



ANNO SEXTO

VICTORIÆ REGINÆ.

No. 11.

By His Excellency GEORGE GREY Esquire Governor and Commander-in-Chief of Her Majesty's Province of South Australia and its Dependencies and Vice-Admiral of the same by and with the advice and consent of the Legislative Council.

AN ACT 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 their support.

WHEREAS by reason of death sickness and other casualties as well as by the desertion or neglect of husbands parents and other near relatives it has frequently happened that wives and families have been left without adequate means of 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 claim to their assistance:

BE IT THEREFORE ENACTED BY HIS EXCELLENCY GEORGE GREY Esquire Governor and Commander-in-Chief of Her Majesty's Province of South Australia and its Dependencies and Vice-Admiral of the same by and with the advice and consent of the Legislative Council thereof
That

Destitute persons to be maintained by their near relatives.

That from and after the commencement of this Act the father and grandfather mother and grandmother and the children of every poor and destitute person not able to work 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 the Province may be assessed and ordered under the provisions of this Act.

Justices may order maintenance: Proceedings.

II. And be it further 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 him or herself by labor and that such person hath a father or grandfather mother or grandmother child or children within the Province 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 named in the summons to show 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.

Unlawful desertion of wives or children. Justices may fine and imprison besides ordering maintenance.

III. And be it enacted that if any man shall unlawfully desert his wife without reasonable cause for so doing or if he shall unlawfully desert any of his children under the age of ten years leaving her or them without means of support it shall be lawful for any Justice of the Peace upon the complaint of such wife or children or of some person on her or their behalf to cause the husband or father 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

day of adjournment when the party shall be brought before them on such warrant or shall appear upon such summons or upon his 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 his wife 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 for his said offence by a fine not exceeding five pounds or by imprisonment with or without hard labor for any term not exceeding two months for the first offence and by a fine not exceeding ten pounds or imprisonment with hard labor for a term not exceeding three 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 that the husband or father complained of shall pay to the wife or to some responsible person on her behalf or on behalf of the child or children as the case may be such reasonable sums of money for the maintenance of his wife or children either weekly or otherwise as to the Justices shall seem fit.

IV. And be it enacted that if in any case it shall be made to appear upon oath to the satisfaction of any such two Justices that any husband hath quitted the Province 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 Province or keeps concealed or away from his usual place of abode with intent to avoid the payment of any sum of money he may have been ordered to pay towards the relief of any such near relative or hath quitted the Province 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 authorize some responsible person forthwith to receive so much of the rents and profits of the real estate of such husband or other person and to seize and sell such portion of the personal estate of such husband or other person as by the Justices may from time to time be deemed necessary and to appropriate the money received towards the maintenance and support 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 Province 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 moneys 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 Act.

Husbands and near relatives absconding in order to defeat this Act Justices may authorize the rents of their real estate to be applied and their goods to be seized and sold for the maintenance of wives and near relatives.

V. And

Penalty for falsely
deposing.

V. 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 Act 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.

Provision as to illegitimate children.

VI. And be it enacted that the provisions of this Act 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 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.

Proceedings for enforcing orders under this Act.

VII. And be it enacted that it shall be lawful for the Justices by whom any order shall have been made under this Act touching the support of any wife or child or other destitute person as aforesaid or for any other two Justices from time to time in a summary way (with or without any 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 directed for such destitute person's support 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 *bona fide* purposes of maintenance or for causing any child or children to be properly brought up and educated and any one Justice shall have power at any time in a summary way to enquire into the disobedience or alleged disobedience of or non-compliance with any such order or with any order made by any Court of General Sessions of the Peace as hereinafter mentioned and for that purpose to summon and examine all proper parties and witnesses and to enforce compliance or punish the non-compliance with such order either by committal of the offending party until the same shall have been complied with or by the imposition of a fine not less than five pounds nor more than fifty pounds: Provided always that no Justice shall review alter or annul any order or proceedings of any other Justice without the concurrence of such Justice issuing such order or proceeding.

Proceedings for penalties appeals &c.

VIII. And be it enacted that all proceedings under this Act whether before two Justices or one Justice shall be had and

and taken and all summonses to parties and witnesses and warrants (where necessary) for enforcing the same shall be issued and served or executed respectively and all fines imposed and all sums of money ordered to be paid by any husband father or other near relative as aforesaid may be recovered and every person feeling aggrieved by the imposition of any such fine or by any order of any two Justices under this Act shall be entitled to appeal therefrom upon the terms and in the manner and form respectively which are prescribed by Act of Council for regulating summary proceedings before Justices of the Peace so far as such provisions shall be applicable.

IX. Provided always that it shall be lawful for any Court of General Sessions of the Peace holden for the Province or the district within which any order under this Act shall have been made 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 every order made by any two Justices under this Act 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.

General Sessions may modify orders.

X. 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 Province 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 Act such child having attained the age of thirteen 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 indentures due and reasonable provision is made for the maintenance clothing and wages of the apprentice and for the proper and humane treatment of any such apprentice.

Two Justices may bind any child as an apprentice.

XI. 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 on the other to issue a summons or warrant to bring the party complained of before any two Justices who

Power of Justices between masters and apprentices.

who may investigate the matter and either dismiss such complaint or punish the party complained of if the master by fine and imprisonment if the apprentice by imprisonment not exceeding in either case three months and if it shall appear to such Justices that there is or has been inveterate ill-usage by the master or incorrigible misconduct in the apprentice it shall be lawful for such Justices to make an order cancelling and annulling the indentures.

Assignment or revocation of indenture.

XII. 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 indenture 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.

Convictions not to be quashed for want of form nor removed by *certiorari*.

XIII. And be it enacted that no conviction order warrant or other matter made or purporting to be made by virtue of this Act shall be quashed for want of form or removed by *certiorari* or otherwise into the Supreme Court and no warrant of commitment shall be held void by reason of any defect therein: Provided that it be therein alleged that the party has been convicted and that there be a good and valid conviction to sustain the same.

Limitation of actions against Justices.

XIV. And be it enacted that no action at law shall lie against any Justices of the Peace for any matter or thing which may be done or commanded by them in pursuance of the provisions of this Act 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 Justice or Justices shall be sued for any matter or thing done in pursuance of this Act the defendant or defendants in any such action may plead the general issue and give this Act and the special matter in evidence.

Appropriation of penalties.

XV. And be it enacted that the amount of every fine imposed under this Act shall be appropriated and applied as follows that is to say one moiety thereof shall be paid as the Justices shall in their discretion direct either wholly to the use of the wife or child or other destitute person as aforesaid in respect of whose maintenance the original order shall have been made or partly to that use partly

partly to the use of the party informing or prosecuting and partly to the Colonial Treasurer to the use of Her Majesty Her Heirs and Successors for the public uses of the Province and support of the Government thereof and the other moiety thereof shall be paid to the Colonial Treasurer and appropriated to Her Majesty Her Heirs and Successors for the public uses of the Province and support of the Government thereof.

G. GREY,
Governor South Australia.

*Passed the Legislative Council this Fourteenth }
day of February One Thousand Eight }
Hundred and Forty-three.*

A. M. MUNDY,
Clerk of Council.