

RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS.

12° GEO. V., No. XXVII.

No. 27 of 1921.

AN ACT to facilitate the enforcement in Western Australia of Maintenance Orders made in other parts of His Majesty's Dominions and Protectorates and *vice versa*, and for other purposes.

[Assented to 21st December, 1921.]

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 Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Reciprocal Enforcement of Maintenance Orders Act, 1921.* Short title.

2. In this Act, subject to the context—

Interpretation.

“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;

“Governing officer” includes, as regards any part of the King's Dominions outside the United Kingdom, the Governor or the officer for the time being administering the government thereof;

“Maintenance Order” means an order for the periodical payment of sums of money for or towards the maintenance or support of any person, and includes an order of affiliation;

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

“Superior Court” means the High Court of Justice in England, Ireland or Northern or Southern Ireland, or the Court of Session in Scotland, or any court in any other part of His Majesty’s Dominions or in any British Protectorate having original jurisdiction as a superior court therein or declared by the legislature thereof to be a superior court.

Enforcement in Western Australia of maintenance orders made in His Majesty’s Dominions outside the Commonwealth.

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 any part of His Majesty’s Dominions outside the Commonwealth to which this Act extends, and a certified copy of the order has been transmitted to the Governor by the governing officer of that part of His Majesty’s Dominions or, in the case of any part of the United Kingdom, by a Secretary of State, the Governor shall send a copy of the order to the prescribed officer of a court in this State 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 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 registered as aforesaid shall, if the court by which the order was made was a superior court, be the Supreme Court, and, if the court was not a superior court, be a court of summary jurisdiction.

Transmission of maintenance orders made in Western Australia.

4. Where a court in this State has, whether before or after the commencement 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 some part of His Majesty’s Dominions outside the Commonwealth to which this Act extends, the court shall send to the Governor for transmission to the governing officer of that part of His Majesty’s Dominions, or, in the case of any part of the United Kingdom, to a Secretary of State, a certified copy of the order.

Power to make provisional orders of maintenance against persons resident in His Majesty’s Dominions outside the Commonwealth.

5. (1.) Where an application is made to a court of summary jurisdiction in this State for a maintenance order against any person, and it is proved that that person is resident in a part of His Majesty’s Dominions outside the Com-

monwealth to which this Act extends, 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 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 such part of His Majesty's Dominions as aforesaid.

(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 send to the Governor for transmission to the governing officer of the part of His Majesty's Dominions in which the person against whom the order is made is alleged to reside, or, in case that part is in the United Kingdom, to a Secretary of State, 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.

(4.) Where any such provisional order has come before a court in a part of His Majesty's Dominions outside the Commonwealth to which this Act extends 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 support of the original application.

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.

(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: Provided that on the making of a varying or rescinding order the court shall send a certi-

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fied copy thereof to the Governor for transmission to the governing officer of the part of His Majesty's Dominions in which the original order was confirmed, or, in case that part is in the United Kingdom, to a Secretary of State, and that in the case of an order varying the original order the order shall not have any effect unless and until confirmed in like manner as the original.

(6.) The applicant shall have the same right of appeal, if any, against a refusal to make a provisional order as he would have had against a refusal to make the order had a summons been duly served on the person against whom the order is sought to be made.

Power of Court
of Summary
Jurisdiction to
confirm main-
tenance order
made out of
the Commonwealth.

6. (1.) Where a maintenance order has been made by a court in a part of His Majesty's Dominions outside the Commonwealth to which this Act extends, and the order is provisional only and has no effect unless and until confirmed by a court of summary jurisdiction in this State, and a certified copy of the order, together with the depositions of witnesses and a statement of the ground 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 this State, 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 and cause it to be served upon such person.

(2.) A summons so issued may be served in this State in the same manner as if it had been originally issued or subsequently endorsed by a justice or court of summary jurisdiction having jurisdiction in the place where the person happens to be.

(3.) 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 proceedings had he been a party thereto, but no other defence, and 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 grounds are grounds on which objection may be taken.

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(4.) 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 modification or with such modifications as to the court after hearing the evidence may seem just.

(5.) 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 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.

(6.) 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 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.

(7.) 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.

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.

Power of Governor to make regulations for facilitating communications between Courts.

8. (1.) A court of summary jurisdiction 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.

Mode of enforcing orders.

(2.) Every such order shall be enforceable in like manner as if the order were for the payment of a sum of money recoverable summarily.

9. The Justices Act, 1902-1920, shall apply to proceedings before courts of summary jurisdiction under this Act.

Application of Justices Act 1902-1920.

Proof of documents signed by officers of Court.

10. For any of the purposes of this Act, any document purporting to be signed or certified by a judge or officer of a court outside this State shall, until the contrary is proved, be deemed to have been so signed or certified without proof of the signature or judicial or official character of the person appearing to have signed or certified it, and the officer of a court by whom a document is signed or certified shall, until the contrary is proved, be deemed to have been the proper officer of the court to sign or certify the document.

Depositions to be evidence.

11. Depositions taken in a court in a part of His Majesty's Dominions outside the Commonwealth, to which this Act extends may, for the purposes of this Act, be received in evidence in proceedings before courts of summary jurisdiction under this Act.

Maintenance orders made outside Western Australia may be used as evidence.

12. (1.) Where an order has been made in any part of His Majesty's Dominions, outside this State, to which this section extends, whether before or after the commencement of this Act by any court or by any judge, magistrate, justice of the peace or other judicial officer by which any person is adjudged to be the father of an illegitimate child or by which any person is ordered to pay any sum of money towards or in respect of the maintenance of the husband, wife, child, or other near relative of that person, the order so made shall, on any complaint made in this State whereby any maintenance order is sought against that person, be sufficient evidence, unless the contrary is proved, of the following matters and facts so far as they are alleged in the order or appear by necessary or reasonable implication therefrom, that is to say—

- (a) The paternity, maternity, and age of the child. whether legitimate or illegitimate:
- (b) The fact that the person against whom the order has been made is the husband or wife of the other person:
- (c) The relationship existing whether by birth or adoption, and whether legitimate or illegitimate, between the person against whom the order has been made and any other person:
- (d) The ability of the person against whom the order has been made to contribute to the maintenance of any other person:

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- (e) The fact that any person is a destitute person or has been deserted or left without adequate means of support by the person against whom the order has been made.

(2.) For the purposes of this section a person shall be deemed to be a near relative of any person to whom he is legitimately related as child, grand-parent, or step-parent, or as brother or sister (of the whole or half blood), or to whom he is legitimately or illegitimately related as father, mother, or mother's husband, or of whom he is a parent by adoption, but no person shall by reason of his being the husband of a woman be deemed to be a near relative of her illegitimate child born after his marriage to her.

13. Any maintenance order made in any part of the King's Dominions, outside the State, to which this section extends may be sufficiently proved for any of the purposes of this Act by the production of a document purporting to be a copy thereof under or authenticated or certified by the seal of the court by which the order was made or the hand of any judge, magistrate, justice of the peace, or other judicial officer by whom or by whose court the order was made or under the hand of the proper officer of the court. Proof of orders.

14. (1.) Sections *ten*, *twelve*, and *thirteen* of this Act apply to and in respect of any part of the King's Dominions to which the Governor may see fit (as he is hereby empowered) to extend them by Order in Council. Application of Act.

(2.) All the provisions of this Act apply to and in respect of the United Kingdom and the Dominion of New Zealand, and to and in respect of such other parts of the King's Dominions and such British Protectorates as they may be extended to.

(3.) Where the Governor is satisfied that reciprocal provisions have been made by the legislature of any part of His Majesty's Dominions outside the Commonwealth for the enforcement within that part of maintenance orders made by courts within this State, the Governor may by Order in Council extend this Act to that part, and thereupon that part shall become a part of His Majesty's Dominions to which this Act extends. Extent of Act.

(4.) The Governor may by Order in Council extend this Act to any British Protectorate, and where so extended this

Act shall apply as if such Protectorate was a part of His Majesty's Dominions to which this Act extends, with such modifications (if any) as the Governor may by the same or any other Order in Council declare.

(5.) An Order in Council under this section may be varied or revoked by a subsequent order.
