

## MAINTENANCE ORDERS (FACILITIES FOR ENFORCEMENT) BILL

### EXPLANATORY MEMORANDUM.

THE purpose of this Bill (with the exception of clause 9) is to make provision for the confirmation and enforcement in New Zealand of provisional orders for maintenance made in the United Kingdom or elsewhere in His Majesty's Dominions.

The Bill has been promoted expressly for the purpose of complying with the conditions prescribed by section 12 of the Maintenance Orders (Facilities for Enforcement) Act, 1920 (Imperial), for the extension of that Act to New Zealand. The Bill differs materially from the Imperial Act, however, inasmuch as it makes no conditions as to reciprocity with respect to its application. Apart from other considerations affecting the merits, this extension of the policy of the Imperial Act is in conformity with the policy expressed in section 80 of the Destitute Persons Act, 1910 (which provides generally, without conditions as to reciprocity, for the acceptance of maintenance orders made out of New Zealand as evidence of the facts in applications for maintenance orders in New Zealand).

The following are the main provisions of the Bill :—

Clause 3 provides for the enforcement in New Zealand of any maintenance order made out of New Zealand, on the filing in a Magistrate's Court of a certified copy of such order. The clause is an adaptation of section 1 of the above-mentioned Imperial Act.

Clause 4 provides for the making in New Zealand of provisional maintenance orders against persons resident in the United Kingdom or some other part of His Majesty's Dominions. Such provisional orders are dependent for their operation on their confirmation by a competent Court in the place where the defendant is. The clause follows section 3 of the Imperial Act, except that the powers conferred by section 73 of the Destitute Persons Act, 1910, are expressly saved. This is necessary for the purpose of enabling beneficiaries under maintenance orders against absentees to have recourse against property in New Zealand.

Clause 5 is adapted from the corresponding provisions of section 4 of the Imperial Act, and provides for the confirmation in New Zealand of provisional maintenance orders made elsewhere within the Empire. Before the confirmation of any such provisional order the defendant is given an opportunity of appearing and of raising any defence that he would have been entitled to raise if he had been represented at the original hearing.

Clauses 6 and 7 relate to matters of evidence, and are in conformity with corresponding provisions in the Imperial Act.

Clause 8 enables the Governor-General to make regulations for facilitating communications between Courts and generally for the purpose of giving effect to the Act. In the Imperial Act a similar authority is conferred on the Secretary of State.

Clause 9 is declaratory of the extent of the operation of section 45 of the principal Act, as to charging orders on property in satisfaction of maintenance orders.

*This PUBLIC BILL originated in the HOUSE OF REPRESENTATIVES, and, having this day passed as now printed, is transmitted to the LEGISLATIVE COUNCIL for its concurrence.*

*House of Representatives,  
8th December, 1921.*

*Hon. Mr. Lee.*

MAINTENANCE ORDERS (FACILITIES FOR ENFORCEMENT).

ANALYSIS.

- |  |  |
|--|--|
| Title.<br>1. Short Title.<br>2. Interpretation.<br>3. Provisions as to the enforcement in New Zealand of orders made in the United Kingdom or elsewhere in His Majesty's dominions.<br>4. Power to make provisional orders under principal Act against persons resident in United Kingdom or elsewhere in His Majesty's dominions. | 5. Magistrate may confirm provisional orders made out of New Zealand.<br>6. Proof of documents signed by officers of Court.<br>7. Depositions to be evidence.<br>8. Charging orders on life insurance policies in satisfaction of maintenance orders.<br>9. Provision for appointment of officers to take proceedings for recovery of moneys payable under maintenance orders. Consequential repeal.<br>10. Regulations. |
|--|--|

A BILL INTITULED

AN ACT to facilitate the Enforcement of Local and Foreign Title.  
Maintenance Orders.

BE IT ENACTED by the General Assembly of New Zealand  
5 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, 1921, and shall be read together with and  
10 deemed part of the Destitute Persons Act, 1910 (hereinafter referred to as the principal Act).

Short Title.

2. In this Act, unless the context otherwise requires,—

“Application” includes a complaint, and “applicant” in-  
cludes a complainant:

Interpretation.

*Cf. 10 & 11 Geo. 5,  
c. 33, sec. 10.*

15 “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:

20 “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; and “dependants” means such persons as that person is, according to the law in force in the place where the maintenance order was made, liable to maintain.

25 3. Where a maintenance order has, whether before or after the passing of this Act, been made against any person by any Court in the United Kingdom or elsewhere in His Majesty's dominions a certified copy of the order may be registered in New Zealand in the prescribed manner, and shall from the date of such registration be of the same force and effect, and all proceedings  
30 may be taken thereon in the same manner, as if it had been a maintenance order originally made by a Magistrate acting under the authority of the principal Act.

Provisions as to the enforcement in New Zealand of orders made in the United Kingdom or elsewhere in His Majesty's dominions.

*Cf. ibid., sec. 1.*

Power to make  
provisional orders  
under principal Act  
against persons  
resident in United  
Kingdom or  
elsewhere in His  
Majesty's  
dominions.  
*Cf.* 10 & 11 Geo. 5,  
c. 33, sec. 3.

4. (1.) Where an application is made in New Zealand for a maintenance order against any person, and it is proved that that person is resident in the United Kingdom or elsewhere in His Majesty's dominions the Magistrate hearing the application may, in the absence of that person, if after hearing the evidence he is satisfied of the justice of the application, make any such order as he 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 the place where the defendant is so proved to be resident. 5 10

(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 Magistrate shall send to the Minister of Justice for transmission in the appropriate manner to the Secretary of State or to the Governor of the part of His Majesty's dominions in which the person against whom the order is made is alleged to reside, 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 also such information as the Magistrate possesses for facilitating the identification of that person and ascertaining his whereabouts. 15 20 25

(4.) Where any such provisional order has come before a Court in the United Kingdom or in any part of His Majesty's dominions as aforesaid for confirmation, and the order has by that Court been remitted to the Magistrate who made the order for the purpose of taking further evidence, such Magistrate or any other Magistrate may, 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. 30

(5.) If upon the hearing of such evidence it appears to the Magistrate that the provisional order ought not to have been made, the Magistrate may rescind the order, but in any other case the depositions shall be dealt with in like manner as the original depositions. 35

(6.) The confirmation of an order made under this section shall not affect any power of a Magistrate or Court to vary or rescind the order. 40

Provided that on the making of a varying or rescinding order a certified copy thereof shall be sent to the Minister of Justice for transmission in the appropriate manner to the Secretary of State or the Governor of the part of His Majesty's dominions in which the original order was confirmed: 45

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.

(7.) The applicant shall have the same right of appeal against a refusal to make a provisional order as he would have had against a refusal to make an order if a summons had been duly served on the person against whom the order is sought to be made. 50

(8.) Nothing in this section shall be so construed as to restrict the authority of a Magistrate to make an order under section seventy-three of the principal Act in any case where the defendant is absent from New Zealand. 55

5. (1.) Where a maintenance order has been made by a Court in the United Kingdom or elsewhere in His Majesty's dominions, and the order is provisional only and has no effect unless and until confirmed in New Zealand, and a certified copy of the order, together with the depositions of witnesses and a statement of the grounds on which the order might have been opposed, has been transmitted in the appropriate manner to the Minister of Justice, the Minister of Justice may cause the said documents to be sent to a Justice of the Peace with a requisition that a summons be issued calling upon the person to appear before a Magistrate to show cause why the order should not be confirmed, and upon receipt of such documents and requisition the Justice shall issue such a summons and cause it to be served upon such person.

(2.) At the hearing it shall be open for 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.

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

(4.) If the person against whom the summons was issued appears at the hearing and satisfies the Magistrate 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 Magistrate may so remit the case and may adjourn the proceedings for the purpose.

(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 Magistrate confirming the same, and where on an application for rescission or variation the Magistrate to whom the application is made 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 Magistrate may so remit the case and adjourn the proceedings for the purpose.

(6.) Where an order has been so confirmed it shall be enforceable in all respects as if it were an order made under the principal Act:

Provided that the person bound thereby shall have the same right of appeal against the confirmation of the order as he would have had against the making of the order had the order been a maintenance order under the principal Act.

6. Any document purporting to be signed by any Judge, Magistrate, or officer of a Court in the United Kingdom or elsewhere in His Majesty's dominions 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.

Magistrate may confirm provisional orders made out of New Zealand.

*Cf.* 10 & 11 Geo. 5, c. 33, sec. 4.

Proof of documents signed by officers of Court.

*Cf.* *ibid.*, sec. 8

Depositions to be evidence.  
Cf. 10 & 11 Geo. 5, sec. 9.

Charging orders on life insurance policies in satisfaction of maintenance orders.

Provision for appointment of officers to take proceedings for recovery of moneys payable under maintenance orders.

Consequential repeal.

Regulations.

7. Depositions taken in a Court in the United Kingdom or elsewhere in His Majesty's dominions for the purposes of this Act may be received in evidence in proceedings under this Act.

8. The authority conferred on any Magistrate by section forty-four of the principal Act to make a charging order on any property of a defendant, for the purpose of satisfying a maintenance order made against that defendant, shall apply and be deemed at all times to have applied with respect to policies of life insurance, notwithstanding the provisions of sections sixty-five and sixty-six of the Life Insurance Act, 1908 (providing for the protection of certain classes of such policies).

9. (1.) On the making of a maintenance order (including an affiliation order) under the principal Act, or at any time thereafter, the Magistrate making the order, or any other Magistrate, may, if he thinks fit, appoint a person, who for the purposes of such appointment shall be deemed to be an officer of the Court, whose duty it shall be, on the request in writing of the person to whom the moneys are payable in pursuance of the order or of some other person having authority in that behalf, to take proceedings for the recovery of any moneys payable under the order in respect of the payment of which default has been made for not less than fourteen days, or to institute proceedings under the Justices of the Peace Act, 1908, or any other Act in respect of offences against the principal Act.

(2.) All moneys payable under a maintenance order may be recovered by such officer suing in his own name, with the addition of the words "Suing on behalf of [*Name and description of persons entitled*] pursuant to section *nine* of the Maintenance Orders (Facilities for Enforcement) Act, 1921," or words to the like effect.

(3.) All moneys recovered under this section shall be applied—

(a.) In payment of the legal and other expenses (if any) incident to the recovery of those moneys; and

(b.) In payment of the balance to the person or persons entitled under the maintenance order.

(4.) The Destitute Persons Amendment Act, 1915, is hereby repealed.

10. The Governor-General may from time to time, by Order in Council, make regulations—

(a.) For facilitating communications between Courts in New Zealand and Courts in the United Kingdom or elsewhere in His Majesty's dominions for the purpose of the confirmation of provisional orders pursuant to this Act:

(b.) Prescribing the returns to be made and accounts to be kept by officers appointed under section *nine* hereof, and generally prescribing the duties of such officers:

(c.) Prescribing rates of allowances or fees to be paid out of the Consolidated Fund to such officers:

(d.) Providing for the release of such officers from their appointments:

(e.) Providing such forms as may be necessary for the purposes of this Act:

(f.) Generally for the purpose of giving effect to the provisions of this Act.