

Maintenance Orders (Facilities for Enforcement) Bill.

EXPLANATORY NOTE.

THE Imperial Conference, held in 1911, passed a resolution in favour of the adoption in the constituent parts of the Empire of reciprocal legal provisions for the enforcement of maintenance orders.

As a result of correspondence between the Imperial Government and the Government of New South Wales, an undertaking was entered into by the latter to introduce such reciprocal provisions when and if the Imperial Government enacted the like legislation. A similar undertaking was entered into by various other States and Dominions throughout the Empire.

Accordingly, in 1920 the Imperial Government passed the Maintenance Orders (Facilities for Enforcement) Act, 1920, 10 and 11 Geo. V C. 33, upon which the attached Bill is modelled. The Clauses of the Bill are self-explanatory. Its object is to make provision for the enforcement in New South Wales of maintenance orders made in England and Ireland and in such other parts of the British Dominions and Protectorates as have adopted like provisions to those contained in the Bill and *vice versa*.

The provisions of the Imperial Act have already been applied *inter alia* to Queensland, Western Australia, Tasmania, British India, Northern Rhodesia, the Bechuanaland Protectorate, Swaziland, the Zanzibar Protectorate, Basutoland, Falkland Islands, the Gold Coast, the Gambia, Trinidad, and Tobago.

No. , 1922.

A BILL

To facilitate the enforcement in New South Wales of maintenance orders made in England and Ireland and certain other parts of His Majesty's Dominions and Protectorates, and vice versa.

[MR. LEY ;—13 *September*, 1922.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited as the "Maintenance Orders (Facilities for Enforcement) Act, 1922." Short title.

Interpreta-
tion.

2. In this Act, unless the context or subject-matter otherwise indicates or requires,—

“Applicant” includes a complainant.

“Application” includes a complaint.

cf. 10 and 11
Geo. V, c. 33,
s. 10.

“Certified copy” in relation to an order of a court means a copy of the order certified by the proper officer of the court to be a true copy. 5

Ibid.

“Dependants” means such persons as a person against whom a maintenance order is made is liable to maintain, according to the law in force in the place where such maintenance order is made. 10

cf. Queens-
land Act, 12
Geo. V,
No. 24, 1921.

“Governor” includes an Administrator, Commissioner, Resident, or other officer representing His Majesty in any British Protectorate. 15

cf. 10 and 11
Geo. V, c. 33,
s. 10.

“Maintenance order” means an order other than an order of affiliation for the periodical payment of sums of money towards the maintenance of the wife or other dependants of the person against whom the order is made. 20

“Prescribed” means prescribed by rules made under or by virtue of this Act.

cf. Queens-
land Act,
12 Geo. V,
c. 33, s. 10.

“Reciprocating State” means any part of His Majesty’s Dominions outside the United Kingdom to which the Imperial Act intituled the Maintenance Orders (Facilities for Enforcement) Act, 1920, extends, or is hereafter extended, and which has been declared under section twelve of this Act to be a reciprocating State for the purposes of this Act. 25 30

cf. W.A. Act,
12 Geo. V,
No. 27.

“Secretary of State” means one of His Majesty’s Principal Secretaries of State for the time being.

Enforcement
in New South
Wales of
maintenance
orders made
elsewhere.

10 and 11
Geo. V, c. 33,
s. 1.

3. (1) Where a maintenance order has, whether before or after the passing of this Act, been made against any person by any court in England or Ireland, or in any reciprocating State, and a certified copy of the order has been transmitted by the Secretary of State or by the Governor of the reciprocating State, as the case may be, to the Governor, the Governor shall send a copy of the order to the prescribed officer of a court in New South Wales 35 40

Wales for registration ; and on receipt thereof, the order shall be registered in the prescribed manner, and shall, from the date of such registration, be of the same force and effect, and, subject to the provisions of this Act, all
5 proceedings may be taken on such order as if it had been an order originally obtained in the court in which it is so registered, and that court shall have power to enforce the order accordingly.

(2) The court in which an order is to be so
10 registered as aforesaid shall, if the court by which the order was made was a court of superior jurisdiction, be the Supreme Court, and, if the court was not a court of superior jurisdiction, be a court of summary jurisdiction.

4. Where a court in New South Wales has, whether
15 before or after the passing of this Act, made a maintenance order against any person, and it is proved to that court that the person against whom the order was made is resident in England or Ireland or in a reciprocating State, the court shall send to the Governor,
20 for transmission to the Secretary of State or to the Governor of that reciprocating State, as the case may be, a certified copy of the order.

Transmission of maintenance orders made in New South Wales.
10 and 11
Geo. V, c. 33,
s. 2.

5. (1) Where an application is made to a court of
summary jurisdiction in New South Wales, for a main-
25 tenance order against any person, and it is proved that that person is resident in England or Ireland or in a reciprocating State the court may, in the absence of that person, if after hearing the evidence it is satisfied of the justice of the application, make any such order as it
30 might have made if a summons had been duly served on that person and he had failed to appear at the hearing, but in such case the order shall be provisional only and shall have no effect unless and until confirmed by a competent court in England or Ireland or in such
35 reciprocating State as aforesaid, as the case may be.

Power to make provisional orders of maintenance against persons resident outside New South Wales.
Ibid. s. 3.

(2) The evidence of any witness who is examined on any such application shall be put into writing, and such deposition shall be read over to and signed by him.

(3) Where such an order is made, the court shall
40 send to the Governor for transmission to the Secretary of State in a case where the person against whom the order

order is made is alleged to reside in England or Ireland, or to the Governor of the reciprocating State in which the person against whom the order is made is alleged to reside, as the case may be, the depositions so taken, and a certified copy of the order, together with a statement of the grounds on which the making of the order might have been opposed if the person against whom the order is made had been duly served with a summons and had appeared at the hearing, and such information as the court possesses for facilitating the identification of that person and ascertaining his whereabouts. 5 10

(4) Where any such provisional order has come before a court in England or Ireland or in a reciprocating State, as the case may be, for confirmation, and the order has by that court been remitted to the court of summary jurisdiction which made the order for the purpose of taking further evidence, that court or any other court of summary jurisdiction sitting and acting for the same place shall, after giving the prescribed notice, proceed to take the evidence in like manner and subject to the like conditions as the evidence in support of the original application. 15 20

If upon the hearing of such evidence it appears to the court that the order ought not to have been made, the court may rescind the order, but in any other case the depositions shall be sent to the Governor and dealt with in like manner as the original depositions. 25

(5) The confirmation of an order made under this section shall not affect any power of a court of summary jurisdiction to vary or rescind that order : 30

Provided that on the making of a varying or rescinding order the court shall send a certified copy thereof to the Governor for transmission to the Secretary of State or to the Governor of the reciprocating State in which the original order was confirmed, as the case may be : 35

Provided also that in the case of an order varying an original order the order shall not have any effect unless and until confirmed in like manner as the original order.

(6) The applicant shall have the same right of appeal, if any, against a refusal to make a provisional order as such person would have had against a refusal to 40

to make the order had a summons been duly served on the person against whom the order is sought to be made.

6. (1) Where a maintenance order has been made by
5 a court in England or Ireland or in a reciprocating State, and the order is provisional only and has no effect unless and until confirmed by a court of summary jurisdiction in New South Wales, and a certified copy of the order,
10 together with the depositions of witnesses and a statement of the grounds on which the order might have been opposed has been transmitted to the Governor, and it appears to the Governor that the person against whom the order was made is resident in New South
15 Wales, the Governor may send the said documents to the prescribed officer of a court of summary jurisdiction, with a requisition that a summons be issued calling upon the person to show cause why that order should not be confirmed, and upon receipt of such documents and requisition the court shall issue such a summons
20 and cause it to be served upon such person.

Power to confirm maintenance order made out of New South Wales.
10 & 11 Geo. V, c. 33, s. 4.

(2) At the hearing it shall be open to the person on whom the summons was served to raise any defence which he might have raised in the original proceeding had he been a party thereto, but no other defence, and
25 the certificate from the court which made the provisional order stating the grounds on which the making of the order might have been opposed if the person against whom the order was made had been a party to the proceedings shall be conclusive evidence that those
30 grounds are grounds on which objection may be taken.

(3) If at the hearing the person served with the summons does not appear or, on appearing, fails to satisfy the court that the order ought not to be confirmed, the court may confirm the order either without
35 modification or with such modifications as to the court after hearing the evidence may seem just.

(4) If the person against whom the summons was issued appears at the hearing and satisfies the court that for the purpose of any defence it is necessary to
40 remit the case to the court which made the provisional order for the taking of any further evidence, the court may so remit the case and adjourn the proceedings for the purpose.

(5)

(5) Where a provisional order has been confirmed under this section, it may be varied or rescinded in like manner as if it had originally been made by the confirming court, and where on an application for rescission or variation the court is satisfied that it is necessary to remit the case to the court which made the order for the purpose of taking any further evidence, the court may so remit the case, and adjourn the proceedings for the purpose. 5

(6) Where an order has been so confirmed, the person bound thereby shall have the same right of appeal, if any, against the confirmation of the order as he would have had against the making of the order had the order been an order made by the court confirming the order. 10 15

Power to make regulations for facilitating communications between courts.
10 & 11 Geo. V, c. 33, s. 5.

7. The Governor may make regulations as to the manner in which a case can be remitted by a court authorised to confirm a provisional order to the court which made the provisional order, and generally for facilitating communications between such courts. 20

Mode of enforcing orders.

8. (1) A court in which an order has been registered under this Act or by which an order has been confirmed under this Act, and the officers of such court, shall take all such steps for enforcing the order as may be prescribed. 25

(2) Every such order shall, where practicable, be enforceable in like manner as if the order were made by the court in which it is so registered, or by which it is so confirmed, and where not practicable shall be enforceable in the manner prescribed by the Justices Act, 1902, for enforcing an order for the payment of money. 30

Application of certain Acts.

9. (1) The Acts for the time being in force and applicable to proceedings in respect of maintenance orders before a court of summary jurisdiction shall apply to proceedings under this Act before such court. 35

Rules of court.

(2) The Governor may for the purpose of carrying out the provisions of this Act make rules for carrying out the practice and procedure of courts of summary jurisdiction under this Act. 40

(3)

(3) The judges of the Supreme Court shall have power to make rules for carrying out the practice and procedure of the Supreme Court under this Act.

10. Any document purporting to be signed by a judge or officer of a court in England or Ireland or in a reciprocating State shall, until the contrary is proved, be deemed to have been so signed without proof of the signature or judicial or official character of the person appearing to have signed it, and the officer of a court by whom a document is signed shall, until the contrary is proved, be deemed to have been the proper officer of the court to sign the document.

Proof of documents signed by officers of court.
10 & 11 Geo. V, c. 33, s. 8.

11. Depositions taken in a court in England or Ireland or in a reciprocating State, for the purposes of this Act, may be received in evidence in proceedings before courts of summary jurisdiction under this Act.

Depositions to be evidence.
Ibid. s. 9.

12. (1) Where the Governor is satisfied that reciprocal provisions have been made by the legislature of any part of His Majesty's Dominions outside the United Kingdom for the enforcement within that part of maintenance orders made by courts within New South Wales, the Governor may, by proclamation published in the Government Gazette, declare such part to be a reciprocating State for the purposes of this Act, and thereupon such part shall become a reciprocating State within the meaning of this Act.

cf. Queensland Act, 12 Geo. V, c. 33, s. 12.

(2) A proclamation under this section may be varied or revoked by a subsequent proclamation.

