

DESERTED WIVES AND CHILDREN ORDINANCE 1934.⁽¹⁾

No. 4 of 1934.

An Ordinance Relating to Deserted Wives and Children.

BE it ordained by the Legislative Council for the Territory of New Guinea, in pursuance of the powers conferred by the *New Guinea Act 1920-1932*, as follows:—

PART I.—PRELIMINARY.

1. This Ordinance may be cited as the *Deserted Wives and Children Ordinance 1934*.⁽¹⁾ Short title.

2. This Ordinance is divided into Parts, as follows:— Parts.
 - Part I.—Preliminary.
 - Part II.—Jurisdiction and Procedure.
 - Part III.—Miscellaneous.

3. In this Ordinance, unless the contrary intention appears— Definitions.
 - “child” means a child under the age of sixteen years whether born in lawful wedlock or not;
 - “court” means a District Court;
 - “ex-nuptial child” means a child not born in lawful wedlock;
 - “justice” means a justice of the peace;
 - “means of support” means lawful and sufficient means of support and in the case of a wife means lawful and sufficient means of support other than her own earnings.

PART II.—JURISDICTION AND PROCEDURE.

4. In any case where—

(a) a husband has unlawfully deserted his wife or left her without means of support;

Power of justice
to issue summons
or warrant.

(1) Particulars of this Ordinance are as follows:—

Date of assent by Administrator.	Date notified in <i>N.G. Gaz.</i> as not disallowed by Gov.-Gen. in Council.	Date on which came into operation.
5.2.1934	30.6.1934	5.2.1934 (<i>Laws of T.N.G.</i> , Vol. XIII, p. 19)

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- (b) a father has deserted his child or left him without means of support; or
- (c) a husband or father is about to remove out of the Territory without making adequate provision for the support of his wife or child,

any justice may, upon complaint on oath being made by the wife or by the mother of the child or by any reputable person on behalf of the wife or child, issue a summons requiring the husband or father to appear before a court to show cause why he should not support his wife or child, or may, in any case in which the circumstances seem to him to require it, issue his warrant for the apprehension of the husband or father.

Hearing and order.

5.—(1.) Upon the hearing of any complaint under the last preceding section, the court shall inquire into the matter of the complaint, and—

- (a) if it is satisfied that the wife is in fact left without means of support or that the defendant is about to remove out of the Territory without making adequate provision for her support, may order the defendant to pay, for the use of the wife, such allowance as it considers reasonable, and may commit the legal custody of any child of the marriage to the wife or some other person and order the defendant to pay, for the support of the child, such allowance as it considers reasonable; and
- (b) if it is satisfied that any child of the defendant is in fact left without means of support or that the defendant is about to remove out of the Territory without making adequate provision for the support of the child, may order the defendant to pay, for the support of the child, such allowance as it considers reasonable, and may commit the legal custody of the child to the mother or some other person.

(2.) Any allowance ordered to be paid under the last preceding sub-section shall be paid weekly, fortnightly, or monthly, and to such person and in such manner as the court orders.

(3.) An order for the support of a child or an order committing the custody of a child to any person shall not continue in force after the child has attained the age of sixteen years or died, except for the recovery of arrears then due under the order.

(4.) Upon the hearing of any complaint under the last preceding section, the court may, upon reasonable cause shown for the desertion, the leaving without support, or the removal, decline to make any order.

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(5.) An order shall not be made on the application of a wife or any person on her behalf if it is proved that she has committed adultery or is of drunken habits, unless the husband has condoned or connived at the adultery or, by his cruelty, wilful neglect, or misconduct, conduced to the adultery or drunken habits.

6.—(1.) Upon the hearing of a complaint under this Ordinance against any person in respect of the support of an ex-nuptial child, if it is alleged in the complaint that the defendant is the father of the child, the court may, subject to the provisions of this section, adjudge him to be the father of the child.

Complaint in respect of ex-nuptial child.

(2.) Corroboration of the evidence of the mother of the ex-nuptial child shall not be necessary unless and until the defendant has, on his oath, denied the allegations contained in the complaint as to the paternity of the child:

Provided that if the defendant does, on his oath, deny the allegations, an order shall not be made against him unless and until the evidence of the mother is corroborated in some material particular.

(3.) Where the defendant is being cross-examined on his giving evidence in denial of the allegations contained in the complaint, the cross-examination shall be confined to the facts, or alleged facts, of the case then before the court.

(4.) A person shall not be adjudged to be the father of an ex-nuptial child if the court is satisfied that at the time the child was begotten the mother was a common prostitute or about that time had been having sexual intercourse with any man other than the defendant.

(5.) Notwithstanding anything contained in this Ordinance, the sums payable under an order for the support of an ex-nuptial child shall not exceed Twenty-five shillings a week.

(6.) An order for the support of an ex-nuptial child shall not be made unless proceedings are commenced within nine months from the date of the birth of the child, unless the court is satisfied that the defendant has contributed to the support of the child or has acknowledged that he is the father of the child.

7.—(1.) Where an order is made under this Ordinance for the support of any wife or child, any court may from time to time, while the order remains in force, upon notice given in such manner as the court directs, require the defendant to attend before it at the time and place specified in the notice and to show cause why he should not be ordered to enter into a recognizance with or without sureties for the due performance of the order for a period not exceeding twelve months.

Power to order security for payment of allowance.

(2.) In default of the defendant's entering immediately into the recognizance with the required sureties, if any, the court may

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commit him to prison for a term of not more than twelve months or until the recognizance has been entered into; but the defendant shall be discharged from prison when the recognizance has been entered into with the required sureties notwithstanding the committal for a specified term.

(3.) Any court, upon proof that any condition of the recognizance has not been complied with, may *ex parte* adjudge the recognizance to be forfeited.

(4.) Any sum of money which a surety becomes liable to pay on the forfeiture of a recognizance shall be recoverable summarily before a court.

(5.) Any justice may, where the circumstances appear to require it, issue a warrant directing the apprehension of the defendant and that he be brought before a court for the purposes of this section, whether notice has been given to the defendant or not.

Power to attach annuity.

8.—(1.) Where an order is made under this Ordinance for the support of a wife or child, the court in making the order may, instead of or in addition to any other order for relief under this Ordinance, authorise and direct some person to demand and receive any annuity or other income payable to the husband or father, or any moneys received or receivable or held by any person in trust to be paid periodically or by instalments or otherwise to or for the husband or father, or such portion of the annuity, income, or other moneys as the court thinks fit, and to appropriate the proceeds towards the support of the wife or child in the manner the court directs.

(2.) While an order made under this Ordinance for the support of a wife or child remains in force, any court may from time to time, upon application made by or on behalf of the wife or child, by its order, give the like authority and direction as are referred to in the last preceding sub-section.

(3.) Notice of the application referred to in the last preceding sub-section shall be given to all parties affected by it, in the manner the court directs.

(4.) Every payment made in pursuance of any direction or order under this section shall be as valid as if made to the husband or father or by his authority, and such direction or order shall protect and indemnify any person acting in pursuance of it.

Seizure of defendant's goods.

9.—(1.) If upon the hearing of any complaint under section five of this Ordinance the court is satisfied that the defendant has left his wife or child without means of support, it may, in and by its order, authorise and direct some person forthwith to seize and sell the defendant's goods, chattels, or securities, and to demand and receive his rents, or such portion of the goods, chattels, securi-

ties, or rents as it thinks fit, and to appropriate the proceeds towards the payment of the allowance directed to be paid under the order in such manner as it directs.

(2.) While an order made under section five of this Ordinance for the support of a wife or child remains in force, any court may from time to time, upon application made by or on behalf of the wife or child and upon notice given in such manner as the court directs to all parties affected, by its order, give the authority and direction referred to in the last preceding sub-section.

10. Where an order has been made under this Ordinance for the support of a wife or child, any court may, at any time, either upon notice to the defendant or *ex parte* in a summary way and with or without any application for that purpose, make such further orders as it thinks necessary for better securing the payment and regulating the receipt of the allowance ordered for the support of the wife or child, or for investing and applying the proceeds of the goods, chattels, securities, or rents ordered to be sold or collected, or for ensuring the due appropriation of the allowance to the support of the wife or child.

Power to make further orders.

11.—(1.) On complaint on oath being made to any justice that any person has disobeyed or not complied with an order made under this Ordinance, the justice may summon the person or issue his warrant for the apprehension of the person to answer the complaint.

Power to punish disobedience of order.

(2.) Any court may at any time inquire into any complaint under the last preceding sub-section, and may enforce compliance with the order by the committal of the offender to prison for a period of one day for every Four shillings or part of Four shillings found to be due, including the costs incidental to the hearing of the complaint, unless the order is sooner complied with; but no offender shall be imprisoned for a longer period than twelve months.

(3.) A court may refuse to enforce an order or may enforce it to such extent as it thinks fit having regard to all the circumstances of the case, particularly with reference to the inability of the offender to obtain employment or to comply with the order owing to continued ill health.

(4.) The period of imprisonment served by an offender in accordance with the provisions of sub-section (2.) of this section shall not be deemed to discharge the arrears for the non-payment of which he has been committed under the provisions of that sub-section, but during that period the order shall be deemed to be suspended:

Provided that the offender shall not be liable to be imprisoned a second time for non-payment of any arrears in respect of which he has been imprisoned.

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(5.) Where it appears that the amount of arrears due under an order made under this Ordinance has been paid since the service of the summons or the issue of a warrant under this section, the court may order the person summoned or apprehended to pay the costs of and incidental to the proceedings.

(6.) The court may direct that the warrant committing the offender to prison shall lie in the office of the court for such time as it thinks proper.

(7.) Where any order made under this Ordinance contains a provision committing the legal custody of a child to the wife or some other person, every person who, after service upon him of a copy of the order, makes default in complying with the order shall be guilty of an offence.

Penalty: One hundred pounds.

Warrant may issue in certain cases.

12. Any justice, on being satisfied by oath that any person is about to remove out of the Territory, or has removed out of the Territory, to defeat any of the provisions of this Ordinance or any order made under it, may issue his warrant for the apprehension of the person.

Jurisdiction not ousted by proceedings in divorce, &c.

13. Orders may be made and enforced under this Ordinance notwithstanding that proceedings may have been instituted under *The Matrimonial Causes Jurisdiction Ordinance of 1910*⁽²⁾ of the Territory of Papua in its application to the Territory of New Guinea by a husband or a wife or that an order has been made in the proceedings:

Provided that an order shall not be made under this Ordinance for the support of a wife who at the date of the application is entitled to payment of alimony under an order made by the Supreme Court in its Matrimonial Causes Jurisdiction or where at the date of the application a petition for alimony has been filed and is then pending.

Power of court to vary order.

14.—(1.) A court may from time to time, upon application by or on behalf of any wife or child or the husband or parent and upon notice given, in such manner as the court directs, to all parties affected, vary, suspend, or discharge any order made by a court under this Ordinance.

(2.) An application under this section shall be heard and determined by a court sitting at a place agreed upon by the parties, or by a court sitting at the place where the order the subject of the application under this section was made if the parties or either of

(2) As from 1. 6. 1934, *The Matrimonial Causes Jurisdiction Ordinance of 1910* of the Territory of Papua ceased to apply to the Territory of New Guinea: see the *Laws Repeal and Adopting Ordinance 1934*. The relevant Ordinance is now the *Divorce and Matrimonial Causes Ordinance 1934*.

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them are resident within the District in which that order was made, or, if not, by a court sitting at a place in the District in which the respondent resides:

Provided that the court may postpone the hearing of the application and direct that the application shall be heard and determined by a court sitting at some other place specified by it.

(3.) Upon the hearing of an application under this section, the court may take into consideration all the circumstances of the case and the conduct and circumstances of the parties since the date of the order; and if it is satisfied that any evidence relating to the conduct and circumstances of the parties prior to and at the date of the order was not available at the time the order was made, it may admit the evidence.

(4.) An order may be varied, suspended, or discharged as from a date prior to the application, and may be varied or suspended from time to time.

(5.) Where any court is satisfied that a husband and wife have resumed cohabitation and that the husband is supporting the wife, the court shall, upon the application of the husband or wife, discharge any order made under this Ordinance for the support of the wife.

(6.) Where a court is satisfied that a wife who has obtained any order under this Ordinance for her support has since the date of the order committed adultery, the court shall discharge the order:

Provided that the court may, if it thinks fit—

- (a) refuse to discharge the order if in its opinion the adultery was conduced to by the failure of the husband to make such payments as in the opinion of the court he was able to make under the order; and
- (b) in the event of the order being discharged, make an order that the legal custody of the children of the marriage shall continue to be committed to the wife, and that the husband shall pay, weekly, fortnightly, or monthly and to such person and in such manner as the court orders, such allowance as it thinks reasonable for the support of the children.

(7.) The court may hear an application to vary, suspend, or discharge an order notwithstanding that the applicant is in default in complying with the order, if it is satisfied that there are good and sufficient reasons for the default.

15. If any person feels aggrieved by any order or variation of an order, or by the dismissal of any complaint or the refusal of any application, under this Ordinance, he may appeal to the Appeal.

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Supreme Court in the manner prescribed by the *District Courts Ordinance* 1924-1933.⁽³⁾

One complaint only necessary.

16. One complaint may contain the allegation that a father has deserted or left without means of support more than one child; and one order may be made in respect of more than one child, but it shall specify the amount payable in respect of each child.

Welfare of child to be primarily regarded.

17. If it appears upon the hearing of a complaint that a father has left his child without means of support, the court shall make such orders as to the custody and support of the child as may appear to it to be just, having regard primarily to the welfare of the child, and an order may be made notwithstanding that the father is willing to receive and maintain the child in his own home or elsewhere.

PART III.—MISCELLANEOUS.

Wife or husband as witness.

18. In all proceedings under this Ordinance the wife or husband (as the case may be) of any person shall be a competent and compellable witness for or against that person.

Power to compel defendant to give evidence.

19. Upon the hearing of any complaint in which the defendant is charged with noncompliance with any order made under this Ordinance, the defendant may be compelled to give evidence and may be summoned as a witness for that purpose.

Proof of marriage.

20.—(1.) Any woman who complains that she has been deserted by her husband or left by him without means of support shall, upon the hearing, produce direct evidence of her marriage to the defendant or, if she is unable to produce such evidence to the satisfaction of the court, shall make and produce an affidavit setting forth the time, place, and circumstances of the marriage.

(2.) Any order made in any case referred to in the last preceding sub-section may be rescinded by any court upon proof of the falsity of the statements made in the evidence or of the falsity of the averments contained in the affidavit.

Constructive desertion.

21. A wife compelled to leave her husband's residence under reasonable apprehension of danger to her person or under other circumstances which may reasonably justify her withdrawal from that residence shall, for the purposes of this Ordinance, be deemed to have been deserted without reasonable cause.

Evidence of desertion.

22.—(1.) Where any husband has abandoned his wife, or any parent his child, for a period exceeding eighty days, and during fourteen days at least of that period the wife or child has been left by the husband or parent without means of support, the husband

(3) Now the *District Courts Ordinance* 1924-1938.

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or parent shall *prima facie* be deemed to have deserted the wife or child.

(2.) Nothing in this section shall prevent a court from adjudging the fact of desertion on other evidence or on proof of abandonment for a less period than eighty days if it thinks fit.

23. If the father or mother of any child, being able to maintain the child, wilfully and without lawful or reasonable cause or excuse deserts the child and leaves it without means of support, he or she shall be guilty of an offence. Desertion of child.

Penalty: Imprisonment for one year.

24. Any husband who without lawful or reasonable cause or excuse deserts his wife, leaves her without means of support, and goes to reside either temporarily or permanently outside the Territory, shall be guilty of an offence. Desertion of wife.

Penalty: Imprisonment for one year.

25. Nothing in this Ordinance shall take away or diminish the common law liability of a husband in respect of contracts made by a wife deserted by her husband without reasonable cause. Saving of common law liability.

26. In any order made under this Ordinance a court may order the payment by such persons being parties to the proceedings of such costs as it thinks fit. Costs.

27.—(1.) An order shall not be made under this Ordinance— Natives exempted from provisions of Ordinance.

(a) against a native; or

(b) for the maintenance of any ex-nuptial child of a native.

(2.) The provisions of sections twenty-three and twenty-four of this Ordinance shall not apply to the desertion of a wife or child by a native or to the desertion of an ex-nuptial native child.

28. The provisions of the *District Courts Ordinance 1924-1933*⁽³⁾ not inconsistent with this Ordinance shall, as far as applicable, apply *mutatis mutandis* to all matters and proceedings under this Ordinance. Application of provisions of *District Courts Ordinance 1924-1933*.

29. No person shall be allowed to be present in the court during the hearing of a complaint under this Ordinance against the father of an ex-nuptial child, except— Who may be present at hearing of complaint for desertion of ex-nuptial child.

(a) the complainant and the defendant and their witnesses;

(b) the barristers and solicitors or other persons representing the parties;

(3) Now the *District Courts Ordinance 1924-1938*.

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- (c) the officers of the court and members of the New Guinea Police Force; and
- (d) any person who has the express permission of the court to be present.

Restriction of publication of reports of certain proceedings.

30.—(1.) Any person who prints or publishes or causes or permits to be printed or published any particulars in relation to any complaint referred to in section six of this Ordinance or in relation to any appeal or other proceedings with respect to any such complaint shall be guilty of an offence.

Penalty: Two hundred pounds.

(2.) A prosecution for an offence under this section shall not be commenced by any person without the sanction of the Crown Law Officer of the Territory.

(3.) Nothing in this section shall apply to the printing or publishing of any pleading, transcript of evidence, or other document for use in connection with any judicial proceedings, or to the communication of the contents of the pleading, transcript of evidence, or other document to persons concerned in the proceedings, or to the printing or publishing of any notice or report in pursuance of the directions of a court or judge, or to the printing or publishing of any matter in any separate volume or part of any *bona fide* series of law reports which does not form part of any other publication and consists solely of reports of proceedings in courts of law, or to the printing or publishing of any matter in any publication of a technical character *bona fide* intended for circulation among members of the legal or medical professions.