

Acts reprinted pursuant to the Amendments Incorporation Act,  
1937.

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MAINTENANCE ACT, 1926-1937

STAMP DUTIES ACT, 1923-1937

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With notes of judicial decisions affecting sections of the reprinted Acts.



## MAINTENANCE ACT, 1926-1937.

BEING

MAINTENANCE ACT, 1926, No. 1780 OF 1926 [ASSENTED TO  
16TH DECEMBER, 1926.]

AS AMENDED BY

MAINTENANCE ACT AMENDMENT ACT, 1930, No. 1983 OF 1930  
[ASSENTED TO 20TH NOVEMBER, 1930.]

CRIMINAL LAW CONSOLIDATION ACT, 1935, No. 2252 OF 1935  
[ASSENTED TO 21ST DECEMBER, 1935.]

CHILDREN'S PROTECTION ACT, 1936, No. 2279 OF 1936  
[ASSENTED TO 3RD SEPTEMBER, 1936.]

MAINTENANCE ACT, 1937, No. 2360 OF 1937 [ASSENTED TO  
19TH NOVEMBER, 1937.]

AND

MAINTENANCE ACT AMENDMENT ACT, 1937, No. 2380 OF 1937  
[ASSENTED TO 15TH DECEMBER, 1937.]

An Act to consolidate and amend the law relating to State children, destitute persons, the summary protection of married women, and other matters, and to make provision for granting assistance to mothers for the maintenance of their children, and for other purposes.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

### PART I.

PART I.

### PRELIMINARY.

1. This Act may be cited as the "Maintenance Act, 1926-1937," and shall come into operation on a day to be fixed by proclamation. Short title and commencement.

**Criminal Law Consolidation Act, 1935:** This Act was proclaimed to commence on 2nd January, 1936: *Gazette* 2nd January, 1936, p. 1.

**Children's Protection Act, 1936:** This Act was proclaimed to commence on 1st April, 1937: *Gazette* 11th February, 1937, p. 286.

s. 1. This Act was proclaimed to commence on 7th April, 1927: *Gazette* 7th April, 1927, p. 791.

## PART I.

Repeal.

2. The Acts mentioned in the first schedule are hereby repealed.

Power of board to continue proceedings commenced under repealed Acts.

Subsec. (1) substituted by 2360, 1937, s. 2.

3. (1) Every investigation, legal proceeding, or remedy instituted, or sought to be enforced under any of the Acts repealed by this Act, by the Destitute Board, the State Children's Council, or any officer of either of those bodies, may be continued, enforced, and completed under the provisions of this Act by the board or any officer thereof.

Every order made under any of the Acts repealed by this Act shall be deemed to be an order made under this Act, and the appropriate provisions of this Act relating to the enforcement, variation, or discharge of maintenance orders, shall apply to all such orders made as aforesaid.

(2) Except where inconsistent with this section or any other section of this Act, the provisions of the Acts Interpretation Act, 1915, relating to the effect of repeals shall apply in respect of the repeals enacted by this Act.

Inserted by 1983, 1930, s. 2.

(3) In every case where any maintenance order or any instrument of any kind provides that any moneys shall be paid to the State Children's Council, to the Destitute Board, or to any officer of either of those bodies, the maintenance order or instrument shall for all purposes be deemed to provide and to always have provided that payment of the said moneys shall be made to the board at Adelaide, notwithstanding that any of the said moneys became due or payable before the passing of the Maintenance Act Amendment Act, 1930.

Division of Act.

4. This Act is divided into Parts, as follows:—

PART I.—Preliminary.

PART II.—The Children's Welfare and Public Relief Board—

DIVISION I.—Its Constitution, Powers and Functions:

DIVISION II.—The Relief of Necessitous Persons:

DIVISION III.—Special Provisions relating to the Relief of Children.

s. 3. (1) *McLURE v. McLURE* (1928) S.A.S.R. 201; 13 Austn. Digest 996. The validity of an order made under an Act repealed by this Act for the payment of money to the State Children's Council discussed. Observations as to the person to whom such money should be paid consequent upon the abolition of the State Children's Council. *Semble*, an order to pay moneys is not invalid because the payee described in the order has ceased to exist. Since this decision subsection (3) of section 3 has been enacted.

PART III.—Maintenance Obligations—

DIVISION I.—The Maintenance of the Indigent Poor by their Relatives:

DIVISION II.—The Maintenance of Children by their Relatives:

DIVISION III.—The Summary Protection of Married Women:

DIVISION IV.—General Provisions relating to Maintenance and the Enforcement of Maintenance Orders.

PART IV.—State Children—

DIVISION I.—The Commitment, Detention, and Release of State Children:

DIVISION II.—Apprenticing and Placing Out.

PART V.—Institutions and Asylums—Their Establishment, Inspection, and Abolition.

PART VI.—The Licensing and Supervision of Lying-in Homes and Foster-mothers.

PART VII.—Procedure, Penalties, and General Matters.

5. In this Act, except where the context or subject matter or some other provision requires a different construction,—

Interpretation.  
641, 1895,  
s. 4.

“affiliation case” means proceedings by way of complaint against the alleged father of an illegitimate child for relief, or maintenance, or confinement expenses:

“asylum” means any asylum, institution, or place for the reception and relief of destitute persons established under this Act, or which was immediately prior to the commencement of this Act under the control of the Destitute Board:

“board” means the Children’s Welfare and Public Relief Board established under this Act:

“chairman” means chairman of the board:

“child” means any boy or girl under the age of eighteen years; and, in the absence of positive evidence as to age, means any boy or girl apparently under the age of eighteen years:

Of. U.K.  
23 Geo. 5  
c. 12, ss. 93,  
107.

## PART I.

702, 1898,  
s. 3.

“confinement expenses” includes reasonable medical and nursing expenses attendant upon the confinement of the mother, and the cost of clothing necessary for the child for two months after its birth:

“convicted child” means any child found guilty or convicted of any crime or offence punishable by imprisonment:

“destitute child” means any child who has no sufficient means of subsistence apparent to the court, and whose near relatives are, in the opinion of the court, in indigent circumstances and unable to support such child, or are dead, or unknown, or cannot be found, or are out of the jurisdiction, or in the custody of the law:

“foster-mother” means a female having the care, charge, or custody of a child under seven years of age, to adopt, rear, nurse, or otherwise maintain such child apart from his or her parent, and not being a near relative of such child:

“foster-parent” means any person to or with whom a State child is apprenticed or placed out under this Act, or any Act hereby repealed, and includes the assignee of such person:

“guardian” means either the mother or father of a child, or any person having the immediate custody and control of a child:

“inmate” means a State child maintained in an institution:

“institution” means and includes the Receiving Depot, the Reformatory School for Boys, the Reformatory School for Girls; every depot, industrial school, probationary school, or reformatory school established under this Act, or any Act hereby repealed; and every private reformatory school or private institution proclaimed under this Act, or any Act hereby repealed; and all other institutions, schools, and places for the time being under the care, control, or supervision of the board:

“lying-in home” means a place for the accommodation of females during their confinement and lying-in, but does not include any asylum or place under the control of the board:

U.K. 17 & 18  
Geo. 5 c. 38,  
s. 10.

“maintenance” includes the cost of clothing, support, training, and education:

“maintenance order” means an order made by a court for payment of money by any person in respect of the maintenance of a child or any other person, and includes any order directing the payment of money to the board in respect of relief afforded by the board to any person, and so much of any order made under Division III. of Part III. of this Act as relates to the payment of money:

“member” means member of the board, other than the chairman:

“near relative,” as regards a child other than an illegitimate child, means and includes the father, mother, stepfather, stepmother, grandfathers, and grandmothers of the child; and, as regards an illegitimate child, means and includes the mother, father, and the husband of the mother of such child; and as regards any person other than a child means and includes the father, grandfather, mother, grandmother, children, and grandchildren of such person:

“neglected child” means any child who—

- (a) habitually begs or receives alms, whether under the pretext of sale or otherwise, or frequents any public place for the purpose of so begging or receiving alms; or
- (b) wanders about, or frequents any public place, or sleeps in the open air, and does not satisfy a court that he or she has a home or settled place of abode; or
- (c) resides in any reputed brothel, or associates or dwells with any person known to the police or reputed to be a prostitute, whether such person is the mother of such child or not; or
- (d) associates or dwells with any person who has been convicted of vagrancy, or is known to the police as of bad repute, or who has been or is reputed to be a thief or habitual drunkard; or
- (e) being under the age or apparent age of ten years, sells or offers for sale, between the hours of eight o'clock in the evening and five

Of. U.K.  
8 Edw. 7  
c. 67, s. 58.

in the morning, in any public place or in any place other than the child's home, any matches, newspapers, or any other article whatsoever; or

- (f) is under the guardianship of any person whom a court considers unfit to have such guardianship; or
- (g) is illegitimate, and whose mother is dead or is unable to maintain or take charge of such child; or
- (h) is found in any brothel or house of ill fame; or
- (i) being under the age of fourteen years, and not being on any lawful business or errand, habitually frequents public streets or places between the hours of eight o'clock in the evening and five o'clock in the morning; or
- (j) being under the age of sixteen years, and not being the child or ward of the licensee, is, on more than one occasion and without lawful excuse, found in the bar, barroom, or taproom of any public house or wine saloon, or is on more than one occasion served with intoxicating liquor in or upon the premises of such public house or wine saloon:

“private institution” means an institution or establishment for the detention, maintenance, training, education, and employment of destitute or neglected children, established and maintained by private persons:

“private reformatory school” means a school or institution for the detention, maintenance, reformation, training, employment, and education of convicted children, established and maintained by private persons:

“public place” includes every erection, building, or place to which free access is permitted to the public with the express or tacit consent of the owner; or to which the public are admitted on payment of money, and the test of the right to admission to which is the payment of money only; and also every road, street, thoroughfare, footway, court, or alley to which the public have the right of access, or which the public are allowed to use:

“State child” means any child who has been committed to an institution, or has been placed in the custody or under the control of the board, pursuant to this Act, or any Act hereby repealed, for a period which has not yet expired:

“the Destitute Board” means the board appointed pursuant to the Destitute Persons Act, 1881:

“the State Children’s Council” means the State Children’s Council constituted under the State Children Act, 1895.

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## PART II.

## PART II.

### THE CHILDREN’S WELFARE AND PUBLIC RELIEF BOARD.

#### DIVISION I.—CONSTITUTION, GENERAL POWERS, AND FUNCTIONS. DIVISION I.

6. (1) A board to be called the “Children’s Welfare and Public Relief Board” is hereby constituted for the purposes of this Act. Constitution and incorporation of board.

(2) The board shall be a body corporate and by the name aforesaid shall have perpetual succession and a common seal.

7. Judicial notice shall be taken of the incorporation and of the common seal of the board; and the production of any deed instrument or writing, if sealed with the said seal, shall be sufficient evidence of the due making and execution of that deed instrument or writing. Judicial notice of seal.

8. (1) The board shall consist of—

(a) the chairman; and

(b) eight other members appointed by the Governor.

Membership of board.

Four, at least, of the members shall be women.

(2) The eight persons first appointed as members of the board under this Act shall be appointed from among persons holding office as members of the Destitute Board or the State Children’s Council immediately prior to the coming into operation of this Act.

(3) No member of either House of Parliament shall be at any time appointed to the board.

Tenure of office.

9. (1) Each member of the board shall be appointed for a term of three years, and may from time to time, at the expiration of his term of office, be re-appointed for a further term of three years.

(2) Whenever a vacancy occurs in the office of either member whether by expiration of the member's term of office or otherwise, the Governor shall appoint a person to fill the vacancy: Provided that the person appointed to fill the vacancy caused otherwise than by the expiration of the term of office of a member shall hold office only for the unexpired portion of the term of office of the member in whose place he is appointed, and any retiring member shall hold office until his successor is appointed.

(3) The provisions of the Public Service Act, 1916, shall not apply to any member of the board by virtue only of his appointment as such member.

Casual vacancies.

10. In addition to the retirement of members by the expiration of their terms of office, the seat of a member shall become vacant on—

- (a) his death, lunacy, or insolvency, or his executing a statutory deed of assignment for the benefit of his creditors, or compounding with his creditors for less than twenty shillings in the pound, or his being convicted of an indictable offence; or
- (b) his resignation by notice in writing posted or delivered to the chairman; or
- (c) his absence from three consecutive meetings of the board without the leave of the board.

Effect of defects in appointment of members of board.

11. (1) No act or proceeding of the board shall be invalid or illegal in consequence only of the number of the members of the board not being complete at the time of such act or proceeding.

(2) All acts and proceedings of the board shall, notwithstanding the discovery of any defect in the appointment of any member thereof, or that any member was disqualified or disentitled to act, be as valid as if such member had been

duly appointed and was qualified and entitled to be and to act, and had acted, as a member of the board, and as if the board had been properly and fully constituted.

12. (1) The Governor may appoint a fit and proper person to be chairman of the board. Chairman.

(2) The person so appointed shall be subject to the Public Service Act, 1916.

13. (1) At all meetings of the board the chairman shall preside. Meetings and quorum.

(2) The chairman and four other members of the board shall constitute a quorum thereof.

14. Each member shall, at the discretion of the Minister, be reimbursed any expenses incurred by him in the exercise of his office. Expenses of members may be reimbursed.

15. (1) The board shall, on or before the first day of September in every year, report to the Governor on the working of this Act, and shall in such report specify the number of children and destitute persons in the several institutions and asylums, the number of children placed out and apprenticed during the period covered by the report, the nature and value of the relief given by the board to destitute persons, including the weekly payments to children under Division III. of Part II. of this Act, and set out a summary of the receipts and expenditure of the board during the same period, and any other particulars which the Chief Secretary may direct from time to time to be included in such report. Reports by board.  
641, 1895,  
s. 19.

(2) All reports shall be laid before Parliament.

16. (1) The board shall have the following general powers and functions, namely:— General powers of board.

- i. The care, management, and control of the persons and property of all State children; and the supervision of all children nursed by foster-mothers: Ibid., s. 16.  
Of U.K.  
20 Geo. 5  
c. 17, s. 2.
- ii. Power to apprentice and place out State children:
- iii. Power to license fit and proper persons to be foster-mothers to children under the age of seven years:
- iv. The supervision of all illegitimate children under the age of seven years, and the homes of such children:

s. 12. The Public Service Act, 1916, has been repealed and superseded by the Public Service Act, 1936.

- v. Power, subject to the approval of the Governor, to appoint institutions for the reception, detention, education, employment, training, or reformation of State children:
- vi. The control, supervision, and management of all institutions as hereinafter provided:
- vii. The licensing, control, and supervision of lying-in homes:
- viii. The control, supervision, and management of asylums, and of the officers and servants employed therein, and of all visiting officers:
- ix. The ordering of the persons and property of destitute persons and children so long as they shall be inmates of any asylum:
- x. Power, subject to the approval of the Chief Secretary, to appoint superintendents, matrons, psychologists, inspectors, teachers, officers, and servants:
- xi. The management, custody, and control of all property, real or personal, vested in or belonging to the board:
- xii. The administration, subject to the regulations of the public service, of all moneys voted by Parliament or otherwise acquired by the board, for the purposes of this Act.

U.K. 20  
Geo. 5 c. 17,  
s. 9.

(2) In cases of emergency requiring immediate action, and in all cases where it is impracticable, or would be likely to cause delay calculated to defeat the proper attainment of any object contemplated by the Act, to obtain the authority of the board before acting, the chairman may, in the name and on behalf of the board, do any act or exercise any power which the board is authorised to do or exercise; but all such acts, or the exercise of any such powers and authorities, shall be reported by the chairman to the board at its next subsequent meeting, and shall be subject to the ratification of the board, but until such meeting shall for all purposes be deemed to be valid and effectual.

(3) All property of whatever kind vested in the State Children's Council or the Destitute Board or any member or officer of either of those bodies for the purposes of any of the Acts repealed by this Act is hereby transferred to the board.

17. The board may manage, and demise for any term not exceeding three years, the lands of or to which any inmate is seised or entitled, and may make allowances and arrangements with all or any of the tenants or occupiers for the time being of the said lands, and accept surrenders of leases and tenancies, as fully and effectually as such inmate if of the full age of twenty-one years could do.

Power of board with respect to estates of children or other inmates. 210, 1881, s. 37.

18. The board may demand, sue for, collect, and receive, all the rents and profits which shall be due to any such inmate, and may give effectual receipts and discharges for such rents and profits or so much thereof as shall be received, and in case of non-payment of the same or any part thereof, in the name of the chairman of the board or in the name and on behalf of such inmate, may enter into and upon all or any of the lands in respect of which any rents shall be unpaid, and may distrain for the said rents and profits, and the costs and expenses of and incidental to the non-payment thereof; and the distress then and there found may dispose of in due course of law, and may take and use all lawful proceedings and means for recovering and receiving the said rents and profits, and for evicting and ejecting defaulting tenants and occupiers from all or any of the said lands, and determining the tenancy or occupation thereof, and for obtaining, recovering, and retaining possession of all or any of the lands held or occupied by such defaulters.

Collection by board of moneys due to inmates. *Ibid.*, s. 38.

19. The board may, in its corporate name, or in the name and on behalf of any such inmate, commence and prosecute at law and in equity all actions, suits, claims, demands, and proceedings, touching any land, estate, interest, or rights of any such inmate, or of his tenants therein or thereto, or touching any matter or thing whatsoever in which any such inmate or his real or personal estate or effects may be in any way interested, affected, or concerned.

Board may bring actions. *Ibid.*, s. 39.

20. The board may appoint and remove at their pleasure any attorney or agent in respect of all or any of the matters aforesaid, upon such terms and for such remuneration as the said board shall think fit, and may allow to such attorney or agent all costs, charges, and expenses lawfully incurred by him in executing the powers and trusts reposed in the board by this Act.

Board may appoint agents. *Ibid.*, s. 40.

21. In sections 17 to 20 inclusive the term "inmate" includes a person who is an inmate of any asylum.

Application of sections 17 to 20.

## DIVISION II.

## DIVISION II.—THE RELIEF OF NECESSITOUS PERSONS BY THE BOARD.

Duty of board to determine proper objects of relief.

210, 1881, s. 29.  
Cf. U.K. 20 Geo. 5 c. 17, s. 15.

22. (1) The board may, subject to any directions given by the Minister, afford relief, whether in money or by the supply of commodities to such destitute or necessitous persons as the board think fit, and subject to the regulations may admit any such person into an asylum.

(2) The board shall cause a record to be kept showing the age, date of reception, parentage, nationality, sex, period of detention, and religion so far as known of all persons admitted into an asylum under this Division and of all dispositions of and dealings with those persons.

Liability of husbands and fathers for relief given to wives and children.

210, 1881, s. 30.  
Cf. U.K. 20 Geo. 5 c. 17, s. 18.

23. All relief given by the board under this Division to or on account of any wife, or any child, shall be deemed to be given to the husband of the wife or the father of the child as the case may be; but if the husband of any wife is dead, out of the State, in custody of the law, or is lunatic or idiot, any relief given to or on account of the wife shall be deemed to be given to her personally, and if the father of any child is dead, out of the State, in custody of the law, or is lunatic or idiot, any relief given to or on account of any child shall be deemed to be given to the mother thereof.

Recovery of cost of past relief from relatives.

210, 1881, s. 32.  
Cf. U.K. 20 Geo. 5 c. 17, s. 20.

24. (1) In any case in which relief has been afforded to any person, or to the wife and child of any person, and such person, or the father, grandfather, mother, grandmother, husband, child, children, or grandchildren of such person is at any time within six years thereafter able to repay the amount or cost of such relief or part thereof, a court of summary jurisdiction may, upon the complaint of an officer of the board, inquire into the matter in a summary way.

(2) If the court is of opinion that such person, or the father, or other near relative as aforesaid is able to repay the whole or part of the amount or cost of such relief, it may order such person or father, or other near relative as aforesaid, to pay such officer such sum of money either in one sum or by instalments as in its judgment such person, father, or other relative as aforesaid can reasonably afford and ought to contribute towards the past relief of such person.

Onus of proof.

210, 1881, s. 33.

25. Upon any trial of any complaint made by or with the authority of the board for the recovery from any near relatives of any sum of money the onus of proving that the

s. 22. For the obligation of persons afforded relief by the board to do work in return, if so directed by the board, see section 8 of the Unemployment Relief Council Act, 1930.

person complained of is not a near relative, or that such near relative is not of sufficient means, or that any inmate of an asylum is of sufficient means, shall lie upon the defendant, who shall be competent and compellable to give evidence touching the matter of such complaint.

26. Any order made under this Division may be enforced in the manner set forth in Division IV. of Part III. of this Act.

Enforcement of orders.

DIVISION III.—SPECIAL PROVISIONS RELATING TO THE RELIEF OF CHILDREN.

DIVISION III.

27. In this Division, unless inconsistent with the context or subject-matter, "child" means any person under the age of fourteen years, whether born in lawful wedlock or not.

Interpretation. Cf. Vic. 3001, 1919, s. 2.

28. (1) In any case where—

- (a) the mother or any female relative of any child has the immediate custody and control of the child; and
- (b) the child is without sufficient means of support; and
- (c) the mother or female relative aforesaid is unable to provide, and is unable by any available legal proceedings to obtain sufficient means of support for the child,

Application by female relative in respect of maintenance of child without sufficient means of support.

Ibid., ss. 3, 17 (1) and (2). Cf. U.K. 20 Geo. 5 c. 17, s. 81.

Subsec. (1) substituted by 1933, 1930, s. 3.

the mother or female relative aforesaid may, in the prescribed form, make an application in writing to the board that a weekly sum be paid to her for or towards the maintenance of the child.

(2) Every application under this Division shall be in accordance with the regulations.

(3) Every applicant shall, by declaration to be made under the Statutory Declarations Act, 1915, and indorsed on the application, declare that the contents of the application are true and correct in every particular.

29. The board shall, on receipt of the said application, make or cause to be made such investigations as appear to it desirable in order to ascertain—

Investigation by board. Vic. 3001, 1919, s. 4.

- i. the circumstances and character of the applicant;

s. 28. The Statutory Declarations Act, 1915, has been repealed and superseded by the Oaths Act, 1936.

- ii. the ability of the applicant to maintain the child the subject of the application without assistance as provided under this Division; and
- iii. the truth of the statements in the application.

Provisions as to investigation by board.

**30.** (1) The board shall notify the applicant of the time when and place where she is required to attend to support her application.

(2) For the purposes of any investigation by the board under this Division the following provisions shall have effect:—

- (a) Where the board is satisfied that by reason of physical disability or other sufficient cause the applicant is unable to attend, the board may dispense with the attendance of the applicant:
- (b) The board may call and examine such witnesses as it thinks fit:
- (c) In investigating any application the board shall not be bound by any rules of evidence, but shall investigate the matter and make its recommendation according to equity, good conscience, and the substantial merits of the case, without regard to technicalities or legal forms:
- (d) If an applicant makes application in respect of more than one child, the board may investigate all the applications together:
- (e) With regard to summoning and compelling the attendance of witnesses and the examination of and production of documents by witnesses, the provisions of the Justices Act, 1921, shall apply as if the board investigating the application were a court of summary jurisdiction:
- (f) The powers conferred upon the board by this Division may be exercised by a quorum thereof, and any summons, subpoena, warrant, or other document issued by the board under this section shall be sufficiently authenticated if signed by the chairman.

**31.** (1) On the completion of its investigation the board shall forward to the Minister a report upon the results of its investigations and a recommendation as to whether in its opinion assistance under this Division should or should not be granted to the applicant in respect of the child, and (if

Report and recommendation of board.  
Vic. 3001,  
1919, s. 6.

Amended by  
1983, 1930,  
s. 4.

she has applied in respect of more than one child) shall state with respect to how many (if any) children such assistance should in his opinion be granted.

(2) The board shall not recommend that assistance be granted unless it is satisfied that the applicant is deserving of assistance, and unless the evidence (if any) of the applicant is corroborated on all material points by documentary information or oral evidence.

**32.** (1) Upon receipt of the report and recommendation of the board the Minister, if he thinks fit, may cause further inquiries to be made into the matter.

Submission of report, &c., to Minister.

Vic. 3001, 1919, s. 7.

(2) The Minister, after considering--

(a) the report and recommendation of the board:

(b) the results of the further inquiries (if any) made as aforesaid,

may, with such modifications and conditions (if any) as he thinks fit, grant the application, or may refuse the same.

**33.** At the request of the Minister the board may at any time rehear any such application previously refused by the Minister and shall forward a report on the result of the rehearing for the consideration of the Minister. In the case of a rehearing the board shall have as nearly as may be the same powers and duties as in the case of the original hearing.

Rehearing by board at request of Minister.

Ibid., s. 8.

**34.** (1) The sum payable under this Division to any person for or towards the maintenance of any child shall be payable out of moneys provided by Parliament for the purpose, and shall not be more than fifteen shillings a week unless in the opinion of the Minister exceptional circumstances warrant the payment of a larger sum.

Limitation of amount payable.

Ibid., s. 10.

Amended by 1933, 1930, s. 4.

(2) Any sum paid to any person pursuant to this Division shall be payable as from the date of the receipt of the application by the board and shall cease to be paid on the child's attaining the age of fourteen years: Provided that the Minister may, where in his opinion the special circumstances of the case make it advisable, direct, in writing, that such sum shall, after the child reaches the age of fourteen years, continue to be paid for such period, not exceeding two years, as is fixed by the Minister on the recommendation of the board.

PART II.  
DIVISION III.Payments to  
mothers.Inserted by  
2380, 1937,  
s. 3.

**34a.** If the person to whom a sum is payable under this Division towards the maintenance of any child is the mother of any such child whose usual place of abode for one year immediately preceding the making of the application under this Part has been within the State, there shall also be paid to her for her own maintenance the sum of not more than one pound per week throughout the period during which she is paid any such sum towards the maintenance of any child and thereafter, unless the Minister on the recommendation of the board directs that owing to a change in the financial position of the mother payments shall cease or that some smaller sum shall be paid. Instead of paying to any such mother any amount provided to be paid by this section, the Minister on the recommendation of the board may cause to be supplied to her goods to the value of the amount which would otherwise be payable.

Power to dis-  
continue and  
vary payments.Vic. 3001,  
1919, ss. 11  
and 12.Amended by  
1983, 1930,  
s. 4.

**35.** (1) The payment of any sum to any person pursuant to this Division may, on the direction in writing of the Minister, be discontinued, and, subject to this Division, any sum so paid may, on the like direction, be increased or reduced at any time, if the Minister is satisfied that the circumstances of any case warrant such discontinuance, increase, or reduction.

(2) Whenever it is proved to the satisfaction of the Minister that any person to whom any sum is being paid pursuant to this Division for or towards the maintenance of any child is guilty of conduct rendering her unfit, in the opinion of the Minister, to have the custody of the child, or that the said person is not properly maintaining the child, the Minister may, by indorsement signed by him upon the application for assistance, direct that the payment shall forthwith cease.

Provision in  
case of illness  
or death of  
mother.Vic. 3001,  
1919, s. 13  
Cf. U.K.  
20 Geo. 5  
c. 17, s. 52.Amended by  
1983, 1930,  
s. 4.

**36.** (1) When any person to whom payments are made for or towards the maintenance of a child pursuant to this Division becomes incapable, whether from illness or any other cause not within her control, of properly caring for and maintaining such child, the chairman—

(a) may direct that during such incapacity some other fit person shall have the care and maintenance of the child; and

(b) shall make such arrangements as he thinks proper as to the person who may during such incapacity receive the payments in respect of the maintenance of such child.

(2) Whenever the chairman is satisfied that any person to whom any sum is being paid pursuant to this Division for or towards the maintenance of any child is dead the chairman may by indorsement signed by him upon the application for assistance certify to the fact and the date of death.

(3) Upon the signing of such indorsed certificate—

(a) the payment in respect of such child shall forthwith cease; and

(b) the child shall become *ipso facto* a State child and shall be deemed to have been placed under the control of the board pursuant to this Act.

(4) The indorsed certificate aforesaid shall for all purposes be deemed to be an order placing such child in the custody and under the control of the board.

**37.** (1) The provisions of this Act, and any regulations under this Act with respect to visiting State children boarded out under this Act and the inspection of places where such State children are or reside shall, with such alterations, modifications, and substitutions as are necessary, extend and apply to children for or towards whose maintenance any sums are paid pursuant to this Division and to persons having the care and maintenance of such children, and to places where any such children are or reside.

Power to visit children and inspect places of residence, etc.

Cf. Vic. 3001, 1919, s. 14 (2) and (3).

(2) With regard to children for or towards whose maintenance sums are paid pursuant to this Division and persons to whom such sums are paid, the board shall have, subject to this Division, such of the powers and authorities conferred upon it by or under this Act, with regard to State children boarded out under this Act and to persons with whom such children are boarded out as are necessary to insure that such sums are properly expended, and that the objects of this Division are being carried out.

**38.** (1) Every father of a child for or towards the maintenance of which child any sum is paid pursuant to this Division shall be liable to pay to the board or some person authorised by it in writing under the hand of the chairman a periodical sum of such amount not exceeding the amount being paid as such father is able to contribute; but the total liability of the father under this Division shall not exceed the aggregate of the sums paid for or towards the maintenance of the child pursuant to this Division, together with any costs and expenses of recovering the same.

Liability of father in respect of sums paid hereunder.

Cf. Vic. 3001, 1919, s. 15.

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DIVISION III.

(2) Any sum payable under this section may be recovered before any court of summary jurisdiction, and any order for payment under this section may be enforced in the manner set forth in Division IV. of Part III. of this Act.

Regulations.  
Cf. Vic.  
3001, 1919,  
s. 22.

39. The Governor may make regulations under this Division for or with respect to—

- i. the form of, the manner of making, and the particulars to be contained in, applications under this Division, and the particulars to be contained in declarations relating thereto; and
- ii. generally, all matters which by this Division are authorised or required to be prescribed, or which are necessary or convenient to be prescribed for carrying this Division into effect.

PART III.

PART III.

MAINTENANCE OBLIGATIONS.

DIVISION I. DIVISION I.—THE MAINTENANCE OF NECESSITOUS PERSONS BY THEIR RELATIVES.

Duty of relatives to maintain destitute persons.  
210, 1881,  
s. 5.  
Cf. U.K.  
20 Geo. 5  
c. 17, s. 14.

40. (1) The father, grandfather, mother, grandmother, son, daughter, grandson and granddaughter of every poor and destitute person who is not able to support himself, shall, at his and their own costs and charges, according to his and their several abilities, relieve and maintain every such destitute person, and in default of so doing shall be subject to the provisions hereinafter contained.

Inserted by  
2360, 1937,  
s. 3.

(1a) Any such relative who is a married woman shall be liable to relieve or maintain or contribute to the relief and maintenance of the destitute person.

(2) This section does not apply to the relief or maintenance of any child.

Issue of summons on application of destitute person.  
210, 1881,  
s. 7.

41. Upon complaint made by or on behalf of any destitute person, any justice may issue a summons requiring the relative or relatives therein named to appear before a court of summary jurisdiction, at a time and place to be named in

the summons, to show cause why he or they should not relieve and maintain, or contribute to the relief and maintenance, of the destitute person.

42. (1) At the time and place appointed for the hearing of the complaint, the court shall inquire as to the person or persons who by this Act are bound to maintain his or their destitute relatives, and as to his or their means and ability; and the court may, if it think fit, adjourn the hearing of the said complaint, and appoint a time and some other place for the adjourned hearing, and may summon any other persons alleged to be near relatives to appear at the time appointed for the adjourned hearing; and at the original or any adjourned hearing if it is satisfied that the persons summoned or any of them are near relatives of the destitute person and are able to pay for or contribute towards his maintenance may order payment to be made by such near relatives or some one or more of them of such moderate rate or sum as the court thinks ought to be allowed for the maintenance of the destitute person.

Proceedings on hearing of complaint. 210, 1881, s. 8.

(2) In making any such order the court shall fix the periods at which, the place where, and person to whom the amount allowed is payable, and in case two or more persons are ordered to contribute to the support of the destitute person the court shall fix the amount or proportions payable by each.

43. (1) When any husband unlawfully deserts his wife, or leaves her without adequate means of support, any justice may, upon complaint made by or on behalf of such wife, issue a summons to such husband, to show cause why he should not support his wife, and such justice, may, in his discretion, issue his warrant for the apprehension of such husband in the first instance.

Issue of summons to husband on application of wife. 210, 1881, ss. 9 and 10. Cf. U.K. 20 Geo. 5 c. 17, s. 19.

(2) Upon the day appointed for the hearing, any court of summary jurisdiction may hear and determine the matter

Amended by 2360, 1937, s. 4.

s. 43. BRISTOW v. BRISTOW (1892) 25 S.A.L.R. 43; 13 Austn. Digest 833. The court is limited to an inquiry as to whether the wife is deserted or left without adequate means of support and has no jurisdiction to inquire into the matrimonial relations of the parties.

TREGLOWN v. TREGLOWN, 4th January, 1894, S.A. *Advertiser* (newspr.); 13 Austn. Digest 833. The court has no power to inquire as to the matrimonial relations of the parties.

HOLMES v. HOLMES (1925) S.A.S.R. 242; 13 Austn. Digest 829, 847, 850, 853. Where a complaint by a wife against her husband for leaving her without adequate means of support is dismissed and a subsequent complaint is laid, the evidence, order, and the reasons for the order on the earlier trial are admissible in the second trial. Where a husband makes a genuine offer of a home to his wife, he cannot be convicted either of unlawfully deserting her or leaving her without adequate means of support, and it is not competent for a court acting under section 43 to inquire whether the act of living apart is justified or not. Where a

of such complaint in a summary way; and if it is satisfied that the wife is in fact without adequate means of support, and that the husband is able to maintain her, or to contribute to her maintenance, the court shall make an order in writing, directing him to pay either weekly, fortnightly, or monthly, at its discretion, and to such person and in such manner for her use as the court may think fit, such sum or allowance for the past or future maintenance of the wife as it considers proper.

(3) Where any children of the wife are in fact under her custody and control, the court may in fixing the amount payable to her under this section include such amount as is reasonably necessary for the support of such children.

(4) The provisions of this section shall not limit or affect the operation of any other provision of this Act.

Maintenance  
of husband  
by wife.  
Cf. 300,  
1883-4, s. 20.

Inserted by  
2860, 1937,  
s. 5.

**43a.** (1) When any wife leaves her husband without adequate means of support, any justice may, upon complaint made by or on behalf of such husband, issue a summons to such wife, to show cause why she should not support her husband.

s. 43. husband and wife are living apart under a separation deed, the wife has the right  
(contd.) to show that the provision for her support is inadequate.

**MEZZINE v. MEZZINE** (1927) S.A.S.R. 167; 13 Austn. Digest 849. Although an agreement by a wife not to sue her husband for maintenance does not take away the jurisdiction of the court to make an order for maintenance, if she applies for it, the agreement is not void, but may be taken into consideration by the court when determining whether an order should be made.

**PINCHBECK v. PINCHBECK** (1931) S.A.S.R. 508; 13 Austn. Digest 820. Held generally that on the second hearing of a complaint in which the decision depends greatly upon the credibility of witnesses it is highly inadvisable that the evidence of available important witnesses called on the first hearing should be read, even with the consent of the parties. The witnesses should be called and evidence given orally.

**ROBERTS v. ROBERTS** (1934) S.A.S.R. 117. Section 43 is mandatory and where the complainant has proved the matters mentioned in the section, the court is bound to make an order. The default or neglect contemplated by section 43 is an act of omission and not necessarily of volition on the part of the husband. If the wife is, in fact, without means of support, and having left her husband is willing to return to him, all that is necessary in order to turn "being" without support into "being left" without support is the proof that the husband either knew or should have known of that fact. Where a wife had left her husband of her own accord, and subsequently becoming without means of support, wrote to her husband *bona fide* offering to return to him, but the letter, through the act of the husband, did not reach him, held that his omission to provide for the wife's maintenance was a default or neglect which justified the issue of a summons under subsection (1). On the hearing of a complaint the court is not debarred from inquiring into the reason why the wife is living apart from her husband.

**ASHBY v. ASHBY** (1935) S.A.S.R. 119. "Support" means support of a particular person; "means of support" means money or property convertible into money which may be applied for such subsistence; and "adequate means of support" means such money or convertible property as being applied to such subsistence suffices for the purpose. Section 43 is not directed to securing to a wife such a proportion of her husband's means as she might be awarded if a decree had been granted in a divorce court. Persons liable to provide adequate means of support are not to be ordered to provide the means necessary to keep the maintained person out of the bankruptcy court having regard to all that person's obligations. *Seemle*, that courts of summary jurisdiction cannot hold persons to be without adequate means of support merely because they are without much of the comfort and luxury to which they may have been accustomed.

(2) Upon the day appointed for the hearing, any court of summary jurisdiction may hear and determine the matter of the complaint in a summary way; and if it is satisfied that the husband is in fact without adequate means of support and that the wife is able to maintain her husband, or to contribute to his maintenance, the court shall make an order in writing directing her to pay either weekly, fortnightly, or monthly, at its discretion, and to such person and in such manner for his use as the court may think fit, such sum or allowance for the past or future maintenance of the husband as it considers proper.

(3) The provisions of this section shall not limit or affect the operation of any other provision of this Act.

(4) The provisions of subsection (2) of section 44, *mutatis mutandis*, shall apply to any order made pursuant to this section or pursuant to section 20 of the Married Women's Property Act, 1883-4.

44. (1) On the complaint of any person liable upon or entitled to the benefit of any order made under this Division, the court on the hearing of such complaint may, while such order continues in force, make further inquiry as to the ability to pay of the person liable upon the order or as to the means of the person entitled to the benefit of the order, and may make an order increasing, reducing, or entirely remitting the amount so ordered to be paid.

Variation of  
amount  
payable  
under order.  
210, 1881,  
s. 11.

(2) Where, upon the complaint of any person liable upon any order made under this Division, it appears to the court that such person has made to his wife a *bona fide* offer to maintain her adequately in his home, the court may, in its discretion, discharge the said order.

s. 44. (1) *MOLLOY v. MOLLOY* (1927) S.A.S.R. 403; 13 Austn. Digest 956; affirming *MOLLOY v. MOLLOY* (1926) S.A.S.R. 285; 13 Austn. Digest 950. Held under section 11 of the Destitute Persons Act, 1881, that where an order was made for the maintenance of a destitute wife by her husband, the fact that the husband was subsequently ready and willing to maintain the wife with himself in a suitable house did not afford sufficient ground under the said section for remitting the order when the husband was able to comply with the order. Held also, that on an application under the said section 11, by the person entitled to the benefit of an order, for further inquiry as to the ability to make increased payments of the person ordered to pay under the order, the inquiry could not be limited to such ability, but should include an inquiry into the necessities and means of support of the applicant. Held also that when an order has been made under the said Act, section 44 of this Act does not apply to an application for variation; such an application must be made under the said section 11 (but see section 3 (1) enacted since this decision).

s. 44. (2) *HUTTON v. HUTTON* (1928) S.A.S.R. 512; 13 Austn. Digest 953. Where an offer to provide a home is proved to have been made and this offer might reasonably be inferred to be *bona fide*, the onus of disproving *bona fides* is on the wife.

PART III.  
DIVISION I.

Penalty for leaving destitute person without support.

819, 1903,  
s. 10.387, 1886,  
s. 20.

45. (1) Any near relative within the meaning of section 40 of this Act, of a destitute person who leaves such destitute person without adequate means of support shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding ten pounds, or to imprisonment for any period not exceeding three months.

(2) Whenever any husband unlawfully deserts his wife, or leaves her without or fails to provide her with adequate means of support, and goes to reside, either temporarily or permanently outside the State, such husband shall be guilty of a misdemeanour, punishable by imprisonment with hard labour, for any term not exceeding twelve months.

(3) The remedies provided in this section are in addition to and not in substitution for the other remedies provided by this Act.

## DIVISION II.

## DIVISION II.—THE MAINTENANCE OF CHILDREN BY THEIR RELATIVES.

Order of liability of near relatives for maintenance of any child.

641, 1895,  
s. 80.  
750, 1900,  
s. 2.  
Cf. U.K.  
20 Geo. 5  
c. 17, s. 14.  
Cf. U.K.  
23 Geo. 5  
c. 12, s. 86.

46. The near relatives of any child, whether a State child or not, shall be liable to pay for or contribute towards the cost of maintenance of such child according to their several abilities, and in the following order, namely—

i. In the case of a legitimate child—father, mother, step-father, stepmother, grandparents:

ii. In the case of an illegitimate child—father, mother's husband, mother.

Issue of summons for maintenance.

641, 1895,  
s. 81.

47. (1) Upon complaint made in the prescribed form that any persons are near relatives of any child, and are able to pay for or contribute towards the maintenance or past maintenance of such child, any justice may summon such persons or any of them to appear before a court of summary jurisdiction, at a time and place to be named in such summons, to show cause why they or he should not pay for or contribute towards the past or future maintenance of such child.

s. 46. GRAY v. HOOPER, 27th April, 1897, S.A. *Advertiser* (newspr.); 13 Austn. Digest 1013. The husband of the mother of an illegitimate child is not a near relative of the child after the death of the mother.

ALDERMAN v. KEMP (1928) S.A.S.R. 4; 13 Austn. Digest 841. Where the parents of the child have been divorced, a court of summary jurisdiction has no jurisdiction to make an order for the maintenance of the child against either parent, such jurisdiction being vested in the Supreme Court only. But see rule 67 in the second schedule to the Matrimonial Causes Act, 1929, which has been since enacted.

s. 47. COLQUHOUN v. BELL (1935) S.A.S.R. 346. Held that there is no jurisdiction under this Act if the defendant is outside South Australia at the relevant time, the Inter-State Destitute Persons Relief Act, 1910, being intended by Parliament as the appropriate provision in the circumstances.

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641, 1895,  
s. 32.

(2) Every complaint under this section in respect of a State child shall be made by or on behalf of the board.

(3) A justice may, instead of issuing a summons issue a warrant under his hand for the apprehension of any person against whom a complaint has been made under this section, and for his detention until the hearing of the complaint, unless such person shall enter into a recognizance with one or more sureties, in such sums as the justice directs, conditioned for his appearance at the hearing of the complaint.

48. (1) At the time and place appointed for the hearing of the complaint the court may adjourn the hearing, and may summon any other persons alleged to be near relatives to appear at the time appointed for the adjourned hearing; and may, at the original or any adjourned hearing, if it is satisfied that the persons summoned, or any of them, are near relatives of the child, and are able to pay for or contribute towards the past or future maintenance of such child, order payment to be made by such near relatives, or some one or more of them, to the board, or to the secretary or some other officer of the board—

Order for  
payment of  
maintenance.  
641, 1895,  
s. 83.  
832, 1903,  
s. 3.  
996, 1909,  
s. 8.

- (a) of such sum for past maintenance of the child as may seem sufficient; and such sum may be made payable by instalments; and
- (b) of such sum for future maintenance not exceeding as against any one person one pound per week, and for such period as may seem sufficient:

If an order is made against two or more near relatives, the sums or proportions payable by each shall be fixed by the court.

(2) Notwithstanding any provision in any other Act to the contrary an order for the payment of money for past maintenance under this section shall not be limited to payment of money for maintenance in respect of the period of six months prior to the making of the complaint, but may also relate to the payment of money for maintenance in respect of any period prior to such period of six months.

49. Upon the hearing of any complaint—

- (a) made by or on behalf of the board in respect of the maintenance of a legitimate child; or
- (b) made pursuant to section 95,

Evidentiary  
effect of  
allegations  
in complaint.  
641, 1895,  
s. 85.

s. 48. (1) STEADMAN v. COLQUHOUN (1930) S.A.S.R. 79; 13 Austn. Digest 895. Evidence as to means is necessary before an order for maintenance can be made.

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all or any of the following allegations in the complaint, namely:—

- (i.) that the person complained against is a near relative liable to maintain the child:
- (ii.) that the person complained against is able to pay, or contribute towards, the maintenance or past maintenance of the child:
- (iii.) that any sum has been expended upon, or is due or owing for or in respect of, the maintenance of the child:
- (iv.) that the child is a legitimate child:
- (v.) that the child is a State child:

shall be *prima facie* evidence of the matter alleged.

Punishment of father or mother failing to provide for child.

996, 1909, s. 27.

**50.** If the father or mother of any child, whether legitimate or illegitimate, or any person who has been adjudged to be the father of an illegitimate child, fails or neglects to provide reasonable and proper maintenance for such child, he or she shall be guilty of an offence against this Act, notwithstanding that at the time of such failure or neglect such father, mother, or person was out of the State, and shall be liable to a penalty not exceeding fifty pounds, or to be imprisoned for any term not exceeding six months.

Desertion by near relative an offence.

819, 1903, s. 10.

**51.** Any near relative (other than the father or mother of the child) of any child who leaves such child without adequate means of support shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding ten pounds, or to imprisonment for any period not exceeding three months.

*Special Provisions relating to Affiliation Cases.*

Court may adjudge defendant to be father of illegitimate child.

641, 1895, s. 86.  
750, 1900, s. 2.  
996, 1909, s. 29.

**52.** Upon the hearing of an affiliation case, if it is alleged in the complaint that the defendant is the father of the child, the court may adjudge him to be the father thereof: Provided that the court shall not so adjudge him if it is satisfied that, at the time the child was begotten, the mother was a common prostitute.

s. 52. GILBEY v. STANTON (1880) 14 S.A.L.R. 64. Held that a determination as to paternity on a complaint is not *res judicata* but may be a relevant fact on a second complaint.

FAHY v. HALL (1892) 25 S.A.L.R. 56; 13 Austn. Digest 892. Upon a complaint under Part I. of The Destitute Persons Act, 1881, for an order for the support of an illegitimate child by the father, the mother being dead, held that the mother's evidence was not essential.

CARTHY v. COCK (1914) S.A.L.R. 1; 13 Austn. Digest 928. Nature of evidence necessary to rebut the presumption of legitimacy where the mother is a married woman discussed. Where a complaint was laid against the defendant for the

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Proceedings before or after birth.

702, 1898, s. 5.  
750, 1900, s. 12.  
Cf. U.K. 85 & 86 Vict. c. 65, s. 3.

53. (1) A complaint may be made in an affiliation case either before or after the birth of the child.

(2) Any such complaint, if made before the birth of the child, may be in the form No. 6 in the second schedule hereto, and any order thereon may be in the form No. 7 in the said schedule.

(3) A justice may, instead of issuing a summons issue a warrant under his hand for the apprehension of any person against whom a complaint has been made under this section, and for his detention until the hearing of the complaint, unless such person shall enter into a recognizance with one or more sureties, in such sums as the justice directs, conditioned for his appearance at the hearing of the complaint.

54. (1) The father of an illegitimate child shall be liable to pay confinement expenses not exceeding ten pounds in respect of such child.

Order for confinement expenses.

702, 1898, ss. 2, 4.  
Cf. U.K. 85 & 86 Vict. c. 65, s. 4 (part).

(2) An order for confinement expenses may be made—

(a) on complaint therefor; or

s. 52. maintenance of an illegitimate child, the mother being a married woman, and (contd.) evidence was given by a physician that it was almost certain that the husband of the mother was impotent, but admitted that there was an element of doubt in such cases, and there was other corroborated evidence as to the defendant's paternity, held that there was sufficient evidence to justify a finding that the defendant was the father of the child.

KEARNEY v. RAW (1918) S.A.L.R. 270; 13 Austn. Digest 934. The dismissal of a summons for the support of an illegitimate child is not a bar to further proceedings against the father for the same cause of complaint, even though the court may have found expressly that the defendant is not the father of the child, and even though there may be a right of appeal against the decision. If no fresh evidence is adduced or there are no grounds for regarding the first decision as unfair the first decision should be followed; otherwise it should be re-considered in the light of the additional circumstances laid before the court. Held on the facts that there was not a declining of jurisdiction by the court.

CATFORD v. KEARNEY (1920) S.A.L.R. 294; 8 Austn. Digest 175; 13 Austn. Digest 879. An order is not invalid if the residence of the defendant is not described as being in South Australia.

ATKINS v. BYRNE (1921) S.A.S.R. 199; 8 Austn. Digest 297. As to evidence necessary to rebut the presumption of legitimacy where the mother is a married woman. Where the evidence showed that the putative father, the appellant, eloped with the mother, a married woman, and lived with her for several years, that at the approximate date of conception the mother, her husband, and appellant, were living in the same town, and the two former had spoken and had opportunity of meeting; the appellant gave evidence, which was contradicted, that while he was away the husband had visited the mother, held that the appellant had not proved any opportunity for sexual intercourse between the husband and wife at the time of conception, and that the evidence was sufficient in the circumstances to rebut the primary presumption of legitimacy. Held also, that even if the statement of the appellant were true there was no proof of any opportunity for sexual intercourse sufficient to raise the secondary presumption that such intercourse had taken place. Query whether, in an affiliation case a declaration by a wife to strangers that she had not seen her husband at a time relevant to the issue, is evidence as part of the *res gestae*.

NICOLLE v. PADDICK (1927) S.A.S.R. 595; 13 Austn. Digest 940. Mere promiscuity of sexual intercourse without evidence that such intercourse takes place as a means of gain does not justify a finding that a woman is a common prostitute.

s. 54. CATFORD v. KEARNEY (1920) S.A.L.R. 294; 12 Austn. Digest 230. Held that section 52 of the Justices Act, 1921, precludes a claim for the expenses of a confinement

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(b) without any complaint therefor in any proceedings against the father for the relief or maintenance of the child.

(3) Such order may be made separately or may be included in any other order against the father.

Proof of pregnancy.  
750, 1900,  
s. 10.  
Cf. U.K.  
8 & 9 Vict.  
c. 10, s. 4.

55. No order shall be made in any affiliation case before the birth of the child unless, in addition to the evidence necessary to establish paternity, it has been proved by the evidence of some legally qualified medical practitioner that the alleged mother is pregnant.

Order for confinement expenses before birth.  
750, 1900,  
s. 11.

56. (1) Every order for confinement expenses made before the birth of a child shall direct that all moneys so ordered to be paid shall be paid to the board.

(2) The board shall retain such moneys until the birth of the child, when it shall apply them towards confinement expenses. If the child is not born within nine months from the date of such order, the money shall be returned to the alleged father.

Persons allowed to be present in court.  
996, 1909,  
s. 12.

57. No person shall be allowed to be present in the court-room during the hearing of any affiliation case except—

- (a) the complainant and the defendant, and their witnesses; and
- (b) counsel or other persons representing the respective parties, and the practitioners of the Supreme Court; and
- (c) the officers of the court and members of the police force; and
- (d) any person who has the express permission of the court to be present.

Compellability of defendant as witness in affiliation cases.  
Ibid., s. 13  
(part).

58. (1) On the hearing of any affiliation case, the defendant shall be compellable to give evidence, and may be summoned as a witness for that purpose.

(2) The defendant shall not be excused from giving evidence on the ground that the answer to any question or such evidence might prove or tend to prove him guilty of

s. 54. which took place more than six months before the date of the complaint. As (contd.) to the liability for past maintenance see subsection (2) of section 48 of this Act.  
STEADMAN V. COLQUHOUN (1930) S.A.S.R. 79. The liability to pay confinement expenses is absolute without reference to the means of the defendant.

the matter alleged against him: Provided that such question or evidence is, in the opinion of the court hearing the complaint relevant to the matter of such complaint.

59. (1) If on the hearing of any complaint in respect of the maintenance of any illegitimate child, any male person over the age, or apparently over the age of eighteen years, admits or says that he had sexual intercourse with the mother of the illegitimate child at any time which is such that, in the opinion of the court, the said male person may possibly be the father of the said illegitimate child, the court may, upon such hearing and without complaint made for the purpose, make an order against any such male person for contribution towards the maintenance of the said illegitimate child and also, if the court thinks fit, towards the confinement expenses in respect of the said illegitimate child; but no order shall be made as aforesaid unless the said male person is given an opportunity to be heard by the court in respect of the making of the order. An order or orders may be made under this subsection against any number of male persons as aforesaid.

Liability of persons admitting sexual intercourse with mother of illegitimate child.

Substituted by 1780, 1930, s. 5.

(2) If on the said hearing it is proved to the satisfaction of the court that the defendant had sexual intercourse with the said mother at such a time as aforesaid, the court may (without limiting the powers of the court to make any other order which it is empowered to make by this or any other section of this Act) make an order against the defendant for contribution towards the maintenance of the said illegitimate child and also, if the court thinks fit, towards the confinement expenses in respect of the said illegitimate child. The provisions of section 60 shall apply to the hearing with respect to the said defendant.

(3) Every order made pursuant to this section shall, for the purposes of the enforcement thereof, be deemed to be a maintenance order made under section 48 against a near relative.

(4) In every case where an application is made to the court for the making of an order under this section and the said application is refused by the court, a memorandum of such refusal shall then be made by the court.

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Power to lay  
complaint for  
support of  
illegitimate  
child against  
one or more  
persons.

Inserted by  
1780, 1930,  
s. 5.

59a. (1) A complaint may be made under this Act by or on behalf of the board or by any officer of the board against one or more male persons over the age of eighteen years at the time of the making of the complaint alleging that the said male person or persons have had sexual intercourse with the mother of an illegitimate child at a time or times which are such that the said male person or persons may possibly be the father of the illegitimate child.

(2) Upon complaint as aforesaid, any justice may summon the said male person or persons or any of them to appear before a court of summary jurisdiction, at a time and place to be named in the summons, to show cause why he or they should not contribute towards or pay for the past or future maintenance of the illegitimate child and the confinement expenses in respect thereof.

(3) A justice may, instead of issuing a summons, issue a warrant under his hand for the apprehension of any person against whom a complaint has been made under this section and for his detention until the hearing of the complaint, unless that person shall enter into a recognizance with one or more sureties, in such sums as the justice directs, conditioned for his appearance at the hearing of the complaint.

(4) At the hearing of the complaint, if the court is satisfied that any of the said male persons had sexual intercourse with the mother of the said illegitimate child at a time which is such that the said male person may possibly be the father of the illegitimate child, the court may make an order against all or any of such male persons in respect of whom the court is satisfied as aforesaid, for contribution towards the maintenance of the illegitimate child and also, if the court thinks fit, towards the confinement expenses in respect thereof. The provisions of section 60 shall apply to the hearing with respect to every such male person.

(5) Every order made pursuant to this section shall, for the purposes of the enforcement thereof, be deemed to be a maintenance order made under section 48 against a near relative.

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s. 59a. *BYRNE v. MENZIES* (1931) S.A.S.R. 264; 13 Austn. Digest 881. Held that section 59a is not limited to a case where the intercourse and birth occurred after the enactment of the section. Held, also, for the purposes of the application of section 52 of the Justices Act, 1921, that the real matter of a complaint under section 59a of this Act is neither the act of intercourse nor the birth, nor both together, but that, in effect, the complaint is a claim for contribution towards the maintenance of the child. Effect and construction of section 59a discussed. Section 59a is designed to make a person who answers a certain description, namely, that he may be the father of a child, liable.

(6) In any proceedings pursuant to this section, the allegation in the complaint that any specified person was at the time of the making of the complaint over the age of eighteen years shall be deemed proved in the absence of proof to the contrary.

**60.** (1) It shall not be necessary to require any corroboration of the evidence of the mother in any affiliation case unless and until the defendant has, on his oath, denied the allegations contained in the complaint: Provided that if the defendant does on his oath deny the allegations, then no order shall be made against him unless the evidence of the mother is corroborated in some material particular.

Corroboration.  
996, 1909,  
s. 29.  
Cf. U.K.  
8 & 9 Vict.  
c. 10, s. 6.  
Cf. U.K.  
35 & 36 Vict.  
c. 65, s. 4.

s. 60. (1) **WARREN v. HOWSON** (1870) 4 S.A.L.R. 6; 13 Austn. Digest 901. Held that the evidence of paternity required under section 14 of the Destitute Persons Relief Act, 1866-7, in corroboration of the evidence of the mother, should be of circumstances which happened about the time of the intimacy which led to the birth of the child.

**MITCHELMOSE v. JACKSON** (1882) 16 S.A.L.R. 89; 13 Austn. Digest 900. Held under section 14 of The Destitute Persons Act, 1881, that evidence by the mother of the complainant (with whom she lived and upon whom she was apparently dependent) in corroboration of the complainant's evidence did not satisfy the requirements of section 14 for corroboration by "other and independent testimony."

**CARTHY v. COCK** (1914) S.A.L.R. 1; 13 Austn. Digest 928. Where the mother was a married woman and evidence was given that the defendant, prior to the mother's confinement, had sent her money and had offered to pay money to her husband, held that the sending of money and the promises to pay constituted corroboration.

**MCKENZIE v. ORDISH** (1922) S.A.S.R. 21; 13 Austn. Digest 913, 917. General statement of the principles of the law relating to corroboration. Held, that admissions by the defendant to the complainant's mother that he had "walked out" with the complainant, and that he had not replied to a letter charging him with paternity and other evidence showing a degree of familiarity between the parties, did not amount to corroboration. Observations that a resemblance between the child and the putative father cannot be relied upon as corroboration.

**SLY v. JOHNSTON** (1924) S.A.S.R. 24; 13 Austn. Digest 903. To constitute corroboration there must be more than independent evidence of mere opportunity for sexual intercourse, but the circumstances surrounding the opportunity itself may be such as to justify the inference that advantage was taken of the opportunity.

**HANCOCK v. PHILCOX** (1925) S.A.S.R. 413; 13 Austn. Digest 927. Held that evidence of opportunity for sexual intercourse coupled with the admission of the defendant that he gave a false name, received a letter suggesting that the mother was pregnant, sent the mother a telegram and gave her money, constituted sufficient evidence of corroboration.

**PITMAN v. BYRNE** (1926) S.A.S.R. 207; 13 Austn. Digest 929; affirming **PITMAN v. BYRNE** (1926) S.A.S.R. 16. Special leave to appeal to High Court refused (1926) 39 C.L.R. 602 (note). General statement of the principles of the law relating to corroboration. Held that false evidence by the defendant denying that a certain conversation took place amounted to corroboration.

**MARS v. MCMAHON** (1929) S.A.S.R. 179; 13 Austn. Digest 924. Where the defendant did not deny the paternity of the child upon being questioned by an officer of the Children's Welfare Department, and, in answer to a statement of the officer to the effect that he understood the defendant did not deny having intercourse with the mother, replied that he supposed that the mother must pick on some one and that he knew others had also had intercourse with her, held that sufficient corroboration existed. Where the mother's evidence contained inconsistencies, held that the Supreme Court was not justified in differing from the opinion of the special magistrate that the mother's evidence was reliable.

**HOCKEY v. ROSSITER** (1929) S.A.S.R. 240; 13 Austn. Digest 919. Held that evidence, apart from the defendant's admissions in the witness box, as to the defendant's

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DIVISION II.

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

Power of board to accept settlement in full. 996, 1909, s. 31.

61. (1) In all proceedings under this Act against any person liable to contribute towards the confinement expenses of the mother or the maintenance of her illegitimate child the board may accept from such person a sum of money in settlement of all such liability.

(2) On payment of such money no further proceedings whatsoever shall be taken by the board or the said mother or any person whomsoever in respect of such expenses or liability.

(3) Whenever the board accepts a sum of money in settlement of liability under this section, that sum shall be retained by the board and applied at the discretion of the board for the maintenance of the illegitimate child in respect of which the money was paid.

s. 60. (1) *(contd.)* conduct on being charged by the complainant and her father with being responsible for her condition, amounted to corroboration. Where the evidence led to the inference that the defendant admitted that he had intercourse with the mother at some time, held, in the absence of evidence of intercourse of others with the mother during the period conception could have taken place, that the admission of intercourse might be taken as referring to that period.

STANDFIELD v. BYRNE (1929) S.A.S.R. 352; 13 Austn. Digest 902; special leave to appeal to the High Court refused (1930) 45 C.L.R. 604 (note). The requirement of corroboration does not import the necessity for independent testimony which establishes the fact of intercourse at a time when the child might have been conceived. Proof of a guilty affection extending over or into the actual period of conception may justify an inference of intercourse without any definite proof of opportunity during that period. Observations that it is desirable, if not essential, that the corroboration of the mother's evidence should extend to cover the date of the birth of the child.

FULLERTON v. McDONALD (1932) S.A.S.R. 1; 13 Austn. Digest 908. Where evidence was given showing that the parties were on terms of familiarity and that they were together alone at the time when conception was alleged to have taken place, held that the evidence was sufficient to amount to corroboration.

STRUCK v. ALDERMAN (1932) S.A.S.R. 71. Where evidence as to statements made by the defendant in a conversation are put forward as corroboration, the whole of the conversation must be given.

WADE v. ALDERMAN (1934) S.A.S.R. 108. *Semble*, the mere admission by the defendant of intercourse after the date fixed for conception is not corroboration.

HAYTER v. HOWIE (1937) S.A.S.R. 59; reversing HOWIE v. HAYTER (1936) S.A.S.R. 443. Where the putative father admitted having unsuccessfully attempted sexual intercourse with the mother on the night prior to the night on which, according to the mother's evidence (denied on oath by the father) he had intercourse with her which resulted in the birth of the child, held that the mother's evidence was sufficiently corroborated in a material particular.

s. 60. (2) HANCOCK v. PHILCOX (1925) S.A.S.R. 413; 13 Austn. Digest 897. Observations that after the mother gives evidence and the defendant is called to deny paternity, cross-examination of the defendant should be limited to the incidents disclosed in the mother's evidence then before the court.

STRUCK v. ALDERMAN (1932) S.A.S.R. 71; 13 Austn. Digest 897. In the course of a trial the special magistrate, after the mother's evidence had been completed, ruled that the defendant must deny the evidence of paternity before the complainant need tender further evidence. The defendant then denied the paternity and the evidence for the complainant was then completed. Held that the procedure adopted was correct.

*Variation of Orders under this Division.*

62. (1) Any justice, on the complaint of a near relative liable upon an order under this Division, may summon all or any of the persons alleged in the complaint to be near relatives of the child named in the order to appear before a court at a time and place to be named in the summons, and shall give notice thereof to the board.

Variation of order as to amount and persons liable therein.

641, 1895,  
s. 92.

(2) At the time and place so appointed, or at any adjourned hearing, a court of summary jurisdiction may make further inquiry as to the means and ability of the complainant, and as to the relationship to such child of the persons summoned, and as to their several means and abilities to maintain or contribute to the maintenance of such child, and may make such order as appears just, increasing, reducing, or varying the periodical sum to be thenceforth paid by the complainant, or suspending for a specified time or annulling the previous order, or directing that the persons so summoned, or some or one of them, shall thenceforth pay for or contribute towards the maintenance of the child, or may make such other order not inconsistent with the provisions of this Act as appears just.

63. On complaint by any person liable upon or entitled to the benefit of any order under this Division for the periodical payment of any sum of money, the court on the hearing of such complaint may, while such order continues in force, make further inquiry as to the means and ability to pay of the person against whom such order was made, and may make an order increasing, reducing, or entirely remitting the periodical sum so ordered to be paid.

Variation of orders as to amount.

813, 1903,  
s. 2.

64. Any justice may, on the complaint of an officer of the board, summon any person liable upon an order under this Division to appear before a court of summary jurisdiction at a time and place to be named in the summons, and at the time and place so appointed the court may make further inquiry as to the means and ability to pay of the person liable upon the order, and may make such order as may be just, increasing, reducing, or entirely remitting the periodical sum to be thenceforth paid by such person liable upon such maintenance order, or may make such other order, not inconsistent with the provisions of this Act, as may be just.

Variation of order on application of board.

750, 1900,  
s. 7.

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DIVISION II.Persons  
entitled to  
make  
complaints.  
702, 1898,  
s. 8.

65. No complaints under this Division against the father or alleged father of an illegitimate child shall be made except—

- (a) by or on behalf of the mother of the child in respect of which the complaint is made;
- (b) by or on behalf of the child itself; or
- (c) by some officer of the board.

## DIVISION III.

## DIVISION III.—THE SUMMARY PROTECTION OF MARRIED WOMEN.

Summary  
relief to  
married  
women.664, 1896,  
s. 2.  
Cf. U.K.  
58 & 59 Vict.  
c. 39, s. 4.  
Cf. U.K.  
2 Edw. 7  
c. 28, s. 5.  
Cf. U.K.  
15 & 16  
Geo. 5 c. 51  
(1), (2).

66. (1) Any married woman—

- (a) whose husband during the preceding six months has been guilty of—
  - (i.) cruelty to her or any of her children; or
  - (ii.) persistent indecent behaviour before her children; or
  - (iii.) adultery; or
  - (iv.) desertion; or

s. 65. PHILLIPS v. PHILCOX (1923) S.A.S.R. 550; 13 Austn. Digest 886. Held that a complaint purporting to be made on behalf of an illegitimate child by an officer of the Children's Welfare Board was duly made on behalf of the child although no authority from the child was proved and no proof was given that the complainant was an officer of the board.

s. 66. (1) BARBU v. BARBU (1920) S.A.L.R. 244; 13 Austn. Digest 868. The principles applied by the Supreme Court in suits for judicial separation, should be applied by the court in an application under section 66 for an order relieving a married woman from co-habitation on the ground of cruelty. Three alleged acts of cruelty, of which the evidence as to two was uncorroborated, held, in the circumstances, to be insufficient to justify an order relieving the wife from the obligation to co-habit with her husband. Observations as to the desirability of corroboration.

ELKAN v. ELKAN (1921) S.A.S.R. 236; 13 Austn. Digest 851. A married woman is not debarred from applying for protection on the grounds of wilful neglect by her husband to maintain her by reason of the fact that she is living apart from him in pursuance of a separation agreement which he has repudiated.

WALLIS v. WALLIS (1922) S.A.S.R. 252; 8 Austn. Digest 242. Where a husband was charged with cruelty to his wife, held that a letter written 12 months previously charging the wife with gross immorality was properly admitted in evidence.

MEANEY v. MEANEY (1923) S.A.S.R. 339; 13 Austn. Digest 865. The jurisdiction to relieve a married woman from co-habitation should be exercised according to the principles laid down for the exercise of the corresponding jurisdiction of the Supreme Court. Instances discussed where one party to a marriage may, by reason of the conduct (short of a matrimonial offence) of the other party to the marriage put an end to co-habitation without it amounting to desertion.

MATTHEWS v. MATTHEWS (1924) S.A.S.R. 280; 13 Austn. Digest 866. The following propositions formulated:—(1) Division III. does not contemplate an order being made where the parties are voluntarily co-habiting and no sufficient cause is shown for separating them. (2) An order for maintenance, or for custody of children ought not to be made except where the husband has deserted his wife, or she has left him for reasonable cause or she asks for relief from co-habitation and proves sufficient cause for receiving it. (3) An order giving relief from co-habitation ought not to be made except for adultery, desertion for two years or upwards, or cruelty to or wilful neglect to provide reasonable maintenance for, the wife or any of her children, which has caused injury or danger, or the reasonable apprehension of injury or danger, to the physical or mental health. (But see subsection (3) since enacted). (4) If the parties are not co-habiting together and the cause of the separation is the husband's desertion, an order for

(v.) wilful neglect to provide reasonable maintenance for her or any of her children;  
or

(b) whose husband is a person who is, by reason of habitual intemperate drinking of intoxicating liquor, at times dangerous to himself or others, or incapable of managing himself or his affairs, may apply for summary protection under this Division, and the same may be ordered accordingly.

(2) When a complaint has been made under this section, a justice may, in his discretion, issue his warrant for the apprehension of the husband in the first instance.

(3) The court may order summary protection under this section on the grounds of desertion notwithstanding that the desertion has not continued for two years or upwards.

67. All courts of summary jurisdiction which include a special magistrate and two justices of the peace shall have jurisdiction under this Division, but no order shall be made

Constitution  
of court.  
664, 1896,  
s. 4.

s. 66. (1) relief from co-habitation should not, in general, be granted, as it is unnecessary, and the policy of the law is to draw husband and wife together. (5) The same circumstances which constitute adequate grounds for giving relief from co-habitation where the parties are living together, also constitute reasonable cause for the wife leaving her husband when they are living apart.

RILEY v. RILEY (1926) S.A.S.R. 120; 13 Austn. Digest 867. Held, under the Married Women's Protection Act, 1896, that there was power to make an order relieving a wife from co-habitation where the desertion was for less than two years but the husband had been guilty of cruel, harsh, and unreasonable conduct, was of drunken habits, and had persisted in unjustifiable charges of adultery against his wife. Since this decision subsection (3) of section 66 has been enacted.

MORGAN v. MORGAN (1927) S.A.S.R. 140; 13 Austn. Digest 868. Held under the Married Women's Protection Act, 1896, that desertion for less than two years would justify an order for maintenance in a proper case but not for relief from co-habitation. Held, also, upon evidence that a wife left home after being threatened by her intoxicated husband, she being in fear of him, and that he subsequently did not contribute to her support (except one small sum) and after eight months refused to take her back or support her, that desertion should have been found. Subsection (3) of section 66 has been enacted since this decision.

GOHRA v. GOHRA (1928) S.A.S.R. 166; 13 Austn. Digest 869. Where on a complaint by a married woman charging cruelty and neglect to maintain two specific acts of violence were proved and there was general evidence of acts of violence at unspecified dates, held that an order relieving the wife from co-habitation was justified. Held also that evidence of violence towards the wife to enforce sexual intercourse during her menstrual periods and of actual sexual intercourse then enforced on her was admissible.

BAILEY v. BAILEY (1930) S.A.S.R. 57; 13 Austn. Digest 844. Where a complaint under section 66 is laid and withdrawn and a second complaint is subsequently laid, the first complaint and withdrawal are no bar if there is new cause sufficient to entitle the wife to relief. If the allegations in the second complaint are proved, the existence of any bar to her being given the relief to which the facts so proved would *prima facie* entitle her must be established by the husband.

AXON v. AXON 11 A.L.J. 342. The onus of proof of establishing upon the balance of probabilities that she is the wife of the defendant rests upon the complainant.

s. 67. SCHMIDT v. SCHMIDT (1912) S.A.L.R. 101; 13 Austn. Digest 819. Where a summons is served at the last known place of abode of the defendant, it is necessary to show that the summons came to his notice or must be presumed to have come to his notice.

R. v. HASLAM AND OTHERS (1923) S.A.S.R. 444; 13 Austn. Digest 867. Where owing to want of unanimity in the court no order is made, a fresh summons may be issued on the original complaint.

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under this Division unless a special magistrate and two justices join in the hearing of the application and the making of the order.

Provisions  
of orders.

664, 1896,  
s. 5.  
Cf. U.K.  
58 & 59 Vict.  
c. 39, s. 5.

68. Any order for protection under this Division may—
- I. relieve the applicant from any obligation to cohabit with her husband:
  - II. grant to the applicant the legal custody of her children:
  - III. grant to the husband of the applicant such rights of access to the children of the applicant and her husband as the court deems proper:
  - IV. direct the husband to pay to the applicant personally, or for her use, to any officer of the court, or third person on her behalf, such weekly or other periodical sum as the court, having regard to the means both of the husband and the wife, consider reasonable for the past or future maintenance of herself and also of all children (if any) whose custody is granted to her, such sum to be secured in such manner (if any) as may be directed by the court.

Extent of  
orders.

664, 1896,  
s. 6.

69. Any one or more of the matters mentioned in sections 66 and 68 may be dealt with in or by the same complaint or order, but costs may be ordered against any informant in respect of any matter of complaint charged in the complaint and not established at the hearing.

- s. 68. **BARBU V. BARBU** (1920) S.A.L.R. 244; 13 Austn. Digest 872. On appeal from an order, the appeal is an appeal on both facts and law.
- MEANEY V. MEANEY** (1923) S.A.S.R. 339; 13 Austn. Digest 865, 870. Where it was found that the husband had deserted his wife and had made unfounded charges of adultery against her in which he did not believe, held that an order relieving her from co-habitation should not be interfered with. The jurisdiction to relieve a married woman from co-habitation should be exercised according to the principles laid down for the exercise of the corresponding jurisdiction of the Supreme Court.
- HARRIS V. HARRIS** (1924) S.A.S.R. 126; 13 Austn. Digest 861, 872. An order need not distinguish between amounts payable in respect of a wife and children. Observations as to the application of principles applied by the Supreme Court in matrimonial causes to making of orders for maintenance. On an appeal where an order for maintenance is varied in favour of the husband, the court has jurisdiction to order the husband to pay the wife's costs of the appeal and a discretion as to whether the order shall be made or not; where in such a case the wife is shown not to have any means other than the maintenance allowed, costs should be allowed to her.
- MATTHEWS V. MATTHEWS** (1924) S.A.S.R. 280; 13 Austn. Digest 826, 866. Where a husband and wife lived at the same house, slept in the same room and occasionally had marital intercourse held that the facts showed voluntary co-habitation and that an order for maintenance should not have been made.
- JOSS V. JOSS** (1924) S.A.S.R. 461; 13 Austn. Digest 866. There is no power to make an order for relief from co-habitation on the mere consent of the husband. An order should be made only upon satisfactory evidence.

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70. No order shall be made under this Division on the application of a married woman, if the adultery complained of has been condoned and not revived, or if it is proved that the applicant is of drunken habits or has committed adultery: Provided that the husband has not condoned, or connived at, or, by his cruelty, wilful neglect or misconduct, conduced to such adultery or drunken habits.

No order in certain cases.  
664, 1896, s. 7.  
Cf. U.K. 58 & 59 Vict. c. 39, s. 6.

71. (1) No order under this Division shall affect the order of any court of superior jurisdiction.

Effect of orders.

664, 1896, ss. 8, 9, 10.

(2) No order under this Division shall dissolve any marriage.

(3) Every order for relief from the obligation to cohabit whilst in force shall have the effect in all respects of a decree of judicial separation.

72. On proof, on any application under this Division, that the husband has omitted to supply reasonable maintenance wilful neglect shall be presumed, unless the husband proves the contrary.

Proof of wilful neglect.  
Ibid., s. 11.

73. (1) Any court of summary jurisdiction constituted as hereinbefore mentioned may, on the due application of a married woman or of her husband, and upon cause being shown upon fresh evidence to the satisfaction of such court, at any time alter, vary or discharge any such order, and may, upon any such application increase or diminish the amount of any payment ordered.

Variation and discharge of order.  
Ibid., s. 12.  
Cf. U.K. 58 & 59 Vict. c. 39, s. 7.

(2) If any married woman upon whose application an order has been made under this Division voluntarily resumes

664, 1896, s. 13.

s. 70. HART v. HART (1922) S.A.S.R. 208; 13 Austn. Digest 871. Nature and effect of condonation discussed. Where a husband was found guilty of cruelty to and wilful neglect of his wife and subsequently on two occasions the husband and wife occupied the same bedroom, held that those acts did not establish condonation.

s. 73. MATTHEWS v. MATTHEWS (1924) S.A.S.R. 280. Subsection (2) is general in its application and applies to every order granting protection under Division III. of Part III.

TURNER v. TURNER (1926) S.A.S.R. 398; 13 Austn. Digest 874; reversing in part TURNER v. TURNER (1925) S.A.S.R. 367. Section 52 of the Justices Act, 1921 (which limits the time for a complaint to six months from the time the matter of complaint arose) does not apply to proceedings under subsection (1) or (2). Observations on the construction of subsections (1) and (2).

ELBOROUGH v. ELBOROUGH (1931) S.A.S.R. 95; 13 Austn. Digest 955. Where on the hearing of an application for reduction in the amount of a maintenance order it was shown that the husband possessed property bringing in no income and was unable to obtain work, held in these circumstances that only such an allowance as would suffice for the necessities of the wife should be made. Held also that the wife was entitled to an allowance even though it might necessitate the sale of the husband's property.

McLACHLAN v. McLACHLAN (1935) S.A.S.R. 253. Notwithstanding a return to cohabitation an order remains in force until discharged.

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cohabitation with her husband, or commits adultery, such order shall, upon application and proof, be ordered to be discharged.

Immediate order for relief.

664, 1896, s. 14.  
Cf. U.K. 58 & 59 Vict. c. 39, s. 8.

74. In case of the conviction of a husband in any court for any offence involving cruelty to his wife or children, an application for protection under this Division may, by leave of the court, be heard immediately after such conviction without any summons.

Penalty for disobedience of order.

664, 1896, s. 16.

75. (1) If any husband molests or interferes with or attempts to molest or interfere with his wife in her manner of living contrary to any order for relief from cohabitation, or molests or interferes with or attempts to molest or interfere with any child contrary to any order for custody, he shall be guilty of an offence against this Act, punishable by a fine not exceeding twenty pounds or by imprisonment for any term not exceeding six months.

(2) Any court of summary jurisdiction may exercise jurisdiction under this section, notwithstanding that it is not constituted as provided by section 67.

Cf. U.K. 58 & 59 Vict. c. 39, s. 9.

(3) The payment of any sum of money ordered to be paid under this Division may be enforced under the provisions of Division IV. of this Part of this Act.

(4) Section 90, which relates to the finding of sureties or security for compliance with a maintenance order, shall apply as regards all the matters or things ordered by any order made under this Division.

Forms.

664, 1896, s. 18.

76. The forms in the third schedule may be used in accordance with the notes thereto and shall be valid and sufficient for the purposes of this Division.

DIVISION IV.

DIVISION IV.—GENERAL PROVISIONS RELATING TO MAINTENANCE AND THE ENFORCEMENT OF MAINTENANCE ORDERS.

Attachment of property of persons against whom order is sought.

641, 1895, s. 87.  
Cf. U.K. 4 & 5 Geo. 5 c. 6, s. 2.

Amended by 1983, 1930, s. 6.

77. Upon complaint made under sections 24, 41, 43, 47, 53, 66, or 91 of this Act notice may be given to any banker or other person having, or supposed to have, the care, custody, or control of any money or property of, or belonging or payable to, any person complained against, not to pay or part with the possession of such money or property until the complaint has been heard and determined, and such money and property shall thereby become and be attached in the hands

of the person having the care, custody, or control thereof, who shall be compellable to give evidence on the hearing of the complaint as to all matters relating to or concerning the money or property.

78. (1) The court hearing any complaint, upon the making of which notice under the next preceding section was given, may, if it makes a maintenance order or (as the case may be) an order under section 91, by the same or a separate order direct that the money or property attached, or such portion thereof as it orders, be paid or handed over to the board, or to the person to whom the maintenance money is ordered to be paid.

Order for delivery of attached property. 641, 1895, s. 88.

(2) The person having the care, custody, or control thereof shall pay or hand over the same accordingly, and shall be thereby discharged from all liability to the owner thereof, or any person claiming under him in respect of the money or property so paid or handed over, and, except as to such portion of the money or property attached as the court may, within one month from the service of the notice of attachment, order to be so paid or handed over, the attachment shall be determined.

79. (1) Any person who has received any notice under section 77 may, before the hearing of the complaint, after giving notice in writing of such application to the person by whom notice is given under section 77, apply to a court of summary jurisdiction for an order setting aside the said notice under section 77 with respect to the whole or any part of the property or money the subject-matter thereof.

Attachment may be pleaded. 641, 1895, s. 89.

Amended by 2360, 1937, s. 6.

(2) Any such person may plead any such notice in bar to any action, suit, or other proceeding which may be instituted against him for the recovery of any such money or property by the owner or any person claiming under him.

80. Any person who, after receipt of a notice under section 77—

Liability of persons contravening order.

641, 1895, s. 90.

(a) pays or hands over any such money or property otherwise than in accordance with the order made by the court; or

(b) neglects or refuses to comply with the order made, shall be personally liable to pay to the board or the payee mentioned in the maintenance order the amount of money or the value of the property ordered to be paid or handed over, and such amount or value may be recovered before a court in a summary way.

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Collection by  
police of  
moneys due  
to board.

641, 1895,  
s. 93.  
996, 1908,  
s. 8.

81. Subject to the provisions of a maintenance order, any member of the police force shall, when so directed in writing by the board under its seal, countersigned by the Commissioner of Police, demand, collect, and receive from any person liable to pay the same all sums of money due to the board under any maintenance order, and the receipt in writing of any such member of the said force for moneys paid to him shall be a sufficient discharge therefor.

Caveats.

641, 1895,  
s. 94.

82. (1) If any person against whom a maintenance order has been made is the registered proprietor of any land, estate, or interest in land subject to The Real Property Act, 1886, the board may lodge with the Registrar-General a caveat under the seal of the board against any dealings with such land, estate, or interest.

(2) Particulars of the order shall be set out in the caveat, and the Registrar-General shall forthwith register such caveat, and it shall not be lawful for the Registrar-General, without the consent of the board, to remove or discharge such caveat—

(a) unless and until he is satisfied that all moneys due under such order have been fully paid and satisfied; or

(b) unless he is ordered by the Supreme Court, or a Judge thereof, to remove such caveat.

Warrant to  
enforce pay-  
ments under  
orders.

Substituted  
by 1983,  
1930, s. 7.

83. If any money payable under a maintenance order is in arrear for one month, a court of summary jurisdiction may, upon the application of the board or any person to whom money is payable under the maintenance order, issue a warrant authorising the board or the said person to receive the whole or any part of the rents, profits, and income of the real and personal estate of the person against whom the order was made, or to take or sell the estate and interest of the said person in the said real or personal estate, or in such part thereof as the court may direct.

Registration  
of warrant and  
effect thereof.

641, 1895,  
s. 96.

84. Every such warrant may be registered in the same manner as a writ of *feri facias*, and shall, from the time of registration, bind the estate or interest of the person liable under the order for maintenance in his real estate and chattel real property.

Sale under  
warrant.

Ibid., s. 97.

85. Any sale under such warrant may be by public auction or private contract for cash or on credit, or partly for cash and partly on credit, and subject or not to such special or other conditions as the board deems expedient.

PART III.  
DIVISION IV.Assurances to  
purchaser.641, 1895,  
s. 98.  
996, 1909,  
s. 8.

86. (1) The board, or person authorised by the warrant to sell, may execute to the purchaser all such conveyances, assignments, memoranda of transfer, or other assurances of the property sold as the person against whom the order was made might have executed but for this Act, and the property so conveyed or assured shall vest in the purchaser accordingly.

(2) The Registrar-General shall forthwith register every such memorandum of transfer, and cause all certificates of title to be issued or cancelled, and entries to be made and acts to be done, as may be necessary for giving effect to the sale.

87. (1) No notice or demand whatsoever shall be requisite before issuing any such warrant as is mentioned in section 83, or before exercising any of the powers thereby conferred, but the court of summary jurisdiction may before issuing any such warrant require such notice (whether by post, advertisement, or otherwise) to be given to the person against whom the maintenance order is made as to the court shall seem just; and for the purpose of giving any such notice the court may from time to time adjourn the hearing of the application for the issue of the warrant. At any such hearing the person against whom the maintenance order is made may be heard by the court.

Issue of  
warrant with-  
out previous  
demand.641, 1895,  
s. 99.  
996, 1909,  
s. 8.Amended by  
1933, 1930,  
s. 8.

(2) The warrant shall, so far as regards any purchaser or person dealing with the board or the person authorised by such warrant, be conclusive evidence that the power to sell is vested in the board or in the person therein named.

88. The payment to the board or to the person named in any such warrant shall be a good discharge to any tenant, purchaser, or other person for all moneys paid by him pursuant to such warrant.

Effect of pay-  
ment under  
warrant.641, 1895,  
s. 100.  
996, 1909,  
s. 8.

89. The rents, profits, and income, and the proceeds of any sale, received under any such warrant and the estate or interest in any real or personal estate taken under any such warrant shall be applied firstly in payment of the costs of collection or sale; secondly, in payment of the costs of obtaining such warrant; thirdly, in paying any money due under the original order; and the balance shall be applied in or towards future maintenance, or in such other manner as a court of summary jurisdiction may direct.

Application  
of moneys  
received under  
warrant.641, 1895,  
s. 101.Amended by  
2360, 1937,  
s. 7.

PART III.  
DIVISION IV.

Power of court to require security for compliance with order.

641. 1895, s. 91.

**90.** The court making any maintenance order may, by the same or a separate order, and any court, on complaint that any person liable upon any such order has made default thereunder, or intends to evade compliance therewith, may, by a subsequent order, require the person liable for the maintenance to find such good and sufficient sureties or security as it thinks fit, that he will comply with the order made against him, and the justices may, in default of such sureties or security being found, commit such person to gaol for any period not exceeding six months, unless the order for security is sooner complied with: Provided that it shall be lawful for the court to determine upon the sufficiency of any proposed sureties or security, and in what manner the security shall be given, and any justice, upon being satisfied that the security has been duly made and perfected, may order the discharge of such person from gaol.

Penalty for failure to comply with orders.

750, 1900,

s. 16.

Cf. U.K.

35 & 36 Vict.

c. 65, s. 4

(part).

Cf. U.K.

25 & 26

Geo. 5 c. 46.

s. 8.

**91.** (1) A court of summary jurisdiction may, at any time, inquire into any disobedience of, or neglect to comply with, any maintenance order, and for that purpose may summon and examine all proper parties and witnesses, and in order to enforce compliance or punish the non-compliance with such order, may commit to gaol, with or without hard labour, for any period not exceeding twelve months, unless the order is sooner complied with, the person found guilty of such disobedience, neglect, or non-compliance, or may impose upon such person a fine not exceeding fifty pounds.

s. 90. In the matter of CHARLES OLIVER and the DESTITUTE PERSONS RELIEF ACT, 1866-7 (1868) 2 S.A.L.R. 200; 13 Austn. Digest 996. As to the form of an order.

s. 91. *McQUIRE v. WHITFIELD* (1932) S.A.S.R. 432; 13 Austn. Digest 995. Interpretation of "disobedience of" and "neglect to comply with." Held that section 91 is a penal section and does not deal with cases of mere non-payment of money under maintenance orders. Held, also, that a complaint under subsection (1) that a person had disobeyed a maintenance order inasmuch as he had neglected to pay certain of the payments thereunder, did not charge two offences, but one only. Held that section 52 of the Justices Act, 1921, applies to proceedings for an offence under section 91, that it is unnecessary that any of the instalments fall due within the six months preceding the complaint, but that the neglect constituting the offence must have occurred during that period. Observations that the liability under a maintenance order is a continuing liability; that instalments falling due more than six months previously remain recoverable; that it must be assumed that until the person ordered to pay obtains a reduction or remission of payments, he is, until the contrary appears, still able to pay as ordered.

*HITCHCOX v. HITCHCOX* (1934) S.A.S.R. 307. The reference in section 34 of the Matrimonial Causes Act, 1929, to Division IV. of this Act is a reference to Division IV. of Part III. of this Act. On a decree for dissolution of marriage an order, consented to by the husband, was made for the permanent maintenance by him of the wife during her lifetime; the payments fell into arrears and proceedings were taken by the wife pursuant to section 34 of the Matrimonial Causes Act, 1929, and section 91 of this Act, for non-compliance with the order; a fresh complaint had been laid on the above ground and an arrangement made whereby the husband had agreed to pay certain amounts off the arrears and certain payments for maintenance; at the time of complaint the arrangement had been terminated and there were considerable arrears. Held, that, on account of the arrangement made, the husband had not been guilty of disobedience to the order, but as his arrangement had been terminated, further proceedings could be brought under section 91 for non-compliance with the order.

(2) Neither the serving of a period of imprisonment nor the payment of a fine under this section shall affect the liability of the defendant to pay any sum of money ordered to be paid by the maintenance order.

92. Upon a complaint made under the next preceding section of this Act in respect of any alleged disobedience of or neglect to comply with any maintenance order, a justice may, instead of issuing a summons, issue a warrant under his hand for the apprehension of the person against whom the complaint is made, and for the detention of that person until the hearing of the complaint, unless he enters into a recognizance, with one or more sureties, in such sum as the justice directs, conditioned for his appearance at the hearing of the complaint.

Warrant in  
first instance.  
750, 1900.  
s. 6.

93. Every person who disobeys or neglects to comply with any maintenance order made against him under this Act and goes to reside beyond the State, either permanently or temporarily, shall be guilty of a misdemeanour, punishable by imprisonment, with or without hard labour, for any period not exceeding twelve months.

Disobedience  
of order and  
quitting State.  
641, 1895.  
s. 126.

93a. (1) If any order (which is hereinafter referred to in this section as "the maintenance order") is before or after the commencement of the Maintenance Act, 1937, made under section 43, section 43a, or Division III. of this Part, or the corresponding provision of any Act repealed by this Act, or is made for the support of a husband by a wife pursuant to section 20 of the Married Women's Property Act, 1883-4, and—

Provision on  
order for  
divorce, &c.

Inserted by  
2360, 1937,  
s. 8.

- (a) an order absolute is made by the Supreme Court whereby the marriage between the husband and wife referred to in the maintenance order is finally dissolved or decreed a nullity; or
- (b) in the course of any proceedings in the Supreme Court for the divorce of the husband and wife referred to in the maintenance order or for the declaration of the nullity of their marriage, any order is made or refused with respect to maintenance; or
- (c) an order is made by the Supreme Court for the judicial separation of the husband and wife referred to in the maintenance order and in the course of the proceedings or in the order any order is made for maintenance,

the following consequences shall follow.

(2) If any such order is made or if any such order for maintenance as is referred to in paragraph (b) of subsection (1) is refused by the Supreme Court after the passing of the Maintenance Act, 1937, a court of summary jurisdiction shall, upon the complaint of any party to the maintenance order or the board, discharge the maintenance order, and the maintenance order shall be deemed to have been discharged from the time the order is made or refused by the Supreme Court.

(3) If in any proceedings such as mentioned in subsection (1) an order for maintenance was made by the Supreme Court before the passing of the Maintenance Act, 1937, a court of summary jurisdiction shall, upon the complaint of any party to the maintenance order or the board, discharge the maintenance order, and the maintenance order shall be deemed to have been discharged from such time as is fixed by the court of summary jurisdiction.

(4) If any such order (other than an order for maintenance) was made or if any such order for maintenance as is referred to in paragraph (b) of subsection (1) was refused by the Supreme Court before the passing of the Maintenance Act, 1937, a court of summary jurisdiction may, upon the complaint of any party to the maintenance order or the board, discharge the maintenance order, and the maintenance order, if discharged, shall be deemed to have been discharged from such time as is fixed by the court of summary jurisdiction.

(5) A court of summary jurisdiction may exercise jurisdiction under this section although it is not constituted as mentioned in section 67.

Desertion of child under certain circumstances a misdemeanour.  
641, 1895,  
s. 127.

94. Every near relative liable to maintain any child who leaves such child without or fails to provide such child with adequate means of support, and goes to reside either temporarily or permanently, outside the State, shall be guilty of a misdemeanour, punishable by imprisonment for any period not exceeding twelve months.

Warrant for arrest of deserter.  
Ibid., s. 128.

95. Upon complaint on oath by or any officer of the board, that he has reasonable grounds for believing that any person is about to commit a misdemeanour within the meaning of section 93 or section 94 of this Act any justice, if satisfied that there are reasonable grounds for believing that such misdemeanour has been or is about to be committed, may issue his warrant for the apprehension of the person complained against.

Summary proceedings against deserters.

641, 1895, s. 129.

96. Upon the hearing of a complaint made under the next preceding section a court of summary jurisdiction may hear and determine the matter in a summary way, and, if satisfied that the defendant was about to commit the offence mentioned in the complaint may order such defendant to find good and sufficient surety or security to the satisfaction of the court that he will comply with the maintenance order, or that he will not leave the child without, or will provide the child with adequate means of support. The court, in default of such surety or security being found, may commit the defendant to gaol for any period not exceeding six months, if such order be not sooner complied with: Provided that any justice may determine upon the sufficiency of any proposed surety or security, and in what manner and to whom the same shall be made; and, upon being satisfied that the same has been made and perfected, may order the discharge of the defendant from gaol or custody.

Compellability of defendant as witness at hearing of complaint for non-compliance.

996, 1909, s. 13.

97. (1) On the hearing of any complaint in which the defendant is charged with non-compliance with any maintenance order, the defendant shall be compellable to give evidence, and may be summoned as a witness for that purpose.

(2) The defendant shall not be excused from giving evidence, on the ground that the answer to any question, or such evidence, might prove or tend to prove him guilty of the matter alleged or charged against him: Provided that such question or evidence is, in the opinion of the court or other tribunal hearing the complaint, relevant to the matter of that complaint.

98. (1) Whenever in any proceedings under this Act it is material to ascertain the earnings of any person the court may in its absolute discretion accept a statutory declaration made as hereinafter in this section mentioned as *prima facie* evidence of those earnings.

Proof of earnings of defendant.

Amended by 2360, 1937, s. 9.

(2) A statutory declaration under this section shall be made—

(a) by any employer of the person whose earnings are in question; or

(b) by some person employed by such employer as manager, secretary, accountant, or in any such other position as in the opinion of the court would enable him to testify to the earnings of the person whose earnings are in question; or

PART III.  
DIVISION IV.Inserted by  
2360, 1937,  
s. 9.

- (c) by a member of the police force of this or any State in the Commonwealth or of the Commonwealth who declares as to information as to such earnings given to him by the employer of the person whose earnings are in question or by some person employed by such employer as manager, secretary, or accountant.

Proof of payment or non-payment under maintenance order.

Cf. U.K.  
22 & 23  
Geo. 5 c. 46,  
s. 34 (3).

99. Whenever in any proceedings under this Division it is material to inquire whether any, or how much, money has been paid or is owing to the board or any officer thereof by any person liable under a maintenance order to make any such payment to the board or an officer thereof, any officer of the board may on oath state his information and belief as to whether any, and how much, money has been paid, or is owing, as aforesaid, and the court shall accept such statement as *prima facie* evidence of the facts stated.

## PART IV.

## PART IV.

## STATE CHILDREN.

## DIVISION I. DIVISION I.—THE COMMITMENT, DETENTION, AND RELEASE OF STATE CHILDREN.

Places for hearing complaints against children.

996, 1909,  
s. 3.  
Cf. U.K.  
8 Edw. 7  
c. 67, s. 111.  
Cf. U.K.  
22 & 23  
Geo. 5 c. 46,  
Part I.  
Cf. U.K.  
23 Geo. 5  
e. 12, s. 45.

100. Every information or complaint—

- (a) laid against any child in respect of any alleged offence whether such offence is indictable or is punishable on summary conviction or otherwise;  
or  
(b) alleging that any child is a destitute, neglected, or uncontrollable, or incorrigible child,

and which is to be heard within ten miles of any part of the City of Adelaide or of the City of Port Adelaide, shall be heard only in such room or place as is from time to time appointed or approved of by the Chief Secretary for the purpose of hearing such informations and complaints.

PART IV.  
DIVISION I.

101. Any constable may, without a warrant, apprehend any child appearing or suspected to be a destitute or neglected child, and take such child before a court of summary jurisdiction.

Constables may arrest destitute or neglected children.  
641, 1895, s. 32.  
Of. U.K.  
8 Edw. 7  
c. 67, s. 58  
(8).  
Of. U.K.  
22 & 23  
Geo. 5 c. 46,  
s. 9.

102. The court, upon complaint being made in the prescribed form, and upon being satisfied that any child charged with being a destitute child or a neglected child is in fact a destitute child or a neglected child, may—

Court may order destitute or neglected children to be sent to an institution.  
641, 1895, s. 33,  
996, 1909, s. 21 (part).  
Of. U.K.  
20 Geo. 5  
c. 17, s. 52.

(a) order such child to be forthwith sent to an institution, to be there detained or otherwise dealt with under this Act until such child attains the age of eighteen years; or

(b) by an order in writing place such child in the custody and under the control of the board until such child attains the age of eighteen years.

103. If any child is brought before a court of summary jurisdiction charged either by his parents or by an officer of the board with being an uncontrollable or incorrigible child, the court, upon being satisfied that the charge is well founded, may—

Uncontrollable or incorrigible child, how dealt with.  
641, 1895, s. 34,  
750, 1900, s. 4,  
996, 1909, s. 21 (part).  
Of. U.K.  
8 Edw. 7  
c. 67 s. 58  
(4).  
Of. U.K.  
22 & 23  
Geo. 5 c. 46,  
ss. 9, 10.  
Of. U.K.  
23 Geo. 5  
c. 12, s. 64.  
Amended by  
1983, 1930,  
s. 9.

(a) order the child to be sent to an institution, to be there detained or otherwise dealt with under this Act until he attains the age of eighteen years or for such lesser period as the court may order:

(b) by an order in writing place the child in the custody and under the control of the board until he attains the age of eighteen years or for such lesser period as the court may order:

(c) release the child on probation, in which case he shall be subject to the supervision of the board until he attains the age of eighteen years or for such lesser period as the court may order, and shall

Of. U.K.  
8 Edw. 7  
c. 67, s. 60.

s. 103. *SKIEER v. BYRNE* (1929) S.A.S.R. 378; 11 Austn. Digest 131. The principle of law under which the court does not interfere with a child's choice of residence, when over a certain age, does not apply to proceedings under section 103. A child is "uncontrollable" when not adequately controllable by those entitled to exercise control. Disobedience or want of amenability to control in an isolated or particular instance, or in circumstances in which obedience should not be expected, do not ordinarily render a child "uncontrollable."

periodically report himself to the board at such place and times and in such manner as the board may direct:

- (d) order the child to be sent to a probationary school to be there detained for a period of not more than three months:

Provided that, if the charge is made by an officer of the board, no order under this section shall be made without notice of the charge to the parent, unless the address of the parent is unknown to the officer.

Summons or warrant for arrest of children in certain circumstances.

Inserted by 1983, 1930, s. 10.

**103a.** (1) In any case where any complaint is made in respect of any child pursuant to section 102 or section 103, any justice may summon the child to appear before a court of summary jurisdiction, at a time and place to be named in the summons, so that the matter alleged against him may be heard and determined.

(2) A justice may, instead of issuing a summons, issue a warrant under his hand for the arrest of the child and for his detention until the hearing of the complaint.

(3) Any such child so arrested shall, as soon as conveniently may be, be brought before a court of summary jurisdiction, so that the matter alleged against him may be heard and determined.

(4) Any child brought before a court of summary jurisdiction, and charged pursuant to section 102 or section 103, may be dealt with by the court as provided by the said sections, notwithstanding that the child has not been summoned as aforesaid or that a warrant has not been issued as aforesaid for the arrest of the child.

If probationer fail to report himself, the board may cause him to be arrested.  
641, 1895, s. 35.

**104.** (1) If any child released on probation, pursuant to section 103, fails to report himself to the board as directed, or if the board is not satisfied with his conduct while on probation, the board may, without any warrant, cause him to be arrested and brought before a court of summary jurisdiction.

(2) The court may exercise, with regard to such child, any of the powers which the court by which such child was released on probation might have exercised.

PART IV.  
DIVISION I.

105. If, on the hearing of any information or complaint, any child is convicted of any offence, or is found to be a destitute, neglected, uncontrollable, or incorrigible child, and the court hearing the information or complaint is of opinion that such child is guilty of such offence, or is destitute, neglected, uncontrollable, or incorrigible, wholly or partly in consequence of some fault of or lack of proper care or control on the part of the guardian of such child, the court may, on the hearing or any adjournment thereof, and without complaint made for that purpose, in its discretion punish such guardian by a fine not exceeding twenty pounds, or by imprisonment for any term not exceeding three months: Provided that no guardian shall be punished under this section unless notice of the hearing or adjournment has been given to him in manner provided by section 106, and, if present, he has had an opportunity of showing cause why he should not be punished.

Guardian of child to be liable in certain cases for its offence.  
996, 1909, s. 20.  
Cf. U.K. 8 Edw. 7 c. 67, ss. 98, 99.

106. (1) Whenever any complaint is made charging a child with being a neglected child on the ground that he is under unfit guardianship, the guardian of such child shall be notified in writing by the complainant of the time when and place where such complaint is to be heard.

Notice to guardian of certain proceedings.  
996, 1909, s. 16.  
Cf. U.K. 23 Geo. 5 c. 12, s. 34.

(2) Such notice shall be deemed sufficiently given if served personally on such guardian, or posted addressed to him at his last known place of abode or business, a reasonable time prior to the date of the hearing of such complaint.

(3) The guardian, if present, shall, if he so desires, be heard in the matter.

107. Any court of summary jurisdiction before whom a child is brought may, if it has reason to suspect that the mental condition of the child is such as to affect the criminal responsibility of the child, cause the child to be examined by a properly qualified person, and may accept as evidence the written or verbal report (whether an oath or otherwise) of such person as to the child's mental condition.

Examinations as to mental condition of children.

108. In all proceedings relating to destitute, neglected, or uncontrollable or incorrigible children, the court may receive and take into consideration any written or verbal report from any member of the police force or officer of the board then present: Provided that the contents of such report shall be made known to the person charged, who shall be permitted to cross-examine such member or officer thereon.

Secondary evidence receivable in certain cases.  
996, 1909, s. 14.  
Cf. U.K. 23 Geo. 5 c. 12, s. 35.

PART IV.  
DIVISION I.

Child under control may be placed in an institution.

996, 1909,  
s. 23.

**109.** The board may, with the approval of the Chief Secretary, order, in writing, that any child placed in the custody and under the control of the board shall be placed in an institution, and upon such order being made such child shall, immediately and for the unexpired term of such custody and control, be deemed to be a State child in the same manner and to the same extent as if such child had been originally committed to an institution by a court.

Entry into house or premises for the purpose of arrest of children.

Ibid., s. 24.

Amended by 2360, 1937,  
s. 10.

**110.** (1) Any member of the police force, any officer of the board specially authorised in writing by the chairman, or any member of the board, may enter into or upon any house, building, or other premises for the purpose of arresting, and may, there or elsewhere, arrest any child who is reasonably supposed to be guilty of any offence, or who is destitute, neglected, or uncontrollable or incorrigible.

(2) Any such child so arrested shall, as soon as conveniently may be, be brought before a court of summary jurisdiction, so that the matter alleged against him may be heard and determined.

Convicted children to be sent to reformatory schools, except in special cases.

641, 1895,  
s. 40.

**111.** Convicted children only shall be ordered to be sent to reformatory schools: Provided that if any neglected child, destitute child, or uncontrollable child, in the opinion of the court and under the special circumstances of the case, ought to be sent to a reformatory school, such court may order such child to be committed to a reformatory school accordingly.

Destitute or neglected children not to be sent to reformatory schools except in special cases.

641, 1895,  
s. 41.

**112.** Destitute children, neglected children, and uncontrollable children only shall be ordered to be sent to institutions other than reformatory schools: Provided that under special circumstances, and with the approval of the Governor, an inmate of any other institution may be transferred for misconduct to a reformatory school; and in like manner any inmate of a reformatory school may, for good conduct, be transferred to any other institution.

Convicted children may be sent to reformatory school, &c.

Ibid., s. 36.  
996, 1909,  
s. 21 (part).  
1389, 1918,  
s. 3.

Cf. U.K.  
8 Edw. 7  
c. 67, ss. 58  
(2) (3), 107.  
Cf. U.K.  
22 & 23  
Geo. 5 c. 46,  
s. 23.

**113.** (1) If any child is found guilty of any crime or offence (other than homicide) punishable by imprisonment, the court by which such child is so found guilty shall not sentence such child to imprisonment, but may—

- (a) order such child to be sent to a reformatory school and to be there detained or to be otherwise dealt with under this Act until he attains the age of eighteen years, or for such lesser period as the court in its discretion deems proper; or

- (b) by an order in writing place such child in the custody and under the control of the board until he attains the age of eighteen years; or
- (c) order the parent to give security for the good behaviour of such child until the child attains the age of eighteen years, or for such lesser period as the court in its discretion deems proper; and, upon being satisfied that such security has been given, may dismiss the charge and give a certificate of dismissal accordingly: Provided that no such order shall be made against any parent unless such parent has been summoned to attend or is present before the court, and has had an opportunity of being heard; or
- (d) adjourn the case on a near relative undertaking to punish the child in such reasonable or moderate manner as the court approves; and on being satisfied that such punishment has been duly inflicted may dismiss the charge and give a certificate of dismissal accordingly.

(2) In any case where a child is liable to be sentenced to imprisonment by a court of summary jurisdiction by reason of the non-payment of a fine or monetary penalty or non-compliance with an order for the payment of money, such child shall not be sentenced to imprisonment, but may be ordered to be detained in an institution or to be placed in the custody and under the control of the board until he attains the age of eighteen years, or for such lesser period as the court in its discretion deems proper.

996, 1909,  
s. 11 (1).

114. If any child at the time of being committed to an institution or placed in the custody and under the control of the board is upwards of sixteen years of age, such child may be ordered to be detained in an institution, or otherwise dealt with under this Act, for the period of two years, notwithstanding that such period would extend beyond the time of such child attaining the age of eighteen years.

If child over sixteen years of age at time of committal he may be detained for two years.

641, 1895,  
s. 38.

115. Except as in this Act otherwise provided, no State child shall be detained in any institution or be under the control of the board after attaining the age of eighteen years.

Children over 18 years of age to cease to be under board's control.

Ibid., s. 39.  
Cf. U.K.  
23 Geo. 5  
c. 12, ss. 71,  
74.

PART IV.  
DIVISION I.Mandate for  
detention.

641, 1895,  
s. 42.  
Cf. U.K.  
23 Geo. 5  
c. 12, ss. 70,  
72.

**116.** (1) Whenever a child is ordered to be sent to an institution the court making the order shall issue a mandate for the taking of such child to such institution, and for his detention during the period of detention specified in the mandate, subject to this Act.

(2) Every such mandate shall be executed and obeyed by all persons to whom it is directed and delivered, and shall be forwarded with the child to the superintendent or matron of the institution, and shall be a sufficient warrant for the taking and detention of the child named therein according to the tenor thereof, and no other warrant for such taking and detention shall be necessary.

Order may be  
set aside.  
641, 1895,  
s. 118.

**117.** If an order is made under this Act in respect of a child in the absence of his parent or guardian, to whom reasonable notice of the complaint had not been given, such order may, for good cause shown, be set aside by the court by which it was made upon the application of such parent or guardian within three months after the making of the order.

Age and  
religion of  
child to be  
stated in  
mandate.  
Ibid., s. 43.  
Cf. U.K.  
8 Edw. 7  
c. 67, ss. 23,  
66.  
Cf. U.K.  
23 Geo. 5  
c. 12, ss. 70,  
75.

**118.** (1) Every mandate by a court committing a child to an institution and every order placing a child in the custody and under the control of the board shall contain a statement of the age and religion, so far as known, of such child, and the cause for which, and institution in which, the child is to be detained.

750, 1900,  
s. 5.

(2) If there is no statement by the court in the mandate as to the age or religion of the child named therein, the chairman may indorse on the mandate a statement of the age or religion of such child, so far as known to him.

In absence of  
positive evi-  
dence as to  
age, age to be  
determined  
on view.  
641, 1895,  
s. 44.  
Cf. U.K.  
8 Edw. 7  
c. 67, s. 123  
(1).

**119.** If there is an absence or insufficiency of positive evidence or information as to the age of any child, the court may on view determine the age of such child, and shall insert in the mandate or order the age so determined.

Statement of  
age and  
religion to be  
*prima facie*  
evidence.

641, 1895,  
s. 45.

**120.** The statement in any mandate that the child therein named is of a certain age and religion shall, for the purpose of this Act, be taken to be true, unless within six months from the date of the mandate the board is satisfied to the contrary, and indorses on the mandate the correct age or religion.

PART IV.  
DIVISION I.

121. A certificate indorsed upon or annexed to any mandate, and signed by the chairman or the superintendent or matron of any institution, stating that the child named in such mandate was duly received into such institution, and was at the signing thereof detained in an institution or had been otherwise dealt with under this Act, shall in all proceedings whatsoever be *prima facie* evidence of the facts stated in such certificate, and of the identity of the child therein named.

Certificate of chairman, &c., indorsed on mandate or order to be *prima facie* evidence.  
641, 1895, s. 46.

122. Any inmate of an institution, whether a private institution or not, may, for any reason which appears to the board sufficient, by order of the board and subject to the provisions of this Act be removed to and detained in any other institution.

Removal of inmates from one institution to another by order of the board.  
Ibid., s. 47.  
Cf. U.K. 8 Edw. 7 c. 67 s. 69 (2).

123. (1) Any State child who—

(a) absconds from any institution, or from his foster-parent; or

(b) whilst liable to detention refuses or neglects at the end or determination of the term of his apprenticeship or placing out forthwith to return to the institution in which he was last detained, or to such other institution as the board may order; or

(c) neglects or fails to obey any order of the board to return to or surrender himself at any institution,

State children absconding, etc., may be apprehended without a warrant and punished.  
641, 1895, s. 48.  
Cf. U.K. 8 Edw. 7 c. 67, ss. 67 (4), 72.  
Cf. U.K. 22 & 23 Geo. 5 c. 46, s. 39.

shall be guilty of an offence and may be apprehended without a warrant by any member of the police force, or by an officer of or person appointed by the board, and conveyed to such institution as the board may direct.

(2) Any State child guilty of an offence under this section shall be liable, on summary conviction, to imprisonment in a reformatory school.

819, 1903, s. 11.

124. Any State child so offending as mentioned in the next preceding section shall, if the board so directs, for every such offence be detained under the control of the board, or of the governing body of the institution, as the case may be, for one month beyond the period of detention limited by the mandate for his or her detention, anything in this Act to the contrary notwithstanding.

Punishment of absconding children.  
641, 1895, s. 49.

PART IV.  
DIVISION I.

Governor may  
release State  
child.

641, 1895,  
s. 50.  
Cf. U.K.  
8 Edw. 7  
c. 67, s. 69  
(1).

Governor may  
extend period  
of detention  
till female  
child attains  
her majority.  
641, 1895,  
s. 51.

**125.** (1) The Governor may order the release of any State child from any institution, or from the control of the board.

(2) Upon production to the board, or to the chairman thereof, of such order, the child shall be forthwith released accordingly.

**126.** (1) The Governor, upon the recommendation of the board, may order that the period of supervision by the board or of detention of any female State child specified in any mandate shall be extended until such child attains the age of twenty-one years or for any shorter period, and such child shall be supervised or detained accordingly.

(2) The board shall notify the parents of the child or any one of them known to the board, or, as the case may be, the guardian of the child that it has recommended the extension aforesaid and shall inform the person so notified of his or her right to make representation to the Chief Secretary on the question whether the period of supervision or detention shall or shall not be extended.

(3) Such person may at any time within one month after the posting of such notice make representations to the Chief Secretary as aforesaid.

(4) If the Chief Secretary after considering the representations (if any) made within the month aforesaid is of opinion that it is in the interests of the child that the period of supervision or detention should be extended, the Governor may extend the same accordingly, but not otherwise: Provided that if the child has no parents or guardian such extension shall not be made unless a medical practitioner certifies that it is in the interest of the child.

Inserted by  
2360, 1937,  
s. 11 (a).

(4a) The powers conferred upon the Governor by the preceding subsections of this section may be exercised from time to time in respect of the same child and, except in the case of the first order in respect of any child, may be exercised notwithstanding that the child has attained the age of eighteen years.

(5) When any female person under the supervision of the board or detained in any institution is certified by two legally qualified medical practitioners to be mentally defective the Governor may on the recommendation of the board order the period of supervision or detention of such person to be extended for any period, notwithstanding that such person shall have attained the age of twenty-one years before the expiration of such period.

Inserted by  
2360, 1937,  
s. 11 (b).

The powers conferred upon the Governor by this subsection may be exercised from time to time in respect of the same female person and notwithstanding that she has attained the age of twenty-one years, but the period of supervision or detention which may be ordered at any one time shall not exceed three years.

DIVISION II.—APPRENTICING AND PLACING OUT OF STATE  
CHILDREN.

DIVISION II.

**127.** The board may, by indenture of apprenticeship, bind any State child apprentice to any suitable person, to be taught such useful trade or calling as the board approves; and such binding shall be as effectual as if the child were of full age at the date of the indenture, and had voluntarily executed the same; but the period of any such apprenticeship shall not exceed five years, nor extend beyond the day of the child attaining the age of twenty-one years.

Board may apprentice children.  
641, 1895, s. 52.  
Cf. U.K. 8 Edw. 7 c. 67, s. 70.  
Cf. U.K. 20 Geo. 5 c. 17, s. 59.

**128.** (1) The board may place out any State child for such period, subject to this Act, as the board thinks fit—

Board may place out children.  
641, 1895, s. 53.  
995, 1909, s. 4.  
Cf. U.K. 8 Edw. 7 c. 67, s. 67.

(a) to reside and board with any relative of such child, or with a suitable person approved by the board;  
or

(b) with any suitable person willing to receive such child for adoption or service, and who, in the opinion of the board, is able to provide for and is suitable to be entrusted with the care of such child; or

(c) to live and be maintained in any home or place suitable for the upbringing of the child.

Para. (c) inserted by 1983, 1930, s. 11.

(2) Nothing in this section shall authorise the placing out of any child for any time extending beyond the period of detention of such child.

**129.** (1) Except in cases where a special exemption has been granted by the board for good cause shown, the foster-parent of every State child over the age of six years placed out shall cause such child to be sent regularly to school as required by the Education Act, 1915.

Children between seven and fourteen not to be placed out unless provision is made for education.  
641, 1895, ss. 54, 55.

(2) Any foster-parent committing or permitting any offence against this section shall be liable to a penalty of ten pounds.

PART IV.  
DIVISION II.

Child under fourteen not to be apprenticed or placed out for service.

641, 1895,  
s. 56.

Indentures of apprenticeship and agreements to provide for maintenance, education, &c.

Ibid., s. 58.

Wages may be paid to board.

Ibid., s. 60.

Interest on deposits.

819, 1903,  
s. 8.

Moneys banked may be expended for the child's benefit.

641, 1895,  
s. 61.

Board may recover wages.

641, 1895,  
s. 62.

Indentures of apprenticeship and licences may be assigned with consent of board.

Ibid., s. 63.  
Of. U.K.  
20 Geo. 5  
c. 17 s. 62.

**130.** No State child shall be apprenticed or placed out for service under the age of fourteen years.

**131.** All indentures of apprenticeship and agreements for the placing out of State children under this Act shall contain provisions to the satisfaction of the board for the proper keeping, maintaining, clothing, and (where necessary) educating such child, and for the due payment of such wages (if any) as may be payable thereunder.

**132.** The board may in any indenture or agreement provide that all, or such portion as may be specified, of any wages to become due to the child shall be paid by the foster-parent to the board, to be deposited in the Treasury in the name of the board on account of such child, and every such payment shall be deemed to be a payment to such child.

**133.** All moneys deposited in the Treasury pursuant to the next preceding section shall bear interest at the rate of four pounds ten shillings per annum for every one hundred pounds, to be calculated upon such money and the balance thereof, and any accrued interest thereon, the first day of each month.

**134.** (1) All or any part of the money so deposited, and any interest thereon, may be expended by the board for the benefit of the child when and in such manner as the board may from time to time deem advisable.

(2) All moneys so deposited, and not paid or expended as aforesaid, shall be payable to the child upon his or her attaining the age of twenty-one years; but if not claimed by the child, or any person lawfully claiming through or under him or her, before the expiration of seven years after he or she has, or would, if living, have attained the age of twenty-one years, may be appropriated by the board for the purposes of this Act, and shall not thereafter be recoverable by any person.

**135.** The wages or earnings due by any person to any State child whether payable to such child or not, may be sued for and recovered by and in the name of the board for the benefit of such child.

**136.** (1) The foster-parent of any State child may, by an assignment bearing the consent of the board, but not otherwise, assign the indenture of apprenticeship or licence respecting such child to any fit and proper person.

(2) Every such assignment shall be executed in duplicate by the assignor and assignee, and one part of the assignment so executed shall be forthwith forwarded to the board by the assignor, and thereafter the indenture or licence shall, for the purposes of this Act, be read and construed as if the assignee had originally been party thereto in the place of the assignor.

137. (1) On the death of the foster-parent of any State child, the widow, widower, executor, or administrator of such foster-parent may, at any time within three months after such death, apply in writing to the board for an order directing such child to be bound or placed out for the residue of the term to some fit and proper person nominated in and consenting to such application.

On death of foster-parent, widow, &c., may nominate new foster-parent.  
641, 1895, s. 64.

(2) The board may make an order accordingly, and thereupon a new indenture or licence shall be executed by the person so nominated for the unexpired term of the original indenture or licence, and upon the like terms and conditions, or upon such other terms and conditions, subject to this Act, as the board may deem advisable.

138. If the foster-parent of any State child becomes insolvent, or becomes unable to maintain and employ such child, or is about to remove from the State, the board may, on application by or on behalf of the foster-parent or child, make an order releasing and discharging the foster-parent and the child, respectively, from the indenture of apprenticeship or agreement, and from every covenant and agreement therein contained or thereby implied; and, by the same or any other order, may direct the child to return to an institution to be therein named.

On insolvency, etc., of foster-parent indentures and licences may be cancelled by board.  
Ibid., s. 65.

139. (1) No foster-parent shall change his or her place of residence without in every case giving to the board such notice as may be prescribed.

Change of residence to be notified by foster-parent.  
Ibid., s. 66.

(2) Every foster-parent offending against this section shall be liable to a penalty of not exceeding ten pounds for every such offence.

140. (1) If a State child apprenticed or placed out absconds, becomes ill, meets with an accident, or dies, the foster-parent of such child shall immediately give such notice and do all such further acts and things as may be prescribed.

Notice to be given if child absconds, becomes ill, or dies.  
Ibid., s. 67.

(2) Every foster-parent offending against this section shall be liable to a penalty of not exceeding ten pounds.

PART IV.  
DIVISION II.

Penalty for transferring or dismissing State child without consent of board.

641, 1895, s. 68.  
996, 1909, s. 4.  
Of. U.K.  
20 Geo. 5  
c. 17, s. 62  
(2)

**141.** Every foster-parent who, without the consent in writing of the board under its seal in every instance first had and obtained—

- (a) assigns or transfers any indenture of apprenticeship or licence; or
- (b) transfers or makes over to any other person any State child apprenticed or placed out with such foster-parent; or
- (c) in any way discharges or dismisses such child so apprenticed or placed out,

shall be liable to a penalty not exceeding ten pounds, and every such attempted assignment, transfer, or discharge shall be null and void.

Penalty for ill-treating State children.

641, 1895, s. 69.

**142.** (1) Every foster-parent who—

- (a) illtreats, injures, or neglects any State child placed out with or apprenticed to him; or
- (b) does not well and truly observe and perform and keep all the terms, covenants, conditions, and agreements, on the part of such foster-parent contained or implied in the indenture of apprenticeship or agreement, as the case may be, in respect of such child,

and every person who assaults, illtreats, or injures any State child, shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding twenty pounds, with or without imprisonment for any term not exceeding six months.

(2) The court of summary jurisdiction hearing any complaint under this section may also discharge the child from the apprenticeship or licence, and order him to be returned to an institution.

(3) No complaint shall be laid under this section except by the board or some officer thereof.

Complaint against a State child to be dealt with in summary way.

641, 1895, s. 70.

**143.** Upon any complaint made by the foster-parent of any State child that such child has been guilty of any misdemeanour, wrongdoing, or misbehaviour, a court of summary jurisdiction may do all or any of the following things, namely:—

- i. At the same time, and without formal complaint against the foster-parent, inquire into his or her conduct towards and treatment of such child:

- ii. Adjourn the hearing of the complaint, and direct a complaint to be laid against the foster-parent:
- iii. Cancel the indenture of apprenticeship or licence relating to such child, and order the return of the child to an institution:
- iv. Order the child to be punished in any manner prescribed.

**144.** When a court of summary jurisdiction orders the discharge of any State child apprenticed or placed out, or cancels the indentures of apprenticeship or agreement relating to any State child, under the provisions of this Act, the court shall forthwith give notice of such order or cancellation to the board, and order the return of the child to an institution.

Notice to be given to board of discharge from apprenticeship or agreement.  
641, 1895, s. 71.

**145.** The board may at any time, by order, require any State child apprenticed or placed out forthwith to return to the institution of which such child was an inmate previous to being apprenticed or placed out, or to surrender himself at any other institution to be named in the order; and the board may, by the same or a separate order, and without incurring any liability for breach of contract or otherwise, cancel or revoke the indenture of apprenticeship or agreement relating to any State child, and require the foster-parent forthwith to deliver such child at an institution or to some person to be named in the order.

Board may order return of State children apprenticed or placed out.  
Ibid., s. 72.

**146.** (1) Any foster-parent who neglects or fails to obey any order made under the next preceding section shall be liable to a penalty not exceeding ten pounds.

Enforcement of order for return of child.

Ibid., ss. 73, 74.

(2) Any constable or officer of the board may, without any warrant, apprehend such child and bring him to the institution named in the order, and for such purpose may enter upon or into any lands or houses belonging to or occupied by the foster-parent whereon or wherein the child may be or may be supposed to be.

**147.** (1) The board shall, except as hereinafter provided, cause all State children apprenticed or placed out by the board to be visited once at least in every four months by some person to be appointed by the board, in order to ascertain whether the stipulations of the indentures of apprenticeship or agreements respecting such children have been fulfilled, and whether the treatment, education, and care of such children are satisfactory.

Apprenticed and placed-out children to be visited at least once in four months.

641, 1895, s. 75.  
Cf. U.K. 20 Geo. 5 c. 17, s. 66.

(2) Every foster-parent shall, at the request of any such visitor—

- (a) personally produce the child apprenticed or placed out to or with him or her, or show cause to the satisfaction of the visitor for the non-production or absence of such child; and
- (b) permit such visitor to inspect the outfit of such child and the sleeping and other accommodation and food provided for such child.

(3) Every foster-parent failing to produce or to show sufficient cause for the non-production of any such child, or to comply with any of the other provisions hereof, shall be liable to a penalty not exceeding ten pounds.

Exemptions  
from visitation  
in special  
cases.  
641, 1895,  
s. 76.

148. The board may in special cases exempt wholly or partially any State child from being visited as provided by the next preceding section, but a return of all such exemptions, with the reasons therefor, shall be forwarded every three months to the Chief Secretary.

Board to have  
general super-  
vision of all  
State children.  
Ibid., s. 77.  
996, 1909,  
s. 4.

149. (1) The board shall also have general supervision over all State children detained in any private institution or placed out for adoption or otherwise, or apprenticed, and may cause such children to be visited at such reasonable times as the board may think fit and by such persons as the board may, by writing sealed with the seal of the board, appoint to be visitors.

(2) The visitors so appointed shall have and perform the same powers and duties in respect of such children as are conferred or imposed upon them by this Act, in relation to other State children; and all persons having the care or control of any child so to be visited shall, at the request of the visitor—

- (a) produce such child and his outfit; and
- (b) permit the visitor to examine the same, and the sleeping and other accommodation and food provided for such child,

in like manner and subject to the like penalties for non-compliance as if such child were a State child apprenticed or placed out by the board.

Payment for maintenance of State children.

Substituted by 1983, 1930, s. 12.

**150.** (1) The board may pay to any person in charge of any State child or to the foster-parent of any State child for the care and maintenance of the child until he or she attains the age of fourteen years, such sum, not exceeding fifteen shillings a week, as may be prescribed: Provided that in special cases—

(i.) the board may pay the said sum for such period after the State child attains the age of fourteen years as to the board appears necessary;

(ii.) the Minister may authorise the payment of a greater sum.

(2) For the purposes of this section the governing authority or person in charge of any home or place at which the board has placed out any State child shall be deemed to be a person in charge of the State child.

**151.** The board may pay to the governing authority or person in charge of any private reformatory school or institution, for the maintenance therein of any State child, such sum not exceeding twenty shillings a week, as the Minister may approve.

Board may pay for maintenance of child in private reformatory. 641, 1895, s. 79.

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PART V.

PART V.

INSTITUTIONS—THEIR ESTABLISHMENT, INSPECTION, AND ABOLITION.

**152.** The Governor may, by proclamation, establish and place under the control of the board, or abolish—

Governor may establish institutions.

641, 1895, s. 20.

(a) homes, depots, probationary schools, reformatory schools, and other institutions for the reception, detention, education, employment, training, and reformation of State children; and

(b) asylums, institutions or places for the reception and relief of destitute persons.

## PART V.

Private schools may be proclaimed as reformatory schools.

645, 1891, s. 21.  
Cf. U.K. 8 Edw. 7 c. 67, s. 45.  
Cf. U.K. 23 Geo. 5 c. 12, s. 79.

**153.** The Governor, on the recommendation of the board, may proclaim any private reformatory school as a reformatory school, and thereafter such school, until abolished as by this Act provided, shall be under the control and supervision of the board.

Private institution may be proclaimed for detention of State children.

641, 1895, s. 22.  
Cf. U.K. 23 Geo. 5 c. 12, s. 79.

**154.** The Governor, on the recommendation of the board, may proclaim any private institution as an institution for the reception, detention, maintenance, education, employment, and training of State children; and thereafter such institution, until abolished as by this Act provided, shall be under the supervision of the board.

Proclamation to set out names of governing body and other particulars.

641, 1895, s. 23.

**155.** Every such proclamation shall set forth the name and description of the reformatory school or institution, as the case may be, the names of the superintendent, and of the managers, directors, or other persons (hereinafter called the "governing authority") having the management or control thereof, and all such other particulars as the Governor thinks fit.

Change in governing authority to be notified and gazetted.

641, 1895, s. 24.

**156.** Upon any change being made in the persons constituting any such governing authority the same shall be immediately notified to the board, and notice thereof published, by the institution, in the *Government Gazette*.

Private reformatories may be proclaimed as for particular religious denominations.

*Ibid.*, s. 25.  
Cf. U.K. 23 Geo. 5 c. 12, s. 81.

**157.** If any private reformatory school or private institution is established and maintained for the children of any particular religious denomination or denominations exclusively, the Governor may, by proclamation, limit the same as a reformatory school or institution for such children only, and in such case no child shall be committed to such school who is not of the denomination, or of one of the denominations, mentioned in the proclamation.

Private reformatory schools may be abolished.

641, 1895, s. 26.  
Cf. U.K. 8 Edw. 7 c. 67, s. 47.

**158.** The Governor may, on the report of the board, if dissatisfied with the condition or management of any private reformatory school, or private institution, by proclamation abolish it as a reformatory school or institution as from a date to be named in the proclamation, and thereupon from and after such date such school or institution shall cease to be a reformatory school or institution within the meaning of this Act: Provided that no such proclamation shall issue until two months have elapsed from the date of the transmission to the superintendent or matron of such school or institution of a copy of the report of the board.

159. Upon any private reformatory school or institution being so abolished, the board may order all State children being inmates thereof, and all State children apprenticed or placed out by the governing authority thereof, to be sent to and detained in any other institution, or otherwise dealt with under this Act.

Upon abolition of private reformatory inmates may be sent to other institutions. 641, 1895, s. 27. Cf. U.K. 8 Edw. 7 c. 67 s. 50.

160. No person shall be appointed or continue to be the superintendent or matron, or have chief control or management of any private reformatory school, or private institution proclaimed under this Act, unless approved of by the board, or if disapproved of by the board.

Superintendent or matron of private reformatory to be approved by board. 641, 1895, s. 28.

161. All members of the Executive Council and members of the Legislature and justices of the peace shall be entitled to visit every institution and the inmates thereof.

*Ex officio* visitors to institutions. Ibid., s. 29.

162. (1) Every person by this Act authorised to visit an institution may inscribe and sign in a book, to be for that purpose kept in each institution, any observations which he may think fit to make concerning such institution, and the superintendent, matron, teachers, officers, servants, or inmates thereof, or any of them; and every such book shall be carefully preserved by the superintendent or matron.

Visitors' book to be kept. 641, 1895, s. 30.

(2) Any person wilfully defacing, altering, or obliterating, wholly or partially, any remark or observation made in any such book, or destroying, defacing, or concealing any such book, or any part thereof, shall be guilty of an offence against this Act and liable to a penalty not exceeding ten pounds.

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## PART VI.

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## PART VI.

### THE LICENSING AND SUPERVISION OF LYING-IN HOMES AND FOSTER-MOTHERS.

163. No person shall, for gain or reward, keep any building or apartment as a lying-in home unless such premises are licensed by the board for that purpose.

Lying-in-homes kept for gain to be licensed. 641, 1895, s. 102. Cf. U.K. 17 & 18 Geo. 5 c. 38, s. 1.

## PART VI.

Continuance  
of existing  
licences.

**164.** Every lying-in home licence granted under any Act repealed by this Act and in force immediately prior to the commencement of this Act shall continue in force until the date of expiry according to the tenor thereof, and during that period shall be deemed to have been granted under this Act.

Licensing of  
lying-in  
homes.

641, 1895,  
s. 103,  
and schedule  
C.

**165.** The board may, on payment of a fee of five shillings, grant an annual licence in respect of any buildings or apartments kept or used, or intended to be kept or used, as a lying-in home, and may at its discretion revoke any licence so granted.

Penalty on  
keeping un-  
licensed lying-  
in homes.

641, 1895,  
s. 104.

**166.** (1) Every person who, for reward or gain, keeps any building or apartment as a lying-in home, unless such building or apartment is licensed by the board for that purpose, shall be guilty of an offence against this Act, and shall be liable to a penalty not exceeding one hundred pounds for the first offence, and for any subsequent offence shall be liable to be imprisoned for any period not exceeding two years.

Evidence of  
keeping lying-  
in home.

750, 1900,  
s. 8.

(2) Proof that any building or apartment was let, hired, or engaged by any person for the accommodation of a female during her confinement or lying-in, shall be *prima facie* evidence that such building or apartment is kept as a lying-in home within the meaning of this section; and it shall not be necessary in any case to prove the letting, hiring, or engagement on more than one occasion of any such building or apartment for any such purpose as aforesaid.

Foster-  
mothers to be  
licensed.

641, 1895,  
s. 105,  
996, 1909,  
s. 9,  
Of. U.K.  
26 Geo. 5 & 1  
Edw. 8 c. 49,  
s. 206.

**167.** No person shall be or act as foster-mother, for gain or reward, to any child under the age of seven years without being licensed by the board for that purpose: Provided that this section shall not apply in the case of children living with their parents.

Board may  
license foster-  
mothers.

641, 1895,  
s. 106,  
996, 1909,  
s. 9, and  
schedule C.

**168.** The board may, on payment of a fee of one shilling for each licence, grant an annual licence to any fit and proper person to be a foster-mother to children under the age of seven years, and may by any such licence fix the number of children authorised to be kept by the foster-mother therein named, and may at its discretion revoke any such licence.

Foster-parent  
may with  
consent of  
board, adopt  
foundling.

996, 1909,  
s. 19.

**169.** The board, on the application of any foster-parent, having the custody of a foundling child, may permit such foster-parent to adopt and have the custody of such child, subject to such conditions as the board may think proper.

170. (1) Every person other than—

- (a) an inmate of an asylum; or
- (b) a near relative of the child,

who, not being licensed as a foster-mother by the board, receives into his or her care, charge, or custody any child under the age of seven years, to adopt, rear, nurse, or otherwise maintain for gain or reward such child apart from his or her parent, and

(2) the mother or father of any such child who—

- (a) procures such child to be placed under the care, charge, or custody of any such person; or
- (b) permits any such person to have the care, charge, or custody of any such child for any such purpose as aforesaid,

shall be guilty of an offence against this Act, and shall be liable to a penalty not exceeding twenty pounds.

(3) No complaint shall be made under this section except by the board or some officer thereof.

(4) Upon the hearing of any complaint made under this section the allegation in the complaint—

- (a) that any child has been received to be adopted, reared, nursed or otherwise maintained for gain or reward; or
- (b) that any child has been procured to be placed under care, charge, or custody, as aforesaid; or
- (c) that any person has been permitted to have the care, charge, or custody of any child, as aforesaid,

shall be *prima facie* evidence of such child having been so received or procured, or that such person has been so permitted, as the case may be.

171. Any licensed foster-mother who acts as foster-mother to any greater number of children than the number fixed in her licence shall be guilty of an offence against this Act, and shall be liable to a penalty not exceeding twenty pounds.

Penalty on  
unlicensed  
foster-  
mothers.  
641, 1895,  
s. 107.  
996, 1909,  
s. 9.  
Of. U.K.  
22 & 23  
Geo. 5 c. 46.  
s. 65.  
Of. U.K.  
26 Geo. 5 & 1  
Edw. 8 c. 49.  
s. 206.

996, 1909,  
s. 17.

Penalty on  
licensed foster  
mother taking  
charge of  
more than  
number of  
children  
allowed by  
licence.  
641, 1895,  
s. 108.  
Of. U.K.  
26 Geo. 5 & 1  
Edw. 8 c. 49,  
s. 211.

s. 170. REYNOLDS v. ATKINSON, 19th January, 1893, S.A. *Advertiser* (newspr.); 13 Austn. Digest 1014. Held that section 101 of The Destitute Persons Act, 1881, applied to a person who adopted a child. Since this decision the Adoption of Children Act, 1925-1936, has been enacted.

## PART VI.

Lying-in homes to be open to inspection.  
641, 1895, s. 109.  
Of. U.K. 17 & 18 Geo. 5 c. 38, s. 5.

**172.** Every lying-in home, whether licensed or not, and the home or place of residence of every licensed foster-mother, shall, at all times be open to inspection by the chairman or any member or officer of the board.

Penalty for obstructing inspection.  
641, 1895, s. 110.

**173.** Every person who resists or obstructs, or assists in resisting or obstructing any such inspection, shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding twenty pounds.

Register to be kept by licensee of lying-in home.  
Ibid., s. 112.

**174.** Every licensee of a lying-in home shall—

- (a) keep a register—
  - (i.) containing the names, usual residences, and dates of confinement of every woman confined in such home; and
  - (ii.) giving particulars of the disposal of every child born there; and
  - (iii.) stating the name of the medical practitioner, midwife, or accoucheur by whom every such woman was attended during her confinement or lying-in; and
- (b) produce to and allow the chairman or any officer or other person appointed by him to inspect the register when demanded; and
- (c) give to the chairman or any such officer or person any information that he may require touching or concerning or relating to any confinement in such licensed premises, or to any child born there.

Register to be kept by foster-mother.  
641, 1895, s. 113.

**175.** (1) Every licensed foster-mother shall keep a register containing the following particulars in respect of every child received by her, so far as such particulars are capable of being ascertained by her, that is to say:—

- (i.) The name, age, and place of birth of the child:
- (ii.) The names, addresses, and description of the parents:
- (iii.) The name, address, description of any persons other than the parents from or to whom the child was received or delivered over:
- (iv.) The date of receipt and delivery over:
- (v.) Particulars of any accident to or illness of the child, and the name of the medical practitioner (if any) by whom the child was attended.

(2) Such register shall at all times be open to inspection by the board or any officer thereof, and the foster-mother shall every six months forward a copy thereof to the board, and shall at all times, when required so to do, give to the board, or any officer thereof, all such information or particulars within her knowledge relating to any child then or at any time previously in her charge or custody, or concerning any near relative or guardian of such child, as the board or any officer thereof shall require.

**176.** (1) Every licensee of a lying-in home, and every licensed foster-mother, shall keep the registers and records required by sections 174 and 175 respectively; and also shall keep all such books and records, and furnish to the board true and correct returns of all such matters and things, as are prescribed, or as the board requires.

Returns and records.  
641, 1895,  
s. 111.

(2) Every licensee of a lying-in home and every licensed foster-mother who fails to comply with any requirement of subsection (1) hereof shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding twenty pounds.

## PART VII.

## PART VII.

### PROCEDURE, PENALTIES, AND GENERAL MATTERS.

**177.** At the hearing of any complaint, information, or indictment against any child, the court before which such hearing takes place may order that all persons not directly interested in the case shall be excluded from the court or place of hearing.

Power to exclude persons from court.  
641, 1895,  
s. 114.  
Of. U.K.  
8 Edw. 7  
c. 67, s. 114.  
Of. U.K.  
22 & 23  
Geo. 5 c. 46,  
s. 6;  
23 Geo. 3  
c. 12, s. 47.

**178.** (1) Any proceedings under the provisions of this Act may be taken by any officer of the board who is authorised by the board to take proceedings, and all such proceedings may be conducted by the said officer or by any other officer of the board.

Power of board to take proceedings.  
Subsec. (1) substituted by 1983, 1930, s. 13 (a).

s. 178. (1) ALDERMAN V. KEMP (1928) S.A.S.R. 4; 13 Austn. Digest 1011. Held, under subsection (1) of section 178 as then enacted, that a complaint under this Act must identify the person desiring to take proceedings on whose behalf the officer makes the complaint, and that proof must be given of who this person is, except where proceedings are instituted for the protection and benefit of persons too young or infirm to be capable of desiring the proceedings for their protection and benefit. Since this decision, subsection (1) has been repealed and a new provision as above substituted by section 13 of the Maintenance Act Amendment Act, 1930.

(2) A document purporting to be under the seal of the board stating that the person therein named is an officer of the board, and is authorised by the board to take proceedings and conduct cases under this Act shall be *prima facie* evidence of the facts so stated.

Subsec. (3)  
struck out  
by 1988,  
1930, s. 13  
(b).

\* \* \* \* \*

Right of  
Crown Solicitor  
and  
officer of  
board to  
appear in  
trials of  
children.  
641, 1895,  
s. 115.  
Cf. U.K.  
20 Geo. 5  
c. 17, s. 155.

**179.** (1) At the hearing of any complaint, information, or indictment against any child, the chairman or some officer of the board may be present, and examine and cross-examine witnesses, and be heard touching the acquittal or punishment of the child.

Subsec. (2)  
inserted by  
1983, 1930,  
s. 14.

(2) At the hearing of any complaint or summons in respect of the making, granting, confirming, altering, varying, remitting, or enforcing of any maintenance order or provisional maintenance order the chairman or some officer of the board may appear on behalf of any person being a party to the proceedings or may appear to assist the court, and may examine and cross-examine witnesses and be heard touching the matters before the court. The Crown Solicitor may either personally or by counsel appear on behalf of any person being a party to the proceedings, or may appear to assist the court on the hearing of any such complaint or summons or on the hearing of any appeal arising from any such complaint or summons, and may examine and cross-examine witnesses, and be heard touching the matters before the court.

For the purposes of this section "maintenance order" and "provisional maintenance order" shall, without limiting the meaning thereof as defined in section 5, be deemed also to respectively include a maintenance order made pursuant to the Maintenance Orders (Facilities for Enforcement) Act, 1922, and a provisional maintenance order made under the said Act or made in a court in a reciprocating State within the meaning of the said Act and transmitted to a court of summary jurisdiction in this State as provided in the said Act.

Evidence of  
husbands  
and wives.

**180.** The wife or husband of any person (as the case may be) shall be competent and compellable to give evidence for or against that person in all matters and complaints under this Act.

**181.** (1) Before making an order under this Act, the court before whom any child is brought may, for the purpose of—

Child may be detained in institution pending trial. 641, 1895, s. 117.

- (a) making inquiry respecting him; or
- (b) making inquiry respecting the mode in which he should be dealt with; or
- (c) enabling the board to be represented; or
- (d) enabling any near relative to appear,

and without prejudice to any other powers of the court, direct that the child be taken to an institution or to any other suitable place, not being a gaol, watch-house, or prison, and to be detained therein for any time not exceeding twenty-one days, or until an order is sooner made—

- (i.) for his discharge; or
- (ii.) for his being sent to an institution; or
- (iii.) for his being otherwise dealt with under this Act.

(2) The board or the officer of the board to whom such order is addressed is hereby empowered and required to detain such child accordingly. If such child escapes, he may be apprehended without warrant and brought back to the place of detention.

(3) Any child may be committed to an institution during the period for which he has been remanded by a court or during the period of his detention on committal for trial in the Supreme Court.

996, 1909, s. 15.

**182.** If an order is made under this Act in respect of a child in the absence of his parent or guardian, to whom reasonable notice of the complaint had not been given, such order may for good cause shown be set aside by the court by which it was made upon the application of such parent or guardian within three months after the making of the order.

Order may be set aside. 641, 1895, s. 118.

**183.** Every inquiry into any complaint for an offence committed by an inmate of an institution or asylum against the provisions of this Act shall, unless the Chief Secretary otherwise directs, be held at the institution or asylum of which the person complained against is an inmate.

Complaints against inmates to be held at institution where offence committed. Ibid., s. 119.

**184.** The governing authority of every institution shall forthwith report to the board all convictions against, and consequent punishments inflicted upon, any inmate of such

Return of complaints and convictions. Ibid., s. 120.

institution, and the board shall cause a return to be made annually to the Chief Secretary of all convictions against and consequent punishments inflicted upon State children.

**185.** Every person shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding ten pounds, or to imprisonment for any term not exceeding three months who—

- (a) without the authority of the board takes or removes any State child from any institution before the expiration of the period of detention of such child; or
- (b) without the authority of the board takes or removes any State child from the foster-parent to or with whom such child is apprenticed or placed out, before the expiration of the term of apprenticeship or placing out; or
- (c) directly or indirectly counsels or induces any State child—

(1) to abscond or escape from any institution before such child has been regularly discharged; or

(2) to break his or her apprenticeship indentures before the expiration of such apprenticeship; or

(3) to abscond from his or her foster-parents before the expiration of such placing out; or

(d) aids or abets any State child in absconding or escaping from any institution or his or her foster-parent as aforesaid; or

(e) prevents any State child from returning to any institution or to his or her foster-parents; or

(f) knowing any State child to have been taken or removed as aforesaid, or to have absconded or escaped as aforesaid, harbours or conceals, or assists in harbouring or concealing, such child.

Penalty for taking, removing, harbouring, etc., State children. 641, 1895 s. 191.

996, 1909, s. 4. Cf. U.K. 20 Geo. 5 c. 17 s. 52 (6).

Cf. U.K. 8 Edw. 7 c. 67, s. 72 (6).

**186.** Every person shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding ten pounds who—

Penalty for communicating with children in institutions.  
641, 1895, s. 122.

- (a) without the authority or permission of the board, or of the governing authority of the institution, as the case may be, holds any communication with any inmate; or
- (b) having entered any institution or any messuage, lands, or premises belonging thereto or used in connection therewith, does not depart therefrom when required to do so by the superintendent, matron, or any officer or servant of such institution; or
- (c) after being forbidden by the board or governing authority as the case may be, so to do, holds any communication, directly or indirectly, or personally, or by letter, or in any other manner howsoever, with any State child.

**187.** Any person who—

- (a) obtains or attempts to obtain from the board or any officer administering the funds thereof any pecuniary or other relief or assistance, or any goods or chattels or other property by way of gift or loan by means of any false pretences; or
- (b) being an inmate of any institution or asylum wilfully wastes, spoils or damages any wearing apparel, tools, implements, or utensils or other property belonging to such institution or asylum,

Penalty on false pretences and damaging board's property.  
Cf. U.K. 20 Geo. 5 c. 17, s. 150.

Cf. U.K. 20 Geo. 5 c. 17, s. 153.

shall be guilty of an offence against this Act and shall be liable to imprisonment with hard labour for any term not exceeding six calendar months.

**188.** (1) Where any person who has the charge, care, or custody, whether for gain or reward or not, of any child under the age of seven years is not a near relative of such child, the home or place of residence and every part thereof of such person shall be open to entry and inspection at all times between the hours of six o'clock in the morning and nine o'clock at night by any officer of the board appointed in writing by the board to inspect the same.

Homes of persons (other than near relatives) having care of children under seven years.  
996, 1909, s. 26.

(2) Any person refusing to allow such entry or inspection, or hindering or resisting any such officer in his making or attempting to make such entry or inspection, shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding twenty pounds.

(3) This section shall not apply to any benevolent institution.

Inspection of  
homes of  
illegitimate  
children under  
seven years.  
996, 1909,  
s. 18.

**189.** (1) The home or place of residence, and every part thereof, of any illegitimate child (not being an illegitimate child in respect of whom an order of adoption has been made pursuant to the Adoption of Children Act, 1925) under the age of seven years shall at all times be open to entry and inspection by any member or officer of the board: Provided that where the board is satisfied that an illegitimate child is being properly cared for in its home or residence, such home or residence shall not be open to entry and inspection under this section.

(2) Any person who refuses to allow such entry or inspection to be made, or hinders or resists any such member or officer in the making of, or attempting to make, such entry or inspection, or who refuses or neglects to produce such child to any such member or officer for inspection by him, upon such production being demanded by such member or officer, shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding twenty pounds.

(3) This section shall not apply to any benevolent institution.

Furnishing of  
confidential  
information.

Inserted by  
1983, 1930,  
s. 15.

**189a.** (1) The chairman may require any person whom he believes to be in a position to do so, to furnish to him a confidential report as to the circumstances or the financial transactions of—

- (a) any person who has applied for relief or the payment of any money by the board under this Act, whether on his own behalf or on behalf of any other person:
- (b) any person who is in receipt of any such relief or payment:
- (c) the near relative of any person who has applied for relief or payment as aforesaid or on whose behalf any such application has been made or of any near relative of any person to whom or in respect of whom any relief is granted or payment is made as aforesaid:

(d) any person who is liable in any way to make any payments to the board either pursuant to any maintenance order or by way of refund of any relief granted or payments made by the board pursuant to this Act.

(2) Any person who, on being required to do so, fails to furnish a report as aforesaid within a reasonable time, or furnishes a report containing any statement which is untrue in any material particular, shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding twenty pounds.

190. Any superintendent or matron of an institution, and any teacher, officer, or servant of the board, or of the governing authority of an institution, who negligently or knowingly permits or suffers any inmate to escape from such institution, shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding twenty pounds.

Penalty for permitting escape.

641, 1895, s. 123.

191. If any officer or servant of the board, or of the governing authority of any institution, is guilty of any breach of any section of this Act or of any regulation intended for the protection of any child, he shall be dismissed from his office or employment, and shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding twenty pounds, or to be imprisoned for any period not exceeding six months.

Penalty on officers.

Ibid., s. 124.

192. Every person authorised by writing under the seal of the board to take charge of any child ordered to be detained under this Act, for the purpose of conveying such child to or from any institution, or to or from a foster-parent, shall, for such purpose, and while engaged in such duty, have all such powers, authorities, protection, and privileges for the purpose of the execution of his duty as any police constable has by common law or statute.

Privilege of persons in charge of State children.

Ibid., s. 131.

193. In every action for anything done in obedience to any mandate or order it shall be sufficient for the defendant to justify under such mandate or order only, without setting forth the previous proceedings, and the production of either duplicate of the mandate or order shall be sufficient evidence to prove the fact of making such mandate or order.

Mandate to be a defence to actions.

Ibid., s. 140.

PART VII.

Protection to board and officers. 641, 1895, s. 141.

194. (1) No action shall be brought against the board or any governing authority of an institution or any person for anything done in pursuance of this Act, unless—

- (a) such action is commenced within six months next after the act or default complained of; and
- (b) notice in writing of such action, and the cause thereof, has been given to the defendant one month at least before the commencement of the action.

(2) The defendant in any such action may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon.

(3) The plaintiff shall not recover in such action if tender of sufficient amends is made before action is brought, or if, after action brought, the defendant pays into court sufficient amends; but in such last-mentioned case the plaintiff shall recover his cost of suit up to the time of the payment into court.

Free passes for State children on railways.

195. (1) Every State child may, for the purpose of—

- (a) travelling between the home of his foster-parent and any institution; or
- (b) travelling to or from any public school for the purpose of attending the same for instruction,

travel free upon any railway owned or managed by the South Australian Railways Commissioner upon production of a certificate under the hand of the chairman stating that such child is entitled to travel free under the provisions of this section.

(2) Any person in charge of a State child whilst travelling as mentioned in paragraph (a) above, may travel free on any such railway as aforesaid, upon production of a certificate under the hand of the chairman, stating that that person is entitled to travel free under the provisions of this section.

Children employed in a circus. 641, 1895, s. 144.

196. (1) Any child under the age of thirteen years who is employed or engaged in any circus, or acrobatic entertainment, or exhibition by which his life, health, or safety is likely to be lost, prejudiced, or endangered, shall be deemed a neglected child within the meaning of this Act.

Subsec. (2) repealed by 2279, 1936, s. 3.

\* \* \* \* \*

197. All orders made by the board in pursuance of this Act shall be in duplicate, sealed with the corporate seal, and either duplicate of such order, purporting to be sealed with such seal, shall for all purposes and in all courts be *prima facie* evidence of the facts therein stated, and that such order was duly made.

Orders of board to bear seal of board, and to be received as evidence.

641, 1895, s. 132.  
 Cf. U.K. 22 & 23 Geo. 5 c. 46, s. 40.

198. The *Government Gazette* containing a proclamation of the establishment or control of any institution under this Act, or of the governing authority thereof, or notifying the appointment of the chairman or a member of the board or the appointment of any person as an officer under this Act, or of the appointment of any person as a member of the governing authority of any institution, shall be conclusive evidence of the facts therein stated.

*Gazette* evidence.

641, 1895, s. 133.

\* \* \* \* \*

S. 199 repealed by 2252, 1935, s. 4.

200. (1) Every complaint, conviction, mandate, order, or warrant under this Act shall be deemed valid and sufficient if the same is in any of the forms in the schedules hereto which may be applicable, with such modifications as the circumstances may require; or in which the offence or act or default is set forth in the words of this Act.

Forms of proceedings.

641, 1895, s. 135.

(2) No conviction, mandate, order, or warrant under this Act shall be held void by reason of any defect therein.

201. No order, or copy or minute thereof, made pursuant to this Act, need be served on any defendant for the purposes of this Act.

Orders need not be served.

819, 1903, s. 5.

202. (1) The several forms in the schedules hereto, or forms to the like effect, may be used, with such variations as the circumstances require, and shall be sufficient for the several purposes to which they are applicable respectively.

Forms.

641, 1895, s. 146.

(2) When no form is prescribed, a form reasonably adapted to the circumstances of the case may be used, and shall be sufficient for its purpose.

203. (1) In addition to any other power by any other section of this Act conferred on the Governor to make regulations as to any matter, the Governor may make all such regulations as may be necessary or convenient for carrying

Regulations.

*Ibid.*, s. 147.

## Maintenance Act, 1926-1937.

into effect the provisions and objects of this Act, including (but without limiting the generality of this section) regulations for the purpose of regulating—

- (a) the duties, powers, authorities, and privileges of all persons employed in the administration of this Act:
- (b) the meetings and proceedings of the board:
- (c) the management, control, and supervision of institutions, asylums, and lying-in-homes:
- (d) the custody, maintenance, grading, education, employment, apprenticing, and placing out of State children:
- (e) the admission of ministers of religion to institutions and asylums:
- (f) the visitation of State children at institutions, or apprenticed, or placed out:
- (g) the channel of communication and correspondence with State children:
- (h) the punishment of State children:
- (i) wages and rewards to State children:
- (j) the management and control of property vested in the board:
- (k) records to be kept at institutions and asylums and by licensees:
- (l) the making of applications for relief under this Act:
- (m) the admission of persons into asylums, and the employment of persons so admitted:
- (n) the conduct of persons admitted into asylums:
- (o) the form and contents of agreements, appointments, apprenticeship articles, authorities, complaints, informations, licences, mandates, notices, orders, summonses, and all other instruments and documents, and the mode of executing, serving, or delivering the same:
- (p) the fees to be paid:
- (q) the imposing of penalties:
- (r) the income and expenditure of the board:
- (s) the time and manner in which any act, deed, matter, or thing required by this Act to be done, and as to which the time or procedure is not provided, is to be done or performed:

(t) all other matters and things arising under and consistent with this Act not expressly provided for.

**204.** All proceedings in respect of offences against this Act (not being misdemeanours) shall be disposed of summarily.

Summary proceedings for offences.  
641, 1895,  
s. 134.

**205.** No warrant shall be issued under this Act by a justice unless the complaint against the person for whose apprehension the warrant is issued is substantiated to the satisfaction of the justice on oath made before him.

Issue of warrants.

**206.** All moneys received for penalties imposed for offences against this Act shall be paid to the Treasurer, for the public uses of the State and in support of the Government thereof.

Appropriation of penalties.  
Ibid., s. 142.

**207.** In any information or complaint for any offence committed upon or in respect of any property, money, goods, chattels, or effects, under the management or control of the board, or of any of the officers thereof, it shall be sufficient to state or allege that the property, money, goods, chattels, or effects belong to the board, and that any offence has been done or committed with intent to injure or defraud (as the case may be), the board, without any further or other name, addition, or description whatever.

Procedure on informations and complaints.

**208.** Any reference in any other Act to the State Children's Council or the Destitute Board shall be deemed to be a reference to the board, and any reference to either the chairman or the secretary of either of the first-mentioned bodies shall be deemed to be a reference to the chairman of the board; and any reference to a member of either of the said bodies shall be deemed to be a reference to a member of the board.

References in other Acts.

## Maintenance Act, 1926-1937.

## THE SCHEDULES.

## THE FIRST SCHEDULE.

## ACTS REPEALED.

Reference to Acts.	Short Title of Act.
No. 210 of 1881 .	The Destitute Persons Act, 1881
No. 387 of 1886 .	The Destitute Persons Act Amendment Act, 1886
No. 641 of 1895 .	The State Children Act, 1895
No. 664 of 1896 .	The Married Women's Protection Act, 1896
No. 702 of 1898 .	The Affiliation Law Amendment Act, 1898
No. 750 of 1900 .	The State Children Amendment Act, 1900
No. 819 of 1903 .	The State Children Further Amendment Act, 1903
No. 832 of 1903 .	The Destitute Persons and State Children Acts Amendment Act, 1903
No. 996 of 1909 .	The State Children Amendment Act, 1909
No. 1339 of 1918	State Children Further Amendment Act, 1918

Sections 47,  
90.

## THE SECOND SCHEDULE.

## No. 1.

## Maintenance Act, 1926.

## COMPLAINT AGAINST NEAR RELATIVE OF A CHILD.

The complaint of \_\_\_\_\_ of \_\_\_\_\_ [add where necessary an officer of the Children's Welfare and Public Relief Board duly appointed to make the complaint hereinafter set out] taken this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, before me, the undersigned, a Justice of the Peace for the said State, who states [set out the complaint in such of the forms following as may be applicable], namely,

- (1) That F of \_\_\_\_\_ and S of \_\_\_\_\_ are near relatives within the meaning of the Maintenance Act, 1926, of C, a male child of the age of \_\_\_\_\_ years, and are able to contribute towards [or pay for] the maintenance and past maintenance of the said child:
- (2) That C, a male child of the age of \_\_\_\_\_ years, is an illegitimate child born of the body of \_\_\_\_\_ of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, and that P is the father thereof, and is able to pay for [or contribute towards] the maintenance and past maintenance of the said child, and the confinement expenses of the mother:
- (3) That C, a male child of the age of \_\_\_\_\_ years, is a State child within the meaning of the Maintenance Act, 1926, and that the sum of £ \_\_\_\_\_ is owing to the Children's Welfare and Public Relief Board for the past maintenance of the said child:
- (4) That P has disobeyed or neglected to comply with an order made against him under the Maintenance Act, 1926, on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, in respect of the maintenance of C, a male child of the age of \_\_\_\_\_ years:
- (5) That P intends to evade compliance with an order made against him under this Act on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, in respect of the maintenance of C, a male child of the age of \_\_\_\_\_ years:

Taken before me the day and year }  
first above written at }  
in the said State. }  
Justice of the Peace.

[Signature of Complainant.]

## No. 2.

Section 47.

## Maintenance Act, 1926.

## MAINTENANCE ORDER IN RESPECT OF CHILD.

Upon complaint made by \_\_\_\_\_ of \_\_\_\_\_ (or K, an officer of the Children's Welfare and Public Relief Board), wherein it is alleged that C, a male child of the age of \_\_\_\_\_ years, is an illegitimate child; that P is the father thereof; that the said C is a State child within the meaning of the Maintenance Act, 1926; that there is owing to the Children's Welfare and Public Relief Board the sum of \_\_\_\_\_ for the past maintenance of the said child; and that the said P is able to pay for (or contribute towards) the maintenance and past maintenance of the said child; and the said complaint coming on for hearing this day before us, the undersigned, two justices of the peace for the State of South Australia, and sitting at \_\_\_\_\_, and having heard the evidence of A, the mother of the said child, and being satisfied that the several allegations aforesaid have been duly proved, we do adjudge the said P to be the father of the said C.

And we do order as follows, that is to say [*use such of the forms following as may be applicable*]:—

That the said P do pay to \_\_\_\_\_ the sum of \_\_\_\_\_ for the past maintenance of the said child on or before the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ next [*or if by instalments set out number, amounts, and dates of payment*]:

That the said P do pay to \_\_\_\_\_ the sum of \_\_\_\_\_ shillings on the \_\_\_\_\_ day of \_\_\_\_\_ every week hereafter until the said child attains the age of \_\_\_\_\_ years, or until further order:

That the said P do pay the sum of \_\_\_\_\_ for confinement expenses of \_\_\_\_\_:

That the said P do pay to the said \_\_\_\_\_ the sum of \_\_\_\_\_ for his costs incurred in this behalf:

That all the said sums be paid to \_\_\_\_\_ at \_\_\_\_\_:

That the said P do forthwith find good and sufficient security by recognizance himself in the sum of \_\_\_\_\_ pounds and two sureties in the sum of \_\_\_\_\_ pounds each, or one surety in the sum of \_\_\_\_\_ pounds, for the due compliance of him, the said P, with this order: And in default of such security being found I (or we) do adjudge the said P to be imprisoned in \_\_\_\_\_ for the space of [*with or without hard labour, as the case may be*]:

That [*the person upon whom notice of attachment of moneys or property has been served*] do forthwith pay (or deliver over) to \_\_\_\_\_, at \_\_\_\_\_, the sum of \_\_\_\_\_ [*or describe the property to be delivered over*], being all (or portion) of the money (or property) attached in his hands by notice from \_\_\_\_\_ dated the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, at \_\_\_\_\_ in the said State.

*Justices of the Peace.*

## No. 3.

Section 77.

## Maintenance Act, 1926.

## NOTICE OF ATTACHMENT.

To

Whereas a complaint has been made under section \_\_\_\_\_ of the Maintenance Act, 1926, against A B, of \_\_\_\_\_: And whereas you have, or are supposed to have, in your care, custody, or control money or property of or belonging or payable to the said A B: Notice is hereby given you not to part with the possession of such money or property, or any part thereof, until after the said complaint has been heard and determined.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

*, Complainant.*

## Maintenance Act, 1926-1937.

Section 62.

No. 4.

Maintenance Act, 1926.

COMPLAINT BY NEAR RELATIVE.

The complaint of \_\_\_\_\_ of \_\_\_\_\_ taken this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_, before me, the undersigned, a justice of the peace for the State of South Australia, who states:—

1. That an order was made against him, pursuant to the Maintenance Act, 1926, on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_, in respect of the maintenance of C, a male child of the age of \_\_\_\_\_.

2. That F, of \_\_\_\_\_ and S, of \_\_\_\_\_, are near relatives of the said C, and are able to pay for (or contribute towards) the maintenance of the said C. Taken, &c. [as in Form No. 1].

Section 62.

No. 5.

Maintenance Act, 1926.

ORDER VARYING MAINTENANCE.

Upon complaint made by P, of \_\_\_\_\_, against F, of \_\_\_\_\_, and S, of \_\_\_\_\_, wherein it is alleged [set out substance of allegations], and the said complaint coming on for hearing this day before us, &c. [as in Form No. 2], we do order as follows, that is to say [use such of the forms following or in No. 2 or 3 as may be applicable].

That the said order against the said P be annulled as from this date (or be suspended for \_\_\_\_\_ months from this date, or be varied in the following particulars [setting them out]:

That the said P do pay the sum of \_\_\_\_\_ shillings; the said F do pay the sum of \_\_\_\_\_ shillings; and the said S do pay the sum of \_\_\_\_\_ shillings on \_\_\_\_\_ day next, and on the \_\_\_\_\_ day in every week thereafter, until the said C attains the age of \_\_\_\_\_ years, or until further order for the maintenance of the said C:

That all the said sums be paid to \_\_\_\_\_ at \_\_\_\_\_.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.  
Justices of the Peace.

Section 53.

No. 6.

Maintenance Act, 1926.

COMPLAINT AGAINST THE FATHER OF AN UNBORN ILLEGITIMATE CHILD.

The complaint of \_\_\_\_\_ of \_\_\_\_\_, made this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, at \_\_\_\_\_, before the undersigned, a justice of the peace for the State of South Australia, who states—

1. That \_\_\_\_\_, of \_\_\_\_\_, is the father of a certain unborn illegitimate child, of which \_\_\_\_\_ is pregnant:

2. That the said \_\_\_\_\_ is able to pay for (or contribute towards) the maintenance of the said child, should it be born, and the confinement expenses of the mother.

Taken before me, at \_\_\_\_\_, the }  
day and year first above written. }  
Justice of the Peace. }

[Signature of Complainant.]

No. 7.

Sections 53,  
54.

Maintenance Act, 1926.

ORDER FOR MAINTENANCE AND CONFINEMENT EXPENSES IN CASE OF AN UNBORN CHILD.

Upon complaint made by \_\_\_\_\_ (hereinafter called "the complainant") against \_\_\_\_\_, (hereinafter called "the defendant") whereby it was alleged the defendant is the father of a certain unborn illegitimate child of which \_\_\_\_\_ is pregnant, and the said complaint coming on for hearing this day before us, the undersigned, two justices of the peace for the State of South Australia; having heard the evidence of \_\_\_\_\_, a legally qualified medical practitioner, that the said \_\_\_\_\_ is pregnant, and the evidence of the said \_\_\_\_\_ and being satisfied that the allegations in the said complaint have been proved, we do adjudge the defendant to be the father of the said child: And we do order as follows, that is to say—That the defendant do pay to the Children's Welfare and Public Relief Board the sum of \_\_\_\_\_ for the confinement expenses of the said \_\_\_\_\_; that the defendant do pay to \_\_\_\_\_ on the day of the birth of the said child, and on the same day in each week thereafter, the sum of \_\_\_\_\_, until the said child attains the age of eighteen years, or until further order; that the defendant do pay to the complainant the sum of \_\_\_\_\_ for costs in this behalf.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, at \_\_\_\_\_ in the said State.

*Justices of the Peace.*

No. 8.

Sections 102,  
103.

Maintenance Act, 1926.

COMPLAINT AGAINST A CHILD.

The complaint of \_\_\_\_\_ of \_\_\_\_\_ made this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, at \_\_\_\_\_ before the undersigned, a justice of the peace for the State of South Australia, who states that A B, of \_\_\_\_\_, in the said State [*here set out the charge in such of the forms following as may be applicable with any modification which the circumstances may require*]:—

- (a) is a destitute child in that he has no sufficient means of subsistence, and his near relations are in indigent circumstances and unable to support him (*or are dead, or are unknown, or cannot be found, or are out of the jurisdiction, or are in custody of the law*):
- (b) did on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ in the said State [*here set out a statement of the charge of being a neglected child following the words as near as may be of the definition of neglected child in section 4*]:
- (c) is an uncontrollable (*or incorrigible*) child:
- (d) is under the guardianship of a person, to wit, who is unfit to have such guardianship.

Taken before me, at \_\_\_\_\_ }  
aforesaid, the day and year first }  
above written. }

*Justice of the Peace.*

No. 9.

Section 102.

Maintenance Act, 1926.

MANDATE FOR NEGLECTED CHILD TO BE SENT TO AN INSTITUTION.

To \_\_\_\_\_, Esquire, Commissioner of Police, and all constables in the State of South Australia, and to the superintendent (*or matron*) of the Industrial School at Edwardstown [*or other institution, as the case may be*] in the said State:

Whereas A B, a boy, has been brought before a court of summary jurisdiction, charged with being a neglected child within the meaning of the Maintenance Act, 1926, in that [*set out the terms of the complaint*]: And whereas we have heard the matter of the said complaint, and are satisfied that the said A B is in fact a neglected child within the meaning of the said Act: And whereas the said A B

## Maintenance Act, 1926-1937.

is of the age of \_\_\_\_\_ years and \_\_\_\_\_ months, and of Protestant  
(*or Roman Catholic or Jewish, as the case may be*) religion: And whereas we  
have ordered the said A B to be sent to the Industrial School at Edwardstown  
[*or other institution*] to be there detained or otherwise dealt with under the said  
Act until he attains the age of eighteen years: These are to require you, to whom  
this mandate is directed, to take the said A B to the said institution and there  
to deliver him to the superintendent (*or matron*) thereof, together with the  
duplicate of this mandate, and the said superintendent (*or matron*) is hereby  
required to receive the said child into the said institution, there to be detained or  
otherwise dealt with under the said Act until the expiration of the term afore-  
said, unless he shall in the meantime be discharged in due course of law.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, at  
in the said State.

*Justices of the Peace.*

Section 102.

No. 10.

Maintenance Act, 1926.

MANDATE FOR DESTITUTE CHILD TO BE SENT TO AN INSTITUTION.

To [*as in Form No. 2*].

Whereas A B, a boy, has been brought before a court of summary jurisdiction  
charged with being a destitute child within the meaning of the Maintenance Act,  
1926, in that he has no sufficient means of subsistence, and that his relatives are  
in indigent circumstances and unable to support the said A B (*or are dead, &c.*):  
And whereas we have heard the matter of the said complaint, and are satisfied  
that the said A B is in fact a destitute child within the meaning of the said Act:  
And whereas, &c. [*continue as in Form No. 11*].

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, at  
in the said State.

*Justices of the Peace.*

Section 103.

No. 11.

Maintenance Act, 1926.

MANDATE FOR UNCONTROLLABLE OR INCORRIGIBLE CHILD TO BE SENT  
TO AN INSTITUTION.

To [*as in Form No. 11*].

Whereas A B, a boy, has been brought before a court of summary jurisdiction,  
and charged with being an uncontrollable (*or incorrigible*) child: And whereas  
we have heard the matter of the said complaint, and are satisfied that the same  
is well founded: And whereas the said A B is of the age \_\_\_\_\_ years  
months, and is of the Protestant [*or as the case may be*] religion: And whereas  
we have ordered the said A B to be sent to the [*name or description of*  
*institution*] to be there detained and dealt with pursuant to the said Act for a  
period of \_\_\_\_\_ months from the day of the date hereof (*or until he attains*  
the age of eighteen years): These are to require [*continue as in Form No. 11*].

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, at \_\_\_\_\_ in the  
said State.

*Justices of the Peace.*

Section 103.

No. 12.

Maintenance Act, 1926.

ORDER FOR UNCONTROLLABLE, ETC., CHILD TO BE RELEASED ON PROBATION.

Whereas [*insert recitals as in Form No. 13 down to the words "well founded"*].  
Now therefore we do hereby order that the said A B be released on probation,  
and that until he attains the age of eighteen years he shall be subject to the  
supervision of the Children's Welfare and Public Relief Board pursuant to the  
said Act; and we do further order that the said A B shall from time to time,  
until he attains the said age, report himself to the said Board, or to the Secretary  
thereof, at such places and times and in such manner as the said board or the  
Secretary thereof shall direct.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ in the said  
State.

*Justices of the Peace.*

No. 13.

Section 118.

## Maintenance Act, 1926.

## MANDATE FOR CONVICTED CHILD TO BE SENT TO A REFORMATORY SCHOOL.

To [as in Form No. 11, varied to suit the circumstances].

Whereas on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, at \_\_\_\_\_ in the State of South Australia, before a court of summary jurisdiction, A B, a boy, was convicted of a certain offence punishable by imprisonment, to wit [*describe the offence in the words of the conviction*]: And whereas the said A B is of the age of \_\_\_\_\_ years and \_\_\_\_\_ months, and is of the Protestant [*or as the case may be*] religion: And whereas we have ordered the said A B to be sent to the Reformatory School at Magill, in the said State [*or other institution, as the case may be*], to be there detained or otherwise dealt with, pursuant to the Maintenance Act, 1926, for the term of \_\_\_\_\_ from the day of the date hereof (*or until he attains the age of eighteen years, as the case may be*): These are to require [*continue as in Form No. 11*].

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, at \_\_\_\_\_ in the said State. \_\_\_\_\_  
Justices of the Peace.

No. 14.

Section 128.

## Maintenance Act, 1926.

## AGREEMENT FOR BOARDING OUT STATE CHILD.

Whereas A B, of [*here state residence and occupation*] has agreed with the Children's Welfare and Public Relief Board to receive and take charge of C D, a State child, now under the care of the Board, for the term of \_\_\_\_\_ from this date, upon receiving from the Board the sum of \_\_\_\_\_ weekly (monthly, *or quarterly*) [*or without fee or reward*]: These are therefore to authorise the said A B, pursuant to the above-mentioned Act, to take the said C D to be by him kept, maintained, clothed, and educated during the said term.

In witness whereof the seal of the Council has been hereunto affixed this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

(Seal of Board).

\_\_\_\_\_, Secretary.

I, the above-named A B, hereby agree with the said Board to receive and keep, maintain, clothe, and educate, to the satisfaction of the said Board, the said C D, for the term and upon the conditions specified in this agreement, and subject in all things to the provisions of the said Act and the regulations thereunder.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

Witness—

A B

No. 15.

Section 128.

## Maintenance Act, 1926.

## AGREEMENT FOR SERVICE OF A STATE CHILD.

Whereas A B, of [*here state residence and occupation*], has agreed with the Children's Welfare and Public Relief Board to receive for service and take charge of C D, a State child now under the care of the Board, for the term of \_\_\_\_\_ from this date: These are therefore to authorise the said A B to receive and take charge of the said C D, to be by the said A B kept, maintained, clothed, and educated during the term of such service, pursuant to the Maintenance Act, 1926, and the regulations thereunder.

In witness, &c. [*as in Form No. 16*].

I, the above-named A B, hereby agree with the said Board to receive the said C D into service, and to keep, maintain, clothe, and educate him to the satisfaction of the Board, for the term and upon the conditions specified in this agreement, and I agree to pay for the services of the said C D the sum of \_\_\_\_\_ per week [*here set out rates of wages, &c. If no wages are to be paid, omit agreement for payment of wages*], subject in all things to the provisions of the said Act and regulations.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

Witness—

A B

Section 128.

No. 16.

## Maintenance Act, 1926.

## AGREEMENT FOR THE ADOPTION OF A STATE CHILD.

Whereas A B, of [*here state residence and occupation*], has agreed with the Children's Welfare and Public Relief Board to adopt and take charge of C D, a State child now under the care of the board, for the term of \_\_\_\_\_ from this date: These are therefore to authorise the said A B to receive and take charge of the said C D, to be by the said A B kept, maintained, clothed, and educated, during the said term, pursuant to the above-mentioned Act and the regulations thereunder.

In witness, &c. [*as in Form No. 16*].

I, the above-mentioned A B, hereby agree with the said board to adopt the said C D, and to keep, maintain, clothe, and educate him to the satisfaction of the said Council during the term and upon the conditions specified in this agreement, subject in all things to the said Act and regulations.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

Witness—

A B

Sections 111  
and 112.

No. 17.

## Maintenance Act, 1926.

## ORDER BY BOARD REMOVING STATE CHILD FROM ONE INSTITUTION TO ANOTHER.

Whereas A B is now an inmate of the [*name of institution*] at \_\_\_\_\_

And whereas the Children's Welfare and Public Relief Board has determined that the said A B shall be removed to and detained at the [*name of institution*] at \_\_\_\_\_ These are therefore to require you, C D, forthwith to take the said A B from the said [*name of institution*] to the said reformatory school [*or as the case may be*], and there to deliver him to E F, the superintendent (*or* matron) thereof, together with a duplicate of this order; and you, the said E F, are hereby required to receive the said A B into the said reformatory school [*or as the case may be*], to be there detained in accordance with the copy mandate accompanying this order.

In witness whereof the seal of the said Board has been hereunto affixed this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

(Seal of Board)

\_\_\_\_\_, *Secretary.*

To C D, of [*residence and occupation*] and E F, superintendent (*or* matron) of the [*name of institution to which child is to be removed*].

Section 145.

No. 18.

## Maintenance Act, 1926.

ORDER BY BOARD FOR RETURN BY FOSTER-PARENT OF STATE CHILD  
APPRENTICED OR PLACED OUT.

Pursuant to the provisions of the Maintenance Act, 1926, the Children's Welfare and Public Relief Board hereby orders and requires you forthwith to deliver A B, a State child apprenticed to (*or* placed out with) you, at the [*name of institution*] at \_\_\_\_\_ (*or* to C D, of \_\_\_\_\_, the bearer hereof, who is authorised by the board to receive the said A B). [*Add, if so determined*—The said board hereby cancels the indentures of apprenticeship of the said A B whereby he was apprenticed to you (*or* revokes the agreement dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, whereby you were authorised to receive the said A B)].

In witness, &c. [*as in Form No. 19*].

To G H [*name and address of parent or foster-parent*].

N.B.—Take notice that if you fail to comply with this order you will be liable to a penalty not exceeding £10.

No. 19.

Section 145.

Maintenance Act, 1926.

ORDER BY BOARD TO STATE CHILD APPRENTICED OR PLACED OUT TO RETURN TO AN INSTITUTION.

Pursuant to the provisions of the Maintenance Act, 1926, the Children's Welfare and Public Relief Board hereby orders and requires you forthwith to return with C D, the bearer hereof, to [name of institution] at (or to forthwith surrender yourself at the [name of institution] at ).

In witness, &c. [as in Form No. 16.]

To A B [name of State child].

No. 20.

Section 165.

Maintenance Act, 1926.

LICENCE FOR LYING-IN HOME.

In consideration of the sum of five shillings paid by of the premises hereunder mentioned, that is to say [describe the premises and situation], are hereby licensed to be kept and used as a place for the accommodation of females during their confinement and lying-in, subject to the provisions of the Maintenance Act, 1926, and the regulations thereunder, for the term of one year from the date hereof.

Dated this day of , 19 .

By order of the Children's Welfare and Public Relief Board, Chairman.  
(Seal.)

No. 21.

Section 168.

Maintenance Act, 1926.

LICENCE FOR FOSTER-MOTHER.

In consideration of the sum of one shilling paid by of the said is hereby licensed as a foster-mother subject to the provisions of the Maintenance Act, 1926, and the regulations thereunder, for the term of one year from the date hereof.

The number of children under seven years of age to be kept by the said under this licence shall not at any time exceed .

Dated this day of , 19 .

By order of the Children's Welfare and Public Relief Board, Chairman.  
(Seal.)

THE THIRD SCHEDULE.

Section 66.

No. 1.

Maintenance Act, 1926.

COMPLAINT AGAINST HUSBAND.

The complaint of states that her husband (a) has been guilty of—

I. Cruelty to informant on the day of 19 , at (d) and on the day of 19 , at (d):

II. Cruelty to (b) and (b) children of the informant, on the day of at (d) and on the day of 19 , at (d):

III. Habitual drunkenness during the period from the day of 19 , to the day of 19 :

IV. Indecent behaviour before the children of the informant during the period from the day of 19 , to the day of 19 :

v. Adultery with (c) on the day of 19 , at (d), and with (c) on the day of 19 , at (d):

VI. Desertion on the day of 19 :

VII. Wilful neglect to provide reasonable maintenance for informant on the day of :

VIII. Wilful neglect to provide reasonable maintenance for informant's children (b) and (b) on the day of 19 :

And the complainant applies for summary protection under the Act.

[Signature of Complainant.]

Maintenance Act, 1926-1937.

Laid before me at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_  
*Justice of the Peace.*

NOTE.—

- (a) Fill in name, address, and occupation of husband.
- (b) Fill in names of children.
- (c) Fill in, if known, the names of persons with whom the adultery is charged.
- (d) Fill in places.

Strike out all references to matters of complaint which are not intended to be established.

Section 65.

No. 2.

Maintenance Act, 1926.

SUMMONS.

To \_\_\_\_\_ of \_\_\_\_\_

As complaint has been laid by your wife that you have been guilty of [*here copy the matter of complaint as set out in the complaint*], you are summoned to appear on \_\_\_\_\_ at \_\_\_\_\_ at \_\_\_\_\_ o'clock, before the court of summary jurisdiction there sitting to answer an application for protection under the Act.

Given under my hand at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_, before me. J.P.

Section 68.

No 3.

Maintenance Act, 1926.

ORDER.

On the application of (a) for protection under this Act, the court finds that her husband (b) has been guilty of—

- Cruelty to her on the (d) day of \_\_\_\_\_ :
- Cruelty to her children on the (d) day of \_\_\_\_\_ :
- Habitual drunkenness during the period from the \_\_\_\_\_ day of \_\_\_\_\_ to the \_\_\_\_\_ day of \_\_\_\_\_ :
- Indecent behaviour before her children during the period from the \_\_\_\_\_ day of \_\_\_\_\_ to the \_\_\_\_\_ day of \_\_\_\_\_ :
- Adultery on the (d) day of \_\_\_\_\_ :
- Desertion on the \_\_\_\_\_ day of \_\_\_\_\_ :
- Wilful neglect to provide reasonable maintenance for her on the \_\_\_\_\_ day of \_\_\_\_\_ :
- Wilful neglect to provide reasonable maintenance for her children (c) on the \_\_\_\_\_ day of \_\_\_\_\_ :

The court doth [*here set out order in one or more of following paragraphs, as the case may require*]—

- I. Relieve the informant from any obligation to cohabit with the said [*here set out Christian and surname of husband*];
- II. Grant to informant the legal custody of her children (c):
- III. Grant to the said [*Christian and surname of husband*] the following rights of access to the children of the informant and the said \_\_\_\_\_, namely [*here set out times and places, as far as possible, when access is allowed.*]
- IV. Direct the said [*Christian and surname of husband*] to pay to [*here set out informant or name of other person to whom money is to be paid*] the sum of [*here set out amount*] per [*here set out week or other period*], such sum to be paid to the said [*name of person to whom money is to be paid*] on [*here set out day on which money is to be paid, if so ordered*] for the maintenance of the said informant [*and, if custody of children granted, add "and of her children whose custody is granted to her."*]

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

NOTE —

*Special Magistrate.*

- (a) Fill in name and address of complainant.
- (b) Fill in name, address, and occupation of husband.
- (c) Fill in names of children.
- (d) Fill in dates and places.

The Stamp Duties Act, 1925-1952, including all amendments passed to the end of 1952 and notes of judicial decisions, is reprinted in the Annual Volume, 1952, at page 245.

## STAMP DUTIES ACT, 1923-1937.

BEING

STAMP DUTIES ACT, 1923, No. 1569 OF 1923 [ASSENTED TO  
21ST NOVEMBER, 1923.]

AS AMENDED BY

STAMP DUTIES ACT, 1927, No. 1822 OF 1927 [ASSENTED TO  
21ST DECEMBER, 1927.]

STAMP DUTIES AMENDMENT ACT, 1928, No. 1860 of 1928  
[ASSENTED TO 17TH OCTOBER, 1928.]

LOTTERY AND GAMING ACT AMENDMENT ACT, 1928, No. 1877 OF  
1928 [ASSENTED TO 1ST NOVEMBER, 1928.]

STATUTE LAW REVISION ACT, 1935, No. 2246 OF 1935  
[ASSENTED TO 19TH DECEMBER, 1935.]

STAMP DUTIES ACT AMENDMENT ACT, 1936, No. 2312 OF 1936  
[ASSENTED TO 19TH NOVEMBER, 1936.]

AND

STAMP DUTIES ACT AMENDMENT ACT, 1937, No. 2359 OF 1937  
[ASSENTED TO 19TH NOVEMBER, 1937.]

An Act to consolidate certain Acts relating to stamp  
duties.

BE IT ENACTED by the Governor of the State of South  
Australia, with the advice and consent of the Parliament  
thereof, as follows:

### PART I.

PART I.

#### PRELIMINARY PROVISIONS.

1. This Act may be cited as the "Stamp Duties Act, 1923-1937." Short title.

2. The provisions of this Act are arranged as follows: Arrangement  
of Act.

PART I.—Preliminary Provisions:

PART II.—General Provisions with respect to Stamp  
Duties:

PART III.—Special Provisions with respect to certain  
Stamp Duties:

Stamp Duties Act, 1927: This Act was proclaimed to commence on 24th December, 1927:  
*Gazette* 22nd December, 1927, p. 1609.

## PART IV.—Special Provisions with respect to Amusements Duty:

## PART V.—Miscellaneous Provisions.

Acts consolidated and repealed.

3. This Act is a consolidation of the Acts mentioned in the first schedule, and the said Acts are hereby repealed.

Interpretation.  
372, 1886.  
s. 2.

4. In this Act, unless it is otherwise provided or there is something in the context repugnant thereto—

“Commissioner” means any person appointed Commissioner of Stamps under this Act:

“die” includes any plate, type, tool, or implement whatever used under the direction of the Commissioner for denoting any duty, or the fact that any duty or penalty has been paid, or the fact that any instrument is duly stamped or is not chargeable with any duty, and also includes any part of any such plate, type, tool, or implement:

“duty” includes every duty chargeable under this Act:

“executed” and “execution,” with reference to instruments not under seal, mean signed and signature:

“forge” includes counterfeit:

“instrument” includes every written document:

“material” means any sort of material upon which words or figures can be expressed:

“money” includes all sums expressed in British, foreign, or colonial currency:

“stamp” means as well a stamp impressed by means of a die as an adhesive stamp:

“stamped” means impressed with a stamp by means of a die or having an adhesive stamp affixed:

“stock” means any share in the stocks or funds of any foreign or colonial State or Government, or in the capital stock or funded debt of any company, corporation, or society in South Australia, or of any foreign or colonial company, corporation, or society:

“write,” “written,” and “writing” include every mode in which words or figures can be expressed upon material.

Cf. U.K.  
54 & 55 Vict.  
c. 38, s. 27.  
Cf. U.K.  
54 & 55 Vict.  
c. 39, s. 122.

## PART I.

5. (1) Subject to the exemptions contained in the second schedule, there shall be charged, for the use of His Majesty, the several stamp duties specified in the said schedule upon and for the several instruments therein set forth, and also such other duties as are specified in the said schedule.

Stamp duties to be charged.  
789, 1902, s. 5 (part).  
Cf. U.K. 54 & 55 Vict. c. 39, s. 1.

(2) The duty chargeable upon any such instrument shall be a debt due to His Majesty from every party who executes such instrument, and shall be recoverable in the name of the Commissioner on behalf of His Majesty from any such party or parties in any court of competent jurisdiction.

Stamp duty to be recoverable as a debt.  
1216, 1915, s. 15.

(3) It shall not be necessary to stamp any instrument executed before the sixth day of December, eighteen hundred and eighty-six.

372, 1886, s. 16.

6. (1) The Governor may appoint a Commissioner of Stamps, a Deputy Commissioner of Stamps, and any other necessary officers for carrying this Act into effect.

Power to appoint officers.  
372, 1886, s. 4.  
789, 1902, s. 38 (part).

(2) Such Commissioner, such Deputy Commissioner, and every such other officer shall give such security for the due discharge of his duties under this Act as the Governor may direct.

(3) The said Commissioner may sue and be sued by the name of the "Commissioner of Stamps."

(4) The said Deputy Commissioner shall have and exercise all the powers and duties of the said Commissioner.

7. (1) The Governor may appoint any person a distributor of stamps.

Distribution of stamps.  
372, 1886, s. 5.  
Cf. U.K. 54 & 55 Vict. c. 38, ss. 3, 8.

(2) Any such distributor may be remunerated by a commission upon the value of stamps purchased for disposal by him, or by salary, or by any other allowance, and upon the sale of stamps to any such distributor such discount may be allowed as may be authorised by regulations made under this Act.

8. The Treasurer shall, for denoting the several duties chargeable under this Act, provide such stamps or dies as may be required for the purposes of this Act, and may do any other act which may be necessary for effectually collecting the said duties.

Stamps to be provided.  
372, 1886, s. 6.

s. 5. (3) SMITH AND OTHERS V. SCAMMELL (1892) 25 S.A.L.R. 95; affirming SMITH AND OTHERS V. SCAMMELL (1890-91) 24 S.A.L.R. 110. Where the signatories to a deed between several parties executed the deed, some before and others after the date mentioned in subsection (3) of section 5, held that the deed was executed after the said date.

## PART II.

## PART II.

## GENERAL PROVISIONS WITH RESPECT TO STAMP DUTIES.

How stamp duties to be denoted.  
789, 1902, s. 5 (part).

9. All duties chargeable upon any instrument shall be paid and denoted according to the provisions of this Act.

Duty, how denoted.  
372, 1886, s. 24.  
Cf. U.K. 54 & 55 Vict. c. 39, s. 2.

10. Except where express provision is made to the contrary, all duties shall be denoted by impressed stamps only; and where it is provided that any duty may be denoted by an adhesive stamp, such duty may be denoted by an impressed stamp or by an adhesive stamp.

Appropriate stamps to be used.  
372, 1886, s. 10.  
Cf. U.K. 54 & 55 Vict. c. 39, s. 10.

11. (1) Any stamp which, by any word or words on the face of it, is appropriated to any particular description of instrument, shall not be used for any instrument of another description.

(2) Any instrument falling under the particular description to which any stamp is so appropriated as aforesaid shall not be deemed duly stamped unless it is stamped with the stamp so appropriated.

789, 1902, s. 39.

(3) No instrument shall be deemed duly stamped with an adhesive stamp unless the words "Duty stamp" are printed on and form part of such stamp.

Adhesive stamps to be cancelled.  
789, 1902, s. 38 (part).  
U.K. 54 & 55 Vict. c. 39, s. 8.

12. (1) Any instrument, the duty upon which is required or permitted by this Act to be denoted by an adhesive stamp, shall not be deemed duly stamped with an adhesive stamp unless—

- (a) the person required by this Act to cancel the adhesive stamp cancels the same by writing on or across the stamp his name or initials, or the name or initials of his firm, together with the true date of his so writing, or otherwise effectually cancels the stamp and renders the same incapable of being used for any other instrument; or
- (b) it is otherwise proved that the stamp appearing on the instrument was affixed thereto at the proper time.

(2) Where two or more adhesive stamps are used to denote the duty upon an instrument, each stamp shall be cancelled in the manner aforesaid.

(3) Every person who, being required by this Act to cancel an adhesive stamp, neglects or refuses duly and effectually to do so in the manner aforesaid, shall be liable to a penalty not exceeding ten pounds.

13. (1) Every instrument written upon stamped material shall be written in such manner, and every instrument partly or wholly written before being stamped shall be so stamped, that the stamp may appear on the face of the instrument and cannot be used for or applied to any other instrument written upon the same piece of material.

How instru-  
ments to be  
stamped.  
372, 1886,  
s. 7.  
Cf. U.K.  
54 & 55 Vict  
c. 39, s. 3.

(2) If more than one instrument is written upon the same piece of material, each one of such instruments shall be separately and distinctly stamped with the duty with which it is chargeable.

14. Except where express provision is made to the contrary—

Instruments  
to be  
separately  
charged.

i. Any instrument containing or relating to several distinct matters shall be separately and distinctly charged with duty in respect of each of such matters, as if the portion of such instrument containing or relating to each such matter were a separate instrument:

372, 1886,  
s. 8.  
U.K. 54 & 55  
Vict. c. 39,  
s. 4.

ii. Any instrument made for any consideration in respect whereof it is chargeable with *ad valorem* duty, and also for any further or other valuable consideration, shall, in addition to being charged with such *ad valorem* duty, be charged with duty in respect of such last-mentioned consideration, as if it were an instrument made for such consideration only.

15. Where any instrument is chargeable with *ad valorem* duty in respect of any money in any foreign or colonial currency, such duty shall be calculated on the value of such money in British currency according to the current rate of exchange on the day of the date of such instrument.

Duty to be  
calculated  
on value in  
British money.  
372, 1886,  
s. 12.  
Cf. U.K.  
54 & 55 Vict.  
c. 39, s. 6.

16. The duty chargeable upon any instrument shall be calculated according to the rates in force at the time when such instrument is produced to the Commissioner for the purpose of being stamped.

Duty in force  
when instru-  
ment pro-  
duced for  
stamping to  
apply.  
1216, 1915,  
s. 10.

## PART II.

Duplicates and counterparts.  
372, 1886, s. 9.  
Cf. U.K. 54 & 55 Vict. c. 39, s. 72.

17. The duplicate or counterpart of any instrument chargeable with duty (including the counterpart of a lease, whether executed by the lessor or not) may be impressed with a particular stamp denoting that the instrument of which it is the duplicate or counterpart has been duly stamped; but unless such duplicate or counterpart is so impressed, it shall be chargeable with duty as an original.

Duty on other instruments.

372, 1886, s. 14.  
U.K. 54 & 55 Vict. c. 39, s. 11.

18. Where the duty with which any instrument is chargeable depends in any manner upon the duty paid upon another instrument, the payment of such last-mentioned duty may, on production of both the instruments, be denoted in such manner as the Commissioner thinks fit upon the first-mentioned instrument.

All facts to be truly set forth.

372, 1886, s. 11.  
1216, 1915 s. 4.  
Cf. U.K. 54 & 55 Vict. c. 39, s. 5.

19. (1) All the facts and circumstances affecting the liability of any instrument to duty, or the amount of the duty with which any instrument is chargeable, shall be fully and truly set forth in the instrument.

(2) Every person who, with intent to defraud His Majesty (and the suppression of any such fact or circumstance shall be *prima facie* evidence of such intent)—

(a) executes any instrument in which all the said facts and circumstances are not fully and truly set forth; or

(b) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all the said facts and circumstances,

shall be liable to a penalty of not less than fifty pounds and not exceeding five hundred pounds.

Penalty for not duly stamping.  
372, 1886, s. 15.  
789, 1902, s. 40.  
Cf. U.K. 54 & 55 Vict. c. 39, s. 15.

20. (1) Except where express provision is made to the contrary, any unstamped or insufficiently stamped instrument may be stamped after the execution thereof on payment of the unpaid duty and a penalty of ten pounds, and on payment also, by way of further penalty when the unpaid duty exceeds ten pounds, of interest on the unpaid duty at

s. 19. *SMEATON V. THE MUTUAL LIFE ASSOCIATION OF AUSTRALASIA* (1904) S.A.L.R. 147; 11 Austr. Digest 890. Section 19 does not affect the provisions of section 24 of the Life Assurance Companies Act, 1936, and does not make it necessary to indorse on a transfer by way of security of a policy of life insurance, a statement that the transfer is for securing the repayment of money.

the rate of ten pounds per centum per annum from the day on which such instrument was first executed up to the time when such interest is equal in amount to the unpaid duty, or up to the time when such instrument is stamped under the authority of this section, whichever is the earlier time: Provided that—

- I. any instrument may be stamped without penalty within one month after the execution thereof:
- II. any unstamped instrument executed out of South Australia may be stamped without penalty at any time within two months after it is first received in South Australia:

\* \* \* \* \*

Subdiv. III.  
repealed by  
S.L.R. Act.  
1935.

(2) The payment of any such penalty and interest shall be denoted on the instrument by a particular stamp.

(3) The Commissioner may, at any time after the execution of any instrument, remit any penalty or any part thereof incurred in respect of such instrument.

**21.** (1) Upon the production of any instrument chargeable with duty as evidence in any civil proceedings in any part of South Australia, the officer whose duty it is to read the instrument shall call the attention of the presiding judge, special magistrate, or justices to any omission or insufficiency of the stamp thereon.

Admissibility  
of unstamped  
instruments  
in evidence.  
372, 1886,  
s. 17.  
Cf. U.K.  
54 & 55 Vict.  
c. 89, s. 14.  
Cf. U.K.  
23 & 24  
Geo. 5 c. 19,  
s. 42.

(2) If the instrument is one which may legally be stamped after the execution thereof it may, on payment to the said officer of the amount of the unpaid duty and of the penalty payable under this Act on stamping the same as aforesaid and of a further sum of one pound, be received in evidence, saving all just exceptions or other grounds.

(3) The officer receiving the said duty and penalty shall—

(a) give a receipt for the same;

(b) make an entry in a book kept for that purpose of the payment and of the amount thereof;

(c) communicate to the Commissioner the name or title of the cause or proceeding in which, and of the party from whom, he received the said duty and penalty, and the date and description of the instrument; and

(d) pay over to the Commissioner the money received by him in payment of the said duty and penalty.

(4) Upon production to the Commissioner of any instrument in respect of which any duty and penalty has been paid as aforesaid, together with the receipt of the said officer, the payment of such duty and penalty shall be denoted on such instrument accordingly.

Except as aforesaid no unstamped instrument to be received in evidence.  
372, 1886, s. 18.  
Cf. U.K. 32 & 33 Vict. c. 49, s. 5.  
Cf. U.K. 54 & 55 Vict. c. 89, s. 14 (4).

**22.** Except as provided by section 21, no instrument chargeable with duty executed in any part of South Australia or relating, wheresoever executed, to any property situated, or to any matter or thing done or to be done, in any part of South Australia, shall, except in criminal proceedings, be pleaded or given in evidence or admitted to be good, useful, or available at law or in equity unless duly stamped.

Assessment of duty.  
372, 1886, s. 19.  
Cf. U.K. 54 & 55 Vict. c. 89, s. 12.

**23.** (1) Subject to any regulations made under this Act, the Commissioner may be required by any person to express his opinion with reference to any executed instrument upon the following questions—

I. Whether it is chargeable with any duty:

II. With what amount of duty it is chargeable.

(2) If the Commissioner is of opinion that such instrument is not chargeable with any duty, such instrument may be stamped with a particular stamp denoting that it is not chargeable with any duty.

(3) If the Commissioner is of opinion that such instrument is chargeable with duty, he shall assess the duty with which it is, in his opinion, chargeable, and when the instrument is duly stamped in accordance with the assessment of the Commissioner, it may also be stamped with a particular stamp denoting that it is duly stamped.

(4) Every instrument stamped with the particular stamp denoting either that it is not chargeable with any duty or that it is duly stamped shall be admissible in evidence and shall be available for all purposes, notwithstanding any objection relating to duty.

(5) Notwithstanding anything contained in this section—

(a) any instrument upon which the duty has been assessed by the Commissioner shall not, if it is unstamped or insufficiently stamped, be stamped otherwise than in accordance with the assessment of the Commissioner:

(b) the stamping after the execution thereof of any instrument prohibited by this Act from being so stamped shall not be lawful.

Appeal from  
assessment.  
372, 1886,  
s. 20.  
Cf. U.K.  
54 & 55 Vict.  
c. 39, s. 13.

24. (1) Any person who is dissatisfied with the assessment of the Commissioner may, on payment of duty in accordance therewith—

- (a) within fourteen days after the date of the Commissioner's assessment forward to the Treasurer a statement of the grounds of his objection to the assessment; or
- (b) within twenty-one days after the date of the Commissioner's assessment, appeal to the Supreme Court.

(2) If such person forwards to the Treasurer a statement of the grounds of his objection to the Commissioner's assessment, the Treasurer may confirm or modify such assessment. If such assessment is not confirmed, the amount of the duty to be ultimately retained shall be that fixed by the Treasurer, and the difference shall be refunded to the person forwarding the statement.

(3) If, upon the confirmation or modification by the Treasurer of the Commissioner's assessment, such person is still dissatisfied, he may, within twenty-one days after the Treasurer's decision is communicated to him, appeal to the Supreme Court.

(4) For the purpose of any appeal to the Supreme Court under this section, the appellant may require the Commissioner to state and sign a case setting forth the question upon which his opinion was required and the assessment made by him.

(5) The Commissioner shall thereupon state and sign a case accordingly and deliver the same to the appellant, and upon his application such case may be set down for hearing in the Supreme Court.

(6) Upon the hearing of such case (at least seven days' notice of which shall be given to the Commissioner) the Court shall determine the question submitted, and assess the duty, if any, chargeable under this Act.

(7) If it is decided by the Court that the assessment of the Commissioner is erroneous, any excess of duty which may have been paid in accordance with such erroneous assessment, together with any penalty which may have been paid in consequence thereof, shall be ordered by the Court to be

s. 24. O'HARA v. COMMISSIONER OF STAMPS (1912) S.A.L.R. 116. Where a case is stated by the Commissioner and filed by the appellant, the court has no power to amend the case without the Commissioner's consent.

repaid by the Commissioner to the appellant, together with the costs incurred by him in relation to the appeal.

(8) If the assessment of the Commissioner is confirmed by the Court, the costs incurred by the Commissioner in relation to the appeal shall be ordered by the Court to be paid by the appellant to the Commissioner.

(9) For the purposes of this section the Supreme Court may consist of one Judge only.

Abstract of instrument to be furnished.  
372, 1886, s. 21.  
Cf. U.K. 54 & 55 Vict. c. 39, s. 12 (2).

25. In any case where the Commissioner is required to express his opinion with reference to any instrument, the Commissioner may require to be furnished with an abstract of the instrument, and also such evidence as he deems necessary in order to show whether every fact and circumstance affecting the liability of the instrument to duty, or the amount of the duty with which the instrument is chargeable, has been fully and truly set forth, and the Commissioner may refuse to express any opinion with reference to the instrument until such abstract and evidence has been furnished accordingly.

Records open to inspection.  
372, 1886, s. 22.  
Cf. U.K. 54 & 55 Vict. c. 39, s. 16.

26. All public officers having in their custody any rolls, books, records, papers, documents, or proceedings, the inspection of which may tend to secure any duty, or to the proof or discovery of any fraud or omission in relation to any duty, shall at all reasonable times permit any person thereunto authorised by the Commissioner to inspect all such rolls, books, records, papers, documents, and proceedings, and to take such notes and extracts as such person deems necessary without fee or reward.

No instrument to be enrolled or registered unless stamped.  
372, 1886, s. 23.  
Cf. U.K. 54 & 55 Vict. c. 39, s. 17.

27. No public officer whose office it is to enrol, register, or enter in or upon any rolls, books, or records any instrument chargeable with any duty, or the memorial of any instrument chargeable with any duty, shall enrol, register, or enter any such instrument or memorial, unless the instrument is duly stamped.

Power of Commissioner to make certain inquiries.

Inserted by 1822, 1927, s. 4.

27a. (1) In any case in which the amount of stamp duty chargeable on any instrument depends upon the value of any property thereby conveyed or transferred, or upon the amount of the consideration paid or given therefor, and in any other case in which it may be necessary to ascertain any facts in order to determine the amount of stamp duty chargeable upon any instrument, the Commissioner may require the instrument to be submitted for his opinion pursuant to

section 23 and may, before assessing the duty with which the instrument is chargeable, hold an inquiry for the purpose of ascertaining the true amount of such consideration, or such other facts as aforesaid.

(2) For the purpose of any such inquiry the Commissioner may require any person to make and produce to him a statutory declaration setting forth any facts relevant to the matter being inquired into, so far as they are known to such person, or may hear, receive, and examine evidence upon oath (which oath such Commissioner is hereby empowered to administer), and by summons under his hand, may require all such persons as he may think fit to appear personally before him, at a time and place to be fixed in and by such summons, and to produce to him all such books, papers, and documents as may be relevant to such inquiry.

Amended by  
2359, 1937,  
s. 3.

The statement of every person so examined shall be taken down in writing and signed by him in the presence of the Commissioner.

(3) Any person who, without just excuse, neglects or refuses to make any such declaration, or to comply with the tenor of any such summons, or who, having appeared before the Commissioner, refuses, without just excuse, to be examined on oath concerning the subject-matter of the inquiry, or to take such oath, or, having taken such oath, to answer such questions concerning the said subject-matter as shall be put to him, shall be guilty of an offence. Penalty— one hundred pounds.

**27b.** When any instrument chargeable with stamp duty, and which is unstamped or insufficiently stamped, has come into the possession of the Commissioner, he shall retain possession of such instrument until the amount of stamp duty due thereon, together with any penalty and costs imposed in respect of the making of such unstamped instrument, have been paid.

Power of  
Commissioner  
to retain  
unstamped  
instrument  
till penalty  
paid.

Inserted by  
1822, 1927,  
s. 4.

### PART III.

### PART III.

## SPECIAL PROVISIONS WITH RESPECT TO CERTAIN STAMP DUTIES.

### *Affidavits and Declarations.*

**28.** The duty upon an affidavit or declaration may be denoted by an adhesive stamp, which shall be cancelled by the person making such affidavit or declaration.

Duty on  
affidavits and  
declarations  
may be  
denoted by  
adhesive  
stamps.  
789, 1902,  
s. 6.

Agreements.

Adhesive stamp may be used for agreement not under seal.

789, 1902, s. 7. Of. U.K. 54 & 55 Vict. c. 39, s. 22.

When agreement comprised of several letters.

789, 1902, Second Schedule, Note.

29. The duty upon an agreement not under seal may be denoted by an adhesive stamp, which shall be cancelled by one of the parties executing the agreement.

30. In any case where an agreement is constituted by two or more letters, such agreement and all such letters shall be deemed to be duly stamped if any one of such letters is duly stamped with the duty payable upon and for such agreement.

Certain contracts to be chargeable as conveyances on sale.

1216, 1915, s. 20.

Amended by 1822, 1927, s. 5 (a).

Of. U.K. 54 & 55 Vict. c. 39, s. 59.

31. (1) Any contract or agreement in writing for the sale of any estate or interest in any property whatsoever (including goods, wares, and merchandise not being goods, wares, and merchandise agreed to be sold in the ordinary course of trade by a party whose principal business is the sale of such goods, wares, and merchandise), except—

(a) property which cannot vest in the purchaser except upon registration of a conveyance; or

\* \* \* \* \*

(c) stock or marketable securities, or shares in the stock, funds, or capital of any corporation, company, or society,

Para. (b) repealed by 1822, 1927, s. 5 (b).

shall be charged with the same *ad valorem* duty as if it were an actual conveyance on sale of the estate or interest contracted or agreed to be sold.

(2) Where duty has been duly paid in accordance with the provisions of subsection (1) hereof on any such contract or agreement as mentioned in that subsection, any conveyance made to the purchaser in pursuance of such contract or agreement shall not be chargeable with any duty; and the Commissioner, upon application and upon the production of such contract or agreement duly stamped, shall stamp such conveyance with a particular stamp denoting that it is duly stamped.

(3) For the purposes of this section a receipt for the payment, in pursuance of any contract or agreement, of any purchase-money shall, in the absence of any further or other instrument being or evidencing such contract or agreement, be charged with *ad valorem* duty as hereinbefore provided.

(4) If any such contract or agreement as mentioned in subsection (1) hereof is afterwards rescinded or annulled, or for any other reason is not substantially performed or carried into effect so as to operate as, or to be followed by, a conveyance, the person who paid the *ad valorem* duty upon such contract or agreement shall be deemed to be possessed, in respect of such contract or agreement, of stamped material rendered useless by being inadvertently spoiled, within the meaning of section 106, and the provisions of that section shall apply accordingly.

*Annual Licences.*

32. In this Act—

“firm of persons” includes any association of underwriters carrying on marine assurance or insurance business through a managing underwriter solely:

“company” includes corporation and society, whether corporate or unincorporate:

“policy” means and includes as well any policy as any instrument in the nature of a policy, an open policy, an insurance cover, or any instrument in any manner covering any assurance or insurance:

“assurance or insurance business” means and includes—

(a) the granting or issuing of any life, personal accident, fire, fidelity, guarantee, live stock, plate glass, marine or other assurance or insurance policies;

(b) the acceptance, either directly or indirectly, of any premium, renewal premium, or consideration for or in respect of the granting or issuing or keeping alive or in force of any life, personal accident, fire, fidelity, guarantee, live stock, plate glass, marine or other policy, whether issued before or after the passing of this Act;

(c) the receiving of any letter or declaration of interest attaching to any life, personal accident, fire, marine or other policy issued in South Australia or elsewhere at any time, whether before or after the passing of this Act; or

(d) the carrying out by means of assurance or insurance effected out of South Australia of any written, verbal, or implied contract or undertaking to effect assurance or insurance.

Definitions.  
789, 1902,  
s. 8.  
1216, 1915,  
s. 6 (1).

## PART III.

Yearly licences required by companies and persons carrying on insurance business.

789, 1902, s. 9.  
1216, 1915, s. 6 (2).

**33.** (1) Every company, person, or firm of persons which carries on or desires to carry on in South Australia any life, personal accident, fire, fidelity, guarantee, live stock, plate glass, marine or other assurance or insurance business whatever, and whether the head office or principal place of business of such company, person, or firm of persons is in South Australia or elsewhere, shall take out an annual licence every year in the form in the third schedule hereto.

(2) The Commissioner is hereby authorised to issue such licence on the payment to him of the duty specified in the second schedule hereto.

789, 1902, s. 23 (part).

(3) The duty payable in respect of any annual licence shall be denoted by impressed stamps.

Time of issue and duration of licences.

789, 1902, s. 10.

**34.** An annual licence shall be issuable on the first day of January in every year: Provided that the first licence issued to any company, person, or firm of persons may be issued at any time during the year, but shall continue in force for the remaining part of such year only, and the duty payable in such case shall be a proportionate part of the duty chargeable on an annual licence, except where, in the opinion of the Commissioner, the licence should have been previously obtained, when the full amount of duty shall be payable thereon.

Application for licence.  
789, 1902, s. 13.

**35.** (1) Any company, person, or firm of persons requiring an annual licence shall make a written application to the Commissioner, stating therein—

- (a) the nature and exact amount of all the assurance or insurance business transacted by such company, person, or firm of persons, and all the branches and agencies thereof in South Australia;
- (b) the exact amount of all gross premiums of any kind whatsoever received or in any manner credited or charged in account by such company, person, or firm of persons during the twelve months preceding the year or part thereof for which the licence is required;
- (c) the exact amount of all commissions or discounts actually paid or allowed;
- (d) the exact amount actually paid away by way of re-insurance effected in South Australia with any other such company, person, or firm of persons; and

(e) the net amount of premiums in respect of which duty is chargeable.

(2) The truth of the statements contained in any such application shall be verified by a statutory declaration made—

I. as to any company—by the public officer appointed under the Taxation Act, 1927, or by the chairman and the secretary, actuary, or other principal officer thereof:

Amended by  
S.L.R. Act,  
1935.

II. as to any person—by such person:

III. as to any firm of persons—by any member of such firm and the principal accountant of such firm.

(3) In case the information contained in any such application is not, in the opinion of the Commissioner, sufficiently explicit to enable him to determine what amount of duty is payable, he may require further information, which shall be verified and declared in the same manner as the statements contained in the original application.

789, 1902,  
s. 14.

(4) Every person who, with intent to defraud His Majesty—

Ibid., s. 15.

(a) executes any such application or any instrument furnishing such further information, in which all the requisite facts and circumstances are not fully and truly set forth; or

(b) being employed or concerned in or about the preparation of any such application or instrument, neglects to set forth fully and truly therein all the said facts and circumstances,

shall be liable to a penalty of ten pounds.

**36.** If the amount of premium payable or chargeable or paid or chargeable in account in respect of any letters or declarations of interest in or attaching to any life, fire, or marine policy, or assurance or insurance cover, or any open policy, is not stated therein, the amount of premium in respect of which duty is payable shall be estimated and determined by the Commissioner.

Duty where  
premium not  
stated in  
policy.  
Ibid., s. 16.

s. 35. (2) The Taxation Act, 1927, so far as it relates to income tax, has been repealed and superseded by the Income Tax Assessment Act 1936, and so far as it relates to land tax, has been repealed and superseded by the Land Tax Act, 1936.

## PART III.

Power to  
summon and  
examine wit-  
nesses for  
purpose of  
determining  
duty payable  
on annual  
licence.  
789, 1902,  
s. 17.

**37.** (1) The Commissioner may, in order to determine the duty payable on any annual licence, summon any person, and require and compel such person to produce any books, papers, deeds, documents, or writings in his possession or control; and the Commissioner may examine any such person on oath touching or concerning any statement made in any written application.

Penalty for  
refusing to  
attend, etc.  
Ibid., s. 18.

(2) If any person so summoned—

(a) does not appear in accordance with the summons;  
or

(b) appearing, refuses to be sworn, or fails or neglects to produce any such books, papers, deeds, documents, or writings,

such person shall be liable to a penalty of twenty pounds.

Questions to  
be settled  
by Commis-  
sioner, subject  
to appeal.  
Ibid., s. 19.

**38.** If any question arises as to the liability of any company, person, or firm of persons to take out an annual licence, or as to the amount of duty payable in respect of any annual licence, the Commissioner may be required to express his opinion with reference thereto, and the decision of the Commissioner shall be final: Provided that, in the case of a decision of the Commissioner as to the amount of duty payable in respect of any annual licence, there shall be an appeal against such decision in the manner provided by section 24 for appeal against an assessment of the Commissioner, and for the purposes of such appeal all the provisions of that section shall, *mutatis mutandis*, apply to an appeal under this section.

Effect of  
annual  
licences.  
Ibid., s. 20.

**39.** An annual licence shall, subject to the provisions of any Act in force for the time being relating to assurance or insurance, be deemed to authorise the lawful business of any company, person, or firm of persons named therein to be carried on in South Australia and by all branches and agencies thereof in South Australia, and for one or more kinds of the assurance or insurance business mentioned in such licence.

Registrar of  
Companies not  
to issue  
certificate  
until duty  
paid.  
Ibid., s. 21.

**40.** (1) It shall not be lawful for the Registrar of Companies to take any steps towards registering or obtaining the incorporation of any company required to take out an annual licence under this Act until the full amount of duty payable in respect of such licence has been paid.

(2) The production of the licence issued by the Commissioner shall be evidence of the payment of the full amount

of the duty payable in respect of the licence required to be taken out by the company specified in such licence.

41. (1) If any company, person, or firm of persons hereby required to take out an annual licence—

Carrying on insurance business without licence.  
789, 1902, s. 22.

(a) carries on in South Australia any assurance or insurance business whatever without having taken out such annual licence; or

(b) neglects for two months after the expiration of the annual licence to take out another annual licence,

such company, person, or firm of persons shall be liable to a penalty not exceeding fifty pounds for every month or part of a month during which such annual licence is not taken out.

(2) All contracts of marine assurance or insurance effected by any company, person, or firm of persons not duly licensed under this Act shall be absolutely null and void, unless any such contract is made with any company, person, or firm of persons publicly holding out itself, himself, or themselves at any place in South Australia as being licensed under this Act.

(3) The payment by any company, person, or firm of persons of the duty in respect of any annual licence taken out by such company, person, or firm of persons shall be notified in the *Government Gazette*, and such notification shall be sufficient evidence of the company, person, or firm of persons specified in the notification being duly licensed under this Act.

Ibid., s. 27 (part).

42. If, after any duty has been paid with respect to any annual licence, it is found within three months after the payment of such duty that too much duty has been paid, the Commissioner shall, on being satisfied that such overpayment has been made, and without further or other authority than this Act, refund the amount thereof to the company, person, or firm of persons by which the overpayment was made, or to any person acting in its, his, or their behalf.

Refund of overpaid duty.  
Ibid., s. 24.

### *Bank Notes.*

43. In this Act—

“bank” means any corporation, society, partnership, or person carrying on the business of banking in South Australia:

Interpretation.  
372, 1886, s. 27.

“bank note” means any bill of exchange or promissory note issued by any bank for payment of money on demand, or purporting or intended to entitle the owner or holder thereof, without indorsement, or without any further or other indorsement than may be thereon at the time of the issue thereof, to payment of money on demand, whether the same is so expressed or not, or in whatever form or by whomsoever such bill or note is drawn or made.

Duty to be paid by banks.  
789, 1902, s. 25.

44. There shall be paid quarterly to the Commissioner by every bank the duty specified in that behalf in the second schedule on the average amount of bank notes issued by such bank stated to be in circulation by the quarterly returns made by such bank pursuant to the Banking Companies Act.

Payment to be made quarterly.  
372, 1886, s. 29.

45. The above-mentioned duty shall become due and payable by quarterly payments on the fourth day of February, the fourth day of May, the fourth day of August, and the fourth day of November in each year, and each quarterly payment by each bank shall be computed upon the amount of notes shown to be in circulation by the returns of such bank for the last preceding quarter prepared in accordance with the provisions of the Banking Companies Act.

*Bills of Exchange, Promissory Notes, Coupons, and Interest Warrants.*

Interpretation.  
372, 1886, s. 30.  
Cf. U.K. 54 & 55 Vict. c. 89, s. 32.

46. In this Act—

“bill of exchange” means and includes—

- (a) any bill of exchange, draft, order, cheque, and letter of credit, and any document or writing (except a bank note) entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw upon any other person for, any sum of money therein mentioned;
- (b) any order for the payment of any sum of money by a bill of exchange or promissory note, or for the delivery of any bill of exchange or promissory note in satisfaction of any sum of money, or for the payment of any sum of money

- s. 44. The Banking Companies Act has been repealed and superseded by the Banking Companies Act, 1935.
- s. 45. The Banking Companies Act has been repealed and superseded by the Banking Companies Act, 1935.
- s. 46. In the matter of an appeal of the FEDERAL BANK OF AUSTRALIA LIMITED from the assessment of the COMMISSIONER OF STAMPS (1889) 23 S.A.L.R. 43. Held that a certain fixed deposit receipt was not a “promissory note.”

out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen; and

- (c) any order for the payment of any sum of money at any stated period, and also any order for the payment of any sum of money by any person at any time after the date thereof sent or delivered by the person making the same to the person by whom the payment is to be made, or to any person on his behalf.

“promissory note” means and includes—

- (a) any document or writing (except a bank note) containing or importing a promise to pay any sum of money; and
- (b) any note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen.

Cf. U.K.  
54 & 55 Vict.  
c. 39, s. 33.

47. The duty on a bill of exchange (including draft payable on demand), promissory note, coupon, or interest warrant may be denoted by an adhesive stamp: Provided that in the case of a bill of exchange or promissory note drawn or made out of South Australia, the duty shall be denoted by an adhesive stamp only.

Duty on bills,  
notes, etc.,  
how denoted.  
372, 1886,  
s. 31 (part),  
s. 32 (1).  
1244, 1916,  
s. 26 (1).  
789, 1902,  
s. 27.  
Cf. U.K.  
54 & 55 Vict.  
c. 39, s. 34  
(part).

48. (1) The adhesive stamp denoting the duty upon any bill of exchange, promissory note, coupon, or interest warrant shall be cancelled by the person by whom the bill of exchange, promissory note, coupon, or interest warrant is drawn, made, or issued, before he delivers it out of his hands, custody, or power.

When bills,  
notes, etc., to  
be stamped.  
372, 1886,  
s. 31 (part).  
1244, 1916,  
s. 26 (part).  
Cf. U.K.  
54 & 55 Vict.  
c. 39, s. 34  
(part).  
Cf. U.K.  
23 & 24  
Geo. 5 c. 19,  
s. 42.

(2) In the case of a draft payable on demand the stamp may be affixed and cancelled by the maker or holder thereof.

789, 1902,  
s. 27 (part).

(3) If any bill of exchange for the payment of money on demand, or any coupon or interest warrant, chargeable only with the duty of two pence or less, is presented for payment unstamped or insufficiently stamped, the person to whom it is so presented may affix thereto a proper adhesive stamp, and may cancel the same as if he had been the drawer of such bill or the issuer of such coupon or interest warrant.

372, 1886,  
s. 34 (2),  
(3).  
Amended by  
S.L.R. Act,  
1935.

and may, upon so doing, pay the sum mentioned in the said bill, coupon or interest warrant, and charge the duty, or part thereof, as the case may be, in account against the person by whom the bill was drawn, or the coupon or interest warrant was issued, or deduct such duty or part thereof from the said sum, and such bill, coupon, or interest warrant shall, so far as respects the duty, be deemed good and valid: Provided that nothing in this subsection shall relieve any person from any penalty he may have incurred in relation to such bill, coupon, or interest warrant.

837, 1903,  
s. 3.

(4) If any bill of exchange or promissory note, other than a bill of exchange or promissory note payable on demand, has not been stamped, or has been insufficiently stamped, the holder may, within fourteen days from the date thereof, by paying the duty or the deficiency to the Commissioner, have such bill of exchange or promissory note duly stamped.

372, 1886,  
s. 32 (part).  
1244, 1916,  
s. 26 (1)  
(part).  
Cf. U.K.  
54 & 55 Vict.  
c. 39, s. 35.

(5) Every holder of any unstamped bill of exchange, promissory note, coupon, or interest warrant drawn or issued out of South Australia shall, before he presents it for payment, or indorses, transfers, or in any manner uses, negotiates, or pays the same, cause it to be duly stamped: Provided that—

- i. if, at the time when any such bill, note, coupon, or interest warrant comes into the hands of any *bona fide* holder thereof, there is affixed thereto an adhesive stamp appearing to be duly cancelled, such stamp shall, so far as it relates to such holder, be deemed to be duly cancelled, although it does not appear to be so affixed or cancelled by the proper person:
- ii. if, at the time when any such bill, note, coupon, or interest warrant comes into the hands of any *bona fide* holder thereof, there is affixed thereto an adhesive stamp not duly cancelled, it shall be competent for such holder to cancel such stamp as if he were the person by whom it was affixed, and upon his so doing such bill, note, coupon, or interest warrant shall be deemed duly stamped, and shall be as valid and available as if the stamp had been cancelled by the person by whom it was affixed,

but nothing in this subsection shall relieve any person from any penalty under this Act.

Penalty on  
taking un-  
stamped bill  
or promissory  
note.  
789, 1902,  
s. 26.

49. Any person who takes or receives from any other person any bill of exchange or promissory note not duly stamped, either in payment or as a security or by purchase

or otherwise, without causing the same to be duly stamped after receiving it, shall be liable to a penalty not exceeding twenty pounds.

**50.** A bill of exchange or promissory note purporting to be drawn or made out of South Australia shall, for the purposes of this Act, be deemed to have been so drawn or made, although it may, in fact, have been drawn or made within South Australia.

Where bill or note deemed to be drawn.  
789, 1902, s. 33.  
Cf. U.K. 54 & 55 Vict. c. 39, s. 36.

**51.** (1) Any person who issues, indorses, transfers, uses, negotiates, presents for payment, or pays any bill of exchange, promissory note, coupon, or interest warrant chargeable with duty and not duly stamped, shall be liable to a penalty not exceeding twenty pounds.

Bills or notes issued unstamped.  
789, 1902, s. 34 (1).  
Cf. U.K. 54 & 55 Vict. c. 39, s. 38.

(2) Any person who takes or receives from any other person any bill of exchange, promissory note, coupon, or interest warrant not duly stamped, either in payment or as a security or by purchase or otherwise, shall not be entitled to recover thereon, or to make the same available for any purpose whatever, until the same is duly stamped.

**52.** When a bill of exchange is drawn in a set, according to the custom of merchants, and one of the set is duly stamped, the other or others of the set shall, unless issued or in some manner negotiated apart from such duly stamped bill, be exempt from duty, and, upon proof of the loss or destruction of a duly stamped bill forming one of a set, any other bill of the set which has not been issued or in any manner negotiated apart from such loss or destroyed bill may, although unstamped, be admitted in evidence to prove the contents of such lost or destroyed bill.

Bills in sets.  
372, 1886, s. 35.  
Cf. U.K. 54 & 55 Vict. c. 39, s. 39.

#### *Bills of Lading.*

**53.** (1) A bill of lading shall not be stamped after the execution thereof.

When to be stamped.  
372, 1886, s. 36.  
U.K. 54 & 55 Vict. c. 39, s. 40.

(2) Any person who makes or executes any bill of lading not duly stamped shall be liable to a penalty of fifty pounds.

#### *Contract Notes and Options.*

**54.** (1) In this Act the term "contract note" means a note sent by a broker or agent to his principal advising him of the sale or purchase of any stock or marketable security, but does not include a note sent by a broker or agent to a person who is acting as a broker or agent for a principal and is himself a member of a stock exchange in the Commonwealth of Australia.

Provisions as to contract notes.  
1216, 1915, s. 16.  
Cf. U.K. 10 Edw. 7 c. 8, s. 77 (3).

(2) Where a contract note advises the sale or purchase of more than one description of stock or marketable security, the note shall be deemed to be as many contract notes as there are descriptions of stock or marketable securities sold or purchased.

(3) Where a contract note is a continuation or carrying-over note made for the purpose of continuing or carrying over any transaction for the sale or purchase of stock or marketable securities, the contract note, although it is made in respect of both a sale and a purchase, shall be charged with duty under this Act as if it related to one of those transactions only, and if different amounts are chargeable as duty in respect of those transactions, as if it related to that one of those transactions which would render the contract note chargeable with the greater amount of duty.

**55.** (1) The duty on a contract note may be denoted by an adhesive stamp.

(2) Every adhesive stamp on a contract note shall be cancelled by the person by whom the note is executed.

(3) Any person who fails to comply with the provisions of subsection (2) hereof shall be liable to a penalty not exceeding ten pounds.

**56.** (1) Any person who effects a sale or purchase of any stock or marketable security as a broker or agent shall forthwith make and execute a contract note, and transmit the same to his principal, and in default of so doing shall be liable to a penalty not exceeding twenty pounds: Provided that this section shall not apply in the case of transactions, carried out in the course of their ordinary business relations, between brokers or agents who are members of any stock exchange in the Commonwealth of Australia.

(2) If any person makes or executes any contract note chargeable with duty which is not duly stamped, he shall be liable to a penalty not exceeding twenty pounds.

**57.** The duty upon a contract note may be added to the charge for brokerage or agency, and shall be recoverable as part of such charge.

**58.** No broker, agent, or other person shall have any legal claim to any charge for brokerage, commission, or agency with reference to the sale or purchase of any stock or marketable security mentioned or referred to in any contract note unless such note is duly stamped.

Adhesive stamps may be used.

1216, 1915, s. 17.  
Cf. U.K. 10 Edw. 7 c. 8, s. 78 (4).

Penalty for not making a stamped note.

1216, 1915, s. 18 (1), (2).  
Cf. U.K. 54 & 55 Vict. c. 39, s. 109.  
Cf. U.K. 10 Edw. 7 c. 8, s. 78 (1), (2).

Duty may be added to brokerage.

1216, 1915, s. 18 (4).  
10 Edw. 7 c. 8, s. 78 (5).

Unstamped notes.

1216, 1915, s. 18 (4).  
Cf. U.K. 10 Edw. 7 c. 8, s. 78 (3).

59. The provisions of this Act as to contract notes shall apply to any contract under which an option is given or taken to purchase or sell any stock or marketable security at a future time at a certain price, in the same manner as it applies to the sale or purchase of any stock or marketable security: Provided that, if under the contract a double option is given or taken, the contract shall be deemed to be a separate contract in respect of each option.

Contracts for options.  
1216, 1915, s. 19.  
Cf. U.K. 10 Edw. 7 c. 8, s. 79 (1).

*Conveyances and Conveyances on Sale.*

60. In this Act—

“conveyance” includes—

- (a) every conveyance, assignment, transfer, or declaration of trust, and every application under The Real Property Act, 1886;
- (b) every decree or order of any court, judge, or commissioner;
- (c) every other application or request of any kind; and
- (d) every other assurance or instrument of any kind,

Definition of “conveyance.”  
1216, 1915, s. 11 (part).  
Cf. U.K. 54 & 55 Vict. c. 89, ss. 54, 62.

whereby or by virtue thereof, or by the operation whereof, whether upon registration or otherwise, or by the issue of a certificate of title in pursuance whereof, any real or personal property, or any estate or interest in any such property, is assured to or vested in any person; the term also includes a surrender to the Crown of any lease or other interest in land with a view to granting another lease or any other interest in any land to the person surrendering or to a person nominated by him:

“to convey” has a meaning co-extensive with the meaning of the term “conveyance,” as extended by this section:

1216, 1915, s. 11 (part).

“conveyance on sale” includes—

- (a) every conveyance assignment, transfer, or application under The Real Property Act, 1886;

372, 1886, s. 37.  
789, 1902, s. 28 (part).

s. 60. CLAUSEN AND OTHERS v. HABERLE (1888) 22 S.A.L.R. 131. Neither a contract for sale, which does not identify the property to which it refers, nor an executory contract, is a “conveyance on sale.”  
WINTER v. BROWN (1892) 25 S.A.L.R. 11. An offer in writing to sell land which is accepted by parol is not a “conveyance on sale.”

- (b) every decree or order of any court, judge, or commissioner;
- (c) every other application or request of any kind; and
- (d) every other assurance or instrument,

whereby, or by virtue whereof, any real or personal property upon the sale thereof is legally or equitably transferred to or vested in the purchaser or any other person on his behalf or by his direction: the term also includes—

- (e) every application for a foreclosure order under The Real Property Act, 1886; and
- (f) every lease for which any consideration other than the rent reserved may be paid or agreed to be paid (but only so far as such consideration is concerned).

61. Where the consideration or part of the consideration upon which a conveyance is chargeable with *ad valorem* duty consists of shares or debentures to be issued by a company, or a contract to issue such shares or debentures, the market value of such shares or debentures shall be taken as the value of such consideration or part.

Method of estimating value of consideration where consideration consists of shares.  
1216, 1915, s. 12.  
1244, 1916, s. 23.  
Cf. U.K. 54 & 55 Vict. c. 39, s. 55.

S. 62 repealed by 1822, 1927, s. 6.

\* \* \* \* \*

63. In the case of an application for a foreclosure order under The Real Property Act, 1886, the value of the land in respect of which the application is made shall be deemed the consideration for the conveyance on sale.

Consideration in case of application for foreclosure order.  
789, 1902, s. 28 (part).

64. In the case of a lease for which any consideration other than the rent reserved may be paid or agreed to be paid, the amount of such other consideration shall be deemed the consideration for the conveyance on sale.

Consideration in case of lease.  
789, 1902, s. 28 (part).

65. Where the consideration, or any part of the consideration, for a conveyance on sale consists of any real or personal property other than money, such conveyance shall be chargeable with *ad valorem* duty in respect of the value of such real or personal property at the date of such conveyance.

Where consideration consists of real or personal property.  
372, 1886, s. 38.

66. (1) Where the consideration, or any part of the consideration, for a conveyance on sale consists of money payable periodically for a definite period, so that the total amount to be paid can be previously ascertained, such conveyance shall be chargeable in respect of such consideration with *ad valorem* duty on such total amount.

Where consideration is payable in instalments. 372, 1886, s. 39. Cf. U.K. 54 & 55 Vict. c. 39, s. 52.

(2) Where the consideration, or any part of the consideration, for a conveyance on sale consists of money payable periodically in perpetuity, or for any indefinite period not terminable with life, such conveyance shall be chargeable in respect of such consideration with *ad valorem* duty on the total amount which may, according to the terms of sale, be payable during the period of twenty years next after the day of the date of such instrument.

(3) Where the consideration, or any part of the consideration, for a conveyance on sale consists of money payable periodically during any life or lives, such conveyance shall be chargeable in respect of such consideration with *ad valorem* duty on the amount which may, according to the terms of sale, be payable during the period of twelve years next after the day of the date of such instrument.

(4) No conveyance on sale chargeable with *ad valorem* duty in respect of any periodical payments, and containing also provision for securing such periodical payments, shall be charged with any duty whatsoever in respect of such provision.

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S. 66a enacted by 1822, 1927, s. 7, and repealed by 2359, 1937, s. 4.

66b. (1) Where in the opinion of the Commissioner the consideration in any transfer or conveyance does not represent the value of the property referred to or dealt with in such instrument, or the evidence of value is unsatisfactory, he may cause a valuation of the property to be made by some person appointed by him, and may assess the duty payable on the basis of such valuation.

Valuation where consideration doubted. Inserted by 1822, 1927, s. 7.

(2) The Commissioner may, having regard to the merits of the case, charge the whole or any part of the expenses of or incidental to the making of the valuation to the person liable to pay the duty, and may recover the same from him as a debt due to His Majesty.

## PART III.

Where property is subject to debt.  
372, 1886, s. 40.  
U.K. 54 & 55 Vict. c. 39, s. 57.

67. Where any property is conveyed to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or encumbrance upon the property or not, such debt, money, or stock shall be deemed the whole, or part, as the case may be, of the consideration in respect whereof the conveyance is chargeable with *ad valorem* duty.

Duty in certain cases.  
372, 1886, s. 41.  
1216, 1915, s. 5.  
U.K. 54 & 55 Vict. c. 39, s. 58.

68. (1) Where any property has been contracted to be sold for one consideration for the whole, and is conveyed to the purchaser in separate parts or parcels by different instruments, the consideration shall be apportioned in such manner as the parties think fit, so that a distinct consideration for each separate part or parcel shall be set forth in the conveyance relating thereto, and such conveyance shall be chargeable with *ad valorem* duty in respect of such distinct consideration.

(2) Where any property contracted to be purchased for one consideration for the whole, by two or more persons jointly, or by any person for himself and others, or wholly for others, is conveyed in parts or parcels by separate instruments, to the persons by or for whom the same has been purchased for distinct parts of the consideration, the conveyance of each separate part or parcel shall be chargeable with *ad valorem* duty in respect of the distinct part of the consideration specified therein.

(3) Where a person having contracted for the purchase of any property, but not having obtained a conveyance thereof, contracts to sell the same to any other person, and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance shall be chargeable with *ad valorem* duty in respect of the consideration for the sale to the original purchaser, and also in respect of the consideration for the sale by the original purchaser to the sub-purchaser, in the same manner as if such considerations were specified in separate instruments.

(4) Where a person having contracted for the purchase of any property, but not having obtained a conveyance, contracts to sell the whole or any part or parts thereof to any other person, and the property is in consequence conveyed by the original seller to different persons in parts or parcels, the conveyance of each part or parcel shall be chargeable with *ad valorem* duty in respect of the consideration for the sale to the original purchaser, and also in respect of the consideration for the sale by the original purchaser

to the sub-purchaser, in the same manner as if such considerations were specified in separate instruments. The consideration for the sale to the original purchaser in respect of each part or parcel shall, for the purposes of this subsection, be ascertained by determining the ratio which the value of the part or parcel in question bears to the value of the whole property, and shall be specified in the instrument of conveyance.

(5) Where a sub-purchaser takes an actual conveyance of the interest of the person immediately selling to him, which is chargeable with *ad valorem* duty in respect of the consideration moving from him, and is duly stamped accordingly, any conveyance to be afterwards made to him of the same property by the original seller shall be chargeable with *ad valorem* duty in respect of the consideration for the sale to the original purchaser.

69. Where there are several instruments of conveyance for completing the purchaser's title to the property sold, the principal instrument of conveyance only shall be chargeable with *ad valorem* duty, and the other instruments shall be respectively chargeable with such other duty as they may be liable to, but such last-mentioned duty shall not exceed the *ad valorem* duty payable in respect of the principal instrument, and the parties, with the approval of the Commissioner, may decide which of such several instruments is the principal instrument.

Where there are several instruments.  
372, 1886, s. 42.  
Cf. U.K. 54 & 55 Vict. c. 39, ss. 61 (part), 106.

70. Every mortgage, lease, or other instrument executed in order, either directly or indirectly, to avoid or evade the payment of duty payable on a conveyance on sale shall be void, except after *bona fide* transfer of the same to a third person, and shall then only be valid when the same has been duly stamped as a conveyance.

Instrument executed to evade duty.  
372, 1886, s. 43.

71. (1) The value for the purposes of this Act of the property conveyed by any conveyance operating as a voluntary disposition *inter vivos* shall be declared in the conveyance.

Conveyance operating as a voluntary disposition *inter vivos*.  
1216, 1915, s. 29.  
Cf. U.K. 10 Edw. 7 c. 8, s. 74.

(2) Notwithstanding anything in section 23, the Commissioner may be required to express his opinion under that section on any conveyance operating as a voluntary disposition *inter vivos*, and no such conveyance shall be deemed to be duly stamped unless the Commissioner has expressed his opinion thereon in accordance with that section.

## PART III.

1244, 1916,  
s. 25.

(3) Any conveyance which is not chargeable with duty as a conveyance on sale or which is not such a conveyance as is referred to in subsection (4) hereof shall, for the purposes of this Act, be deemed to be a conveyance operating as a voluntary disposition *inter vivos*.

1244, 1916,  
s. 25.

(4) A conveyance made for nominal consideration for the purpose of securing the repayment of an advance or loan, or made for effectuating the appointment of a new trustee or the retirement of a trustee (whether the trust is expressed or implied) and under which no beneficial interest passes in the property conveyed, or made to a beneficiary by a trustee or other person in a fiduciary capacity under any trust (whether expressed or implied), or operating as a voluntary disposition of property for charitable or religious purposes, shall not be chargeable with duty as a conveyance operating as a voluntary disposition *inter vivos*.

*Leases.*

Agreement for  
lease to be  
charged as a  
lease.  
789, 1902,  
s. 29.  
Cf. U.K.  
54 & 55 Vict.  
c. 39, s. 75.

**72.** An agreement for a lease, or with respect to the letting of any lands, shall be chargeable with the same duty as if it were an actual lease made for the term and consideration mentioned in the agreement.

Leases, how to  
be charged in  
respect of  
produce, etc.  
789, 1902,  
s. 30.  
Cf. U.K.  
54 & 55 Vict.  
c. 39, s. 76.

**73.** (1) Where the consideration or any part of the consideration for which a lease is granted or agreed to be granted consists of any produce or other goods, the value of the produce or goods shall be deemed a consideration in respect of which the lease or agreement is chargeable with *ad valorem* duty.

(2) Where it is stipulated in any lease or agreement for a lease that the value of the produce or goods shall amount at least to, or shall not exceed, a given sum, or where the lessee is specially charged with or has the option of paying after any permanent rate of conversion, the value of the produce or goods shall, for the purpose of assessing the *ad valorem* duty, be estimated at the given sum, or according to the permanent rate.

(3) A lease or agreement for a lease, made either wholly or partially for any such consideration, if it contains a statement of the value thereof and is stamped in accordance with the statement, shall, so far as regards the subject-matter of the statement, be deemed duly stamped, unless or until it is otherwise shown that the statement is incorrect, and that the lease or agreement is in fact not duly stamped.

74. (1) A lease or agreement for a lease or with respect to the letting of any lands shall not be chargeable with any duty in respect of any penal rent, or increased rent in the nature of a penal rent, thereby reserved or agreed to be reserved or made payable, or by reason of being made in consideration of the surrender or abandonment of any existing lease or agreement of or relating to the same subject-matter.

Directions as to duty in certain cases.  
789, 1902, s. 31.  
Cf. U.K. 54 & 55 Vict. c. 39, s. 77 (part).

(2) A lease made for any consideration in respect whereof it is chargeable with *ad valorem* duty, and in further consideration either of a covenant by the lessee to make, or of his having previously made, any substantial improvement of or addition to the property demised to him, or of any covenant relating to the subject-matter of the lease, shall not be chargeable with any duty in respect of such further consideration.

#### *Letters of Allotment, Scrip Certificates, and Scrip.*

75. Every person who executes, grants, issues, or delivers out any instrument chargeable with duty as a letter of allotment or scrip certificate or scrip, before the same is duly stamped, shall be liable to a penalty not exceeding twenty pounds.

Penalty for not stamping letter of allotment.  
1216, 1915, s. 14.  
Cf. U.K. 54 & 55 Vict. c. 39, s. 79 (1).

#### *Mortgages.*

76. In this Act the term "mortgage" means a security by way of mortgage for the payment of any definite and certain sum of money advanced and lent at the time when such security is executed or previously due and owing, or forborne to be paid (being payable), or for the repayment of money to be lent, advanced, or paid, or which may become due upon an account current, either alone or together with any sum already advanced or due, and includes—

Interpretation of term.  
1216, 1915, s. 21.  
1244, 1916, s. 24.  
Cf. U.K. 54 & 55 Vict. c. 39, s. 86.

- (a) any conveyance of any real or personal property whatsoever, or any estate or interest therein, in trust to be sold or otherwise converted into money, intended only as a security, and redeemable before the sale or other disposal thereof, either pursuant to express stipulation or otherwise, except where such conveyance is made for the benefit of creditors generally, or for the benefit of creditors specified who accept the provision thereby made for payment of their debts in full satisfaction thereof, or who exceed five in number;
- (b) any defeasance, declaration, or other instrument for defeating or making redeemable or explaining or

qualifying any conveyance of any real or personal property whatsoever, or any estate or interest therein, apparently absolute but intended only as a security;

(c) any agreement, contract, or bond, accompanied by a deposit of any muniments of title, to make a mortgage or any such conveyance or instrument as aforesaid, of or concerning any real or personal property comprised in such title deeds, or any estate or interest therein, or for pledging or charging the same as a security; and

(d) any equitable mortgage, that is to say, any agreement or memorandum, under hand only, relating to the deposit of any title deeds or instruments constituting, or being evidence of, a title to any property whatever, or creating a charge on such property.

Cf. U.K.  
54 & 55 Vict.  
c. 39, s. 86  
(2).

Where mort-  
gage consists  
of several  
instruments.  
1216, 1915,  
s. 22.  
Cf. U.K.  
54 & 55 Vict.  
c. 39, s. 61  
(part).

77. If several instruments are necessary to make a mortgage, and duty would, but for this section, be chargeable on more than one of such instruments, the duty shall be chargeable upon the principal instrument only, and the other instruments shall not be liable to any duty, and the parties, with the approval of the Commissioner, may decide which is the principal instrument.

Security for  
stock, how to  
be charged.  
1216, 1915,  
s. 24.  
Cf. U.K.  
54 & 55 Vict.  
c. 39, s. 87  
(1).

78. A security for the transfer or re-transfer of any stock shall be chargeable with the same duty as a similar security for a sum of money equal in amount to the value of such stock; and a transfer or assignment of any such security shall be chargeable with the same duty as an instrument of the same description relating to a sum of money equal in amount to the value of such stock.

Security for  
future  
advances, how  
to be charged.  
1216, 1915,  
s. 25.  
Cf. U.K.  
54 & 55 Vict.  
c. 39, s. 88.

79. (1) A security by way of mortgage for the payment or repayment of money to be lent, advanced, or paid, or which may become due upon an account current, either alone or together with money previously due, is to be charged, where the total amount secured or to be ultimately recoverable is in any way limited, with the same duty as a security for the amount so limited.

(2) Where such total amount is unlimited, the security is to be available for such an amount only as the *ad valorem* duty denoted thereon extends to cover.

(3) Notwithstanding any provision of The Real Property Act, 1886, no reconveyance or discharge of any mortgage given for an unlimited amount shall be registered unless the duty payable upon the highest amount advanced upon the security has been paid.

80. A security for the payment of any rentcharge, annuity, or other periodical payment, by way of repayment or in satisfaction or discharge of any loan, advance, or payment intended to be so repaid, satisfied, or discharged, shall be chargeable with the same duty as a similar security for the payment of the sum of money so lent, advanced, or paid: Provided that an encumbrance to secure periodical payments during an indefinite period not terminable with life, or during any life or lives, shall be charged as a security for an amount calculated in accordance with the provisions of subsections (2) and (3) of section 66.

Security for repayment by periodical payments, how to be charged.  
1216, 1915, s. 26.  
Cf. U.K. 54 & 55 Vict. c. 39, s. 87 (2).

81. No transfer of a duly stamped security, and no security by way of further charge for money or stock added to money or stock previously secured by a duly stamped instrument, shall be chargeable with any duty by reason of containing any further additional security for such money or stock transferred or previously secured, or the interest or dividends thereon, or any new covenant, proviso, power, stipulation, or agreement in relation thereto, or any further assurance of the property comprised in the transferred or previous security.

Transfers and further charges.  
1216, 1915, s. 27.  
Cf. U.K. 54 & 55 Vict. c. 39, s. 87 (3).

#### *Receipts.*

82. In this Act the term "receipts" includes any note, memorandum, or writing whereby—

Provisions as to duty upon receipts.  
789, 1902, s. 32 (1).  
Cf. U.K. 54 & 55 Vict. c. 39, s. 101 (1).

(a) any money amounting to two pounds or upwards, or any bill of exchange or promissory note for money amounting to two pounds or upwards, is acknowledged or expressed to have been received or deposited or paid; or

(b) any debt or demand, or any part of a debt or demand, of the amount of two pounds or upwards, is acknowledged to have been settled, satisfied, or discharged, or which signifies or imports any such acknowledgment,

and whether the same is or is not signed with the name of any person.

## PART III.

How duty on receipts may be denoted.

789, 1902, ss. 32 (2), 33 (proviso). Cf. U.K. 54 & 55 Vict. c. 39, ss. 101 (2), 102.

**83.** The duty upon a receipt may be denoted by an adhesive stamp, which shall be cancelled by the person by whom the receipt is given before he delivers it out of his hands: Provided that any person may stamp a receipt with an impressed stamp upon the terms following, that is to say:—

- i. Within fourteen days after the receipt has been given, on payment of the duty and a penalty of not exceeding five pounds:
- ii. After fourteen days but within one month after the receipt has been given, on payment of the duty and a penalty of not exceeding ten pounds:

1216, 1915, s. 7.

In no other case shall a receipt be stamped with an impressed stamp: Provided further that a receipt may be written upon a form which has been stamped before signature with an impressed stamp.

Penalty for offences in reference to receipts.

789, 1902, s. 33 (part). U.K. 54 & 55 Vict. c. 39, s. 103.

**84.** If any person—

- (a) gives a receipt liable to duty and not duly stamped;
- or
- (b) in any case where a receipt would be liable to duty, refuses to give a receipt duly stamped; or
- (c) upon payment to an amount the receipt for which is liable to duty gives a receipt for a less amount, or separates or divides the amount paid, with intent to evade the whole or any part of the duty,

he shall be liable to a penalty not exceeding ten pounds.

*Totalizators.*

Racing club to include trotting club.  
789, 1902, s. 37.

**85.** In this Act the term “racing club” includes a trotting club.

Duty on takings of totalizator.  
789, 1902, s. 34. (part).  
1216, 1915, s. 8.

**86.** There shall be payable upon the gross takings of every totalizator, or other instrument or machine of a like nature and conducted upon the like principle, the duty specified in the second schedule.

Payment of stamp duty shall be made to the Commissioner.  
789, 1902, s. 34. (part).

**87.** (1) Payment of any such duty shall be made to the Commissioner.

(2) No such payment shall be deemed to be a discharge for the duty payable upon the gross takings of any totalizator until a formal receipt therefor has been given by the Commissioner, who shall in each case, prior to giving a receipt, satisfy himself that the full amount of duty has been paid.

88. For the purpose of ascertaining the amount of the duty hereby imposed, it shall be the duty of each racing club, racing committee, and racing association to forward to the Commissioner, within fourteen days after the holding of any race meeting held or conducted by such club, committee, or association at which any totalizator is used, a full statement in writing showing the total amount of the takings of each totalizator used at such meeting, and the particulars of such amount.

Statement of takings to be forwarded to the Commissioner,  
789, 1902,  
s. 34 (part).  
Amended by  
S.L.E. Act,  
1935.

89. If any racing club, committee, or association—

(a) neglects to make out and deliver such full statement as aforesaid within one month after the holding of any race meeting held or conducted by such club, committee, or association at which any totalizator is used; or

(b) wilfully delivers any such statement which is false in any particular,

Penalty on failure to deliver such statement,  
789, 1902,  
s. 35.

such club, committee, or association, and every officer thereof respectively who has taken an active part in the holding or conduct of any such race meeting, shall be liable to a penalty of twenty pounds.

89a. (1) Subject to subsection (3) of this section, where the Treasurer is satisfied that any racing club, racing committee or racing association intends to apply the whole of the profits derived by it from any race meeting (including any commission retained by it under section 28 of the Lottery and Gaming Act, 1936) to charitable purposes, or purposes which the Treasurer considers should be regarded as charitable for the purpose of this section, the Treasurer may authorise the club, committee or association to apply towards such purposes the amount of any duty which would apart from this section be payable to the Commissioner on the gross takings of any totalizator used at the race meeting so held.

Exemption from totalizator duty.

Inserted by  
2359, 1937,  
s. 5.

(2) If the club, committee or association satisfies the Treasurer that the amount of such duty has been so applied, the club, committee or association shall be exempt from the obligation to pay such duty to the Commissioner.

(3) In each year this section shall apply only in relation to four race meetings.

(4) The meetings to which this section applies shall be determined by the governing body of the South Australian Jockey Club Limited.

(5) The foregoing provisions of this section shall also apply *mutatis mutandis* in relation to not more than four trotting meetings held in any year by trotting clubs.

The trotting meetings to which this section shall apply shall be determined by the South Australian Trotting League Incorporated.

Regulations.  
789, 1902,  
s. 36.

90. (1) In addition to any power by any other section of this Act conferred on the Governor to make regulations as to any matter, the Governor may make regulations—

(a) for arranging with any racing club for the collection and payment of the duty payable by any other racing club, committee, or association in the same district;

(b) for prescribing the form of any statement, affidavit, declaration, bond, or other instrument required in connection with the payment of duty upon the gross takings of any totalizator: Provided that any statement required shall be verified by an affidavit or declaration sworn or made before a justice; and

(c) generally for facilitating or compelling payment of duty upon the gross takings of any totalizator.

(2) Subsections (2) and (3) of section 112 shall apply to regulations made under this section.

## PART IV.

## PART IV.

SPECIAL PROVISIONS WITH RESPECT TO  
AMUSEMENTS DUTY.

91. In this Part, unless inconsistent with the context or some other meaning is clearly intended—

“admission” means admission as a spectator or one of the audience, and includes admission for the purpose of participating in any exercise or amusement in which the payment for admission entitles him to

Interpreta-  
tion.

1244, 1916,  
s. 5.

Cf. U.K.  
6 & 7 Geo. 5  
c. 11, s. 1  
(6).

Amended by  
1822, 1927,  
s. 8.

s. 91. BROWN v. HOFFMAN (1936) S.A.S.R. 1. As to what constitutes “admission” and “payment on admission.” A person took part in a bridge competition for a prize. There was no charge for admission to the place where the contest was held; the payment was a voluntary one and to enable him to compete for a prize and mere participation in the play was free of charge. Held that the promoter of the amusement had not been guilty of the offence of admitting the said person for payment to an amusement without complying with the provisions of section 93.

participate, and "payment on admission" includes any payment made by a person who, having been admitted to one part of a place where an amusement is held, is subsequently admitted to another part thereof for admission to which a payment involving duty or more duty is required:

"amusement" means amusement (including, though without limiting the meaning of that term, concert, recital, lecture, reading, entertainment of the stage, cinematograph or other picture show, dancing, boxing, horse-racing, or other exhibition, performance, amusement, sport, game, or contest of any kind whatsoever) to which persons are admitted for payment; and "admission to an amusement" includes admission to any place in which the amusement is held:

"promoter," in relation to any amusement, includes the person, company, corporate body, or association having the superintendence or management of the amusement, and also includes the agent, trustee, manager, or committee of any such person, company, corporate body, or association respectively, and also includes any person responsible for the management of the amusement.

*Duty to be Paid on Admission to Amusements.*

92. There shall be charged, levied, and paid on all payments for admission to any amusement as defined by this Part a stamp duty (in this Part referred to as "amusements duty") at the rates specified in the fourth schedule: Provided that no duty shall be charged, levied or paid on any payment not exceeding one shilling.

Duty on payments for admission to amusements.  
1244, 1916, s. 6.  
U.K. 6 & 7 Geo. 5 c. 11, s. 1 (1).

Proviso added by 2312, 1936, s. 3, and amended by 2359, 1937, s. 6.

93. (1) No person shall be admitted for payment to any amusement where the payment is subject to amusements duty, except—

Persons not to be admitted to amusements without duly stamped ticket.

(a) upon the production and delivery to some person appointed by the promoter of such amusement of a ticket stamped with a stamp (not before used) denoting that the proper amusements duty has been paid; or

1244, 1916, s. 7.  
Cf. U.K. 6 & 7 Geo. 5 c. 11, s. 1 (2).

(b) in special cases with the approval of the Commissioner, through a barrier which, or by means of a mechanical contrivance which, automatically registers the number of persons admitted,

unless the promoter of the amusement has made arrangements approved by the Commissioner for furnishing returns of the payments for admission to the amusement and has given security up to an amount and in a manner approved by the Commissioner for the payment of duty.

Amended by  
2359, 1937,  
s. 7.

(2) If any person is admitted for payment to any amusement and the provisions of this section are not complied with, the person admitted and the promoter of the amusement to which he is admitted shall be liable in respect of each offence to a penalty, in the case of the person admitted of five pounds, and in the case of the promoter of fifty pounds, and the promoter shall in addition be liable to pay any duty which should have been paid.

How duty to  
be calculated  
and paid.  
1244, 1916,  
s. 8.  
U.K. 6 & 7  
Geo. 5 c. 11,  
s. 1 (3).

94. (1) Where persons are admitted to an amusement by stamped ticket the amusements duty shall be charged in respect of each person admitted for payment and shall be paid by means of the stamp on the ticket.

Subsecs. (1),  
(2) and (2a)  
substituted by  
2359, 1937,  
s. 8 (1).

(2) Where persons are admitted to an amusement through a barrier or by means of a mechanical contrivance which automatically registers the number of persons admitted the amusements duty shall be calculated and paid on the gross amount paid for such admission (including amounts charged by the promoters for the purpose of paying the duty).

(2a) Where persons are admitted to an amusement otherwise than as mentioned in subsection (1) or subsection (2) of this section or in section 95 of this Act, the duty shall be calculated and paid on the number of admissions.

Amended by  
2359, 1937,  
s. 8 (2).

(3) Amusement duty, in the case of admission otherwise than by stamped ticket, shall except where this Part otherwise provides, be payable to the Commissioner seven days after the holding of the amusement in respect of which the duty is charged and shall be recoverable from the promoter, and may, if the amount of duty is less than fifty pounds, without prejudice to any other means of recovery, be recovered by the Commissioner in a summary manner.

Members'  
tickets and  
season tickets  
1244, 1916,  
s. 9.  
U.K. 6 & 7  
Geo. 5 c. 11,  
s. 1 (4).

95. Where the payment for admission to an amusement is made by means of a lump sum paid as a subscription or contribution to any club, association, or society, or for a season ticket or for the right of admission to a series of amusements or to any amusement during a certain period of time, the

amusements duty shall be paid on the amount of the lump sum, but where the Commissioner is of opinion that the payment of a lump sum or any payment for a ticket represents payment for other privileges, rights, or purposes besides the admission to an amusement, or covers admission to an amusement during any period for which the duty has not been in operation, the duty shall be charged on such an amount as appears to the Commissioner to represent the right of admission to amusements in respect of which amusements duty is payable.

96. (1) Where, upon application being made by the promoter of any amusement to the Commissioner prior to the giving of such amusement, the Commissioner is satisfied—

Exemptions.  
1244, 1916,  
s. 10.  
Cf. U.K.  
6 & 7 Geo. 5  
c. 11, s. 1  
(5).  
Cf. U.K.  
6 & 7 Geo. 5  
c. 24, s. 12.

- (a) that the whole of the gross takings or the whole of the net proceeds of such amusement are to be devoted to charitable, patriotic, religious, educational, or scientific purposes; and
- (b) that the estimated expenses (if any) to be incurred in connection with such amusement are reasonable,

he may give to such promoter a certificate under his hand exempting such amusement from the payment of amusements duty, and such certificate shall be evidence that amusements duty is not chargeable on payments made for admission to such amusement.

(2) If the estimate of expenses to be incurred in connection with such amusement is exceeded, any certificate granted under subsection (1) hereof with respect thereto may be declared by the Commissioner to be null and void, and thereupon—

- (a) the exemption hereby granted shall cease; and
- (b) the promoter to whom the same was granted shall be liable to a penalty not exceeding twenty pounds, unless he satisfies the Commissioner that such excess could not reasonably have been foreseen.

(3) Amusements duty shall not be charged on payments for admission to any agricultural, horticultural, floricultural, poultry, dog, or other like show.

(4) Amusements duty shall not be charged on payments for admission to any amusement being a dance, concert, or card party, or any other amusement specially approved by

Inserted by  
2359, 1937,  
s. 9.

the Treasurer, if the amusement is held for any of the following purposes:—

- (a) Raising funds for any hospital or any institute being a member of the Institutes Association of South Australia, or any public school as defined in the Education Act, 1915-1935; or
- (b) Raising funds to defray the cost of building any church, or any hall available or intended to be available for general public use, or to repay any loan raised to pay such cost; or
- (c) Raising funds to defray the cost of beautifying or improving any streets, roads, public parks, public playgrounds, public reserves or other like public places; or
- (d) Any other charitable, patriotic, religious, educational or scientific purpose; or
- (e) Any other purpose specially approved by the Treasurer,

and if the whole of such net proceeds (if any) as are derived from the amusement are used for any such purpose.

No certificate of exemption shall be required in relation to any such amusement, but in any proceedings to recover amusements duty, it shall lie on the defendant to prove that the amusement was exempt from duty by virtue of this subsection.

#### *Supplementary Provisions.*

Use of  
automatic  
barriers.  
1244, 1916,  
s. 11.

97. (1) The Commissioner may, upon application being made to him by the promoter of any amusement, grant to such promoter permission to use properly constructed barriers or mechanical contrivances which automatically register the actual number of persons admitted through or past such barriers or contrivances as the means of giving admission to such amusement, in lieu of giving admission by duly stamped tickets.

(2) Every such permission shall be in writing and signed by the Commissioner, and shall be authority for the use of such barriers or contrivances on the occasion or occasions therein mentioned only.

Obligations of  
promoters  
using  
automatic  
barriers.  
Ibid., s. 12.

98. (1) Every promoter to whom the permission mentioned in section 97 is given shall, immediately upon the termination of the amusement at which any such barriers or contrivances have been used, check the numbers registered upon

such barriers or contrivances and shall make a return verified by statutory declaration showing the numbers registered thereon and the prices of admission through or past each such barrier or contrivance.

(2) Such return shall be in the prescribed form, and shall be delivered to the Commissioner within three days from the holding of such amusement, together with the amount of amusements duty payable.

(3) Any promoter failing or neglecting to comply with the provisions of this section, or making an incorrect or fraudulent return hereunder, shall be liable to a penalty not exceeding fifty pounds.

99. The Commissioner may require the promoter of any amusement to make arrangements approved by the Commissioner for furnishing returns of the payments for admission to such amusement and to give security up to an amount and in a manner approved by the Commissioner for the payment of duty, and if such promoter refuses or fails or neglects to make such arrangements or to give such security, or to carry out such arrangements when made, he shall be liable to a penalty not exceeding fifty pounds.

Commissioner  
may require  
returns to be  
furnished.  
1244, 1916,  
s. 13.

100. (1) Every promoter of an amusement shall, after the conclusion of such amusement, deliver to the Commissioner all tickets which have been collected from any person or persons admitted to such amusement, and every promoter retaining or being concerned in retaining, or not delivering, such tickets as aforesaid shall be liable to a penalty not exceeding fifty pounds.

Used tickets  
to be  
delivered to  
the Com-  
missioner.  
Ibid., s. 14.

For the purposes of this section, in the case of continuous amusements the phrase "the conclusion of such amusement" means the conclusion of the final amusement on each day.

(2) In the case of any amusement held within a radius of ten miles of the General Post Office at Adelaide, all such tickets as mentioned in this section shall be delivered at the office of the Commissioner at Adelaide within twelve hours from the conclusion of the amusement, and in the case of other amusements all such tickets as aforesaid shall be forwarded to the Commissioner at Adelaide by the first available post.

101. The Commissioner may, upon application in writing by the promoter of any amusement, and upon proof to his satisfaction that any amusement tickets have not been used, repay to such promoter the value of the stamp upon such

Unused  
tickets.  
Ibid., s. 15.

tickets, subject to such deductions as may lawfully be made in the case of a refund by the Commissioner under section 106 of the value of spoiled or unused stamps of the same value.

Power of entry and inspection.  
1244, 1916, s. 16.  
Cf. U.K. 6 & 7 Geo. 5 c. 11, s. 2 (2).

**102.** (1) The Commissioner, or any person authorised in writing by the Commissioner, may enter any place where an amusement is held while the amusement is proceeding, and any place ordinarily used for the holding of an amusement at any reasonable times, with a view to seeing whether the provisions of this Act as to amusements duty are being complied with, and may—

(a) inspect and check any tickets; or

(b) take any particulars, or require any information, which he considers necessary for the proper administration of this Act.

(2) If any person prevents or obstructs the entry of the Commissioner or any person so authorised, or refuses or fails to furnish any information required, he shall be liable to a penalty not exceeding twenty pounds.

Police may be authorised to exercise powers of Commissioner.  
1244, 1916, s. 17.  
Cf. U.K. 6 & 7 Geo. 5 c. 11, s. 2 (4).

**103.** The Commissioner may, if he thinks fit, by agreement in writing with the Commissioner of Police, arrange for the exercise by the Commissioner of Police, either concurrently with the Commissioner or to the exclusion of the Commissioner, of any powers of the Commissioner with respect to amusements and amusements duty; and, so far as required for the purpose of giving effect to any such arrangement, the provisions of this Act with respect to amusements and amusements duty shall have effect as if the Commissioner of Police and the members of the police force were mentioned therein in addition to, or substituted for, the Commissioner or a person authorised by the Commissioner.

### *Regulations.*

Governor may make regulations.  
1244, 1916, s. 18.  
Cf. U.K. 6 & 7 Geo. 5 c. 11, s. 2 (1).

**104.** (1) In addition to any power by any other section of this Part conferred on the Governor to make regulations as to any matter (which power shall in every case be implied for the purposes of any section in which the word "prescribed" is used), the Governor may make any regulations which may be necessary or convenient for carrying out any of the provisions of this Part, or for better effecting the objects of this Part, and in particular (without limiting the effect of this section) for all or any of the following purposes, namely:—

- i. For the supply and use of stamps or stamped tickets, or for the stamping of tickets sent to be stamped; and for securing the defacement of stamps when used; and

- ii. For the use of tickets covering the admission of more than one person and the calculation of the duty thereon; and for the payment of duty on the transfer from one part of a place where an amusement is held to another; and
- iii. For controlling the use of barriers or mechanical contrivances (including the prevention of the use of the same barrier or mechanical contrivance for payments of a different amount), and for securing proper records of admission by means of barriers or mechanical contrivances.

(2) Any such regulation may fix penalties, not exceeding in any case the sum of ten pounds, for any breach of the same or any other regulation.

**105.** (1) Any contravention of or failure to observe any provision of this Part, whether by act or omission, shall be an offence against this Part.

Penalty.  
1244, 1916,  
s. 19.

(2) Every person guilty of an offence against this Part for which no specific penalty is prescribed shall be liable to a penalty not exceeding fifty pounds, or to be imprisoned for any period not exceeding twelve months.

## PART V.

## PART V.

### MISCELLANEOUS PROVISIONS.

**106.** Subject to any regulations made under this Act, the Commissioner may, on the application of any person possessed of stamps or stamped material unused or rendered useless by being inadvertently spoiled, give to such person in lieu of such stamps or stamped material so spoiled or unused, other stamps of the same or another denomination of the same amount in value, or, at his discretion, the same value in money, deducting the proper allowance on purchase of stamps of the like description: Provided that the Commissioner may, if he thinks it just to do so, refrain from making any such deduction.

Spoiled or  
unused  
stamps.  
372, 1886,  
s. 45.  
Cf. U.K.  
54 & 55 Vict.  
c. 38, ss. 9,  
10.  
Cf. U.K.  
12 & 13  
Geo. 5 c. 17,  
s. 48.

Proviso added  
by 2359,  
1937, s. 10.

**107.** Any person making, or assisting in making, any false statement, or any fraudulent alterations in any statement or document required under this Act, with intent to evade the payment of duty shall be deemed guilty of a misdemeanour, and shall be liable to imprisonment for any period not exceeding three years, and to a fine of one hundred pounds.

Penalty for  
fraudulent  
misstate-  
ments.  
372, 1886,  
s. 47.

## PART V.

Penalties for felonies.

372, 1886,  
s. 48.  
Cf. U.K.  
54 & 55 Vict.  
c. 38, s. 13.

**108.** (1) Any person who—

- (a) forges any die or stamp:
- (b) impresses any material with a forged die:
- (c) cuts, tears, or in any way removes from any material any stamp, with intent to make fraudulent use of such stamp or of any part thereof:
- (d) mutilates any stamp with intent to make fraudulent use of any part thereof:
- (e) fraudulently fixes or places upon any material, or upon any stamp, any stamp or part of a stamp which has been cut, torn, or in any way removed from any other material, or out of or from any other stamp:
- (f) erases or otherwise removes from any stamped material any name, sum, date, or other matter or thing whatsoever therein written, with the intent that any fraudulent use should be made of the stamp upon such material:
- (g) knowingly sells or exposes for sale, or utters or uses, any forged stamp:
- (h) knowingly and without lawful excuse (the proof of which lawful excuse shall lie on the person accused) has in his possession any forged die or stamp, or any stamp or part of a stamp, which has been fraudulently cut, torn, or otherwise removed from any material, or any stamp which has been fraudulently mutilated, or any stamped material out of which any name, sum, date, or other matter or thing has been fraudulently erased or otherwise removed,

shall be guilty of felony, and liable to imprisonment, with or without hard labour, for any term not less than one year and not exceeding seven years.

(2) Any person who causes to be done, or knowingly assists in doing, any of the acts mentioned in subdivisions (a) to (h) of subsection (1) hereof shall be deemed to be guilty of the principal offence and shall be punishable accordingly.

**109.** Any person who—

- (a) fraudulently removes or causes to be removed from any instrument any adhesive stamp, or fraudulently affixes to any instrument any adhesive stamp which has been removed from any other instrument, with intent that such stamp may be used again;

Penalty for fraud.

372, 1886,  
s. 26.  
Cf. U.K.  
54 & 55 Vict.  
c. 39, s. 9.

- (b) knowingly sells or offers for sale or utters any adhesive stamp which has been removed from any instrument, or utters any instrument having thereon any adhesive stamp which to his knowledge has been so removed as aforesaid; or
- (c) practises or is concerned in any fraudulent act, contrivance, or device, with intent to evade any duty under this Act,

shall be liable to a penalty of fifty pounds, and in the last case shall also forfeit the amount of the duty sought to be evaded.

**110.** (1) Penalties incurred under this Act may be recovered in a summary way before any two justices, or may be sued for by information in the Supreme Court in the name of the Attorney-General for South Australia, and may be recovered with full costs of suit.

Recovery of penalties.  
372, 1886,  
s. 49.

(2) The Treasurer may, at his discretion, mitigate, stay, or compound proceedings for any penalty, and may reward any person who informs the Commissioner of any offence against this Act or assists in the recovery of any penalty.

**111.** (1) The Supreme Court may, upon application by or on behalf of the Commissioner, grant a rule requiring any person who has received money payable by way of duty or penalty under this Act, or the executor or administrator of any such person, to show cause why he should not deliver to the Commissioner an account upon affidavit of any duty or sum of money received by such person, or executor or administrator, and why the same should not be forthwith paid to the Commissioner.

Remedy for misappropriation.  
372, 1886,  
s. 50.

(2) The Court may make absolute such rule, and enforce by attachment or otherwise the payment of any such duty or sum of money as appears to be due, together with costs.

**112.** (1) The Governor may make such regulations and may authorise such forms as may be necessary from time to time for carrying this Act into effect, and may, by any such regulation, impose a penalty not exceeding fifty pounds for any breach thereof.

Regulations.  
372, 1886,  
s. 51.

(2) Every such regulation and form, when published in the *Government Gazette*, shall have the force of law.

(3) Every such regulation shall be laid before both Houses of Parliament forthwith, if Parliament is sitting, and, if not, then within thirty days after the commencement of the next session.

## SCHEDULES.

Section 3.

## THE FIRST SCHEDULE.

Reference to Acts.	Short Titles of Acts.
No. 372 of 1886 . . . . .	Stamp Act, 1886.
No. 789 of 1902 . . . . .	The Stamp Act Amendment Act, 1902.
No. 837 of 1903 . . . . .	Stamp Act Further Amendment Act, 1903.
No. 849 of 1904 . . . . .	The Stamp Act Further Amendment Act, 1904.
No. 885 of 1905 . . . . .	The Stamp Act Further Amendment Act, 1905.
No. 1216 of 1915 . . . . .	Stamp Act Further Amendment Act, 1915.
No. 1244 of 1916 . . . . .	Stamp Act Further Amendment Act, 1916.
No. 1277 of 1917 . . . . .	Stamp Act Further Amendment Act, 1917.
No. 1374 of 1919 . . . . .	Stamp Act Further Amendment Act, 1919.

Reference to sections of this Act.

Section 28.  
Of U.K.  
54 & 55  
Vict. c. 39,  
1st Sch.

## THE SECOND SCHEDULE.

## Nature of Instrument.

Amount of  
Duty.  
£ s. d.

AFFIDAVIT OR DECLARATION when sworn or declared and subscribed before any competent authority, for each deponent or declarant 0 1 0

*Exemptions—*

Every affidavit or declaration—

1. Filed, read, or used in any Court, or before any Judge, Registrar, Clerk, or officer of any Court.
2. Required to be made by any officer of the Government in respect of any matters relating to the duties of his office.
3. Made before a notary or other authority as to the execution of any instrument, and any certificate by such notary or authority that such declaration has been duly made.
4. Required by the Banking Companies Act, or in proof of death or identity.
5. Required to be made under the Acts relating to the registration of births, deaths, and marriages, or relating to vaccination.
6. Relating to military or naval pensions.
7. Relating to any bonus for the destruction of wild dogs, foxes, or other vermin, or with respect to any vermin rate.
8. Verifying any return required by and made under section 98 of this Act.

Section 29.  
Of U.K.  
54 & 55 Vict.  
c. 39, 1st  
Sch.

AGREEMENT or any MEMORANDUM of any AGREEMENT, not under seal, and not otherwise specifically charged with any duty, whether the same is only evidence of a contract or obligatory upon the parties from its being a written instrument. 0 1 0

**Second Schedule:** The Banking Companies Act has been repealed and superseded by the Banking Companies Act, 1935.

Section 11 of the Hire-Purchase Agreements Act, 1931, provides that the stamp duty payable on an assignment of any of the rights, powers, and liabilities of the owner under a hire-purchase agreement shall be at the rate of one shilling for every £50 or part of £50 comprised in the consideration for the assignment.

Nature of Instrument.

Reference to sections of this Act.

Exemptions—

1. Any agreement or memorandum for the hire of any labourer, artificer, manufacturer, or menial servant.
2. Any agreement or memorandum made for or relating to the sale of any goods, wares, or merchandise where the value does not exceed £50 sterling, whether the same is only evidence of a contract or obligatory on the parties from its being a written instrument, including every schedule, receipt, or other matter put or indorsed thereon or annexed thereto. This exemption shall be construed subject to section 31 of this Act.
3. Any agreement or memorandum made between a master and any mariner of any ship or vessel for wages on any voyage coastwise, from port to port, in the State of South Australia.
4. Any life, fire, personal accident, fidelity, guarantee, live stock, plate glass, or marine insurance or assurance policy or cover note.
5. Storage notes for wheat in the Form A hereto appended, or to like effect only.
6. Any agreement made before the thirtieth day of September, nineteen hundred and sixteen, between any person, firm, or company and the Government of the State, or any Minister of the Crown, authorising the said Government, or any Minister of the Crown, to handle and sell wheat on behalf of such person, firm, or company.

Amended by 1822, 1927, s. 9 (a).

ANNUAL LICENCE—

Sections 32 to 42.

To be taken out by any company, person, or firm of persons, whether corporate or unincorporate, which carries on in South Australia any life, personal accident, fire, fidelity, guarantee, live stock, plate glass, marine, or other assurance or insurance business whatever, and whether the head office or principal place of business of such company, person, or firm of persons is in South Australia or elsewhere.

25s. for every £100 or part of £100 of net premiums of any kind whatsoever received or in any manner charged in account by any such company, person, or firm of persons, or by his or their agents, during the twelve months preceding the year for which such licence may be taken out (except life and personal accident insurance premiums, the licence on which shall be 10s. for every £100, or part of £100). Such premiums shall be the net premiums and be counted so as to exclude any commission or discount and any portion of such net premiums actually paid away by way of re-insurance effected in South Australia with any other such company, person, or firm of persons. No premiums received by any such company, person, or firm of persons for fire or marine insurance risks out of the State shall be counted. The duty in respect of any one licence shall not in any case be less than £25.

In the case of any such company, person, or firm of persons which has not, prior to applying for an annual licence, transacted any assurance or insurance business—

If the annual licence is required for the full period of twelve months ..... 25 0 0

If such licence is required for a shorter period than twelve months ..... A proportionate part of £25.

Stamp Duties Act, 1923-1937.

Reference to sections of this Act.	Nature of Instrument.	Amount of Duty. £ s. d.
	<i>Exemptions—</i>	
	1. Any private guarantee fidelity insurance scheme promoted amongst and sustained solely for the benefit of the officers and servants of any one particular public department, company, person, or firm of persons, and not extended either directly or indirectly beyond such officers and servants; or	
	2. Any such scheme promoted amongst and sustained solely for the benefit of the officers and members of any registered friendly society or branch, and not extended either directly or indirectly beyond such officers and members.	
Sections 43 to 45. Cf. U.K. 54 & 55 Vict. c. 39, 1st Sch.	<b>BANK NOTE.</b> —A duty to be paid by each bank quarterly on bank notes issued by it— For every £100, and also for the fractional part of £100, of the average amount of such notes stated to be in circulation by the quarterly returns made by the bank pursuant to the Banking Companies Act . . . . .	0 10 0
Sections 46 to 52. Amended by 1822, 1927, s. 9 (b). Cf. U.K. 54 & 55 Vict. c. 39, 1st Sch.	<b>BILL OF EXCHANGE, CHEQUE, ORDER payable on demand, COUPON, or INTEREST WARRANT . . . . .</b> Provided that where the bill of exchange, cheque, order payable on demand, coupon, or interest warrant is for an amount under two pounds, the stamp duty shall be 1d. <i>Exemption—</i> Coupons and interest warrants issued by or on behalf of, or in connection with any security guaranteed by, the Government of South Australia.	0 0 2
	<b>BILLS OF EXCHANGE</b> of any kind whatsoever drawn in South Australia other than bills on demand, payable at any place beyond the limits of the Commonwealth of Australia— For every £100, or fractional part thereof . . . . .	0 1 0
	<b>BILL OF EXCHANGE</b> of any kind whatsoever, and <b>PROMISSORY NOTE</b> of every kind whatsoever, drawn or expressed to be payable, or actually paid or indorsed, or in any manner negotiated, in South Australia— For every £25, and also for any fractional part of £25 . . . . .	0 0 6
	<i>Exemptions—</i>	
	1. Bill, note, bond, or debenture issued by or on behalf of or guaranteed by the Government of South Australia.	
	2. Draft or order for the payment of money issued by any duly authorised officer of the Government on account of the public service.	
	3. Post office order or postal note.	
	4. Cheque or order drawn upon the Savings Bank of South Australia.	
	5. Draft or order drawn by any bank in South Australia upon any other bank in South Australia, not payable to bearer or to order, and used solely for the purpose of settling or clearing any account between such banks.	
	6. Letter written by any bank in South Australia to any other bank in South Australia, directing the payment of any sum of money, the same not being payable to bearer or to order, and such letter not being sent or delivered to the person to whom payment is to be made, or to any person on his behalf.	
	7. Letter of credit granted in South Australia authorising drafts to be drawn out of South Australia.	
	8. Cheque drawn by any registered friendly society.	
Section 53.	<b>BILL OF LADING or SHIPPING NOTE</b> for goods exported from the State	0 0 6
Sections 54 to 59. Amended by 1822, 1927, s. 9 (c). Cf. U.K. 54 & 55 Vict. c. 39, 1st Sch.	<b>CONTRACT NOTE</b> (not otherwise charged) for or relating to the sale or purchase of any stock or marketable security. For every £50, or fractional part of £50, of the face value of such stock or marketable security . . . . .	0 1 0
Cf. U.K. 54 & 55 Vict. c. 39, 1st Sch. Cf. U.K. 10 Edw. 7 c. 8, s. 79 (2).	<b>CONTRACT NOTE</b> for or relating to the sale or purchase of any stock or marketable security, which note is made or executed in pursuance and in consequence of the exercise of an option given or taken under a contract duly stamped, and bears on its face a certificate by the broker, agent, or other person	

Nature of Instrument.	Amount of Duty.		Reference to sections of this Act.
	£	s. d.	
referred to in section 56 of this Act to the effect that it is made or executed in the exercise of an option for which a duly stamped contract note has been rendered on the date mentioned in the certificate—			
For every £50, or fractional part of £50, of the face value of such stock or marketable security . . . . .	0	0 6	Amended by 1822, 1927, s. 9 (d).
CONTRACT giving or taking any option to purchase or sell any stock or marketable security at a future time at a certain price—			
For every £50, or fractional part of £50, of the face value of such stock or marketable security in respect of each option . . . . .	0	0 6	Amended by 1822, 1927, s. 9 (e).
CONVEYANCE or TRANSFER on sale of any property (not otherwise charged), including contract or agreement for sale—			Sections 60 to 71.
(a) In the case of any marketable security of any amount or value—			Amended by 1822, 1927, s. 9 (f).
Where the amount or value of the consideration for the sale—			
Does not exceed £50 . . . . .	0	5 0	Cf. U.K. 54 & 55 Vict. c. 39, 1st Sch.
Exceeds £50 and does not exceed £100 . . . . .	0	10 0	
Exceeds £100, for every £100, or fractional part of £100, of such amount or value . . . . .	0	10 0	
(b) In any other case—			
Where the amount or value of the consideration for the sale—			
Does not exceed £50 . . . . .	0	10 0	
Exceeds £50 and does not exceed £100 . . . . .	1	0 0	
Exceeds £100, for every £100, or fractional part of £100, such amount or value . . . . .	1	0 0	
<b>Exemptions—</b>			
Grant of land from the Crown.			
Conveyance, whether on sale or otherwise, to the Crown, and to any person on behalf of the Crown.			
* * * * *			Para. repealed by 1822, 1927, s. 9 (g).
CONVEYANCE operating as a voluntary disposition, <i>inter vivos</i> , of any property.			Amended by 1822, 1927, s. 9 (h), and now para. substituted by 1860, 1928, s. 2 (a).
For every £100 or fractional part of £100 of the value of the property conveyed . . . . .	1	0 0	
CONVEYANCE of any other kind not before charged . . . . .	1	0 0	
DOCUMENT or other INSTRUMENT made for the purpose of securing periodical payments provided for by a separate conveyance on sale, in respect of which provision for periodical payments such conveyance on sale is chargeable with <i>ad valorem</i> duty, of whatever description and howsoever otherwise chargeable . .		No sum higher than 10s.	Section 66. Cf. U.K. 54 & 55 Vict. c. 39, 1st Sch.
DEED (except as otherwise provided in this schedule)—			
For any deed where the consideration money therein expressed is not more than £100 . . . . .	0	5 0	Ibid.
For every additional £100, up to a total of £400, a further sum of	0	5 0	
For every deed or transfer of any kind whatsoever not otherwise specified in this schedule . . . . .	1	0 0	
LEASE (not being a lease made subsequently to and in conformity with a duly stamped agreement for a lease) or AGREEMENT for a LEASE, or any written document for the tenancy or occupancy of any lands, tenements, or hereditaments, the following duties in respect of the rent at the rate per annum—			Sections 72 to 74. Cf. U.K. 54 & 55 Vict. c. 39, 1st Sch.
Where the rate of the rent does not exceed £50 per annum	0	2 6	
Where the same exceeds £50 and does not exceed £100 . . .	0	5 0	
Where the same exceeds £100, for every £50 or fractional part of £50 thereof . . . . .	0	5 0	
Of any other kind whatsoever . . . . .	1	0 0	
LEASE made subsequently to and in conformity with a duly stamped agreement for a lease . . . . .	0	2 6	

Stamp Duties Act, 1923-1937.

Reference to sections of this Act.	Nature of Instrument.	Amount of Duty. £ s. d.
	<i>Exemption—</i>	
	Lease or agreement for a lease, or any written document for the tenancy or occupancy of any lands, tenements, or hereditaments for a term not exceeding one year where the rent reserved does not exceed the rate of £26 per annum.	
Section 75. Cf. U.K. 54 & 55 Vict. c. 39, 1st Sch.	LETTER OF ALLOTMENT or any other document having the effect of a letter of allotment of any share, or part of any share, in any company or proposed company; and SCRIP CERTIFICATE, SCRIP, or other document entitling any person to become the proprietor of any share, or part of any share, in any company or proposed company . . . . .	0 0 1
Sections 76 to 81. Cf. U.K. 54 & 55 Vict. c. 39, 1st Sch.	MORTGAGE, BOND, DEBENTURE, COVENANT, WARRANT OF ATTORNEY to confess and enter up judgment— Being the only or principal or primary security for the payment or repayment of money— For every £100 or fractional part of £100 (not reckoning any money to be advanced for the insurance of any property comprised in the security against damage by fire) . . . . .	0 2 6
	Where any further money is added to the money already secured	(The same duty as a principal security for such further money.)
	<i>Exemption—</i>	
	Every collateral or auxiliary or additional or substituted security, or security by way of further assurance for the above-mentioned purpose, where the principal or primary security is duly stamped.	
Cf. U.K. 54 & 55 Vict. c. 39, 1st Sch.	POWER OF ATTORNEY or other instrument in the nature thereof— Any instrument not under seal . . . . . Any instrument under seal . . . . .	0 10 0 1 0 0
	<i>Exemptions—</i>	
	1. Any instrument for the sole purpose of appointing or authorising any one person to vote as a proxy at any meeting at which votes may be given by proxy.	
	2. Any instrument or order for the receipt of any salary or wages.	
	3. Any instrument or order for the receipt of dividends or interest when made for the receipt of one payment only.	
	RECEIPT—Every receipt for forty shillings or upwards . . . . .	0 0 2
Sections 82 and 84. Cf. U.K. 54 & 55 Vict. c. 39, 1st Sch.	<i>Exemptions—</i>	
	1. Receipt for payment of municipal or district council rates.	
	2. Receipt written upon any instrument duly stamped under this Act acknowledging the receipt of the consideration money therein expressed.	
	3. Receipt for money deposited in any bank in current account and not as a fixed deposit for any period.	
	4. Receipt for money paid into any charitable institution, or for money paid into any registered building or friendly society by any member of such society on account of subscriptions, or for money paid into any fire, life, personal accident, fidelity, guarantee, live stock plate glass, marine, or other insurance or assurance company on account of premiums, or into any post office or other savings bank established in pursuance of any Act on deposit.	
	5. Receipt for money withdrawn by any depositor from the Savings Bank.	
	6. Receipt or discharge given by any seaman, labourer, or menial servant for the payment of wages.	
	7. Receipt for money paid by any friendly or benefit society for sick pay.	
	8. Receipt for money less than five pounds paid to any person by way of gift or gratuity.	
Substituted by 1877, 1928, s. 9.	TOTALIZATOR.—There shall be payable for each day on which any totalizator is used by any racing club a duty calculated according to the gross takings of all the totalizators or other like machines used by the club on that day in accordance with the following scale:— Where the said gross takings do not exceed £2,000 the duty shall be: 1½ per centum of the gross takings.	

- Where the said gross takings exceed £2,000 but do not exceed £3,000 the duty shall be: 2½ per centum of the gross takings.
- Where the said gross takings exceed £3,000 but do not exceed £4,000 the duty shall be: 3½ per centum of the gross takings.
- Where the said gross takings exceed £4,000 but do not exceed £5,000 the duty shall be: 4½ per centum of the gross takings.
- Where the said gross takings exceed £5,000 the duty shall be: 5½ per centum of the said gross takings.

Reference to sections of this Act.

GENERAL EXEMPTION FROM ALL STAMP DUTIES.

1. Wills and testamentary instruments.
2. Certificates of title issued from the Lands Titles Registration Office.
3. Customs bonds.
4. Administration bonds.
5. Bonds to the Crown.
6. Bills, bonds, debentures, and other securities issued by the Government of the Commonwealth in connection with any loan raised by the said Government for any of the purposes of the recent war, and any coupons or interest warrants issued in connection with any such security.
7. Bond on appointment of a special bailiff.
8. Memorandum of association, articles of association, and rules and regulations of any incorporated company, association, or society.
9. Marriage settlements.
10. Mortgage bonds guaranteed by the Government of South Australia.
11. Articles or indentures of apprenticeship.
12. Leases to the Crown and to any person on behalf of the Crown.
13. Power of attorney limited to a power to sign and seal leases from the Crown.
14. Conveyance on sale of any goods, wares, merchandise, horses, cattle, sheep, or other movable chattels when the value does not exceed £20.
15. Any transfer of any fire, personal accident, fidelity, guarantee, live stock, plate glass, or marine insurance or assurance policy.
16. Any cemetery leases.
17. Conveyance or transfer on sale of any share or shares in the stock, funds, or capital of any corporation, company, or society whatever.
18. Bills, bonds, inscribed stock, debentures, deposit receipts, and other securities issued by the Government of the State, and coupons or interest warrants issued in connection with any such bills, bonds, stock, debentures, deposit receipts, or other securities, and any transfer of or document relating to the purchase or sale of any such bills, bonds, stock, debentures, deposit receipts, or other securities.
19. Conveyance or transfer of any share or shares in the stock, funds, or capital of any corporation, company, or society by the personal representatives of a deceased person to any beneficiary who is entitled by virtue of the provisions of the will of such deceased person, or upon his intestacy, to have the share or shares so conveyed or transferred to him.

Cf. U.K. 54 & 55 Vict. c. 39, 1st Sch.

Inserted by 1822, 1927, s. 9 (i).

Inserted by 1822, 1927, s. 9 (i).

Inserted by 1860, 1928, s. 2 (b).

FORM A.

No. .... 19 .  
 We have this day received from , of  
 bags of wheat, containing bushels lbs., to be stored  
 subject to the following conditions:—

We claim to have the offer, at market price, of all wheat stored with us. Should we purchase, our terms are twelve months' storage free. After that time a charge will be made of per bushel per month. Should we not purchase, we will deliver to the storer, his order, wheat of a quality equal to that originally received, either at station where wheat was stored, or at the nearest shipping port, at our option, the storer paying all charges thereon, which can be ascertained from the agent at the time of delivery.

For..... Agent.

Stamp Duties Act, 1923-1937.

THE THIRD SCHEDULE.

Reference to sections of this Act, Section 33.

Form of Annual Licence to be issued to any Company, Person, or Firm of Persons which carries on or desires to carry on in South Australia any Life, Personal Accident, Fire, Fidelity, Guarantee, Live Stock, Plate Glass, Marine, or other Assurance or Insurance Business.

Name of company, person, or firm of persons to whom licence granted.....
Nature of business.....

Amount of net premiums of any kind whatsoever received or in any manner charged in account by such company, person, or firm of persons during the year ended 31st December, 19

Period over which licence extends.....year ending 31st December, 19

This is to certify that.....is a company [person or firm of persons] duly licensed under the provisions of the Stamp Duties Act, 1923, to carry on in South Australia [life, personal accident, fire, fidelity, guarantee, live stock, plate glass, marine, or other] assurance and insurance business during the above-named period.

Dated at the office of the Commissioner of Stamps at Adelaide this.....day of....., nineteen hundred and

DUTY STAMP.

A. B., Commissioner.

Notice.—This licence must be given up and a fresh licence applied for before the 1st January next, as provided by the Stamp Duties Act, 1923.

THE FOURTH SCHEDULE.

Section 92.

Para. 1 substituted by 2359, 1937, s. 11 (1).

Para. 3 substituted by 2359, 1937, s. 11 (2).

- Amusements duty shall be payable as follows:—
1. Where the payment does not exceed one shilling no duty shall be payable.
Where the payment, excluding the amount of duty, exceeds one shilling, the duty shall be one penny for every sixpence or fractional part of sixpence of such payment.
2. Members' or season tickets ... one penny for every sixpence or fractional part of sixpence of the price of such ticket.
3. In cases where properly constructed barriers or mechanical contrivances which automatically register the actual number of persons admitted through or past such barriers or contrivances as the means of gaining admission to an amusement are permitted to be used in lieu of duly stamped tickets, duty shall be payable at the rate of one-seventh of the total amount (including the amounts charged by the promoter for the purpose of paying the duty), paid by persons so gaining admission to the amusement: Provided that where any persons are admitted to the amusement upon payment of sums not exceeding one shilling per person, no duty shall be payable in respect of the sums so paid.