

New Zealand.



ANALYSIS.

Title.

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1896, No. 15.

Title. AN ACT to amend the Law relating to the Summary Jurisdiction of Magistrates in reference to Married Persons.

[24th September, 1896.]

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

Short Title.

1. The Short Title of this Act is "The Married Persons Summary Separation Act, 1896."

Interpretation.

2. In this Act, if not inconsistent with the context,—

“Court” means a Magistrate’s Court constituted under “The Magistrates Act, 1893,” but does not include a Court held before Justices of the Peace:

“Magistrate” means a Stipendiary Magistrate appointed under “The Magistrates Act, 1893.”

Married woman may apply for separation order in certain cases.

3. Any married woman whose husband shall have been convicted summarily or otherwise of an aggravated assault upon her within the meaning of the sixteenth section of “The Indictable Offences Summary Jurisdiction Act, 1894,” or whose husband shall have been convicted of an assault upon her and sentenced to pay a fine of five pounds or upwards, or to a term of imprisonment exceeding two months, or whose husband shall have deserted her, or whose husband shall have been guilty of persistent cruelty to her, or of wilful neglect to provide reasonable maintenance for her or her infant children whom he is legally liable to maintain, may apply to any Court in the district in which any such conviction shall have taken place, or in which the cause of complaint shall have wholly or partially arisen, for an order or orders under this Act: Provided

that when a married woman is entitled to apply for an order or orders under this section on the ground of the conviction of her husband on indictment she may apply to the Court before which her husband has been convicted, and that Court shall, for the purposes of this section, have the power without a jury to hear an application and adjudicate thereon.

4. The Court to which any application under this Act is made may make an order containing all or any of the provisions following, namely,—

Court may make order.

- (1.) A provision that the applicant be no longer bound to cohabit with her husband (which provision, while in force, shall have the effect in all respects of a decree of judicial separation on the ground of cruelty, under the provisions of "The Divorce and Matrimonial Causes Act, 1867"):
- (2.) A provision that the legal custody of any children of the marriage, while under the age of sixteen years, be committed to the applicant:
- (3.) A provision that the husband shall pay to the applicant personally, or for her use to any officer of the Court or third person on her behalf, such weekly sum as the Court, having regard to the means of both parties, and the number of children, and other circumstances of the case, shall consider reasonable:
- (4.) A provision that the husband shall give security to the satisfaction of the Stipendiary Magistrate over any real or personal property belonging to him for the due payment of any moneys ordered to be paid by him:
- (5.) A provision for payment by the applicant, or the husband, or both of them, of the costs of the Court, and such reasonable costs of either of the parties as the Court may think fit.

5. No order shall be made under this Act on the application of a married woman if it shall be proved that such married woman has committed adultery: Provided that the husband has not condoned or connived at, or by his wilful neglect or by his misconduct conduced to, such act of adultery.

No order to be made if applicant guilty of adultery.

6. (1.) Any Magistrate acting in the district in which any order under this Act has been made may, on the application of the married woman or of her husband, and upon cause shown upon fresh evidence to the satisfaction of the Court, at any time alter, vary, or discharge any such order, and may upon any such application from time to time increase or diminish the amount of any weekly payment ordered to be made. If any married woman upon whose application an order shall have been made under this Act shall voluntarily resume cohabitation with her husband, or shall commit an act of adultery, such order shall upon proof thereof be discharged.

Orders may be varied or discharged.

(2.) The Magistrate may, if he think fit, refer any application made under this section to a Magistrate in another district, and in such case transmit the original order and any other necessary documents to the Clerk of the Court of such other district, and the Magistrate to whom such application is so referred shall have jurisdiction to hear and determine the same.

How application to be made.

7. All applications under this Act to a Magistrate's Court shall be by complaint on oath, and all other applications shall be by motion.

Applications to wrong Court.

8. The Magistrate or the Clerk of the Court may refuse to issue a summons if he shall be of opinion that the application has not been made to the proper Court: And if in the opinion of the Magistrate the application should have been made to some other Court, he may make an order that the application be sent for hearing to such other Court; and thereupon all further proceedings thereon shall be had in such other Court as if the application had been originally made to such Court.

On the making of any such order the Clerk of the Court shall forthwith transmit to the Clerk of such Court a certified copy of the application, and of the order transferring the same. And the last-named Clerk shall enter the application in his book as if the same had been originally made to that Court. The Magistrate of such Court shall appoint a day for the hearing, and notice thereof shall be given to both parties in such manner as such Magistrate shall direct.

No objection shall be taken at the hearing of any application, or at any subsequent stage of the proceedings, or by any other proceeding, on the ground that any application has been made to the wrong Court.

Enforcement of orders.

9. The payment of any sum of money directed to be paid by any order under the Act may be enforced in the same manner as the payment of money is enforced under the provisions of "The Destitute Persons Act, 1894."

Certified copies of documents admitted as evidence.

10. In all Courts and in all proceedings under this Act,—

(1.) A copy of any application, order, or other document certified by the Clerk of the Court where such application, order, or other document was made or filed shall be admitted as evidence of the contents of such application, order, or other document, and of the due making or filing thereof.

(2.) A certificate by the Clerk of the Court to any officer of which any money has been directed to be paid shall be admitted as evidence of the payment or non-payment of such money or any part thereof, according to the tenor of such certificate.

Court may refuse to make order if case proper for Supreme Court.

11. If in the opinion of the Court the matter in question between the parties or any of them would be more conveniently or properly dealt with by the Supreme Court, the Court may refuse to make an order under the Act, and in such case no appeal shall lie from the decision of the Court.

Appeal.

12. Save as hereinbefore provided, an appeal shall lie from any order, or the refusal of an order, by the Court under this Act to the Supreme Court. The Governor may by Order in Council from time to time make, alter, vary, suspend, and rescind rules or regulations regulating the practice and procedure in such appeals; and until such rules or regulations are made, so far as any such rules or regulations when made do not apply, the provisions of Title II. of Part III. of "The Justices of the Peace Act, 1882," as the same are amended by "The Justices of the Peace Act 1882 Amendment Act, 1885," shall apply to appeals under this Act.

13. The provisions of the Act shall also apply so as to entitle a married man to the benefit thereof, and to make his wife liable and subject to the provisions thereof; and for the purposes of this section the words "married man," or "husband," or any similar expression or reference, shall, *mutatis mutandis*, be read throughout the Act in lieu of the words "married woman," or "wife," or any similar expression or reference, and the words "married woman," or "wife," or any similar expression or reference, shall be read in lieu of the words "married man," or "husband," or any similar expression or reference.

Act to apply to married men.

14. The twenty-second section of "The Destitute Persons Act, 1894," is hereby repealed.

Repeal.

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