Justice by the ninth section of the Act hereby amended.

9.

9. **8.** The power given to the Court of Quarter Sessions by the eleventh section of the said Act of varying an Order for maintenance either of the wife or of any children or child may upon the application either of the wife or any such child or of the husband or parent be exercised from time to time by any two Justices Provided that notice of every such application be given before the adjudication to all parties to be affected thereby, in such manner as such Justices shall direct. **Varying orders of maintenance.**

10. **9.** This Act shall so far as is consistent with the contents and subject matter thereof be taken as part of and be construed with the said recited Act and the same may be cited for all purposes as "The Deserted "Wives and Children Act of 1840 as amended by the Act of 1857." **The two Acts incorporated.**