

[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1930.

A BILL

To make provision for the maintenance of destitute persons by near relatives.

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. This Act may be cited as the "Destitute Persons Act, 1930," and shall commence on a date to be appointed by the Governor and notified by proclamation published in the Gazette.

Short title and commencement.

2. (1) In this Act, unless the context or subject-matter otherwise indicates or requires,— Interpretation.

“Charitable institution” means—

a public hospital or separate institution under the Public Hospitals Act, 1929;

or

any body corporate or society established for any purpose of charity or benevolence, and declared by the Governor by proclamation under the authority of this Act to be a charitable institution for the purposes of this Act.

“Court” means a court of petty sessions holden before a stipendiary or police magistrate, and includes a children’s court, and also includes a magistrate or justices exercising the jurisdiction of a children’s court. C’wth Act, s. 5.

“Destitute person” means any person unable, whether permanently or temporarily, to support himself by his own means or labour. N.Z. 1 Geo. V, No. 38, s. 2.

“Maintenance” includes lodging, feeding, clothing, teaching, training, attendance, medical and surgical relief, and, in respect of a deceased person, the cost of his funeral. Ibid.

“Near relative” means—

Ibid. s. 4.

(a) with respect to a legitimate person, his father, mother, grandfather, grandmother, son, daughter, grandson, granddaughter, brother (of the whole or half blood) or sister (of the whole or half blood).

(b) with respect to an illegitimate person, his mother, mother’s father or mother, son, daughter, grandson, or granddaughter, or any person adjudged before or after the commencement of this Act, under the Child Welfare Act, 1923, or any amendment thereof, or any Act thereby repealed, to be the father of that illegitimate person, or the father or mother of the person so adjudged.

“Public

“Public institution” means any institution established and constituted as an institution under the provisions of the Child Welfare Act, 1923, and also any institution (other than a prison) supported wholly or mainly out of the public revenues, and declared by the Governor by proclamation under the authority of this Act to be a public institution for the purposes of this Act; and also includes any department of the Government of the State which from public revenues affords charitable relief to destitute persons.

- (2) For the purposes of this Act—
 - (a) every illegitimate person shall be deemed to be a near relative of all persons who are his near relatives under this Act; and
 - (b) an adoptive parent shall be deemed to be a near relative of the person adopted; and
 - (c) an adopted son or daughter shall be deemed to be a near relative of his or her adoptive parent; but an adoption shall not be deemed to create or to have created any relationship between the person adopted and the relatives of the adoptive parent, or to destroy or to have destroyed any natural relationship existing between any persons.

3. Every near relative of a destitute person, if that relative is of sufficient ability, is liable for the maintenance of that destitute person to the extent provided in this Act.

Liability of near relatives for maintenance of destitute person.
N.Z. 1 Geo. V. No. 38, s. 3.

4. (1) On the complaint on oath of any person that he is a destitute person and has a near relative of sufficient ability to contribute to his support, or on the complaint on oath of any reputable person that any other person is a destitute person and has a near relative of sufficient ability to contribute to the support of that destitute person, a justice of the peace may summon that near relative to show cause to a court why an order for the maintenance of such destitute person should not be made against him.

Court may make maintenance order against near relative.
Ibid. s. 5.

(2) A court hearing the complaint, on being satisfied of the truth thereof, may, in its discretion, if having regard to all the circumstances of the case, if it thinks fit to do so, order the near relative to pay towards the future maintenance of the destitute person a sum of money not exceeding two pounds per week at such times and in such manner as the court thinks fit :

Provided that where the complainant is a claimant for or recipient of a pension under the Widows' Pensions Act, 1925-1929, and an order is sought against a son or daughter of the complainant, the court may, if it thinks fit, order such son or daughter to pay towards the future maintenance of his or her mother such sum not exceeding the proportion appropriate to the case of the earnings of such son or daughter mentioned in paragraph (d) or (d1) of subsection one of section fifteen of that Act.

5. No agreement shall be effective so as to take away or restrict any liability imposed upon any person by this Act to contribute to the maintenance of any person of whom he is a near relative, or affect the operation of any order made under this Act or the right of a court to make any such order ; but a court may, in its discretion, having regard to the existence of the agreement and to all the circumstances of the case, refuse to make any such order.

Liability as maintenance not affected by agreement.
N.Z. 1 Geo. V, No, 38, s. 6.

6. A complaint or order may be made under this Act, whether the destitute person or the near relative against whom the order is sought is resident in New South Wales, or in the Commonwealth of Australia, or elsewhere.

Destitute person or near relative need not be resident in New South Wales.
Ibid. s. 7.

7. Where any person in respect of whose maintenance any order is made under this Act is at the time of the making of the order maintained wholly or in part by, in, or at the cost of any public or charitable institution, or in receipt of any pecuniary or other relief from any such institution, the court making the order may therein direct that the moneys payable thereunder or any part thereof shall be paid to that institution, or to any person on behalf of that institution, or to the person who for the time being and from time to time holds any office in or in respect of that institution.

Court may make order in favour of charitable institution.

8.

8. Where an order has been made under this Act for the payment of an amount for the maintenance of a destitute person, the court may, immediately after pronouncing its decision, or at any time during the currency of the order, on notice being given to the defendant, require the defendant to enter into a recognizance with or without sureties for the due performance for a period not exceeding twelve months of such order, and in default of the defendant's immediately entering into such recognizance with the required sureties, if any, the court may commit the defendant to prison, there to remain for any term not exceeding twelve months or until such recognizance has been entered into or the said order complied with for the period specified in the recognizance.

Security for
payment of
maintenance
order.
Act No. 21,
1923, s. 80.

The court, on due proof that the conditions of such recognizance have not been complied with by the defendant, may *ex parte* forfeit such recognizance, which shall therefore be dealt with as a forfeited recognizance in the manner provided for by the Fines and Forfeited Recognizances Recovery Act, 1902.

9. In any proceeding under this Act the court may, by its order for maintenance or at any time during the currency of such order, authorise and direct some person forthwith to seize and sell the defendant's goods and to demand and to receive his rents and any moneys to which he is entitled or about to become entitled, or such portions of the said goods or rents or moneys as the court thinks fit, and to appropriate the proceeds towards the payment of the moneys ordered in such manner as it from time to time directs.

Seizure of
defendant's
goods.
Ibid. s. 82.

And if it appears on oath that the defendant has theretofore usually resided in New South Wales and has left the said State the like order may be made and authority given by such court although no summons or warrant has been issued.

A copy of the orders provided for in this section and section ten, certified to by the clerk of the court, shall be served on any person affected thereby.

Any person who disobeys or neglects to comply with any such order served on him shall be guilty of an offence under this Act.

10.

10. Where an order has been made under this Act for the payment of maintenance or of moneys secured under recognizances, the court may, in a summary way and with or without any application for that purpose, make such orders in writing as it thinks necessary for better securing the payment and regulating the receipt of the maintenance or moneys ordered to be paid, or for investing and applying the proceeds of the goods or rents ordered and directed to be sold or collected, or for ensuring the due appropriation of such expenses or moneys.

Further orders may be made. Act No. 21, 1923, s. 81.

11. On complaint on oath being made to a court that any person has disobeyed or has not complied with any order made under this Act, such court may summon such person or issue its warrant for the apprehension of such person to answer such complaint.

Disobedience of order may be punished. *Ibid.* s. 83.

The court may at any time in a summary way inquire into any such disobedience or non-compliance with any such order, and may enforce compliance, or may punish non-compliance with such order by the committal of the offender until such order has been complied with, and until the payment of any costs incidental to the hearing of the said complaint which may be awarded by the court.

12. (1) The court from time to time may, upon application, and upon notice given in such manner as the court may direct to all parties to be affected thereby, vary any order made under this Act.

Court may vary order. *Ibid.* s. 84.

On the determination of such application the court may award costs to the successful party.

(2) Where any person in respect of whose maintenance any order has been made under this Act is afterwards during the subsistence of the order maintained wholly or in part by, in, or at the cost of any public or charitable institution, or during that period receives any pecuniary or other relief from any such institution, any court may, on application made ex parte by any person, vary the order by directing that the moneys payable thereunder or any part thereof shall be paid to that institution, or to some person on behalf

Court may vary existing order and direct payment to charitable institution.

behalf of that institution, or to the person who for the time being and from time to time holds any office in or in respect of that institution.

13. (1) Every summons or notice shall be served by a constable or other person upon the person to whom it is directed by delivering it to him personally, or if he cannot be conveniently met with, then by leaving it with some person for him at his last or most usual place of abode.

Service of
summons or
notice.
Act No. 21,
1923, s. 85.

(2) Service of a summons or notice in manner aforesaid may be proved by the oath of the constable or other person who served it, or by affidavit, or otherwise.

14. (1) If a defendant against whom a summons has been issued under this Act does not appear in accordance therewith, the court, upon proof of the service of the summons, may issue a warrant for his apprehension, or may proceed in the case ex parte.

Court may
proceed ex
parte.
Ibid. s. 86.

(2) In every case where a warrant has been issued, and the defendant cannot after strict inquiry and search be found to be taken thereon, the court may in like manner proceed in the case ex parte.

15. Any court, on being satisfied by complaint on oath that any defendant has removed or is about to remove out of New South Wales or to remote parts thereof to defeat any of the provisions of this Act or any order made hereunder, may issue a warrant for the apprehension of such defendant to be dealt with according to law:

Warrant
may issue in
certain cases.
Ibid. s. 87.

Provided that in lieu of issuing such warrant the court may issue a summons requiring such defendant to appear before the court to answer such complaint.

Upon the appearance of such defendant he may at the discretion of the court be ordered to enter into a recognizance with sureties for the due performance for a period not exceeding twelve months of such order.

And in default of defendant immediately entering into such recognizance with the required sureties the court may commit the defendant to prison, there to remain for any term not exceeding *twelve* months or until such recognizance has been entered into or the said order complied with.

The

The court on due proof that the conditions of such recognizance have not been complied with by the defendant may ex parte forfeit such recognizance, which shall thereupon be dealt with as a forfeited recognizance in the manner provided by the Fines and Forfeited Recognizances Recovery Act, 1902.

16. (1) Every person who wilfully refuses or neglects to comply with an order made against him under this Act, and goes or attempts or makes preparation to go beyond New South Wales, or to reside or is resident either permanently or temporarily beyond New South Wales, shall be liable on conviction on indictment to imprisonment for a term not exceeding *twelve* months.

Certain breaches of Act indictable when offender leaves New South Wales. Act No. 21, 1923, s. 88.

(2) No person convicted of an offence against this section shall be liable to any other penalty or punishment for such offence.

17. A committal to prison or conviction for an offence under this Act of any person shall not prevent the making or operation of any order, for the payment of money or the doing of any act by such person, which may be lawfully made.

Committal to prison not to prevent making or operation of orders. *Ibid.* s. 89.

18. (1) Where any order for maintenance has been made under this Act, a court may, at the same or any subsequent time, on the application of any person, make an attachment order against any person who is proved to the satisfaction of a court to be an employer of the defendant against whom the order for maintenance is made.

Attachment orders. N.Z. 1 Geo. V, No. 38, s. 43.

(2) Any such attachment order may be made ex parte without notice to the defendant or his employer, but a duplicate thereof shall be served upon the employer, either personally or by leaving the same at his place of abode, or at his place of business, or at any of his places of business.

(3) Any such attachment order may declare that the moneys due and payable under the order for maintenance, or which at any time, or from time to time so become due and payable, shall be a charge on any salary or wages which from time to time, and at any time while the attachment order remains in force, become due and payable

payable

Destitute Persons.

payable by the employer to the defendant, and be paid to such person by way of weekly payments of such amount as the court thinks fit, and specifies in the attachment order.

(4) The charge so created shall be deemed to accrue from week to week, and on such day of the week as is specified in that behalf in the attachment order.

(5) The attachment order may be made either for a fixed period, or so as to remain in force until cancelled in accordance with the provisions of the section in that behalf contained.

(6) The charge so imposed shall attach to all wages or salary which becomes due by the employer to the defendant at any time while the attachment order is in force, whether the contract of employment in respect of which the wages or salary so becomes due existed at the date of the attachment order or not.

(7) Any such attachment order may be at any time varied, suspended, or cancelled on the application ex parte of any person by a court making the same, on good cause being shown to the satisfaction of the court why the order should be so varied, suspended, or cancelled; and every such variation, suspension, or cancellation shall take effect on notice thereof being served on the employer in manner aforesaid.

(8) Every such attachment order shall take effect on the service of a duplicate thereof on the employer in manner hereinbefore provided.

(9) So long as the attachment order remains in force the employer shall from time to time so often as any moneys become due and payable by him to the defendant by way of salary or wages deduct therefrom such sum as is sufficient to satisfy the charge thereon so far as the same has accrued before the day on which the said wages or salary so becomes due and payable, and shall pay the amount so deducted to the person specified in that behalf in the attachment order who may as the court thinks fit be either the clerk for the time being of a court or any other person specified in the order.

(10)

(10) All sums so deducted and paid shall be deemed to the extent thereof to have been paid by the employer in satisfaction of the wages or salary payable by him to the defendant and to have been paid by the defendant in satisfaction of his liability under the maintenance order.

(11) If and as often as the employer makes default in the payment of any money in satisfaction of any such charge, that money shall become a debt due by him to the person to whom the same is payable in accordance with the terms of the attachment order, and may be recovered by that person by action in any court of competent jurisdiction.

(12) If the person to whom that money is so payable in accordance with the terms of the attachment order is the clerk for the time being of a court, he may, on any such default as aforesaid, assign the said debt, by writing under his hand, with the leave of the court, to such other person as the court thinks fit; and that person may thereupon, in his own name, demand, sue for, and receive the said sum as if it was payable to him in accordance with the order.

(13) The charge created by any such attachment order shall prevail over and have priority to any assignment made or charge created by the defendant, whether before or after the making of the attachment order against him, and the order shall have the same effect as if no such assignment or charge had been so made or created.

(14) The employer, in making any deduction or payment in pursuance of the attachment order and in accordance with the terms thereof, shall not be concerned to make inquiry as to whether any moneys are due and payable under the maintenance order, or be affected by any notice to the contrary.

(15) The provisions of the Attachment of Wages Limitation Act, 1900, shall extend to an order made under this section.

19. (1) Where any order for maintenance has been made under this Act, the court may, if it thinks fit, at the same or at any subsequent time, order and declare that

Charging orders.

N.Z.

1 Geo. V,

the No. 38, s. 44.

the moneys payable or to become payable under the order for maintenance shall be a charge upon any real or personal property to which the defendant is entitled, upon registration of the order in the Registry of Causes, Writs and Orders affecting land in the office of the Registrar-General, the said property shall become subject to an equitable charge accordingly in favour of the person to whom for the time being and from time to time those moneys are to become payable.

(2) Every such charging order shall specify, in such manner as to identify the same, the property on which the charge is imposed.

(3) Any such charging order may be at any time varied or cancelled by the court making the same, and such variation or cancellation shall take effect upon the registration of the order making the same in the said registry.

(4) Where any such charging order is made in respect of the registered estate or interest of the defendant in any land, under the provisions of the Real Property Act, 1900, a duplicate or copy of the order under the seal of the court may be registered by the Registrar-General in the register book in the manner prescribed by regulations under the Conveyancing Act, 1919.

(5) Any order cancelling or varying any charging order may be registered in like manner.

(6) On the registration of any charging order in manner aforesaid, the charge thereby constituted shall become a legal charge upon the estate or interest in respect of which it is so registered.

20. (1) When a charging order is so made in respect of any real or personal property, the court may, at the same or at any subsequent time, if any money is in arrear and unpaid under the order for maintenance, make, if it thinks fit, an order appointing the Public Trustee or any other person to be the receiver of the rents, profits, or income of the property so charged or of any part of that property.

Order appointing receiver. N.Z. 1 Geo. V, No. 38, s. 45.

(2) A receiving order so made may be at any time thereafter varied or cancelled by the same court, and

and every such order shall be so cancelled as of right on the payment by the defendant of all arrears due under the maintenance order, together with payment by him in advance of all moneys to become payable under the maintenance order during the period of one year from the date of the cancellation of the receiving order.

(3) An order appointing a receiver shall as regards land take effect only from the registration of the order in like manner as is provided for in the case of a charging order.

21. (1) After the registration of the order the receiver so appointed shall be entitled to take and recover, by action or otherwise, the possession and receipt of the land or other property in respect of which he has been appointed, and of the rents, profits, and income thereof so long as the receiving order remains in force.

Powers and duties of receiver.
N.Z.
1 Geo. V,
No. 38, s. 46.

(2) He may also in his own name grant leases of any such land on such conditions as he thinks fit, and for any term not exceeding three years, at the best rent that can reasonably be obtained, payable uniformly, quarterly or oftener, without taking any fine or other benefit in the nature of a fine; and every such lease shall remain valid notwithstanding any subsequent cancellation of the charging order or receiving order.

(3) All moneys received by the receiver in the exercise of his powers shall, after payment thereof of all expenses incurred by him, and of such remuneration (if any) as may be allowed by a court for his services in that behalf, be held by the receiver in trust—

- (a) to pay and satisfy thereout all moneys from time to time accruing due under the maintenance order;
- (b) to pay from time to time the residue of the moneys so received by him to the person who would be entitled to those moneys if no such charging order or receiving order was in force.

(4) Subject to this Act, the appointment of a receiver by the court under this Act shall have the same effect, and the receiver shall have the same powers

powers, duties, and liabilities as if he had been appointed by the Supreme Court in the exercise of its jurisdiction in that behalf.

22. The jurisdiction of a court to make, cancel, or vary a charging or receiving order under this Act may be exercised on the application of any person made *ex parte* or otherwise, but the court may on any such application direct that the notice of the application shall be given to such persons as it thinks fit.

Mode of application for charging or receiving orders.
N.Z.
1 Geo. V,
No. 31, s. 47.

23. All proceedings authorised by this Act to be taken in execution of any order, or otherwise in pursuance of any order, may be taken concurrently or successive with any other proceedings so authorised.

Procedure.
Ibid. s. 48.

24. Every person aggrieved by an order of a court or by the dismissal of a complaint under this Act may appeal to a court of quarter sessions against such order in the manner provided by the Justices Act, 1902, in respect of appeals to courts of quarter sessions :

Appeal to quarter sessions or district court.
Act No. 21,
1923, s. 91.

Provided that where an order is made by the court at any place, and a district court is held nearer to that place than a court of quarter sessions, such appeal may be made to such district court in the same manner as an appeal may be made to a court of quarter sessions under the said Act :

Provided also that where any order has been made *ex parte* under section fourteen of this Act, the defendant may appeal as in this section provided, at any time within one month of the time when the fact of such order having been made came to knowledge, the onus of proving such time to lie upon the defendant.

25. (1) When any person is maintained wholly or in part by, in, or at the cost of any public or charitable institution, or receives any pecuniary or other relief from any such institution, the cost of the maintenance or relief so afforded shall be a debt due to the Crown in the case of any public institution, and to the trustees or corporation of any charitable institution, and recoverable by action in any court of competent jurisdiction.

Cost of maintenance or relief by public or charitable institution to constitute debt due to Crown or trustees, &c.

- (2) The said debt shall be due and payable—
(a) by the person so maintained or relieved ;
(b) by the husband of that person ;

(c)

(c) by any parent of any child so maintained or relieved; Recovery of debt.

(d) by any person who has, whether before or after the maintenance or relief has been afforded, been adjudged, under this Act or under any other Act, to be the father of any illegitimate child so maintained or relieved.

(3) Every debt so incurred in respect of a public institution shall be recoverable by action at the suit of the Crown, or of any person authorised by the Minister.

(4) On the death of any person by whom any debt is owing under this section, the debt, so far as it has accrued due at the time of his death but no further, shall be recoverable from his estate.

(5) Nothing in this section or in any action or judgment instituted or obtained thereunder, shall so operate as to take away or restrict the power of a court to make an order for maintenance against any person under this Act.

(6) Where any liability is imposed by this Act on two or more persons in respect of the maintenance or relief of the same person, their liability shall be joint and several, and every person paying any money in discharge of that liability shall be entitled to recover from any other person so liable, by action in any court of competent jurisdiction, such sum by way of contribution or indemnity as the court in which the action is brought thinks just in the circumstances of the case.

(7) Nothing in this Act shall so operate as to take away or restrict the liability of any person under any agreement made by him for the maintenance or relief of any person.

(8) Every debt created by this section shall be deemed to accrue due from day to day as the maintenance or relief is afforded, and no moneys shall be recovered under this section unless sued for within two years after the same have become due, unless it is proved that the defendant, at the time when the moneys became due, was of sufficient ability to pay the same.

(9) The cost of the maintenance or relief of any person shall be deemed to be such sum as is agreed upon between the person so liable and any person by whom or on whose behalf the cost is recoverable, or, in default of any such agreement, such sum as is prescribed under the provisions of any Act or by the by-laws of any charitable institution, and, if no sum is so prescribed, such sum as is reasonable in the circumstances of the case.

26. (1) The Governor may at any time, by proclamation published in the Gazette, declare that any body corporate or society established for any purpose of charity or benevolence is a charitable institution within the meaning of this Act, and any such proclamation may be at any time in like manner revoked or varied.

Governor may declare certain bodies corporate or societies to be charitable institutions.

(2) The Governor may at any time, by proclamation published in the Gazette, declare that any institution (other than a prison) supported wholly or mainly out of the public revenues is a public institution within the meaning of this Act, and any such proclamation may be at any time in like manner revoked or varied.

27. Where any order for maintenance is made under this Act the clerk of the court shall give the prescribed notice of the making thereof and of any variation thereof to the Director of Government Relief, who may enter in the register of relief compiled in pursuance of section four of the Government Relief Administration Act, 1930, such particulars of the order as he deems proper.

Notice of maintenance order to Director of Government Relief.

28. A court, upon the hearing of any complaint or application under this Act, may order that any persons not directly interested in the case shall be excluded from the room or place in which the court is sitting.

Exclusion of persons from hearing.

29. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and may impose a penalty not exceeding *ten* pounds for any contravention of or failure to comply with any such regulation.

Regulations.

(2)

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- (2) The regulations shall—
- (a) be published in the Gazette;
 - (b) take effect from the date of publication or from a later date specified in the regulations;
 - (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is then in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament pass a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

(3) Any penalty imposed by the regulations may be recovered in a summary manner before a police or stipendiary magistrate or any two or more justices.
