

[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1929.

A BILL

To amend the Deserted Wives and Children Act, 1901, and the Deserted Wives and Children Amending Act, 1913, and certain other Acts; and for purposes connected therewith.

BE it enacted by the King'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. (1) This Act shall be construed with the Deserted Wives and Children Act, 1901, as amended by subsequent Acts, and may be cited as the "Deserted Wives and Children (Amendment) Act, 1929." Short title, &c.

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(2) The Deserted Wives and Children Act, 1901, as so amended, is hereinafter referred to as the Principal Act.

(3) The Principal Act, as amended by this Act, may be cited as the Deserted Wives and Children Act, 1901-1929.

2. The Principal Act is amended by inserting after section twenty-four the following new section :— Amendment of Act No. 17, 1901. News s. 25.

25. (1) Any person feeling aggrieved by any order or varied order made, or by the dismissal of a complaint or the refusal of any application under this Act, may appeal to a Court of Quarter Sessions in the manner provided by section one hundred and twenty-two of the Justices Act, 1902, and the provisions of the said section shall apply to such appeal.

(2) Where no summons has been issued and the justices proceed ex parte in pursuance of subsection two of section six after the issue of a warrant, the defendant may, if he desires to appeal from the order made, give notice of appeal within twenty-one days of the time when the order comes to his knowledge.

3. The Principal Act is further amended as follows :— Further amendment of Act No. 17, 1901. Sec. 2. (Interpretation.)

(a) by omitting from section two the words "child includes illegitimate child" and by inserting in lieu thereof the words "child does not include an illegitimate child but includes a step-child whose father at the date of the mother's remarriage is deceased";

(b) (i) by omitting from section four, paragraphs (a) and (b), and by inserting in lieu thereof the following words: "any husband or father has deserted his wife or child or where he has left such wife or child without means of support or where he is about to remove out of New South Wales or to some remote part thereof without making adequate provision for the support of his wife or child";

(ii)

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- (ii) by omitting from the same section the words "such husband, father, or mother" wherever occurring and by inserting in lieu thereof the words "such husband or father";
- (iii) by inserting at the end of the same subsection the words "with some person apparently of or above the age of sixteen years";
- (iv) by omitting from subsection two of the same section the word "found" and by inserting in lieu thereof the words "conveniently met with";
- (c) (i) by inserting in section five after the word "summons" wherever it occurs the words "or notice"; Sec. 5. (Service of summons.)
- (ii) by omitting from subsection one of the same section the words "found then" and by inserting in lieu thereof the words "conveniently met with by leaving the same";
- (d) (i) by inserting in paragraph (a) of subsection one of section seven after the words "means of support" the words "or that the defendant is about to remove out of the State of New South Wales or to some remote part thereof without making adequate provision for the support of his wife or child"; Sec. 7. (Hearing and consequent orders.)
- (ii) by inserting in the same paragraph after the words "in addition" the words "or in lieu thereof";
- (iii) by omitting from the same paragraph the words "child of the marriage" and by inserting in lieu thereof the words "such child";
- (iv) by inserting in subsection two of the same section after the word "weekly" the word "fortnightly";
- (v) by inserting in subsection two of the same section after the words "justices may order" the words "an order adjudging an allowance

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allowance to be paid for the use of a wife or for the support of a child may be made to take effect as from a date not earlier than three months immediately preceding the date of the order” ;

(vi) by omitting from subsection three of the same section the words “ or leaving without support ” and by inserting in lieu thereof the words “ the leaving without support or the removal alleged ” ;

(vii) by inserting at the end of subsection three of the same section the following new paragraph :—

Adultery committed by the wife which has not been condoned, connived at, or condoned to by the husband shall be deemed reasonable cause within the meaning of this subsection ” ;

(viii) by omitting subsection four of the same section ;

(e) (i) by inserting in section thirteen before the word “ father ” wherever it occurs the word “ or ” ; Sec. 13. (Warrant may issue in certain cases.)

(ii) by omitting from the same section the words “ or mother ” wherever they occur ;

(iii) by inserting in the same section after the word “ father ” where such word firstly occurs the words “ cannot be found or ” ;

(iv) by inserting in the same section after the word “ thereof ” the words “ or has so removed.”

4. (1) The Principal Act is further amended by omitting section eight and by inserting the following sections in lieu thereof:— Further amendment of Act No. 17, 1901, s. 8.

8. (1) Where an order under the last preceding section is made for the support of any wife or child any two justices may, from time to time, while the order remains in force, upon notice given in such manner as the justices shall direct, require the defendant Security for payment of amount may be ordered.

defendant to attend before them at the time and place specified in the notice, and there to enter into a recognizance with sureties for the due performance for a period not exceeding twelve months at any one time of such order.

(2) In default of the defendant immediately entering into the recognizance with the required sureties the justices may commit the defendant to gaol, there to remain for any period not exceeding twelve months or until the recognizance has been entered into or the said order complied with to the extent of the period specified in the recognizance.

(3) Any justice, on due proof that any condition of the recognizance has not been complied with, may ex parte forfeit the recognizance.

(4) Any justice may, where the circumstances appear to require it, issue a warrant directing the apprehension of the defendant, and that he be brought before two justices for the purposes of this section, whether notice has been given to him or not.

SA. (1) Where an order under section seven is made for the support of a wife the justices making the order may, instead of or in addition to any other order for relief under this Act, authorise and direct some person to demand and receive any annuity or other income payable to the husband, or any moneys received or receivable or held by any person 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 moneys as the justices think fit, and to appropriate the proceeds towards such sum or allowance in such manner as they may direct.

Justices may attach annuity.

(2) While an order under section seven for the support of a wife remains in force any two justices may, from time to time, upon application made by the wife, by their order give the like authority and direction as is referred to in subsection one of this section.

(3)

(3) Notice of the application shall be given in such manner as the justices shall direct to all parties to be affected thereby.

(4) Every payment made in pursuance of any such direction or order shall be as valid as if made to the husband or by his authority, and such direction or order shall protect and indemnify any person acting in pursuance thereof.

(2) The Fines and Forfeited Recognizances Act, Amendment of Act No. 75, 1902. 1902, is amended—

(a) by inserting in the proviso to section four after Sec. 4. the words "articles of the peace" the words "or for the due performance of an order made under the Deserted Wives and Children Act, 1901-1929 ;

(b) by inserting next after section sixteen the News. 16A. following new section :—

16A. Any moneys recovered by the Sheriff Payment in cases of recognizance to secure performance of orders made under the Deserted Wives and Children Act, 1901-1929. in respect of a recognizance conditioned to secure the due performance of an order made under the Deserted Wives and Children Act, 1901-1929, shall, after deduction therefrom of the fees and expenses of the sheriff, be paid by him to the person entitled to payment under the order.

5. The Principal Act is further amended—

(a) (i) by omitting from section nine the words Sec. 9. "and that the defendant is able to contribute to the support of such wife or child, are also satisfied" and by inserting in lieu thereof the word "or";

(ii) by omitting from the same section the words "by their said order" and by inserting in lieu thereof the words "in and by any order made under section seven or at any time during the currency of the said order";

(iii) by inserting in the same section after the word "goods" wherever occurring the words "chattels or securities";

(iv)

Further amendment of Act No. 17, 1901.

(iv) by inserting at the end of the same section the following subsection:—

(2) While an order under section seven for the support of a wife or child remains in force any two justices may, if they are satisfied that the defendant has deserted such wife or child, from time to time upon application made by the wife or child, and upon notice given in such manner as the justices shall direct to all parties to be affected thereby, by their order give the like authority and direction.

(b) by inserting in section ten, after the words Sec. 10. "any two justices may" the words "at any time, either upon notice to the defendant or ex parte";

(c) by omitting section eleven and by inserting in Substituted s. 11. lieu thereof the following new section:—

11. (1) On complaint on oath being made Disobedience of order. to any justice that any person has disobeyed or not complied with an order made under this Act such justice may summon such person or issue his warrant for the apprehension of such person to answer such complaint.

(2) Any two justices may at any time in a summary way inquire into any such complaint, and may enforce compliance with the order by the committal of the offender to prison for a period of *one* week for every pound or part of one pound found to be due, including the costs incidental to the hearing of the complaint, unless the said order be complied with; but no offender shall be detained for a longer period than *twelve* months, and the period of detention shall in every case be subject to the provisions of section ninety-four of the Justices Act, 1902.

Where it appears that the amount of arrears has been paid since the service of the summons or the issue of a warrant the justices may order the

the person summoned or apprehended to pay the costs of and incidental to the proceedings, and such costs may be recovered in a summary way under the provisions of the Justices Act, 1902.

(3) The justices may direct that the warrant committing the offender to prison shall lie in the office of the court for such time as they think proper, or may order the amount found to be due, and any costs awarded, to be paid, by such instalments and upon such conditions as they think fit, to the person to whom the amount due under the order is payable.

Upon the production of a certificate by such person that any instalment has not been paid, or that any condition of the direction has not been complied with, and of the amount then due on the order, any justice may direct that the warrant committing the offender to prison be executed.

(4) Any justice to whom an application is made for a direction that the warrant be executed, may postpone the execution of the warrant upon such terms and conditions as he thinks fit, and if the offender breaks any term or condition upon which such a postponement is made, the justice may then direct the execution of the warrant.

(5) A justice may refuse to enforce an order or may enforce it to such extent as the justice thinks fit having regard to all the circumstances of the case.

(6) Where an order made under section seven contains a provision committing the legal custody of a child to the wife or other person, a copy of the order may be served upon any person in whose actual custody the child for the time being is, and if such last-mentioned person makes default in complying with such order he shall without prejudice to any

any other remedy open to such wife or other person, be liable to a penalty not exceeding *one* pound per day for each day he makes default in complying with the order.

Such penalty may be recovered in a summary way under the provisions of the Justices Act, 1902.

6. The Principal Act is further amended—

Further amend-
ment of Act No.
17, 1901.

- (a) by omitting from section fourteen the words "but no admission or statement then made by such wife or husband shall be used upon any other occasion" and by inserting in lieu thereof the words "and any evidence then given by such wife or husband may be used in any court in proceedings to which such wife and husband are parties and in which she or he is a competent and compellable witness, but on no other occasion";

Sec. 14.

(Evidence.)

- (b) by omitting subsection two of section fifteen.

Sec. 15 (2).

7. The Principal Act is further amended—

Further amend-
ment of Act
No. 17, 1901.

- (a) by inserting the following new sections after section thirteen :—

New ss. 13A,
13B, 13C.

13A. Where a deserted wife is with child, the Children's Court or justices may in addition to the orders authorised to be made by section seven, make such and the like orders as a magistrate may make under Part X of the Child Welfare Act, 1923, in the case of a single woman with child, and the provisions of that Part shall be deemed to apply to any such order.

Power to
make orders
for confine-
ment ex-
penses, &c.

13B. (1) Where an order has been made under section seven for the support of a wife or child and it is made to appear upon oath to a police or stipendiary magistrate that default has been made by the defendant in making the payments directed by the order, and that an amount of more than ten pounds

Certificate of
amount due
and judgment
thereon.

is

is due thereunder, the magistrate may grant a certificate in the prescribed form stating the amount due under the order at the date thereof without requiring notice of the application to be given to the defendant.

(2) The person entitled to receive the money ordered to be paid may file or cause to be filed such certificate in the Supreme Court or in any district court having jurisdiction within the district wherein the defendant resides or wherein any real property of his is situate, and the Prothonotary or the registrar of such district court, as the case may be, shall enter judgment for such person for the amount stated to be due in the certificate together with the fees paid therefor and for filing the same and entering the judgment.

Such judgment may be enforced in any manner in which a final judgment in an action may be enforced.

Rules of court may prescribe the practice and procedure in the Supreme Court and in district courts to be observed in connection with the filing of certificates and entering up of judgments thereon in pursuance of this section, and the fees to be paid.

13c. Orders may be made and enforced under this Act, notwithstanding that proceedings may have been instituted under the Matrimonial Causes Act, 1899, by a husband or a wife, or that an order has been made in the proceedings: Jurisdiction not ousted by proceedings in divorce, &c.

Provided that no order shall be made under this Act for the maintenance or support of a wife who at the date of the application is entitled to payment of alimony under an order made by the Supreme Court in its Matrimonial Causes jurisdiction or where at the date of the application a petition for alimony has been filed and is then pending.

(b)

- (b) by inserting at the end of section sixteen the following new subsection :—

(2) After the dismissal of a complaint of a wife against her husband that she has been deserted within the meaning of this section fresh proceedings in respect of the same cause of complaint may be brought at any time by the leave of two justices upon proof being given ex parte to the said justices that material evidence has since become available to the complainant which was not available at the time of the former hearing.

7. The Principal Act is further amended—

Further amend-
ment of Act
No. 17, 1901.

- (a) (i) by omitting from section twenty-one the words "the application" and by inserting in lieu thereof the words "application by or on behalf";

Sec. 21.

- (ii) by omitting from the same section the words "any order made under section seven" and by inserting in lieu thereof the words "or discharge any order made under Part II of this Act";

- (iii) by inserting at the end of the same section the following new subsections :—

(2) The justices may take into consideration all the circumstances of the case and the conduct and circumstances of the parties since the date of the order. Where the justices are satisfied that any evidence relating to the conduct and circumstances of the parties prior to the date of the order was not available at the original hearing they may admit and take such evidence into consideration.

(3) An order may be varied or discharged as from a date prior to the application, and may be varied from time to time.

(4)

(4) Where any two justices are satisfied that a husband and wife have resumed cohabitation and the husband is supporting her, the justices shall, upon the application of the husband or wife, discharge any order made under this Act for the support of the wife.

(5) Where two justices are satisfied that a wife who has obtained any order for her support under this Act has since the date of the order committed adultery, the justices shall discharge the order as from the date upon which they find that the act of adultery was committed.

(6) The justices may entertain an application to vary an order notwithstanding that the applicant is in default in complying therewith if they are satisfied that there are good and sufficient reasons for such default.

(b) by inserting after section twenty-one the following new sections :— New ss. 21A, 21B, 21C.

21A. Where an order has been made for the support of a child, and the justices direct that the father shall have access to the child at such times and on such conditions as they think fit, any two justices may at any time vary or rescind any such directions. If any such direction is disobeyed, the order for support may be varied in such manner as the justices think fit. Access to children.

21B. One complaint may contain the allegation that a father has deserted or left more than one child, and one order may be made in respect of all the children, but it shall specify the amount payable in respect of each child. One complaint only necessary.

21C. If it appears upon the hearing of a complaint that a father has left his child without means of support, the justices shall make such Welfare of child to be primarily regarded.

such orders as to the custody and maintenance of the child as may appear to them to be just, having regard primarily to the welfare of the child, and notwithstanding that the father is willing to receive and maintain such child in his own home or elsewhere.

- (c) by inserting next after section twenty-five the following new section :—

Order for interim payments. cf. 15 and 16, Geo. V, c. 51, s. 6.

26. Where the hearing of a complaint under this Act is adjourned for any period exceeding one week, the justices may, if they see fit, order that the husband do pay to the wife a weekly sum for maintenance of the wife and child until the final determination of the case.

The order directing such payment shall not remain in operation for more than three months from the date on which it is made.

Any such order may be enforced in a like manner as a final order.

8. (1) The Deserted Wives and Children Amending Act, 1913, is amended—

Amendment of Act No. 9, 1913.

- (a) by omitting section four ;
- (b) by omitting section five.

Sec. 4.
Sec. 5.

(2) The Prisons Act, 1899, is amended—

Amendment of Act No. 27, 1899, Sec. 16A.

- (a) by omitting from subsection one of section 16A inserted by the Deserted Wives and Children Amending Act, 1913, the words "section eight or eleven of the Deserted Wives and Children Act, 1901, or sections five, fifteen, or eighteen of the Infant Protection Act, 1904," and by inserting in lieu thereof the words "Part II of the Deserted Wives and Children Act, 1901-1929, or Part X of the Child Welfare Act, 1923";
- (b) (i) by inserting in paragraph (a) of subsection three of the same section after the figures "1901" the hyphen and figures "-1929";
- (ii)

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- (ii) by omitting from the same paragraph the words and figures "Infant Protection Act, 1904," and by inserting in lieu thereof the words and figures "Child Welfare Act, 1923";
 - (iii) by omitting from paragraph (b) of the same subsection the words and figures "section five or section fifteen of the Infant Protection Act, 1904," and by inserting in lieu thereof the words and figures "Part X of the Child Welfare Act, 1923."
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