

**70.** The court shall hear and determine so much of such complaint as relates to the paternity of the child, and may—

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(a) order the defendant to deposit with the court a sum not exceeding thirty pounds for preliminary expenses; and

**Court may require defendant to pay preliminary expenses.**

(b) further order the defendant to enter into a recognizance with or without a surety or sureties for such amount as the court determines, as a security that within four months from the birth of the child, and on such day as any court, at any time not later than three months from the said birth, determines, and of which at least fourteen days' notice shall be given to the defendant by or on behalf of the complainant, the defendant will appear and show cause why he should not make such adequate provision as the court determines for the payment of the expenses of the maintenance and education of the child after it has reached the age of three months. **Every such order** shall specify a date not later than six months thereafter when the order shall lapse if the child has not been born, and if upon such date the child has not been born the order shall lapse and the defendant and his surety or sureties shall be deemed to be released from their recognizances, and the unexpended portion of any moneys paid by the defendant as preliminary expenses shall be repaid to him:

**See S.A. Act, No. 702, ss. 3, 4; Vic. Act, No. 1,684, ss. 2, 3; Imperial Act, 35 & 36 Vic., c. 65, s. 4.**

**See S.A. Act 702, s. 7.**

Provided that if the mother has been delivered of a still-born child within the date specified, the court may direct that the whole or such portion of the amount deposited, as it thinks fit, be paid out to her.

The court shall not make an order under this section against the defendant unless it be proved by the evidence of some medical practitioner or by the certificate of some medical practitioner admitted as such evidence with the consent of the defendant that the woman is quick with child, and unless her evidence be corroborated

**See S.A. Act 702, s. 6.**

in

**George V,** in some material particular, or if the court be satisfied  
**No. 21.** that at the time the child was begotten the mother was a common prostitute.

In default of compliance with any order as aforesaid, the court may commit the defendant to prison for any term not exceeding twelve months: Provided that upon compliance with such order, at any time during such term of imprisonment, the defendant shall be released from prison.

Forfeiture of recognizance where defendant does not appear.

**71.** If upon the day on which the defendant is bound to show cause as aforesaid, or upon any later day to which the proceedings are adjourned he does not appear, and it is proved to the satisfaction of the court that the child has been born, and that the order binding the defendant to show cause has not lapsed, the recognizances entered into by the defendant and sureties before the birth shall be forfeited, and such recognizance shall be dealt with as a forfeited recognizance in the manner provided by the Fines and Forfeited Recognizances Recovery Act, 1902; the moneys so secured shall be applicable for the benefit of the mother and child, and the court may proceed in the case *ex parte* and make an order for the payment by the defendant of a sum for the maintenance and education of the child.

Order after birth where the defendant does appear.

**72.** If upon the day or later day mentioned in the last preceding section the defendant appears, and it is proved to the satisfaction of the court that the child has been born, and that the order binding the defendant to show cause has not lapsed, the court shall make an order for the payment by the defendant of a sum for the maintenance and education of the child.

*Proceedings begun after birth.*

Complaint may be made against father of illegitimate child for leaving it without means of support.  
 (See Local Act, No. 17, 1901, s. 4; Imperial Act, 35 & 36 Vic., c. 45, s. 3.)

**73.** In any case where the father of an illegitimate child has left it without means of support, the mother of the child, or the secretary or any other reputable person on behalf of the child, may make complaint on oath to a magistrate or court; and shall, when making such complaint, produce evidence on oath, either oral or on affidavit, in corroboration in some material particular of  
 any

any allegation in such complaint as to the paternity of the child; and upon such complaint being made, the magistrate or court may summon the defendant to appear before the court to answer such complaint, or if the circumstances seem to require it, may issue a warrant for his apprehension.

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In any case where the mother of an illegitimate child has left it without means of support, the secretary or any reputable person on behalf of the infant may make complaint in writing on oath to a magistrate or court, and upon such complaint being made the magistrate or court may summon the defendant to appear before the court to answer such complaint, or, if the circumstances seem to require it, may issue a warrant for her apprehension.

**74.** The court shall hear and determine the complaint, and may make an order for the payment by the defendant of a sum for the maintenance and education of the child.

Court shall hear and determine complaint and may make order for maintenance.

In any order made under this section against the father of an illegitimate child, the court may further order that the preliminary expenses to an amount not exceeding thirty pounds shall be paid by the defendant, and for the purposes of this and the preceding section any defendant who has failed to pay an adequate sum for preliminary expenses shall be deemed to have left the child without means of support.

**75.** Where any complaint has been made under this Part by a woman for expenses in respect of a child of which she is about to be or has been delivered, she may, at the hearing of the complaint, be compelled to give evidence; and where complaint has been made by an officer or other reputable person on behalf of a woman for such expenses, she may, at the hearing of the complaint, be compelled to give evidence if it has first been proved to the satisfaction of the court that she has made an allegation as to the paternity of the child. The admissions of a woman in giving evidence under this section shall not be used against her in any criminal prosecution, except for perjury committed while so giving evidence.

Women may in certain cases be compelled to testify.

**76.**

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Court may  
order pay-  
ment of  
funeral  
expenses of  
mother and  
child.  
(See 35 & 36  
Vic., c. 65,  
s. 4.)

**76.** (1) Where after the fifth month of pregnancy any illegitimate child has been still-born or having been born alive has died before attaining the age of sixteen years, and where the mother of any such child has died during parturition or in consequence of parturition and the father of such child has not paid an adequate sum—

(a) for preliminary expenses;

(b) for funeral expenses of such mother or child;

any reputable person may make complaint in writing on oath to any magistrate or court that the defendant has failed to pay the same, and shall when making such complaint produce evidence upon oath either oral or on affidavit in corroboration in some material particular of the allegation as to the paternity of the child.

(2) Such magistrate or court may thereupon summon the defendant to appear before the court to answer such complaint; or if the circumstances seem to require it, may issue a warrant for his apprehension.

(3) The court shall hear and determine the complaint and may make an order for payment by the defendant of a sum—

(a) not exceeding thirty pounds for preliminary expenses;

(b) a reasonable sum for the expenses of the funeral:

Provided that no order for preliminary expenses shall be made under this section unless the complaint be made within twelve months of the birth of such child, and no order for funeral expenses shall be made unless complaint be made within twelve months of the death of such mother or child.

Any complaint under this section may include all or any of the expenses mentioned therein.

(4) The provisions of section ninety-three of this Act shall apply to proceedings under this section as if the proceedings were in respect of the maintenance of an illegitimate child:

Provided that where the defendant has been adjudged by any court of competent jurisdiction to be father of any such child this subsection shall not apply, and no further proof of paternity shall be required.

**77.**

**77.** In any order under this Part the court may further order the payment of such costs by such persons as it thinks fit.

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Court may  
order payment  
of costs.

**78.** If it appears to the court that both the father and mother of an illegitimate child are able to contribute to any of the expenses mentioned in the preceding sections of this Part, the court, in making any order, may direct the payment of such expenses by both the father and mother in such proportions and in such manner as it thinks fit; and if it appears to the court that the mother only is able to so contribute, it may direct the payment by her alone.

Mother also  
to contribute  
to expenses of  
maintenance.  
(See Deserted  
Wives and  
Children Act,  
No. 17, 1901,  
s. 7; N.Z. Act,  
58 Vic. No. 22,  
s. 10.)

**79.** Every order adjudging any sum to be paid for the maintenance of a child may be made to take effect from a date not earlier than three months immediately preceding the date of the order, or, if a previous order has been made, from the date when the last preceding order ceased to have effect, and shall be of full force and validity until the child has, if a male, attained the age of fourteen years, or has, if a female, attained the age of sixteen years, or until the death of such child if such death occurs within the respective periods above mentioned:

Period for  
which orders  
for mainten-  
ance may be  
made.  
(cf. Imperial  
Act, 35 & 36  
Vic., c. 65,  
s. 5; N.Z.  
Act, 58 Vic.  
No. 22, s. 9.)

Provided that the court may in the order direct that the payments to be made under it in respect of a male child shall continue until the child attains the age of sixteen years, in which case such order shall be in force until that period:

Provided also that for the purpose of recovering money previously due under an order it shall always remain of full force and validity.

**80.** When an order is made under this Part for the payment of any expenses other than preliminary expenses the court may, immediately after pronouncing its decision, or at any time during the currency of the order on notice being given to the defendant, require the defendant to enter into a recognizance with or without sureties for the due performance for a period not exceeding twelve months of such order, and in default of the defendant's immediately entering into such recognizance with the required sureties if any, the court may

Security for  
payment of  
amount may  
be ordered.  
Deserted  
Wives and  
Children Act,  
No. 17, 1901,  
s. 8.

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**No. 21.** may commit the defendant to prison, there to remain for any term not exceeding twelve months or until such recognizance has been entered into or the said order complied with for the period specified in the recognizance.

The court, on due proof that the conditions of such recognizance have not been complied with by the defendant may ex parte forfeit such recognizance, which shall thereupon be dealt with as a forfeited recognizance in the manner provided for by the Fines and Forfeited Recognizances Recovery Act, 1902.

Further orders may be made as to mode of payment of expenses.

Deserted Wives and Children Act, No. 17, 1901, s. 10.

**81.** Where an order has been made under this Part for the payment of expenses, or of moneys secured under recognizances, the court may, in a summary way and with or without any application for that purpose, make such orders in writing as it thinks necessary for better securing the payment and regulating the receipt of the expenses or moneys ordered to be paid, or for investing and applying the proceeds of the goods or rents ordered and directed to be sold or collected, or for ensuring the due appropriation of such expenses or moneys or for causing the child in respect of whom the order was made to be properly brought up and educated.

Seizure of defendant's goods.

*Ibid.* s. 9.

**82.** In any order under this Part the court may, by the said order, or at any time during the currency of such order, authorise and direct some person forthwith to seize and sell the defendant's goods and to demand and to receive his rents, or any moneys to which he is entitled or about to become entitled, or such portions of the said goods or rents or moneys as the court thinks fit, and to appropriate the proceeds towards the payment of the moneys ordered in such manner as it from time to time directs, and if it appears on oath that the defendant has theretofore usually resided in New South Wales and has left the said State, the like order may be made and authority given by such court although no summons or warrant has been issued.

A copy of the orders provided for in sections eighty-one and eighty-two, certified to by the clerk of the court, shall be served on any person affected thereby. Any person who disobeys or neglects to comply with any such order served on him shall be guilty of an offence under this Act.

**83.**

**83.** On complaint on oath being made to the court or magistrate that any person has disobeyed or has not complied with any order made under this Part such court or magistrate may summon such person or issue his warrant for the apprehension of such person to answer such complaint. The court may at any time in a summary way inquire into any such disobedience or non-compliance with any such order, and may enforce compliance, or may punish non-compliance with such order by the committal of the offender until such order has been complied with, and until the payment of any costs incidental to the hearing of the said complaint which may be awarded by the court.

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Disobedience  
of order may  
be punished.

**84.** The court from time to time may, upon application made by or on behalf of the mother or child or by or on behalf of the father, and upon notice given in such manner as the court shall direct to all parties to be affected thereby, vary any order made under this Part. On the determination of such application the court may award costs to the successful party.

Court may  
vary order.

A man adjudged to be the father of a child may apply to the court for leave to apply to have the order varied on the ground that evidence material to the question of the paternity of the child was not available to or known of by him at the date of the adjudication, and the court may on hearing the evidence grant or refuse such leave. Except in pursuance of leave so granted the question of the paternity of the child shall not be raised on an application to vary an order.

**85.** (1) Every summons or notice shall be served by a constable or other person upon the person to whom it is directed by delivering it to him personally, or if he cannot be conveniently met with, then by leaving it with some person for him at his last or most usual place of abode.

Service of  
summons or  
notice.

(2) Service of a summons or notice in manner aforesaid may be proved by the oath of the constable or other person who served it, or by affidavit, or otherwise.

**86.** (1) If a defendant against whom a summons has been issued under this Part does not appear in accordance

Court may  
proceed  
ex parte.

**George V,**  
**No. 21.** accordance therewith the court, upon proof of the service of the summons, may issue a warrant for his apprehension, or may proceed in the case *ex parte*.

(2) In every case where a warrant has been issued, and the defendant cannot, after strict inquiry and search, be found to be taken thereon, the court may in like manner proceed in the case *ex parte*.

Warrant may  
issue in  
certain cases.

**87.** Any magistrate or court on being satisfied by complaint on oath that any defendant has removed or is about to remove out of New South Wales or to remote parts thereof to defeat any of the provisions of this Part or any order made hereunder may issue a warrant for the apprehension of such defendant to be dealt with according to law :

Provided that in lieu of issuing such warrant the magistrate or court may issue a summons, requiring such defendant to appear before the court to answer such complaint. Upon the appearance of such defendant he may at the discretion of the court be ordered to enter into a recognizance with sureties for the due performance for a period not exceeding twelve months of such order. And in default of defendant immediately entering into such recognizance with the required sureties, the court may commit the defendant to prison, there to remain for any term not exceeding twelve months or until such recognizance has been entered into or the said order complied with.

The court on due proof that the conditions of such recognizance have not been complied with by the defendant may *ex parte* forfeit such recognizance, which shall thereupon be dealt with as a forfeited recognizance in the manner provided by the Fines and Forfeited Recognizances Recovery Act of 1902.

Certain  
breaches of  
Act indictable  
when offender  
leaves New  
South Wales.

(See N.Z., 1894,  
No. 22, s. 17;  
Vic., 1901, No.  
1,737, s. 4.)

**88.** (1) Every person who wilfully refuses or neglects to comply with an order made against him under this Part, and goes or attempts or makes preparation to go beyond New South Wales, or to reside or is resident either permanently or temporarily beyond New South Wales, shall be deemed to be guilty of an indictable offence, punishable by imprisonment with hard labour for a term not exceeding twelve months.

(2)



(2) No person convicted of an offence against this section shall be liable to any other penalty or punishment for such offence. **George V, No. 21.**

**89.** A committal to prison or conviction of an offence under this Part shall not prevent the making or operation of any order for the payment of money or the doing of any act by such person which may be lawfully made. Committal to prison not to prevent making or operation of orders.

**90.** Whenever the Legislature of any British possession beyond the limits of the United Kingdom of Great Britain and Ireland, the Channel Islands, and the Isle of Man, and other than New South Wales, makes provision whereby the offence of desertion of children, and going to reside beyond the limits of such possession, is constituted an offence whether punishable on indictment or otherwise by imprisonment for a term of twelve months or more, then and in every such case every person accused of such offence and coming to New South Wales may be there arrested and dealt with under and pursuant to the provisions of the Act of the Imperial Parliament of Great Britain and Ireland, intituled the Fugitive Offenders Act, 1881, or any Act amending the same. Persons deserting children in other colony, &c., may be arrested in New South Wales. (See Vic., 1901, No. 1,797, s. 5; N.Z. Act, 58 Vic. No. 22, s. 23.) 44 & 45 Vic., c. 69; 7 V.S. 321.

**91.** Every person aggrieved by an order of a court or by the dismissal of a complaint under this Part may appeal to a court of quarter sessions against such order in the manner provided by the Justices Act, 1902, in respect of appeals to courts of quarter sessions: Appeal to quarter sessions or district court.

Provided that where an order is made by the court at any place, and a district court is held nearer to that place than a court of quarter sessions, such appeal may be made to such district court in the same manner as an appeal may be made to a court of quarter sessions under the said Act:

Provided also that where an order is made before birth respecting the paternity of a child, and the party aggrieved by the order gives notice of intention to appeal to a court of quarter sessions or district court, as the case may be, and desires that the appeal shall not be heard before the birth of the child, such party shall state his or her desire in the notice, and in such case the appeal shall

**George V, No. 21.** shall be heard at the first court of quarter sessions or district court, as the case may be, held after a period of one month from the birth has elapsed, or at any court of quarter sessions or district court succeeding such first held court and to which the hearing is postponed, but no appeal shall in such case be heard earlier than such first held court :

Provided also that at the request of either party the child shall be produced in court. Where an appeal respecting the paternity of a child is to be heard after the birth of the child, no order shall be made under sections seventy-one and seventy-two of this Act until and unless such appeal has been heard and determined :

Provided also that where any order has been made *ex parte* under subsection two of section eighty-six of this Act the defendant may appeal as in this section provided, at any time within one month of the time when the fact of such order having been made came to knowledge, the onus of proving such time to lie upon the defendant.

Where order  
quashed, &c.

**92.** Where an order of court has been quashed, or an order of dismissal of a complaint has been confirmed by a court of competent jurisdiction on appeal as provided by section ninety-one, fresh proceedings may by leave of a court be brought at any time under sections sixty-nine, seventy-three, or seventy-six in respect of the same cause of complaint or subject-matter.

Evidence  
necessary for  
order for  
maintenance.

**93.** Where any proceedings are taken under this Act, in respect of the maintenance of an illegitimate child, of which the defendant is alleged to be the father, no order shall be made—

- (a) upon the evidence of the mother, unless her evidence be corroborated in some material particular; or
- (b) if the court is satisfied that at the time the child was begotten the mother was a common prostitute.

Application  
of Justices  
Act, No. 27,  
1902.

**94.** Sections sixty-one, sixty-two, sixty-three, sixty-four, sixty-five, sixty-six, sixty-eight, sixty-nine, seventy, seventy-one, seventy-four, seventy-five, seventy-six, seventy-seven, seventy-eight, seventy-nine, eighty, eighty-one,

eighty-one, eighty-two, eighty-three, eighty-four, eighty-five, eighty-seven, eighty-nine, ninety, ninety-two, ninety-three, ninety-four, ninety-five, ninety-six, ninety-seven, ninety-eight, ninety-nine, one hundred and one, one hundred and two, one hundred and three, one hundred and four, one hundred and five, one hundred and six, one hundred and seven, one hundred and eight, one hundred and nine, one hundred and ten, one hundred and eleven, one hundred and twelve, one hundred and thirteen, one hundred and fourteen, one hundred and fifteen, one hundred and sixteen, one hundred and seventeen, one hundred and eighteen, one hundred and nineteen, one hundred and twenty, one hundred and twenty-one, one hundred and fifty-two, and one hundred and fifty-three of the Justices Act, 1902, shall mutatis mutandis apply to this Part of this Act, so far as such sections are not inconsistent with such Part or the Deserted Wives and Children Amending Act, 1913: Provided that subsection two of section eighty-two shall not affect the provision relating to periodical payments under such Part, or to amounts ordered to be paid under sections seventy, seventy-four, and seventy-six of this Part.

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**95.** A court for the purpose of dealing with proceedings under sections sixty-nine, seventy-three, and seventy-six of this Act shall have all the powers of a justice or justices under section sixty-one, sixty-six, and seventy-one of the Justices Act, 1902, and the provisions of sections sixty-two, sixty-three, and sixty-four of that Act shall mutatis mutandis apply to the forms, service, and proof of service of any summons or warrant issued by the court under this Act.

Powers of  
court under  
secs. 69, 73,  
and 76.

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## PART XI.

## CHILDREN'S COURTS.

Governor  
may establish  
special courts  
for dealing  
with  
children.

**96.** (1) The Governor shall by proclamation establish special courts to be called children's courts.

Every such court shall consist of a special magistrate and shall have jurisdiction within the area named in a proclamation.

(2) In places not within any such area the jurisdiction of a court shall be exercised by a special magistrate, or any two justices.

(3) Such special magistrate shall possess the qualifications required for the office of police or stipendiary magistrate under the Public Service Act, 1902.

Powers of  
court.

**97.** Within the area so named a court and the magistrate constituting such court—

- (a) shall exercise the powers and authorities which are possessed by special, stipendiary or police magistrates, courts of petty sessions, or justices in respect of children and of offences committed by or against children ;
- (b) shall exercise the powers and authorities of a justice or justices to hear and determine complaints under the Deserted Wives and Children Act, 1901 ;
- (c) shall hear and determine complaints, informations, and applications under this Act.

Jurisdiction  
of other  
courts to  
cease.

**98.** On and after the establishing of a court, the jurisdiction of every court of petty sessions in respect of the matters as to which the court has jurisdiction, except those matters in which a justice or justices has or have jurisdiction under the Deserted Wives and Children Act, 1901, shall cease to be exercised within the area proclaimed :

Provided that nothing in this section shall abridge or prejudice the ministerial powers of magistrates or justices in cases of committal for trial, or their powers to take any information or issue any summons, or grant, issue, or endorse any warrant, or admit to bail :

Provided