

# A BILL

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

**W**HEREAS it is expedient to amend the Act passed in the fourth Preamble.  
year of the reign of Her Majesty intituled "*An Act to provide* 4 Vic. No. 5.  
"*for the maintenance of deserted Wives and Children*" Be it therefore  
enacted by the Queen's Most Excellent Majesty by and with the advice  
5 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:—

1. It shall be lawful for any Justice of the Peace on being satisfied Warrant may issue  
in the first instance in  
certain cases.  
by oath that any husband has in violation of the said Act deserted his  
10 wife or that any child has been so deserted by its father or mother or that  
any husband or 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 or father or mother to be dealt with  
15 as hereinafter or as in the said Act is mentioned.

2. Every summons issued under the said Act may be served on Affidavit of service  
of summons to be  
sufficient to proceed  
ex parte.  
any such husband or 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  
20 thereof stating therein the mode and time and place 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 inves-  
tigating the case as sufficient proof of due service of the summons if they  
shall think fit and such Justices may thereupon proceed in the case *ex*  
25 *parte* or may issue a warrant to apprehend the defendant so summoned.

3. When an Order is made for the maintenance of any wife or Security for pay-  
ment of amoun  
ordered.  
child it shall be lawful for the Justices if they think fit immediately on  
pronouncing their decision to require the defendant to enter into a recog-



nizance with sureties for the due performance of such Order and in default of his or her immediately entering into such recognizance with such sureties as the Justices require it shall be lawful for them to commit such defendant 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 or committal 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 acquire and retain or sell and dispose of any property being personal and to enter into contracts as if she were an unmarried woman and such husband shall not be liable on any such contract nor shall he have any interest in or power over any property which his wife may acquire after publication of such notice but such wife 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.

Proviso.

5. Provided always that no such notice shall be so published except by the assent of the wife nor until the expiration of three months after the adjudication.

Facilitating evidence of desertion.

6. 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 Provided that nothing in this section shall prevent the Justices from adjudging the fact of desertion on other evidence or on proof of abandonment for a less period than sixty days if they shall think fit.

Wife and husband may be witnesses mutually.

7. In all proceedings under this or the recited Act excepting always the now following section of this Act the wife and the husband shall be competent and compellable to give evidence on her or his own behalf and for or against the other.

35

Certain cases of wilful desertion.

8. If any husband shall after the passing of this Act wilfully and without lawful or reasonable cause or excuse desert his wife or any parent shall after the passing of this Act wilfully and without lawful or reasonable cause or excuse desert any of his or her children and leave



her or them or any of them without means of support such husband or parent being able to maintain the wife or child (as the case may be) so deserted the husband or parent so offending shall be deemed guilty of a misdemeanor.

5        9. Provided that no father shall be liable under the last preceding Proviso.  
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  
10 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.

10. In respect of every child for whose maintenance an Order is Provision for edu-  
cating children.  
15 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  
20 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  
25 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.

11. The power given to the Court of Quarter Sessions by the Varying orders of  
maintenance.  
30 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  
35 to be affected thereby in such manner as such Justices shall direct.

12. The said recited Act may be cited for all purposes as "The Title of Act.  
"Deserted Wives and Children Act of 1840 as amended by the Act of  
"1858."



THE UNIVERSITY OF CHICAGO

PHILOSOPHY DEPARTMENT

PHILOSOPHY 101

LECTURE NOTES FOR THE COURSE

WINTER 1964

LECTURE I: THE PHILOSOPHY OF LANGUAGE

1. THE PHILOSOPHY OF LANGUAGE

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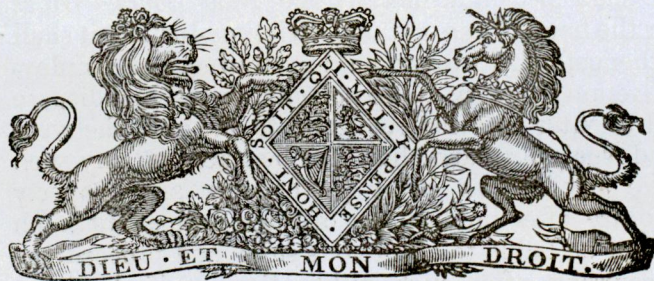


This PUBLIC BILL, having been this day passed by the LEGISLATIVE COUNCIL, is ready for presentation to the LEGISLATIVE ASSEMBLY, for its concurrence.

Legislative Council Chamber,  
Sydney, 7th May, 1858. }

WM. MACPHERSON,  
Clerk of the Legislative Council.

## New South Wales.



ANNO VICESIMO PRIMO

## VICTORIÆ REGINÆ.

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No. .

An Act to amend the Act for the Maintenance of Deserted Wives and Children.

**W**HEREAS 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:—

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 or 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 or 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 or 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 and time and place 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 of the summons 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*.



*Deserted Wives and Children Act Amendment Act.—1858.*

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 defendant to enter into a recognizance with sureties for the due performance of such Order and in default of his or her immediately entering into such recognizance with such sureties as the Justices require it shall be lawful for them to commit such defendant 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 or committal shall extend over a longer period than twelve months.

Security for payment of amount ordered.

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 acquire and retain property being personal or sell and dispose of any such property and to enter into contracts and to sue as if she were an unmarried woman and such husband shall not be liable on any such contract nor shall he have any interest in or power over any property which his wife may acquire after publication of such notice but such wife 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.

Deserted wife may acquire separate property.

5. Provided always that no such notice shall be so published except by the assent of the wife nor until the expiration of three months after the adjudication.

Proviso.

6. 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. Provided that nothing in this section shall prevent the Justices from adjudging the fact of desertion on other evidence or on proof of abandonment for a less period than sixty days if they shall think fit.

Facilitating evidence of desertion.

7. In all proceedings under this or the recited Act excepting always the now following section of this Act the wife and the husband shall be competent and compellable to give evidence on her or his own behalf and for or against the other. Provided that no admission or statement then made by either shall be used upon any other occasion.

Wife and husband may be witnesses mutually.

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

Certain cases of wilful desertion.

9. 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.

Proviso.

10. Provided also that in every prosecution or proceeding under this or the recited Act if in the opinion of the jury (or of the Justices as the case may be) there was reasonable cause for the desertion or refusal or neglect

Proviso.

Reasonable cause for desertion.



*Deserted Wives and Children Act Amendment Act.—1858.*

neglect of maintenance the jury shall acquit the defendant or the Justices (as the case may be) shall abstain from making any order under this or the recited Act against him.

11. 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.

Provision for educating children.

12. 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.

13. The said recited Act may be cited for all purposes as "The Deserted Wives and Children Act of 1840 as amended by the Act of 1858."

Title of Act.



THE JOURNAL OF THE  
ROYAL ANTHROPOLOGICAL INSTITUTE

Volume 10, Part 1  
1980

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DESERTED WIVES AND CHILDREN ACT AMENDMENT BILL.

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*SCHEDULE of Legislative Assembly's Amendments. Message*  
25 June, 1858.

	Page 2, line 11.			<i>Insert "new clause No. 4."</i>
	,, 2, ,, 48.			<i>Insert "new clause No. 5."</i>
	,, 2, ,, 51.			<i>Insert "new clause No. 6."</i>
	,, 2 and 3, ,, 56.			<i>Omit "Clause 4."</i>
	,, 3, ,, 10.			<i>Omit "Clause 5."</i>
Clause 7. 6-	,, 3, ,, 13.			<i>Omit "6" insert "7."</i>
,, 7, ,, 3, ,, 13.				<i>Omit "in fact."</i>
,, 7, ,, 3, ,, 15.				<i>Omit before "seven" the words "at the least."</i>
,, 7, ,, 3, ,, 15.				<i>Insert after "seven" the words "at the least."</i>
,, 8. 7-	,, 3, ,, 22.			<i>Omit "7" insert "8."</i>
	,, 3, ,, 27.			<i>Insert "new Clause 9."</i>
	,, 3, ,, 33.			<i>Insert "new Clause 10."</i>
Clause 8,	,, 3, ,, 47.			<i>Omit "Clause 8."</i>
,, 9, ,, 4, ,, 1.				<i>Omit "Clause 9."</i>
,, 10, ,, 4, ,, 10.				<i>Omit "Clause 10."</i>
,, 11, ,, 4, ,, 26.				<i>Omit "(or any one Police Magistrate.)"</i>







This PUBLIC BILL, having been this day passed by the LEGISLATIVE COUNCIL, is ready for presentation to the LEGISLATIVE ASSEMBLY, for its concurrence.

Legislative Council Chamber,  
Sydney, 7th May, 1858. }

WM. MACPHERSON,  
Clerk of the Legislative Council.

The LEGISLATIVE ASSEMBLY has this day agreed to this Bill with Amendments.

Legislative Assembly Chamber,  
Sydney, 25th June, A.D., 1858. }

R. O'CONNOR,  
Clerk of Legislative Assembly.

## New South Wales.



ANNO VICESIMO SECUNDO

## VICTORIÆ REGINÆ.

\*\*\*\*\*

No. .

An Act to amend the Act for the Maintenance of Deserted Wives and Children.

**W**HEREAS it is expedient to amend the Act passed in the fourth Preamble. year of the reign of Her Majesty intituled "*An Act to provide* 4 Vic. No. 5. "*for the maintenance of deserted Wives and Children*" Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice 5 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:—

1. It shall be lawful for any Justice of the Peace on being satisfied 10 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 or 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 or father or mother to be dealt with 15 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 20 any such husband or 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 and time and place 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 of the summons if they shall think fit and such Justices may thereupon proceed in the case *ex* 25 *parte* or may issue a warrant to apprehend the defendant so summoned.

Affidavit of service of summons to be sufficient to proceed *ex parte*.

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3.

NOTE.—The clauses and words to be omitted are ruled through; those to be inserted are printed in black letter.



*Deserted Wives and Children Act Amendment Act.—1858.*

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 defendant to enter into a recognizance with sureties for the due performance of such Order and in default of his or her immediately entering into such recognizance with such sureties as the Justices require it shall be lawful for them to commit such defendant 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 or committal shall extend over a longer period than twelve months.

Security for payment of amount ordered.

4. A wife deserted by her husband may at any time after such desertion apply *ex parte* to the Supreme Court or to any Judge thereof for an order to protect any personal property which she may acquire after such desertion against her husband or his creditors or any person claiming under him and such order shall in all cases be made on such Court or Judge being satisfied by affidavit of the fact of such desertion and that the same was without reasonable cause and shall contain a statement of the day of such desertion and shall have the effect of protecting all personal property acquired by such wife at any time after such desertion from her husband and his creditors and all persons claiming under him and while such order shall continue in force such wife shall with respect to such personal property as aforesaid and to all contracts in reference thereto and to all other contracts entered into by her after the making of such order and not relating to real estate be regarded in all respects as a *feme sole* and if the husband or any of his creditors or any person claiming under him shall without the permission of the wife seize take or hold possession of any property protected as aforesaid such wife is hereby empowered to sue such husband creditor or other person for the restoration of the specific property seized taken or held as aforesaid and to recover in such suit in the event of such property not being restored a sum equal to double the value of the same with double costs of suit. Provided always that it shall be lawful for the husband or any of his creditors or any person claiming under him at any time after the making of any such order as aforesaid to apply on notice to the wife to the Supreme Court or to any Judge thereof that such order may be rescinded and the same shall be rescinded in all cases where it shall be proved to the satisfaction of such Court or Judge by affidavit or by *vivâ voce* examination or both that such wife was not deserted without reasonable cause or that since the making of the order she and her husband have cohabited or resided together and on such order being so rescinded the husband shall have and enjoy with respect to all personal property protected by such order the same rights as he would have had if such order had not been made and shall be entitled to sue on any contracts which his wife may have made while such order was in force and shall be liable to be sued on all such contracts in the same manner as though they had been made by his wife before his marriage with her.

Wife may apply to Supreme Court or to a Judge for an order to protect personal property acquired by her after desertion by her husband.

5. Nothing in this Act shall take away or diminish the common law liability of a husband in respect to contracts made by a wife deserted by her husband without reasonable cause.

Common law liability of husband preserved.

6. 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 reasonably justify her withdrawal from such residence shall be deemed and taken to have been deserted without reasonable cause.

Wife compelled to leave her home to be considered as deserted.

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

Deserted wife may acquire separate property.



*Deserted Wives and Children Act Amendment Act.—1858.*

be lawful for such wife thenceforth to carry on any business or employment and to acquire and retain property being personal or sell and dispose of any such property and to enter into contracts and to sue as if she were an unmarried woman and such husband shall not be liable on any such  
 5 contract nor shall he have any interest in or power over any property which his wife may acquire after publication of such notice but such wife 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 5. Provided always that no such notice shall be so published <sup>Provido.</sup> except by the assent of the wife nor until the expiration of three months after the adjudication.

7. 6. 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  
 15 ~~at the least seven~~ <sup>at the least</sup> 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 *prima facie* be deemed to have unlawfully deserted such wife or children or child Provided that nothing in this section shall prevent the Justices from adjudging the fact of desertion on other evidence or  
 20 on proof of abandonment for a less period than sixty days if they shall think fit.

8. 7. In all proceedings under this or the recited Act excepting always the now following section of this Act the wife and the husband shall be competent and compellable to give evidence on her or his own  
 25 behalf and for or against the other Provided that no admission or statement then made by either shall be used upon any other occasion.

9. If any parent shall after the passing of this Act wilfully and without lawful or reasonable cause or excuse desert any of his children  
 under the age of sixteen years and leave such child without means of  
 30 support such parent being able to maintain such child shall be deemed guilty of a misdemeanor and shall on conviction be imprisoned for any period not exceeding twelve calendar months.

10. Whenever any order is made for the maintenance of a wife under the second section of the said recited Act it shall be lawful for  
 35 the Justices making such order instead of or in addition to any relief or remedy provided by the said recited Act to authorize and direct some person to demand and receive any annuity or other income payable to the husband or any money or moneys received or receivable or held by any person or persons in trust to be paid periodically or by instalments or  
 40 otherwise to or for such husband or such portion of such annuity or income or other money or moneys as the said Justices shall think fit and to appropriate the proceeds towards the payment of such allowance in such manner as they shall from time to time direct and every payment made in pursuance of any such order shall be as valid as if made to the  
 45 husband or by his authority or direction and shall protect and indemnify any person acting in pursuance of such order.

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

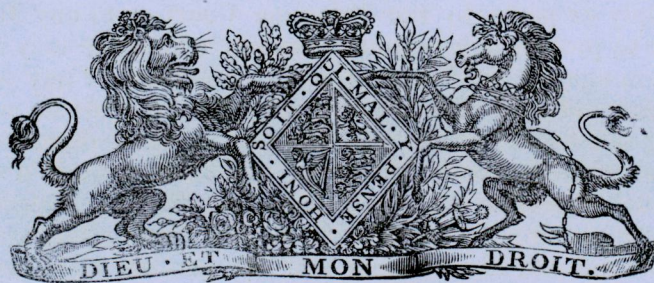


*Deserted Wives and Children Act Amendment Act.—1858.*

9. Provided that no father shall be liable under the last preceding <sup>Provis'o.</sup> 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  
 5 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.
- 10 10. Provided also that in every prosecution or proceeding under <sup>Provis'o.</sup> this or the recited Act if in the opinion of the jury (or of the Justices as <sup>Reasonable cause</sup> the case may be) there was reasonable cause for the desertion or refusal or neglect of maintenance the jury shall acquit the defendant or the Justices (as the case may be) shall abstain from making any order under this or  
 15 the recited Act against him.
11. In respect of every child for whose maintenance an Order is <sup>Provision for edu-</sup> made under the aforesaid Act it shall be lawful for any two Justices <sup>cating children.</sup> 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  
 20 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  
 25 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  
 30 by the ninth section of the Act hereby amended.
12. The power given to the Court of Quarter Sessions by the <sup>Varying orders of</sup> eleventh section of the said Act of varying an Order for maintenance <sup>maintenance.</sup> 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  
 35 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.
13. The said recited Act may be cited for all purposes as "The <sup>Title of Act.</sup> Deserted Wives and Children Act of 1840 as amended by the Act of  
 40 "1858."



New South Wales.



ANNO VICESIMO SECUNDO

VICTORIÆ REGINÆ.

\*\*\*\*\*

No. VI.

An Act to amend the Act for the Maintenance of Deserted Wives and Children. [Assented to, 25th August, 1858.]

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:—

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 or 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 or 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 or 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 and time and place 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 of the summons 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*.



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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 defendant to enter into a recognizance with sureties for the due performance of such Order and in default of his or her immediately entering into such recognizance with such sureties as the Justices require it shall be lawful for them to commit such defendant 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 or committal shall extend over a longer period than twelve months.

Wife may apply to Supreme Court or to a Judge for an order to protect personal property acquired by her after desertion by her husband.

4. A wife deserted by her husband may at any time after such desertion apply *ex parte* to the Supreme Court or to any Judge thereof for an order to protect any personal property which she may acquire after such desertion against her husband or his creditors or any person claiming under him and such order shall in all cases be made on such Court or Judge being satisfied by affidavit of the fact of such desertion and that the same was without reasonable cause and shall contain a statement of the day of such desertion and shall have the effect of protecting all personal property acquired by such wife at any time after such desertion from her husband and his creditors and all persons claiming under him and while such order shall continue in force such wife shall with respect to such personal property as aforesaid and to all contracts in reference thereto and to all other contracts entered into by her after the making of such order and not relating to real estate be regarded in all respects as a *feme sole* and if the husband or any of his creditors or any person claiming under him shall without the permission of the wife seize take or hold possession of any property protected as aforesaid such wife is hereby empowered to sue such husband creditor or other person for the restoration of the specific property seized taken or held as aforesaid and to recover in such suit in the event of such property not being restored a sum equal to double the value of the same with double costs of suit Provided always that it shall be lawful for the husband or any of his creditors or any person claiming under him at any time after the making of any such order as aforesaid to apply on notice to the wife to the Supreme Court or to any Judge thereof that such order may be rescinded and the same shall be rescinded in all cases where it shall be proved to the satisfaction of such Court or Judge by affidavit or by *vivâ voce* examination or both that such wife was not deserted without reasonable cause or that since the making of the order she and her husband have cohabited or resided together and on such order being so rescinded the husband shall have and enjoy with respect to all personal property protected by such order the same rights as he would have had if such order had not been made and shall be entitled to sue on any contracts which his wife may have made while such order was in force and shall be liable to be sued on all such contracts in the same manner as though they had been made by his wife before his marriage with her.

Common law liability of husband preserved.

5. Nothing in this Act shall take away or diminish the common law liability of a husband in respect to contracts made by a wife deserted by her husband without reasonable cause.

Wife compelled to leave her home to be considered as deserted.

6. 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 reasonably justify her withdrawal from such residence shall be deemed and taken to have been deserted without reasonable cause.

Facilitating evidence of desertion.

7. Where any husband shall have quitted his wife or any parent his or her children or child for a period exceeding sixty days during seven at the least 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



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or child Provided that nothing in this section shall prevent the Justices from adjudging the fact of desertion on other evidence or on proof of abandonment for a less period than sixty days if they shall think fit.

8. In all proceedings under this or the recited Act excepting always the now following section of this Act the wife and the husband shall be competent and compellable to give evidence on her or his own behalf and for or against the other Provided that no admission or statement then made by either shall be used upon any other occasion.

Wife and husband may be witnesses mutually.

9. If any parent shall after the passing of this Act wilfully and without lawful or reasonable cause or excuse desert any of his children under the age of sixteen years and leave such child without means of support such parent being able to maintain such child shall be deemed guilty of a misdemeanor and shall on conviction be imprisoned for any period not exceeding twelve calendar months.

Parent deserting his children guilty of a misdemeanor.

10. Whenever any order is made for the maintenance of a wife under the second section of the said recited Act it shall be lawful for the Justices making such order instead of or in addition to any relief or remedy provided by the said recited Act to authorize and direct some person to demand and receive any annuity or other income payable to the husband or any money or moneys received or receivable or held by any person or persons in trust to be paid periodically or by instalments or otherwise to or for such husband or such portion of such annuity or income or other money or moneys as the said Justices shall think fit and to appropriate the proceeds towards the payment of such allowance in such manner as they shall from time to time direct and every payment made in pursuance of any such order shall be as valid as if made to the husband or by his authority or direction and shall protect and indemnify any person acting in pursuance of such order.

Justices empowered to authorize persons to receive annuity &c. of husband to pay amount ordered in support of wife.

11. 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 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.

Provision for educating children.

12. 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.

13. The said recited Act may be cited for all purposes as "The Title of Act. "Deserted Wives and Children Act of 1840 as amended by the Act of "1858."



