



WESTERN AUSTRALIA.

ANNO NONO

VICTORIÆ REGINÆ.

No. II.

An Ordinance to provide for the Maintenance and Relief of Deserted Wives and Children, and other Destitute Persons, and to make the property of Husbands and near Relatives, to whose assistance they have a natural claim, in certain circumstances, available for support.

WHEREAS by reason of death, sickness, or other casualties, as Preamble.
well as by desertion or neglect of husbands, parents, or

Destitute persons to be maintained by their near relatives.

other near relatives, it has happened that wives and families have been left without adequate support, and it is expedient that the property and means of such husbands, parents, and other near relatives, should be made available for the relief of those who have a natural or just claim to their assistance;—Be it therefore enacted, by His Excellency the Governor of Western Australia, with the advice and consent of the Legislative Council thereof;—That from and after the passing of this Ordinance, in the case of every poor and destitute person, not able to work, his or her father and grandfather, mother, and grandmother, and children, being of sufficient ability, shall at their own charges relieve and maintain every such destitute person in such manner and according to such rate as by any two Justices of the Peace for this colony may be assessed and ordered under the provisions of this Ordinance.

Justices may order maintenance. Proceedings.

II. AND be it enacted, that if it shall be made to appear to the reasonable satisfaction of any Justice of the Peace, upon the complaint of any reputable householder, that any person is poor and destitute, and unable to support himself or herself by labor, and that such person hath a father or grandfather, mother or grandmother, child or children, within the colony of sufficient ability to relieve and maintain, or to contribute to the relief and maintenance of such poor and destitute person, it shall be lawful for such Justice to summon such father or other near relative before mentioned to appear before any two Justices of the Peace at a time and place to be mentioned in the summons, to shew cause why he should not relieve and maintain, or contribute to the relief and maintenance of such poor destitute person, and upon the appearance of such father or other relative as aforesaid, or upon proof being made to the satisfaction of the Justices who may attend at the time and place appointed, that such father or other relative hath been duly served with such summons, such Justices shall enquire into the matter, and if they shall be of opinion that such father or other relative is of sufficient ability to relieve and maintain, or to contribute to the relief and maintenance of such poor destitute person, then it shall be lawful for such Justices to order that such father or other relative shall pay, either weekly or otherwise, to such person as they shall think fit to appoint, such sum of money as in their judgment they shall think such father or other relative can reasonably afford and ought to contribute towards the relief and maintenance of such poor destitute person;—Provided that it shall be lawful for such Justices from time to time to suspend or

determine the said order, or to alter or vary the same according as circumstances shall seem to them to require.

III. AND be it enacted, that if any man shall unlawfully desert his wife, or if any woman shall unlawfully desert her husband, without reasonable cause for so doing, or if he or she shall unlawfully desert any of his or her children under the age of ten years, leaving her, him, or any of them without means of support, it shall be lawful for any Justice of the Peace, upon the complaint of such wife, husband, or children, or of some person on her, his, or their behalf, to the husband, wife, father or mother, as the case may be, to be summoned to appear or to be brought by warrant, before any two Justices of the Peace to answer such complaint, and upon the day appointed in the summons or warrant, or upon some day of adjournment, when the party shall be brought before them on such warrant, or shall appear upon such summons, or upon his or her failing to appear after having been duly summoned, the Justices then present shall proceed to enquire into the matter of such complaint, and if they shall be satisfied that the party complained of hath unlawfully, without reasonable cause, deserted wife or husband, or any such children as aforesaid, and hath left them without means of support, such Justices shall so adjudge, and it shall be lawful for them to punish him or her for such offence by a fine not exceeding five pounds, or by imprisonment, with or without hard labor, for any term not exceeding two calendar months for the first offence; and by a fine not exceeding ten pounds, or imprisonment, with hard labor for any term not exceeding three calendar months for a second or subsequent offence;—Provided also that it shall be lawful for such Justices, if they shall deem it expedient so to do, to order and direct that the husband, wife, father or mother, complained of, shall pay to the wife, husband, or to some responsible person on behalf of the wife, or on behalf of the child or children, as the case may be, such reasonable sums of money for the maintenance of such wife, husband, or children, either weekly or otherwise, as to the Justices shall seem fit.

In cases of unlawful desertion of wives and children, Justices may fine and imprison besides ordering maintenance.

IV. AND be it enacted, that if in any case it shall be made to appear upon oath to the satisfaction of any two Justices that any husband hath quitted the colony, or keeps himself concealed, or away from his usual place of abode, with intent to desert his wife or children, or that any person hath quitted the colony, or keeps concealed away from his usual place of abode, with intent to avoid the payment

Husbands and near relatives absconding in order to defeat this ordinance, Justices may authorise the rents of their real estates to be applied, and their goods to be seized and sold for the maintenance of wives and near relatives.

of any sum of money he may have been ordered to pay towards the relief of any such near relative, or hath quitted the colony leaving behind him any such poor and destitute relative as it is by this Act declared he ought to support, then and in any such case it shall be lawful for such Justices, by their order under their hands and seals, to authorise some responsible person forthwith to demand and receive so much of the rents and profits of the real estate of such husband or other person as by the said Justices may from time to time be deemed necessary, and to appropriate the money received towards the maintenance of such wife or poor destitute relative in such manner as such Justices shall direct;—Provided always that nothing herein contained shall be construed so as to interfere with the just rights, claims, or remedies of any person to whom any such person quitting the colony, or keeping concealed or away from his usual place of abode, may be indebted;—Provided also that the receipt of such responsible person as aforesaid shall be a good discharge to any tenant, or other person, for all monies paid by him and acknowledged in such receipt to be paid;—Provided also that such person shall from time to time be accountable to the Justices in General Sessions for all such money as he shall receive by virtue of this Ordinance.

Persons about to leave the colony to give surety for the maintenance of wife or child left behind,

V. AND be it enacted, that whenever after the passing of this Ordinance, application shall be made to the Colonial Secretary for his counter-signature to such Certificate as is mentioned and required in and by an Act of Council, passed in the fourth and fifth years of the Reign of Her present Majesty, intituled “An Act for the regulation of Pilotage and Shipping in the Harbours of Western Australia,” and it shall appear to him, from answers to questions put by him to the applicant for such counter-signature or otherwise, that such applicant is about to leave behind him in this colony, a wife, or any legitimate or illegitimate child under the age of ten years, then and in every such case it shall be lawful for the Colonial Secretary to refuse such his counter-signature, until such applicant, and one or more surety or sureties, shall have signed in the presence of the Colonial Secretary (who may require reasonable evidence of the sufficiency of such surety or sureties) a written several undertaking to provide at their own respective costs and charges, for the maintenance of such wife, child, or children, while within this colony, and entitled to relief under this Ordinance, and during the absence of such applicant from this colony; and that such undertaking shall be delivered or transmitted, as occasion may require, by the Colonial Secretary to any Justice or Justices of the Peace for the purposes

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of this Ordinance; and that after the departure of such applicant from this colony, such surety or sureties shall be deemed to stand in his place or stead, and shall be subject, to the extent of such undertaking, to such and the like summary and other proceedings, as such applicant, if still in this colony, would be subject to under the provisions of this Ordinance; and that the counter-signature of the Colonial Secretary to such undertaking shall be deemed sufficient proof thereof in all proceedings under this Ordinance.

VI. AND be it enacted, that if any man and woman shall have arrived and resided together in this colony as reputed man and wife, evidence of such arrival, residence, and repute, shall be sufficient to subject either of them to the provisions of this Ordinance, without proof of their having been joined in lawful matrimony. Evidence of marriage.

VII. AND be it enacted, that whosoever shall wilfully make any false statement on oath or affirmation in any proceeding before any Justice under the provisions of this Ordinance, shall be deemed guilty of Perjury, and shall on conviction thereof suffer such punishment as may by Law be inflicted on persons convicted of wilful and corrupt Perjury. Penalty for falsely deposing.

VIII. AND be it enacted, that the provisions of this Ordinance shall extend to and include illegitimate children, provided that no man shall be taken to be the father of any illegitimate child upon the oath of the mother only;—Provided also that in every case where it shall appear to the Justices that the mother of an illegitimate child is able to contribute to its support, it shall be lawful for him or them to direct that she shall so contribute as well as the putative father in such proportions respectively, and in such manner, as such Justices shall think fit, and if in any such case it shall appear that the mother only is of such ability, it shall be lawful for the Justices to make an order in respect of her alone. Provision as to illegitimate children.

IX. AND be it enacted, that it shall be lawful for the Justices by whom any order shall have been made under this Ordinance touching the support of any wife, husband, child, or other destitute person as aforesaid, or for any other two Justices from time to time in a summary way (with or without application for that purpose) to make such orders in writing as he or they may think necessary for better securing the payment and regulating the receipt of the allowance di- Proceedings for enforcing orders under this Ordinance.

rected for the support of such destitute person, or for investing and applying the proceeds of the goods or rents if any directed to be sold or collected, or for ensuring the due appropriation of such allowance to the bonâ fide purposes of maintenance, and any one Justice shall have power at any time, in a summary way, to inquire into the disobedience, or alledged disobedience of, or non-compliance with any such order, or with any order made by any Court of General or Quarter Sessions of the Peace as hereinafter mentioned, and for that purpose to summon and examine all proper parties and witnesses, and punish the non-compliance with such order by the imposition of a fine not exceeding ten pounds;—Provided always, that no Justice shall revise, alter, or annul any order or proceedings of any other Justice without the concurrence of such Justice issuing such order or proceeding, during the time that such last mentioned Justice shall continue to exercise the office of Justice in this colony.

General Sessions may
modify orders.

X. PROVIDED always, that it shall be lawful for any Court of General or Quarter sessions of the Peace upon appeal to quash, confirm, or vary any such order either in whole or in part at discretion, or to substitute a new order in lieu thereof, and for that purpose any order made by any Justices under this Ordinance shall be transmitted by such Justices under their hands and seals to the Clerk of such Court at any time on demand by either party.

Two Justices may bind
any child apprentice

XI. AND be it enacted, that it shall be lawful for any two Justices, with the consent of either of the parents if living and within the colony, but if otherwise, then without such consent, on the application of any reputable householder, to bind by Indenture and put out any child in respect of whose maintenance any order shall have been made under this Ordinance, such child having attained the age of ten years, as an apprentice, until he or she shall attain the age of eighteen years, to any master or mistress willing to receive such child in any trade, business, or employment whatsoever suitable to such child, and every such binding shall be as effectual in law to all intents and purposes as if the child had been of full age and had bound himself or herself to be such apprentice;—Provided that such two Justices, previously to executing such Indenture, shall inform themselves as fully as they can of the child's age, which age shall be inserted in such Indenture, and shall thereupon for the purposes of this provision be taken to be the child's true age without further proof; Provided also that such Justices shall see that in the Inden-

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ture due and reasonable provision is made for the maintenance, clothing and wages, as well as for the proper and humane treatment of any such apprentice.

XII. AND be it enacted, that it shall be lawful for any Justice, upon complaint by any such master or mistress, or by any such apprentice, of misbehaviour by the apprentice on the one hand, or of ill usage by the master or mistress on the other, to issue a summons or warrant to bring the party complained of before any two Justices, who may investigate the matter, and either dismiss such complaint or punish the party complained of; if the master or mistress, by fine not exceeding five pounds, if the apprentice by imprisonment not exceeding three calendar months; and if it shall appear to such Justices that there is or has been inveterate ill usage by the master or mistress, or incorrigible misconduct in the apprentice, it shall be lawful for such Justices to make an order cancelling and annulling the Indentures.

Power of Justices between Masters and Apprentices.

XIII. AND be it enacted, that in the event of the death of any such master or mistress, his or her executor or administrator may, with the approbation of any two Justices, assign any such apprentice for the residue of the term then unexpired therein, and any two Justices may in case of such death or upon the application of the master or mistress, in case it shall appear to be for the benefit of the apprentice so to do, assign any such Indenture to any other person, or may absolutely cancel the Indenture in case there shall be no such executor or administrator;—Provided that in every such case of assignment the assignee shall be as much bound to perform the several covenants of the Indenture as if he or she had been the master or mistress originally named therein.

Assignment or revocation of indenture.

XIV. AND be it enacted, that all informations and proceedings in respect of any offences under this Ordinance shall be heard and determined, and the forfeitures and penalties in respect of the same shall be awarded and imposed in a summary way by or before two or more Justices of the Peace (except so far as may be herein expressly provided to the contrary) according to the provisions of an Ordinance passed in the seventh year of the reign of Her present Majesty, intituled “ An Act to regulate summary proceedings before Justices of the Peace.

Proceedings for penalties, &c.

Limitation of actions against Justices. XV. AND be it enacted, that no action at law shall lie against any Justice of the Peace, Constable, or other Peace Officer, for or on account of any matter or thing whatsoever done or to be done or commanded by him in the execution of his duty or office under this Ordinance, unless there be direct proof of corruption or malice, and unless such action be commenced within three calendar months after the cause of action or complaint shall have arisen; and if any person shall be sued for any matter or thing which he has done in the execution of this Ordinance, he may plead the general issue, and give this Ordinance and the special matter in evidence.

Appeal. XVI. AND be it enacted, that if any person shall think himself aggrieved by any judgment, order, or conviction made under this Ordinance, such person may appeal therefrom to the next Court of Quarter Sessions.

Appropriation of penalties. XVII. AND be it enacted, that all fines, forfeitures, and penalties, recovered under and by virtue of this Ordinance, shall be appropriated and applied as follows, that is to say;—the whole or such portion thereof as the convicting Justices shall in their discretion direct, shall be paid to the wife, child, or other such destitute person as aforesaid, to whose non-maintenance or desertion the conviction shall have reference, and the other portion, if any, shall be paid to Her Majesty, Her Heirs and Successors, for the public uses of the colony and the support of the Government thereof.

Ordinance may be altered. IX. AND be it enacted, that this Ordinance may be altered, amended or repealed by any Ordinance to be passed during the present Session.

JOHN HUTT,
GOVERNOR.

*Passed the Council }
23rd July, 1845. }*

WALKINSHAW COWAN,
Clerk of the Councils.