

NEGLECTED AND CRIMINAL CHILDREN.

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An Act for the amendment of the Law relating to Neglected and Criminal Children.

[2nd June 1864.]

WHEREAS it is expedient to provide for the care and custody of “neglected” and “convicted” children, and to prevent the commission of crime by young persons: Be it therefore enacted by the Queen’s Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):—

- 1.** This Act shall be called and may be cited as “*The Neglected and Criminal Children’s Act 1864.*”

Title of Act.
- 2.** The Act mentioned in the First Schedule hereto shall be and the same is hereby repealed: but such repeal shall not affect any assignment award or order made under the authority of the said Act.

Repeal of 13 Vict. No. 31. First Schedule.
- 3.** It shall be lawful for the Governor in Council to establish for the purposes of this Act industrial schools; and every such school shall be occupied by and used for males or females exclusively as the Governor in Council may direct.^(a)

Industrial schools to be established.
- 4.** It shall be lawful for the Governor in Council to establish for the purposes of this Act reformatory schools; and every such school shall be occupied by and used for males or females exclusively as the Governor in Council may direct.

Reformatory schools to be established.
- 5.** It shall be lawful for the Governor in Council from time to time as occasion may require to make regulations for the conduct management and supervision of such schools as aforesaid, and the employment education and correction of the children detained therein, and such regulations from time to time to amend vary or annul; but no such regulation as aforesaid shall include or permit any corporal punishment, except such as may be lawfully inflicted by school-masters.

Governor in Council to make regulations.
- 6.** All such regulations as aforesaid shall be laid before both Houses of Parliament within fourteen days after the making thereof if Parliament be sitting, and if Parliament be not sitting then within fourteen days after the next meeting of Parliament.

Regulations to be laid before Parliament.
- 7.** It shall be lawful for the Governor in Council from time to time to appoint some fit and proper persons to be respectively superintendent and matron of every such school respectively; and

Superintendent and matron and their duty.

(a) See 38 Vict. No. 495 s. 3, “*Neglected and Criminal Children (Amendment)*,” *post*, p. 1853.

it shall be the duty of such persons to observe and carry into execution the several provisions of this Act and the regulations to be made as aforesaid, and also to obey and execute any mandate which may be issued as hereinafter mentioned.

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8. It shall be lawful for the Governor in Council from time to time to appoint such number of fit and proper persons as may be necessary to be teachers officers and servants at every such school: and it shall be the duty of every such person to obey all lawful and reasonable orders and directions of the said superintendent and matron respectively in the execution of this Act.

Teachers officers
and servants and
their duty.

9. If any school shall be established by private contributions and shall be likewise supported to the extent hereinafter mentioned by private contributions and shall be approved by the Governor in Council for the purposes of this Act, the same shall, for the purposes hereinafter mentioned and until such approval shall be withdrawn, be deemed to be an industrial school or a reformatory school (as the case may be) within the meaning of this Act: but if any such school shall be supported for any one or more than one religious denomination exclusively, no child shall be sent to the same unless he or she shall be a member of such denomination or of one of such denominations if more than one; and every order approving such school shall state the denominations (if any) for which the same is supported.

Private schools
to be within the
Act.

10. The accounts of every school established by private contributions as in the last section mentioned shall be audited once at least in every year by the Commissioners of Audit, who for the purposes of such audit shall have all the powers conferred on such commissioners by any law now or hereafter to be in force respecting the collection and audit of the public moneys and accounts. Provided that such school accounts shall be kept separate; and the accounts of the industrial shall be kept distinct from those of the reformatory schools. Every such school shall be entitled to receive out of the consolidated revenue a sum equal to twice the amount, exclusive of any sums contributed by parents or step-parents as hereinafter mentioned, which the Commissioners of Audit shall certify to have been collected and received by private contributions for the said school and to have been expended in the maintenance of the children therein for and during the preceding year. Provided always that the total amount to be granted out of the consolidated revenue to any such school shall not exceed a sum calculated at the rate of five shillings per week for every child maintained in such school in accordance with the provisions of this Act during the preceding year or any part thereof.

Accounts of such
school to be
audited.

Endowment out
of consolidated
revenue.

11. The Governor in Council shall direct a report of the condition management and regulations of every such school as is in the last preceding section mentioned to be made to him at least once in each year by such person as the Governor in Council may appoint; and if upon his report the Governor in Council is dissatisfied with the condition management or regulations of the school, he may withdraw his approval from such school; and from and after publication of such withdrawal in the *Government Gazette* the school shall cease to be an industrial or reformatory school (as the case may be) within

Inspection of
private schools.
24 & 25 Vict.
c. 113 s. 5.

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the meaning of this Act and to be entitled to receive aid from the consolidated revenue. Provided nevertheless that the Governor in Council shall not withdraw his approval of any school as aforesaid until after the lapse of two months from the time that a duplicate of the report aforesaid shall be transmitted to the superintendent matron or managers of such school. Provided also that the minister in whose department this Act may for the time being be administered shall yearly lay before Parliament a report of the condition management and regulations and a general account of the receipts and expenditure of all such schools up to the last day of December next preceding.

Who to be deemed "children" and "inmates."

12. Every boy and girl under the age of fifteen years shall be deemed to be a "child" within the meaning and for the purpose of this Act: and in case there shall be no satisfactory evidence of the age of any such boy or girl, the opinion^(a) of the court or justice dealing with him or her under the provisions hereinafter contained shall be sufficient proof of his or her age: and every person detained (under the provisions hereinafter contained) in any such school as aforesaid shall be deemed to be an "inmate"^(b) thereof within the meaning of this Act.

What children to be deemed "neglected."
24 & 25 Vict. c. 113 s. 9.
29 & 30 Vict. c. 118 s. 14.

13. Every child who answers to any of the descriptions hereinafter mentioned shall be deemed to be a "neglected child"^(c) within the meaning and for the purposes of this Act:—

- (I.) Any child found begging or receiving alms or being in any street or public place for the purpose of begging or receiving alms:
- (II.) Any child who shall be found wandering about or frequenting any street thoroughfare tavern or place of public resort or sleeping in the open air and who shall not have any home or settled place of abode or any visible means of subsistence:
- (III.) Any child who shall reside in any brothel or associate or dwell with any person known or reputed to be a thief prostitute or drunkard or with any person convicted of vagrancy under any Act now or hereafter to be in force:
- (IV.) Any child who having committed an offence punishable by imprisonment or some less punishment ought nevertheless in the opinion of the justices (regard being had to his age and the circumstances of his case) to be sent to an industrial school:
- (V.) Any child whose parent represents that he is unable to control such child and that he wishes him to be sent to an industrial school and gives security to the satisfaction of the justices before whom such child may be brought for payment of the maintenance of such child in such school:

(a) Under this section the magistrate is not bound to take any evidence at all of the child's age; he may form his "opinion" of the age of the child, not only when conflicting or meagre evidence has been "unsatisfactory," but also when there is no evidence at all—the words "unsatisfactory evidence" including in their

scope "no evidence at all."—*In re Brazenall*, 3 W. W. & A. B. (L.), 76.

(b) See 38 Vict. No. 495 s. 2, "*Neglected and Criminal Children (Amendment)*," *post*, p. 1853.

(c) See 38 Vict. No. 495 s. 6, "*Neglected and Criminal Children (Amendment)*," *post*, p. 1854.

(VI.) Any child who at the time of the passing of this Act shall be an inmate of the home commonly known as the Immigrants' Home. 27 VICTORIA,
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14. Every child who shall be found by any constable under circumstances which make such child a "neglected child" within the definition aforesaid may be immediately apprehended by such constable without any warrant, and forthwith taken before some two or more neighboring justices to be dealt with according to this Act. Neglected children may be taken before justices.

15. Whenever any child shall be brought before any two or more justices and charged with being a "neglected child," the said justices shall proceed to hear the matter of the said charge; and if the same shall be established to the satisfaction of the said justices, it shall be lawful for them to direct such child to be sent forthwith to any one of the said industrial schools occupied by and used for his or her sex to be there detained for not less than one year nor more than seven years: and no child except a "neglected child" within the meaning of this Act shall be sent to or maintained in any industrial school. Neglected children to be detained.

16. Whenever any child^(a) shall be "convicted" of any offence punishable by law either upon information or summary conviction, it shall be lawful for the judge or chairman of the court before which or for any two or more justices by whom such child shall be so convicted, in addition to the sentence which may then and there be passed as a punishment for the said offence, to direct such child to be sent at the expiration of such sentence to any one of the said reformatory schools occupied by and used for his or her sex, to be there detained for not less than one year nor more than seven years: and no child except a "convicted" child within the meaning of this Act shall be sent to or maintained in any reformatory school. Convicted children to be detained.
17 & 18 Vict.
c. 86 s. 2.

17. If at the time when any reformatory school is established under this Act any child shall be imprisoned under sentence for an offence punishable either upon information or summary conviction, the keeper of the gaol wherein such child shall be imprisoned shall take such child before two or more justices, who may if they think fit direct such child to be sent to and detained in any one of the said reformatory schools in like manner as if such child had been committed by them after the passing of this Act. Provided always that no such child as last aforesaid shall be sent to or detained in any reformatory school unless the unexpired term of imprisonment of such child shall be at least six months, nor for any longer period than such unexpired term. Children in gaols to be detained.

18. When the judge or chairman of any court or any two or more justices shall direct any "convicted child" to be detained under the provisions of this Act, such direction shall not be included in or form any part of the judgment or adjudication of such court or justices; but shall be a distinct and collateral proceeding. Order not to form part of judgment.

19. Whenever any child shall be directed to be detained in any school established under this Act, the judge chairman or justices Mandate for detention.
Second Schedule.

(a) As to age of "convicted" child, see 38 Vict. (Amendment)," post, p. 1854.
No. 495 s. 8, "Neglected and Criminal Children

27 VICTORIA, shall issue a mandate^(a) in such one of the forms contained in the
No. 216. Second Schedule of this Act as shall be applicable to the case.

Mandate to be a
defence to
actions.

20. In every action for anything done in obedience to any such mandate as aforesaid by any person to whom the same may be directed or by any other person by his authority or command, it shall be sufficient for the defendant to justify under such mandate alone without setting forth the previous proceedings, in like manner as any sheriff can and may justify under any writ of execution issued out of the Supreme Court in any civil action; and proof of the matters alleged shall be sufficient evidence in support of such plea.

Mandate to be
obeyed and to be
authority for and
evidence of
detention.

21. Every mandate issued under this Act shall be executed and obeyed by the persons to whom the same is directed and delivered, and shall be sufficient authority for the detention of the child therein mentioned according to the exigency of such mandate: and the production thereof, accompanied by a statement signed by the superintendent or matron of any industrial or reformatory school that the child named in such mandate was duly received into and is at the signing thereof detained in such school or has been otherwise disposed of according to law, shall in all proceedings whatsoever be sufficient evidence of the facts by this Act required to be stated in such mandate and of the subsequent detention and identity of the child named therein.

Power to dis-
charge child.

22. Notwithstanding the provision lastly hereinbefore contained, it shall be lawful for the Governor in Council at any time during the detention under the provisions of this Act of any such inmate as aforesaid to release such inmate from the industrial or reformatory school in which he or she may be detained (and he or she shall upon the production of such order in council be discharged accordingly), and to remove any such inmate from any industrial or reformatory school maintained at the sole expense of the State to any other industrial or reformatory school as last aforesaid, or from any industrial or reformatory school partly maintained by private contributions to any other such school as last aforesaid. But no inmate shall be transferred from any industrial or reformatory school partly maintained by private contributions to any other such school unless he or she shall be a member of the denomination or one of the denominations by which the said last-mentioned school shall be partly maintained.

Children may be
put out to service
on certain con-
ditions.

23. Notwithstanding anything hereinbefore contained, it shall be lawful for the Governor in Council to place any inmate of any industrial or reformatory school on trial with some person to be named in the license hereinafter mentioned who shall be willing to receive and take charge of and qualified to provide for and take care of such inmate; and to grant to such inmate a license to reside with the person so to be named therein as aforesaid for any term not exceeding three years unless sooner called upon by the Governor in Council to return to the said school, and to require such inmate to return to the said school at any time during the said term unless he or she shall have been previously discharged as aforesaid. And any inmate having such license who shall abscond from the person named

(a) See 38 Vict. No. 495 s. 9, "Neglected and Criminal Children (Amendment)," post, p. 1854.

therein during such term or shall neglect or refuse to return to the said school at the expiration of the said term or when required as aforesaid shall be held to have absconded from the said school. Provided always that no such inmate shall be so placed out before the expiration of one-half of the term of detention originally allotted.

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24. The parent^(a) or step-parent of every such inmate shall (if of sufficient ability so to do) contribute to his or her support while so detained; and any constable, or the superintendent of the school where such inmate shall be detained, may apply to a justice for a summons to be served on the alleged parent or step-parent of such person for the purpose of obtaining such contribution.

Parents liable to contribute to support.

25. On the return of such summons two or more justices shall proceed to hear the matter of the said complaint; and if the relationship of the defendant and his ability to contribute to the support of such inmate be proved to the satisfaction of such justices, they may, by an order in the form contained in the Third Schedule to this Act or to the like effect, adjudge the defendant to pay such weekly sum not exceeding ten shillings for the maintenance of such inmate as such justices shall think fit.

Order for payment to be made.

Third Schedule.

26. It shall be lawful for any two justices, on the complaint of any such parent or step-parent or of any person authorised as aforesaid at any time while the first or any subsequent order continues in force, to make further enquiry into such parent's or step-parent's ability to contribute as aforesaid, and to remit or lessen the amount of the weekly payment that shall have been adjudged by the last preceding order or to increase the same if they see cause so to do, so that the amount shall not in any case exceed the weekly sum hereinbefore mentioned. Provided always that when any such further enquiry shall have taken place, such justices shall make an order in the form contained in the Fourth Schedule to this Act or to the like effect.

Orders for payment may be varied.

Fourth Schedule.

27. Whenever after the making of any such order as aforesaid it shall be made appear to any justice by a complaint in writing and upon oath that any weekly sum to be paid in pursuance of such order has not been paid, such justice may by warrant under his hand and seal cause such parent or step-parent to be brought before him or some other justice to answer the said last-mentioned complaint.

If weekly sum not paid parent may be apprehended.

28. On the return of the said warrant some justice shall proceed to hear the matter of the said last-mentioned complaint; and if the same shall be proved to be true, such justice shall proceed to raise levy or enforce payment of the said weekly sums; and the warrants thereupon may be in the form contained in the Fifth Schedule to this Act or to the like effect.

Recovery of arrears.

Fifth Schedule.

29. The superintendent of every industrial and reformatory school with the consent in writing of the Chief Secretary shall and may manage and demise for any term not exceeding three years the lands of or to which any inmate of such school is seised possessed or entitled; and shall and may make allowances to and arrangements

Superintendent may manage and let estates of inmates.

(a) The father of an illegitimate child was not a parent within the meaning of this section.—*Reg. v. Gaunt, ex parte Ward*, 3 A.J.R., 39.

But see 38 Viet. No. 495 s. 10, "*Neglected and Criminal Children (Amendment)*," *post*, p. 1854.

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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.

And may collect
their rents.

30. The superintendent of every industrial and reformatory school with such consent as aforesaid shall and may demand sue for collect and receive all the rents and profits which shall be due to any inmate of such school, and shall and may give effectual receipts and discharges for such rents and profits or so much thereof as shall be received ; and in case of nonpayment of the said rents and profits or any of them or any part thereof, 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 or profits shall be unpaid, and for the same rents and profits and the costs and expenses incurred by or incidental to the nonpayment thereof may distrain, and the distresses 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.

And bring
actions.

31. The superintendent of every industrial and reformatory school with such consent as aforesaid shall and may in the name and on behalf of any inmate of such school commence and prosecute at law and in equity all actions suits claims demands and proceedings touching any lands estate interest or rights of any inmate of such school 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.

And employ
agents.

32. The superintendent of every industrial and reformatory school with such consent as aforesaid shall and may appoint and remove at his pleasure any attorney or agent under him in respect of all or any of the matters aforesaid, upon such terms and for such remuneration as the Chief Secretary shall think fit.

Rents &c. to be
paid into the
Treasury.

33. All moneys, which under or by virtue of this Act shall come to the possession or control of the superintendent of any industrial or reformatory school for or on account or for the use or benefit of any inmate thereof, shall after making the deduction hereinafter mentioned be paid into the Treasury to be disposed of according to law.^(a)

After making
certain deduc-
tions.

34. All expenses lawfully and with the consent in writing of the Chief Secretary incurred by the superintendent of any industrial or reformatory school in executing the trusts or powers reposed in him by this Act for or on behalf or on account of any inmate thereof, and also such weekly sum not exceeding ten shillings as the Chief Secretary shall direct for the maintenance of such inmate, shall and may be deducted from the moneys to be received as aforesaid.

(a) Wages or earnings may be paid into Post Office Savings Bank ; see 38 Vict. No. 495 s. 19, *“Neglected and Criminal Children (Amendment),”* post, p. 1855.

35. Subject to the regulations to be made as hereinbefore mentioned, all persons authorised in that behalf by the Chief Secretary, all executive councillors, all members of the legislature, all judges of courts (whether of record or otherwise), and all justices, shall be entitled to visit every such school as aforesaid; and shall have admission to the same accordingly.

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Visitors.

36. Subject to the regulations to be made as hereinbefore mentioned, all ministers of religion shall have admission to every industrial and reformatory school maintained at the sole expense of the State and access to such of the inmates thereof as may be members of their respective denominations; and may give instruction to them on the days and at the times allotted by such regulations for the religious education of the inmates of their particular denominations respectively.

Ministers of religion to have access.

37. Every person who by virtue of the provisions hereinbefore contained is entitled to visit any such school as aforesaid, and every minister of religion may inscribe in a book (to be for that purpose provided and kept in such school by the superintendent thereof) any remarks or observations which he may think fit to make touching or concerning such school and the superintendent matron teachers officers servants or inmates thereof or any of them.

Visitors' book.

38. If the superintendent or matron of any industrial or reformatory school or any teacher officer or servant thereof shall negligently or voluntarily permit any inmate thereof to escape therefrom, every such offender shall on conviction thereof forfeit and pay any sum not exceeding twenty pounds.

Penalty for permitting escape.

39. If any inmate of any industrial or reformatory school shall abscond therefrom, or wilfully damage or destroy any real or personal property belonging to any such school, or wilfully neglect or refuse to obey or conform to any such regulation as aforesaid, such inmate (if a male) shall on conviction thereof before two or more justices be liable at the discretion of such justices to be privately whipped; and such inmate may if he has absconded be ordered by the said justices to be sent back to the school and to be there detained until he reaches the age of fifteen years, or for such shorter period as the justices think fit.

Penalty for absconding.
24 & 25 Vict.
c. 113 s. 20.

40. Any person who shall directly or indirectly withdraw from any industrial or reformatory school any inmate thereof, or counsel or induce him or her to abscond therefrom before he or she has been regularly discharged, or who knowing any such person to have been withdrawn or to have absconded from any industrial or reformatory school shall harbor or conceal or assist in concealing such person or prevent him or her from returning to such school, shall on conviction thereof forfeit and pay any sum not exceeding ten pounds.

Penalty for withdrawing or harboring inmates.
Ib. s. 21.

41. Any person who without lawful authority or excuse shall hold or attempt to hold any communication with any inmate of any industrial or reformatory school, and any person who shall enter any such school or any building yard or ground belonging thereto and shall not depart therefrom when required so to do by the superintendent matron or other officer or servant of such school, shall on conviction forfeit and pay any sum not exceeding twenty pounds.

Penalty for communicating with persons detained.