

Treasurer to retain securities for fees, &c.

P. L. 1870, p. 45.

60. The treasurer shall retain in his possession any securities heretofore or hereafter deposited with him or his predecessor, by any banking association, until his or his predecessor's fees, charges and advances made, or credit given in account on the books of the treasury, properly payable by such bank or banking association, shall be paid.

## Bastards.

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## An act for the maintenance of bastard children.

Revision—Approved March 27, 1874.

### I. Proceedings to apprehend putative father of bastard.

Application to justice.

1. That if any woman(*a*) shall be delivered of a bastard child, which shall be chargeable or likely to become chargeable to any township; or shall declare herself to be pregnant of a child likely to be born a bastard, and to become chargeable to any township, (*b*) any overseer of the poor of the township where such woman may be, or of the township wherein the legal settlement of such woman may be, may apply (*c*) to a justice of the peace of the same county wherein such woman may be, to make inquiry into the facts and circumstances of the case.

Examination of mother of bastard.

2. Such justice shall, by the examination of such woman on oath, and upon such other testimony as may be offered, ascertain the father of such bastard, or of such child likely to be born a bastard; and shall thereupon issue his warrant, directed to any constable of the county, commanding him forthwith to apprehend such reputed father, and to bring him before such justice, for the purpose of having an adjudication respecting the filiation of such bastard, or of such child likely to be born a bastard. (*d*)

Warrant.

Proceedings against father if out of county.

3. If the person charged as such reputed father shall be or reside in any other county of the state than that in which such warrant shall be issued,

(*a*) A warrant may issue in the case of a married woman but non-access of the husband must be shown, *State v. Overseer of the Poor, 4 Zab. 533.*

(*b*) The settlement of a bastard child is at the place of legal settlement of the mother at the time of the birth, *Nottingham v. Amwell, 1 Zab. 27.* Or where the child is born if the mother have no legal settlement, *Quick v. Overseers of Amwell, Pen. \*1016.* *McCoy v. Overseers of Newton, 8 Vr. 133.* Proceedings may be instituted both in the township where the mother last resided and also in the township where the child was born, *Ibid.* If the mother, before the birth of the child, remove to another state, and continue to

reside there, the child is not chargeable on any township in this state, *Richardson v. Overseer of Burlington, 4 Vr. 190.*

(*c*) The complaint need not be in writing, *State v. Overseer of the Poor, 4 Zab. 533.* No order can be made against the putative father before such application, *Anonymous, Pen. \*870.*

(*d*) It is not necessary that the township have actually paid money for the expenses of the mother, before proceedings can be instituted for its relief; it is sufficient if the township has promised to pay them, *Garwood v. Waterford, 3 Dutch. 437.* The justice in issuing the warrant acts ministerially, and the putative father cannot litigate the case before him, *State v. Overseer of the Poor, 4 Zab. 533.*

the justice issuing the same shall, in writing thereupon, direct the sum in which any bond shall be taken of the party so charged; and it shall be the duty of the constable to carry it to some justice of the county wherein such person resides, or can be found; the justice to whom the same shall be presented, on proof being made to him of the handwriting of the justice who issued such warrant, shall endorse his name thereon, with an authority to arrest such person in the county where the justice so endorsing shall reside, which shall be a sufficient authority to the constable bringing such warrant in the county where it shall be endorsed.

Endorsement of warrant.

4. Upon the party so charged being apprehended, he shall be carried before the justice who endorsed the said warrant, or some other justice of the same county, who may take from such person a bond to the state of New Jersey, with good and sufficient surety or sureties in the sum so directed on the said warrant, with one or other of the following conditions: first, that in case such person be adjudged or found, under the provisions of this act, to be the father of such bastard, or child likely to be born a bastard, as the case may be, he will obey and comply with any order of filiation that may be made against him, and will indemnify each and every of the townships of this state which may have incurred any cost or expense, or which thereafter may be put to or incur any cost or expense for the support of such bastard or child, or of its mother during her confinement, or from any proceedings arising therefrom; or, second, that such person will appear at the next court of general quarter sessions of the peace of the said county in which said warrant was originally issued, and will not depart the said court without leave.<sup>(a)</sup>

Bond to be taken by justice endorsing warrant.

Condition.

5. Upon a bond being so entered into, with either of the conditions aforesaid, the justice taking the same shall discharge the person so apprehended from arrest, and shall endorse upon the warrant a certificate to that effect; he shall deliver the warrant, with the bond so taken by him, to the constable who brought such warrant; who shall deliver the same to the justice who granted the same, who shall proceed thereupon in the same manner as if such bond had been taken by him.

Thereupon discharge granted.

6. If the person so charged shall not execute the bond so required, with one or other of the conditions aforesaid, to the satisfaction of the justice before whom he shall be brought, then the constable having the warrant shall take such person before the justice who originally issued the warrant.

If no bond given arrest proceeded with.

## II. Examination before justices.

7. Upon the person so charged with being the father of such bastard, or of such child likely to be born a bastard, being brought before the justice who issued the warrant for his apprehension, whether he was arrested in the same or in any other county, the said justice shall immediately call to his aid another justice of the same county; and the said two justices, if the party charged does not demand a trial by jury, shall proceed, without unnecessary delay, to make examination of the matter; and shall examine the mother of such bastard, or the woman so pregnant as aforesaid, on oath, in the presence of the person so charged, touching the father of such child, and shall hear any proofs that may be offered in relation thereto; and, on application, either of said justices shall issue subpoenas to compel the attendance of witnesses before them, which shall have the same effect as if they were issued by a justice of the peace in the court for the trial of small causes.

Justice to associate another with himself.

Proceedings of the two justices.

8. If the person charged shall, before such examination is entered upon, deny that he is the father of such bastard child, or of such child likely to be born a bastard, and shall demand a trial by jury, it shall be the duty of said justices to issue a venire facias to any constable of said county to summon a jury of twelve men competent as jurymen, according to law, to be and appear before said justices at such time and place as shall be expressed in such writ, to make a jury for the trial of such accusation made against said person, of being the father of such child; a return of which jurors shall be made, as made in cases arising under the act for the

Person charged may demand a jury.

<sup>(a)</sup> The provisions of this section are only for the security of the township and for the detention of the putative father until the bastard is born, *Matter of Thomas Murphy*, 3 Zab. 180.

- trial of small causes, and as to any or all of whom the same right of challenge shall belong to both parties, that exist in civil cases at law. (a)
- Trial before jury.** 9. That said justices shall proceed to impanel and swear such jury, and the witnesses produced to establish and rebut such accusation, and the said accusation shall thereupon be tried, as in cases in courts of common law, before such jury.
- Justices may grant adjournments.** 10. If sufficient reasons are given therefor, the said justices may adjourn said hearing or trial, for any time not exceeding six weeks, and shall take a bond with sureties, if the same shall be tendered, from the person charged for his appearance at such time, before them, in the penalty hereinafter directed; if no bond be given the said justices shall commit the said person charged to the jail of said county, there to remain until said day of adjournment.
- May take bond for appearance or commit person charged.**
- The finding at trial.** 11. At the trial aforesaid the said justices, or the said jury, in case a jury has been demanded, shall decide whether the person so charged is the father of such bastard, or of such child likely to be born a bastard; if the decision is that he is not the father of such bastard, or child, he shall be forthwith discharged; but if the decision is that he is such father, the said justices shall make an order of filiation, in which they shall specify the sum to be paid weekly, or otherwise, by such putative father, for the support of such bastard, or of such child likely to be born a bastard, after the same shall be born; if the mother of such child be in indigent circumstances, they shall determine the sum to be paid by such putative father for the sustenance of such mother during her confinement; they shall certify the reasonable expenses of apprehending the said father, and of the trial and order of filiation; and they shall reduce their proceedings to writing and subscribe the same. (b)
- If in his favor accused to be discharged.**
- If adverse, justices to make order of filiation.**
- Reputed father to pay costs and give bond.** 12. Such person so adjudged to be the reputed father, shall upon notice of such order, immediately pay the amount so certified for the costs of apprehending him, and of the trial and order of filiation; and shall also enter into bond to the state of New Jersey, in such sum as such justices shall, direct, with good and sufficient surety or sureties, to be approved of by them, with one or other of the following conditions: first, that such person will obey and comply with the said order of filiation so made against him, and will indemnify each and every of the townships of this state, which may have incurred any costs or expense, or which thereafter, may be put to, or may incur, any costs or expense for the support of such bastard, or child, or of its mother during her confinement, or from any proceedings arising therefrom; or, second, that such person will appear at the next court of general quarter sessions of the peace in said county, and will not depart the court without leave.
- When father to be discharged and when committed.** 13. Upon such bond being delivered to the satisfaction of said justices, they shall discharge such person from arrest; but if he refuses or neglects to execute a bond with one of the conditions aforesaid, or to pay the costs and charges so certified, he shall be committed by such justices, or either of them, to the common jail of the county, there to remain until discharged by the quarter sessions, or until he shall execute such bond to the satisfaction of either of said justices, who upon receiving such bond is hereby authorized to discharge such person from his said confinement.
- Penalty of bonds.** 14. The penalty of every bond which shall be taken for the appearance of any such reputed father, either before justices of the peace or at the quarter sessions, or for indemnifying the townships, shall in all cases, be such a sum as shall insure a full indemnity to every township in the state for the expense that has been, or which may be, incurred by reason of supporting such bastard and its mother during her confinement and the costs of all proceedings connected therewith.
15. When any bond, taken out of the county as aforesaid, shall be
- (a) An order of the justices which has been affirmed by the sessions will not be reversed on *certiorari* because it does not appear on the order when, where, or before whom, the venire was returnable, what the names and number of jurors were, whether the jury were sworn or by whom, whether any witnesses were sworn before the jury or by whom, or what the verdict was, *Dunn v. Overseer of South Amboy*, 3 Vr. 275.
- (b) If the jury find the putative father "guilty," it is sufficient, and the justices may thereupon enter their order, *Gaskill v. Overseer of Downe*, 7 Vr. 356. The order of filiation is a judicial act and must be executed by the justices jointly and not separately, *The State v. Prall*, 5 Hal. 161. *The State v. Joslin*, 1 Gr. 267. *Matter of Murphy*, 3 Zab. 180. See *Charles v. City of Hoboken*, 3 Dutch. 203. An order may be made at any time after the bastard is born and before he is twenty-one years of age. *Matter of Thomas Murphy*, 3 Zab. 180. It may be made against both or either of the parents, *Tyrrel v. Township of Woodbridge*, 3 Dutch. 416. No action can be maintained against the father of a bastard for its support, or the expenses of the mother, without an order, *Layton v. Cooper*, Pen. \*65.

returned to the justice who issued the warrant, such justice shall in like manner call in the aid of another justice of the peace of the same county; and the said two justices shall proceed in manner aforesaid, to examine and determine who is the father of such bastard child, or of such child likely to be born a bastard; and shall make an order of filiation, and prescribe the sum to be paid by such putative father for the support of such child, and for the sustenance of the mother as aforesaid; and shall certify the costs and expenses as aforesaid.

Proceedings in case bond given out of county.

16. Such examination and order may be made in the absence of the person so charged, unless before the same be made he shall in writing require of the justice issuing the warrant, that such examination be made in his presence; in which case reasonable notice of the time and place of such examination shall be given to the person so charged; he may appear and offer testimony in relation to the matters to be inquired into, and may demand and have a trial by jury, and the same proceedings shall be had as in case of the person so charged being brought before such justice; but if the decision on said trial shall be adverse to the person charged, no new bond shall be required of him by the said justices, but he and his sureties shall remain liable for the performance of the condition of the bond theretofore given.

Examination in such case.

III. Appeal to sessions.

17. Any person so charged as aforesaid, or any township, that may deem himself or itself aggrieved by the finding of the jury, or order of the two justices, may, within five days thereafter, appeal therefrom to the next court of general quarter session of the peace, to be holden in the same county; and in such cases, the party taking such appeal shall deliver within said period, a written notice of appeal to one of said justices.

Appeal to sessions.

18. In case of appeal the said justices shall send the bond which has been taken from the person charged, to the clerk of said court of quarter sessions, immediately after receiving said petition of appeal, together with the orders of maintenance and sustenance aforesaid and all the papers connected therewith.

Notice thereof.

Justices to send up papers.

19. The said court to which such appeal shall be made shall have full cognizance of the case, and shall proceed to hear the allegation and proofs of the respective parties, the burthen of proof being upon the township as it was before said justices; (a) if the mother of any bastard be dead, or is insane, or has left the state, the testimony given by her on her examination, shall be received in the same manner, as if she was present and testified to the same; (b) the court shall have power to adjourn the hearing from time to time, on sufficient cause shown; at the request of either party the case shall be tried before a jury in the same manner as before said justices.

Proceedings in sessions.

20. If on the trial of said appeal it is decided, that the said person charged is not the father of such bastard, or child, he shall be forthwith discharged from his imprisonment, or if he has given a bond it shall be cancelled by order of the court; but if the decision in said respect be against the party charged, the court shall proceed to examine the order of filiation or sustenance, and may reduce or increase the sum, directed by such order to be paid; but the same shall not be quashed for any defects in the form thereof, but the same shall be amended by the court according to the facts and justice of the case. (c)

When the accused to be discharged.

If adverse, the court to examine order of sustenance.

Not to be quashed for defect of form.

If decision is against person charged to give bond or on failure, to be sent to jail.

21. If the person charged be in confinement at the time of the trial of such appeal, or has given a bond with condition that he shall appear at such sessions and will not depart the court without leave, he shall immediately, if the decision of such court is against him, pay such costs

(a) The jurisdiction of the sessions is only appellate, and consequently they have no authority to make an original order of filiation or maintenance, *The State v. Price*, 6 Hal. 143. They do not act as a court of error, but may re-try the cause and vary the order to conform to the evidence of the case, *State, Dunn v. Overseer of South Amboy*, 3 Vr. 275. The burden of proof is on the township, *The State v. Bidleman*, 2 Harr. 20. The accused may prove his previous good character, *Dally v. Overseers of Woodbridge*, 1 Zab. 491. *Hawkins v. The State*, 1 Zab. 630.

(b) Parol evidence of the mother's examination, which had been reduced to writing, can not be received, *Clark v.*

*Zane*, Pen. \*981. See *State v. Zellers*, 2 Hal. 220. *Aliter*, where there is conflicting evidence as to whether it was reduced to writing or not, *Tyrrel v. Township of Woodbridge*, 3 Dutch. 416. See *Patton v. Freeman*, Coxe 118. *The State v. Wells*, Coxe 424. *Wilson v. Hill*, 2 Beas. 143.

(c) Where after an order of filiation had been made on defendant, who entered into a recognizance and appealed to the sessions, where the order was confirmed, defendant brought a *certiorari*, and a *scire facias* had been issued on the recognizance, the supreme court ordered the proceedings on the *scire facias* to be stayed, *The State v. Bidleman*, 1 Harr. 267.

To remain until he gives bond or is discharged by court.

and expenses as the court shall adjudge to be paid by him forthwith, and shall enter into a bond to the state of New Jersey in such amount as the court shall order, with approved surety or sureties, with a condition similar in substance with the first condition set forth in section twelfth of this act; if he shall neglect or refuse to pay such moneys and execute such bond, he shall be committed to the common jail of the county, there to remain until he shall pay the same and execute the bond aforesaid, or be discharged by said court in the manner hereinafter provided.

Bond to appear at sessions, when forfeited.

22. If the person, so bound to appear at the sessions, shall depart the said court without executing the bond in the next preceding section required, or without being discharged by the said court, his said bond, with condition to appear at such court, shall be thereby deemed to be forfeited, and may be prosecuted as directed in the next section.

#### IV. Bonds, and suits on, &c.

Such bond, how prosecuted.

23. If default as aforesaid be made, the sessions aforesaid shall cause the said bond to be prosecuted by the prosecutor of the pleas of said county, and the penalty thereof shall be recovered, and shall be paid into the said court, and the said court shall, from time to time, order the said moneys paid out to indemnify any township in the state that may have incurred or which may thereafter incur any cost or expense in the sustenance and support of the said bastard or of its mother, or by reason of any proceedings taken against the said father of such bastard; if any residue remains, the court may direct it to be paid to the person, or his representatives, from whom the said penalty was levied and made.(a)

Judgment for penalty.

Moneys paid out under order of court.

Residue.

Proceedings on breach of condition bond to perform order of filiation.

Sued by prosecutor of pleas. Breaches assigned.

What shall be breach.

Further breaches

Remedy to township where bastard legally settled.

24. When any bond shall be taken, as hereinbefore mentioned, to perform any order of filiation, and any breach shall happen in the condition thereof, the same may be prosecuted by the prosecutors of the pleas of the county in which proceedings were originally taken under this act; which suit shall be in the name of the state of New Jersey, and judgment, if it passes against the defendants, shall be for the penalty thereof; in such actions the breaches shall be assigned as in actions brought on bonds with condition other than for the payment of money, and the same proceedings shall be had in all respects; it shall not be necessary to prove the actual payment of money by any township, or overseer of the poor, but the neglect to pay any sum which shall have been ordered to be paid by any competent authority under this act shall be deemed a breach of the conditions of such bond, and the amount of damages to be assessed in such case, shall be the sum which was so ordered to be paid, and which was withheld up to the time of the commencement of such suit, with interest thereon; for any breaches of such bond which shall happen after the recovery of any damages, or the commencement of any suit, a scire facias may issue, upon which the damages shall be assessed, from time to time, in manner aforesaid; and all moneys which shall be collected on such bond shall be paid to such township or townships as may have incurred or been put to expense in supporting said bastard or its mother, during her confinement, or from costs therefrom arising.

25. If after any order of filiation or sustenance shall have been made by force of this act, the said bastard or its said mother, or both may be removed to the place of their legal settlement, the township wherein such legal settlement shall be, shall be entitled to the benefit of said order of filiation and sustenance, and of the bond given in the proceedings connected therewith; and shall have the same remedies therein as the township at whose instance the original proceedings were taken.

#### V. General provisions.

Court may discharge father when indigent.

26. Whenever any person shall be committed to prison charged as the father of a bastard, or of a child likely to be born a bastard, it shall be the duty of the court of general quarter sessions of the peace of the county in which such person is in jail, to inquire from time to time into the

(a) An overseer cannot maintain, in his own name, a suit on a bastardy bond which has been taken by and in the name of his predecessor in office. *Reed* ads. *Wood*, 3 Vr. 418. The judgment must be entered for the penalty of the bond. *Roll v. Maxwell*, 2 South. \*493(a). An injunction issued out

of chancery to restrain proceedings on a bond given by mistake, to indemnify the township, instead of a bond for appearance, where the putative father had appeared and the justices refused to make an order against him, *Field v. Cory*, 3 Hal. Ch. 574.

circumstances and ability of such father to procure sureties to be bound with him; and if the court shall at any time be satisfied that such father is wholly unable to support such child, or to contribute to its support, or to procure sureties, the said court may, in its discretion, order such father to be discharged from such imprisonment.

27. In making the examinations hereby authorized the mother of such bastard or the woman pregnant with such child may be compelled to testify and disclose the name of the father of such bastard or child and in case of her refusal the said justices or said sessions may, after she is sufficiently recovered from her confinement, commit her to the common jail of the county as and for a contempt of court.

Mother of bastard may be compelled to disclose name of father.

28. *And whereas*, The putative father and lewd mother of bastard children often run out of the township, and sometimes out of the county, and leave the said bastard children a charge upon the township where they are born or legally settled, although such putative father or mother have estate sufficient to support such children, and to discharge the township; therefore, it shall and may be lawful for the overseers of the poor of such township where any bastard child shall be born or settled, to apply to any two justices of the peace of the county where the estate real or personal, or any part thereof, of such putative father or lewd mother may be, and by warrant or warrants, under the hands and seals of the said two justices, who are hereby authorized and required to issue the same, to seize and take the goods and chattels, and to let out and receive the annual rents and profits of the lands and tenements of such putative father or lewd mother, so absconding as aforesaid, for and towards the sustenance, bringing up, and education of such bastard child, so left as aforesaid; and as soon as the said seizure shall be allowed of and confirmed by the court of quarter sessions, it shall and may be lawful for the overseers of the poor of such township, from time to time, and as often as the case may require, to sell and dispose of so much of the said goods and chattels at public vendue, to the highest bidder, and to receive the said rents and profits, or so much thereof as shall be ordered by the said sessions, and to apply the money arising therefrom towards the sustenance, bringing up and education of such bastard child so left as aforesaid; *and further*, that the said overseers of the poor shall be accountable to the court of quarter sessions for all such sum or sums of money as shall or may arise by every such sale or sales, or be by them received for the rents and profits of such lands or tenements.

Proceedings against property of absconding father or mother.

29. Whenever a bastard shall be born in any of the poorhouses of this state, or shall be removed thereto, before any proceedings have been had by virtue of this act, proceedings may be had and taken for the better relief of the board of chosen freeholders, or other authority or authorities having the direction and government of such poorhouse, upon the application of any officer of such poorhouse, or of the keeper thereof, in the same manner as by this act may be had and done for the relief of the township in which a bastard is born.

Bastard born in poor-house.

30. That jury men and witnesses in attendance before said justices shall receive such pay, and be subject to such fines and punishments for non-attendance, and other offences, as are established by law in cases of actions before the inferior courts of common pleas; and such justices and officers shall receive each such fees for their services as are allowed them for like services in courts for the trial of small causes, the losing party to pay all costs of the suit, as in ordinary cases at law; and when the proceedings are removed to the sessions the same fees and costs shall be allowed as in trials before the common pleas on appeals in civil cases.

Fees.

31. The term "township," made use of in this act, shall be construed to comprehend city, town corporate, borough, precinct and ward, respectively.

Definition of term "township."