

No. VI.

DESERTED WIVES
AND CHILDREN.

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

Preamble.
4 Vic. No. 5.

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 :—

Warrant may issue
in the first instance
in certain cases.

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.

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

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.

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

Deserted Wives and Children.

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.

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 *visá 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.

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 *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

Facilitating evidence of desertion.

Deserted Wives and Children.

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.

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.

Parent deserting his
children guilty of a
misdemeanor.

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.

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

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.

Provision for edu-
cating children.

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.

Varying orders of
maintenance.

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.

Title of Act.

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."