

Hon. Mr. Mason.

DOMESTIC PROCEEDINGS.

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A BILL INTITULED

AN ACT to amend the Destitute Persons Act, 1910, for the Purpose of making Better Provision in relation to Domestic Proceedings and other Matters. Title.

5 BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the Domestic Proceedings Act, 1939, and shall be read together with
 10 and deemed part of the Destitute Persons Act, 1910 (hereinafter referred to as the principal Act). Short Title.
See Reprint of Statutes, Vol. II, p. 896

Commencement.

(2) This Act shall come into force on the *first* day of ~~October~~, *November*, nineteen hundred and *thirty-nine*.

Interpretation.

2. For the purposes of the principal Act, unless the context otherwise requires, the term "domestic proceedings" means—

(a) Proceedings under Part III of the principal Act, except proceedings in respect of any offence against section nineteen thereof:

(b) Proceedings under Part IV of the principal Act:

(c) Proceedings under section thirty-eight or section thirty-nine of the principal Act in respect of any order made under Part III or Part IV of the principal Act:

(d) Proceedings in relation to an interim maintenance order under section *six* of this Act.

Proceedings to be filed in Magistrates' Courts.

3. (1) In all cases where under the principal Act a Justice of the Peace is authorized upon a complaint on oath or upon any other documents to issue a summons to any person or a warrant to apprehend any person, the complaint or other documents, as the case may be, shall be filed in a Magistrate's Court and the summons or warrant shall be issued by the Clerk of that Court. The summons or warrant may be signed by any Justice or by the Clerk.

(2) Any such complaint may be made to any Justice or to the Clerk of a Magistrate's Court.

Sittings of Courts for domestic proceedings.

Cf. 1 Edw. VIII & 1 Geo. VI, c. 58, s. 2 (Imp.)

4. (1) The business of Magistrates' Courts and of Magistrates shall, so far as is consistent with the due despatch of business, be arranged in such manner as may be requisite for separating the hearing of domestic proceedings from other business.

(2) No person shall be present during the hearing of any domestic proceedings except—

(a) Officers of the Court:

(b) Parties to the proceedings, their solicitors and counsel, witnesses and other persons directly concerned in the proceedings, and other persons whom either party desires to be present:

(c) Solicitors and counsel in attendance for other cases:

(d) Accredited newspaper reporters:

(e) Any other person whom the Magistrate may permit to be present.

(3) Where any other proceedings are heard together with any domestic proceedings, the provisions of the *last preceding* subsection shall, unless the Magistrate otherwise determines, apply as if the whole of the proceedings were domestic proceedings.

(4) Nothing in this section shall be construed to limit any other powers of the Magistrate to hear proceedings *in camera* or to exclude any persons from the Court.

10 5. (1) Where a complaint under Part III of the principal Act is filed by or on behalf of any husband or wife, the Magistrate, or in his absence the Clerk of the Court, shall refer the matter to some person whom he shall appoint as conciliator to attempt to effect a
15 conciliation between the husband and the wife:

Reference of matrimonial cases to a conciliator.

Cf. 1 Edw. VIII & 1 Geo. VI, c. 58, s. 4 (Imp.)

Provided that if for any special reason the Magistrate thinks it inexpedient that the matter should be referred to a conciliator, he may make an order that the matter be not so referred, or that the reference
20 made by the Clerk be revoked, as the case may require.

(2) Any Probation Officer, Maintenance Officer, or Child Welfare Officer, or any other person, whether in the service of the Government or not, may be appointed as a conciliator.

25 (3) Except as provided in this section no person appointed as a conciliator shall disclose to any person any information received by him *or any statements or admissions made to him* in the course of any proceedings under this section. Every person who
30 commits a breach of this provision shall be liable on summary conviction to a fine of *five pounds*.

New.

35 (3A) No statement or admission made in the course of any proceedings under this section before any person appointed as a conciliator shall be received in evidence in any Court whatsoever.

40 (3B) If the attempt to effect a reconciliation is unsuccessful or if it is desired that the Magistrate should make an order to give effect to any agreement between the parties, the person appointed as a conciliator may furnish to the Magistrate a report stating that the attempt to effect a reconciliation has been unsuccessful or, as the case may require, stating the agreement between the parties and the order which is desired.

Struck out.

(4) If an attempt to effect a conciliation is unsuccessful and the person appointed as conciliator thinks fit in the circumstances of the case so to do, he may furnish to the Magistrate a report made in such form as may be prescribed by regulations made under the principal Act and containing the statements made by the husband and the wife respectively, and information as to such other matters relating to the proceedings or to the parties thereto as may be prescribed:

Provided that no statement made by the husband or the wife shall be included in the report without his or her consent in writing.

(5) Where a report is furnished under this section, the person by whom the report is furnished shall cause copies thereof to be delivered to the husband and to the wife, or to be sent by post addressed to each of them at his or her last known place of abode or business.

(6) Where a report is furnished under this section, the Magistrate may, if he thinks fit, make use of the report for the purpose of putting or causing to be put questions to any witness:

Provided that, notwithstanding anything to the contrary in section sixty-eight of the principal Act nothing contained in the report shall be received by the Magistrate as evidence.

Interim
maintenance
orders.
Cf. 15 & 16
Geo. V, c. 51,
s. 6 (Imp.)

6. (1) Where the hearing of a complaint under Part III of the principal Act is adjourned for any period exceeding one week, or where any such complaint is referred to a conciliator under the provisions of the *last preceding* section, a Magistrate may, if he thinks fit, having regard to all the circumstances of the case, make an order directing that the defendant do pay a weekly sum towards the future maintenance of his or her wife or husband and of any of his or her children until the final determination of the case.

(2) No order made under this section shall continue in force for more than three months from the date on which it is made.

(3) Any order made under this section may be enforced in the same manner as if it were a final order of the Magistrate.

7. (1) No particulars in relation to any domestic proceedings shall be printed or published in any newspaper before the Magistrate has heard and determined the case.

Newspaper reports of domestic proceedings.

Cf. 1 Edw. VIII & 1 Geo. VI, c. 58, s. 3 (Imp.)

5

Struck out.

After the Magistrate has heard and determined the case no particulars other than the following shall be printed or published in any newspaper, that is to say:—

- 10 (a) The names, addresses, and occupations of the parties and of the witnesses:
- (b) The grounds on which the complaint was based, and a concise statement of the charges, defences, and counter-charges in support of
- 15 which evidence has been given:
- (c) Submissions on any point of law arising in the course of the proceedings and the decision of the Magistrate thereon:
- 20 (d) The decision of the Magistrate and any observations made by him in giving his decision.

(2) If any particulars are printed or published in any newspaper in contravention of the provisions of the *last preceding* subsection, every person who is a

25 printer, publisher, proprietor, manager, or editor of the newspaper shall be guilty of an offence and liable on summary conviction to imprisonment for a term of *three* months or to a fine of *one hundred* pounds, or to both such imprisonment and such fine.

30 (3) No prosecution for an offence against this section shall be commenced except with the leave of the Attorney-General.

Struck out.

35 (4) Nothing in this section shall apply to the printing or publishing of any matter in any newspaper of a technical character intended for circulation among members of the legal profession or of the medical profession.

40 (5) Nothing in this section shall be construed to limit the provisions of any other enactment relating to the prohibition or the regulation of the publication of reports of or particulars in relation to judicial proceedings.

See Reprint
of Statutes,
Vol. VI, p. 954

(6) For the purposes of this section "newspaper" means any newspaper registered under the Printers and Newspapers Registration Act, 1908, or any periodical publication which is published at intervals not exceeding three months; and every document which at any time accompanies and is distributed together with any newspaper shall be deemed to form part of the newspaper. 5

Part III of
principal Act
to apply for
benefit of
married man.

8. (1) Subject to the provisions of this section, Part III of the principal Act shall apply so as to entitle a married man to the benefit thereof and to make his wife subject to the provisions thereof; and for the purposes of this section all references in that Part to a married woman or a wife shall be deemed to be references to a married man or a husband, and all references in that Part to a married man or a husband shall be deemed to be references to a married woman or a wife. 10 15

(2) No maintenance order shall be made against a wife in favour of her husband unless the Magistrate is satisfied that the husband is a destitute person, and that his wife is of sufficient ability by her own means or labour to contribute to his maintenance, and, if the order is sought on the sole ground of the failure of the wife to provide adequate maintenance for her husband, that the failure was wilful and without reasonable cause. Notwithstanding anything to the contrary in section seventy-one of the principal Act, the burden of proof for the purposes of this subsection shall be on the complainant. 20 25 30

(3) The fact that a separation order or an order of guardianship is made in favour of any husband shall not in itself affect the liability (if any) of the husband to provide for the maintenance of his wife or the power of a Magistrate to make a maintenance order against the husband in favour of his wife. 35

Repeals.

(4) This section is in substitution for section twenty-three of the principal Act, and that section and subsection two of section three of the Destitute Persons Amendment Act, 1926, are hereby accordingly repealed. 40

Dissolution of
marriage not
to affect
maintenance
order.

9. No maintenance order made under Part III of the principal Act shall be deemed to be or to have been cancelled by reason only of the dissolution (whether before or after the commencement of this Act) of the marriage between the husband and the wife. 45

10. (1) Section thirty-eight of the principal Act is hereby amended by repealing subsection one and substituting the following subsection:—

Section 38 of principal Act (as to rehearings) amended.

5 “(1) Where an order has been made on any complaint under this Act, any Magistrate may, if in his discretion he thinks fit, on the application ~~ex-parte~~ of the complainant or defendant, grant a rehearing of the complaint, and may upon the rehearing cancel, vary, or confirm the order.”

10 (2) Section thirty-nine of the principal Act is hereby consequentially amended by repealing paragraphs (a) and (b) of subsection one.

Struck out.

15 11. (1) If under any order moneys are payable to the Clerk for the time being of any Magistrate’s Court, any application or complaint made under section thirty-eight or section thirty-nine of the principal Act in respect of that order shall be filed in that Court.

Place for filing applications for rehearing, variation, &c., of orders.

20 (2) In all other cases any application or complaint made under section thirty-eight or section thirty-nine of the principal Act shall be filed either in the Magistrate’s Court at the place where the order was made or in the Magistrate’s Court situated nearest to the place where the complainant in the original proceedings, or the person to whom or for whose benefit moneys are payable under the order, resides or carries on business.

New.

30 11A. (1) In this section the expression “retiring-allowance” means any retiring-allowance or pension or other moneys of a like nature, and the provisions of this section shall apply to any retiring-allowance notwithstanding that it may be protected by law against assignment or charge.

Attachment order may be made in respect of retiring-allowances.

35 (2) An attachment order under section forty-three of the principal Act may, notwithstanding anything to the contrary in any Act, be made in respect of any retiring-allowance payable to any defendant as if it were salary or wages payable to the defendant by an employer.

40 (3) For the purposes of this section and of section forty-three of the principal Act, any person by whom any retiring-allowance is payable to a defendant shall be deemed to be the employer of the defendant.

Section 43 of principal Act (as to attachment orders) may be extended to bind the Crown.

12. (1) The Governor-General, on the recommendation of the Minister of Finance, may by Order in Council provide that the provisions of section forty-three of the principal Act *as extended by the last preceding section* shall bind the Crown to such extent and subject to such conditions as the Governor-General thinks fit and as may be set out in the Order in Council. 5

(2) Any Order in Council under this section may, notwithstanding anything to the contrary in the said section forty-three, prescribe the manner in which, the person or persons on whom, and the time within which any attachment order shall be served, and may provide that any specified portion or portions of the said section forty-three shall not bind the Crown. 10

(3) Any Order in Council made under this section may from time to time on the like recommendation and in the like manner be varied or revoked. 15

Place of hearing of informations for failure to pay maintenance-moneys.

13. (1) Every information for an offence against section sixty-one of the principal Act shall be heard and determined by a Magistrate sitting in the Magistrate's Court situated nearest to the place where the defendant resides or carries on business: 20

Provided that where the defendant is brought up in custody or voluntarily appears to answer the charge in any other Magistrate's Court the information may be heard and determined in that Court: 25

Provided also that non-compliance with the provisions of this subsection shall not of itself invalidate the proceedings.

(2) Where an information for an offence against section sixty-one of the principal Act is filed in any Court other than that in which the information is required to be heard, the following provisions of this section shall apply. 30

(3) The Clerk of the Court in which the information is filed, on being satisfied as to the amount unpaid under the maintenance order referred to in the information, shall endorse on the information a certificate setting out the amount so unpaid and the date or dates when it became due under the order, and the Clerk shall thereupon forward the information to the Clerk of the Court in which the information is required to be heard. 35 40

(4) The certificate endorsed on the information shall, in the absence of proof to the contrary, be sufficient evidence of the statements contained therein and that the default has been made without reasonable
5 cause, and it shall not be necessary for the informant to appear or be represented at the hearing of the information.

(5) If the defendant is convicted, a minute of the conviction shall be endorsed on the information, and
10 signed by the Magistrate hearing the information, and the information shall thereupon be transmitted to the Court in which it was originally filed and further proceedings may be taken thereon as though the information had been heard and determined by a
15 Magistrate sitting in that Court.

New.

13A. Section sixty-one of the principal Act, as amended by section six of the Destitute Persons Amendment Act, 1926, is hereby further amended by inserting
20 in subsection three, after the word "thereafter", the words "notwithstanding that any direction or directions may already have been made under this subsection fixing a larger sum".

Section 61 of the principal Act (as to failure to pay maintenance-moneys) extended.

14. Section seventy-eight of the principal Act is
25 hereby amended by inserting before the words "complaint or application," the word "information."

Section 78 of principal Act (as to costs) extended.

15. (1) Notwithstanding anything to the contrary in section seventy-nine of the principal Act, it shall
30 not be necessary to specify the examining Magistrate by name in an order under subsection one of that section, but it shall be sufficient if the order directs that the evidence be taken before any Magistrate sitting in a specified Court.

Section 79 of principal Act (as to taking evidence) extended.

(2) The powers of any examining Magistrate under
35 section seventy-nine of the principal Act may be exercised by the Clerk of his Court, and for the purposes of this subsection the references to the examining Magistrate in the said section seventy-nine shall be deemed to include references to the Clerk of
40 the Court of the examining Magistrate.

(3) The said section seventy-nine is hereby extended so as to authorize the taking under that section of the evidence of any person with respect to
45 section sixty-one of the principal Act.

Extension of
Magistrates'
jurisdiction
as to orders for
maintenance
made by
Supreme
Court.

See Reprint
of Statutes,
Vol. II, p. 937

16. (1) This section applies with respect to every order of the Supreme Court of which a copy has, whether before or after the commencement of this Act, been registered in the office of a Magistrate's Court under section eight of the Destitute Persons Amendment Act, 1926. 5

(2) Subject to the provisions of this section, the provisions of the principal Act shall apply with respect to every such order as if it were an order of a Magistrate under the principal Act: 10

Provided that nothing in this section shall be deemed to take away or affect the jurisdiction of the Supreme Court in relation to an order of that Court.

(3) Whenever a copy of any order to which this section applies is registered in the office of a Magistrate's Court, the Clerk of that Court shall give notice of the registration to the Registrar of the office of the Supreme Court in which the order was made. 15

(4) No complaint shall be made under the principal Act for the cancellation, variation, or suspension of any order to which this section applies, or for the substitution of a new order therefor, in any case where the Supreme Court has ordered security to be given for the performance of the order, or while any proceedings for the cancellation, variation, or suspension of the order are pending or in progress in the Supreme Court. 20

(5) A copy of every order made by a Magistrate cancelling, varying, or suspending any order to which this section applies, or substituting a new order therefor, shall be forwarded by the Clerk of the Court in which the order is made to the Registrar of the office of the Supreme Court in which the order of the Supreme Court was made, and shall be filed without fee by that Registrar. 25

(6) Where an order to which this section applies is varied or otherwise affected by a subsequent order of the Supreme Court, a copy of that subsequent order shall be forwarded by the Registrar of the Supreme Court to the Clerk of the Magistrate's Court in which the copy of the earlier order of the Supreme Court is registered, and the copy of the subsequent order shall thereupon be registered by that Clerk under section eight of the Destitute Persons Amendment Act, 1926. 30 35 40

(7) Section eight of the Destitute Persons Amendment Act, 1926, is hereby amended by omitting all the words after the words "Magistrate's Court".

(8) The Destitute Persons Amendment Act, 1930, is hereby repealed.

17. (1) Section nine of the Destitute Persons Amendment Act, 1926, is hereby amended by inserting, after subsection two, the following subsections:—

10 "(2A) The Maintenance Officer may institute any proceedings, and may appear on the hearing of any proceedings, under Part I, Part III, or Part IV of the principal Act.

15 "(2B) The Maintenance Officer may, on behalf of the complainant in the original proceedings or the person to whom or for whose benefit moneys are payable under any order under the principal Act, appear in any of the following proceedings:—

20 "(a) An application for the rehearing, or the rehearing, of any complaint under Part I, Part III, or Part IV of the principal Act:

"(b) Proceedings for the cancellation, variation, or suspension of any order made under the principal Act for the payment of money in respect of the maintenance of any person:

25 "(c) The examination of a witness under section seventy-nine of the principal Act."

(2) Section nine of the Destitute Persons Amendment Act, 1926, is hereby further amended by inserting, after subsection eight, the following subsection:—

30 "(8A) Any Maintenance Officer, or his deputy, or any constable may act in proceedings in any Magistrate's Court on behalf of the Maintenance Officer appointed in connection with any other Magistrate's Court."

Repeal.

See Reprint of Statutes, Vol. II, p. 939

Powers of Maintenance Officers enlarged.

Ibid., p. 937