

PROTECTION OF CHILDREN UNDER THE LAW

One of the first attempts at protection of children under the Law in Jamaica came on 31st March, 1881 when the Maintenance Act came into being but at that time the Act protected only children born in wedlock when the majority of children being born at that time were illegitimate. Finally on 26th April, 1926 a Law by a rather unfortunate name "the Bastardy Law" as it was then named but fortunately now known as the Affiliation Act came into being and for the first some protection was given to bastards or illegitimate children born out of wedlock.

An "Affiliation Order" is one adjudging a man to be the putative father of a child and the old Law had the word "bastard" before the word child, and ordering the father to pay a sum of money weekly or otherwise towards the support of that child.

"Putative father" means the person adjudged by an Affiliation Order to be the putative father of a child and in the old Law prior to the word child was inserted the word Bastard and again this was not abolished until as late as the year 1969.

"Child" means a natural child and finally

"Guardian" means any person who may be appointed to have the custody of a child under the provisions of the Affiliation Act.

The Law provided and still provides that any single woman who may be pregnant or who may be delivered of an illegitimate child after 26th April, 1926 or who may have had such a child within twelve (12) months before the 26th day of April, 1926, the date of the passing of the Bastardy Law as aforementioned may (1) EITHER before the birth or at any time within twelve (12) months from the Birth of such child or at anytime thereafter upon proof that the man alleged to be the father of such child has within twelve (12) months after the birth of such child paid money for its maintenance

or contributed to its support or within twelve (12) months next after the return to this Island of the man alleged to be the father of such child upon proof that he ceased to reside in this Island within twelve (12) months next after the birth of such child, then such single woman i.e. pregnant or already delivered of the child, can make a complaint on oath or affirmation before any of the following person:-

- (a) the Resident Magistrate of the parish in which she resides;
- (b) A Justice resident in such a parish.
- (c) The Clerk of the Courts or Deputy Clerk of the Parish alleging some man to be the putative father.

Also the guardian of a child in respect of whom no Affiliation Order has been made for him or her on the application of its mother shall have the same right to make a complaint as a single woman who is the natural mother of a child and the guardian will make such application to the persons above referred to in the parish in which the guardian resides.

The Complaint having been paid, the Clerk of the Courts will issue the relevant Summons to be served on the person alleged to be the father of the child.

When the complaint is made before the birth of the child the summons shall be issued to the person alleged to be the father of the child to appear at a Resident Magistrate's Court to be holden at a time after the woman expects the child to be born and if on the date specified on the Summons for the person alleged to be the father to appear, the said child has not yet been delivered of the complainant or if the Resident Magistrate is satisfied that she has been delivered of the said child within such a short period from the day set to appear that she cannot appear, then the Resident Magistrate can adjourn the hearing of the case until the child shall have been born and the complainant shall be able to attend.

The child having been born and the complainant being able to attend the hearing and it having been proven that the Summons was served on the person alleged to be the father of the child or left at his place of abode six days at least before the holding of the Court (the Law states that the Summons can be left at the place of abode of the alleged father but this is not usually done as only service upon the alleged father is now in practice accepted by the Courts, with the necessary Affidavit of service at the back of the Summons filed in The Resident Magistrate shall hear the evidence of the Complainant and any other evidence as may be and tendered in support of the complaints and then he shall hear the alleged evidence tendered by the alleged father or on his behalf and if the evidence of the Complainant be corroborated in some material particular by other evidence to the satisfaction of the Resident Magistrate then the Resident Magistrate may adjudge the man to be the putative father of the child provided that (a) If the Complainant fails to give evidence and the Resident Magistrate is sufficiently satisfied that the reason why the Complainant cannot give such evidence is due to the inability (death) or the unavailability of the Complainant (illness) or other sufficient cause then the Resident Magistrate may accept in lieu of such evidence, the evidence of some other person who in the estimation of the Resident Magistrate appears to be worthy of belief and who is sufficiently knowledgeable of the case and this evidence must be sufficiently corroborated and (b) If the alleged father appears in Court and admits to being the putative father the Resident Magistrate may thereupon adjudge that person to be the putative father of such child whether or not the Resident Magistrate has heard the evidence of the Complainant or of any other person.

If the Resident Magistrate adjudges the man to be the putative then he may also if he sees fit, and he almost invariably

does, make an Order called an Affiliation Order on the putative father for the payment to the mother or guardian of the child, such weekly or monthly sums of money - usually weekly having regard to the means of the putative father and having regard to all the circumstances of the case as the Resident Magistrate may think fit for the maintenance and education of the said child. In 1951 the maximum amount that the Resident Magistrate could order was Forty Shillings (40/-) or Four Dollars (\$4.00) (S 2 of 9/1951) this situation was changed in 1975.

If the child has died before an Order was made, the Resident Magistrate could order the putative father to pay such sum, having regard to the means of the putative father as the Resident Magistrate thinks fit for the expenses incurred in respect of the burial of the said child. Prior to 1975 the Resident Magistrate could not make an Order for contributions towards the burial exceeding £1.00.

If an application is made before the birth of the child or within two (2) calendar months after the birth of the child then the weekly sum will be calculated from the date of birth of the child, and if the child has died from the birth of the child until the date of the death. In addition to the weekly sums the Resident Magistrate may make an Order for the putative father to pay a sum of money, dependent on his means and as the Resident Magistrate sees fit, towards the confinement of the mother. Prior to 1975, the maximum sum that the Resident Magistrate could order as a payment from the putative father towards the mother's confinement was £2.00. Finally in any case the Resident Magistrate may also in and by the said Order direct the putative father to pay such sum as he may seem fit for the costs incurred in obtaining the Order. In the Family Court costs are seldom ordered except in respect of expenses such as those incurred for

which may also be ordered in the Family Court.

travelling eg. bringing children to Court etc.

At any time after an Affiliation Order has been made the Resident Magistrate may upon the application of the putative father or of the mother or the guardian of the child vary, such Order in such manner and to such extent as he may think fit or suspend such Order or such Order having been suspended, may revive the same.

After the expiration of one week the sum to be paid on the Order may be enforced in the Resident Magistrate's Court in the manner prescribed by the Justices of the Peace Jurisdiction Act Parts I and III for the enforcement of Orders of Justices, Requiring the payment of a sum of money under that Act. The Resident Magistrate may appoint a Clerk of the Courts or Assistant Clerk to be the Collecting Officer who will be e.g. the Collecting Officer for the parish of Saint Catherine. The Family Court as a Collecting Office and indeed an entire Collecting Agency Department now exists at No. 74B King Street. Where a Resident Magistrate makes an Affiliation Order he shall upon the application of the mother or the guardian (as the case may be) at the time when the Order is made or afterwards on a Expatre Application to vary the said Order provide that all payments under the Order be made to the Collecting Officer. Payments may be made in person to the Collecting Officer or by Registered Post and should be posted in time to be delivered to him on the day appointed for payment. The Collecting Officer will receive these sums and make fortnightly payments to the mother or guardian without making any deductions therefrom. The mother or guardian should go to the Collecting Officer and collect the amounts as ordered. If not, then the Collecting Officer must send an Order to the appropriate Post master of the Post Office of the person to whom the payment is to be made - an original and duplicate Order is to be sent specifying the amount to be paid. It shall therefore be the

duty of the person entitled to payment to attend at the Post Office and sign the receipt of the original and duplicate orders in the presence of the Postmaster who shall then pay out the amount. The Court will not be make an order to pay amounts to persons in charge of Postal Agencies as these are run by private persons and the Family Court has had problems with various Postal Agencies. It is the duty of the Postmaster to keep the duplicate order and return the original to the Collecting Officer. It has been found that an ever increasing amount of applicants request the Resident Magistrate to make an order for the putative father to pay the amount as ordered to the Collecting Officer as this seems to induce the putative father to pay and furthermore proper records are kept, as well as, if the moneys are not paid on time then the necessary legal action against the putative fathers will be taken. Where under an Affiliation order which provides for payment to be made to the Collecting Officer and payment in fourteen (14) clear days in arrears, the Resident Magistrate may upon the application of the Collecting Officer issue a warrant under such order or since any commitment for disobedience under that order together with the costs of such order to be recovered by distress. If there is not sufficient goods to distrain upon, then the Resident Magistrate shall issue a warrant to bring the putative father before him and if the putative father neglects or refuses without reasonable cause to make the payment of the sum due, together with the costs then the Resident Magistrate may Commit him to prison for a period not longer than three (3) months with or without hard labour unless the sum due plus costs together with the costs of Commitment be sooner paid. Where the Resident Magistrate Commits the putative father to prison under the foregoing provisions then unless the Resident Magistrate so directs then no arrears can accrue under the order while the putative father remains in prison. It is only possible to recover arrears of up to six (6) months.