



ANNO DECIMO TERTIO

GEORGII V REGIS.

A.D. 1922.

No. 1504.

An Act to Facilitate the Enforcement in South Australia of Maintenance Orders made in England and Ireland and other parts of His Majesty's Dominions and Protectorates, and *vice versa*.

[Assented to, October 12th, 1922.]

BE it Enacted by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

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

2. In this Act, unless some other meaning is clearly intended— Interpretation.

"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 : Cf. 10 & 11 Geo. 5, c. 33, s. 10.

"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 part of His Majesty's dominions in which the order is made :

"Certified copy" in relation to an order of a Court means copy of the order certified by the proper officer of the Court to be a true copy :

"Prescribed" means prescribed by rules of Court :

"Governor" includes an Administrator, Commissioner, Resident, or other officer representing His Majesty in any British protectorate :

Maintenance Orders (Facilities for Enforcement) Act.—1922.

“Reciprocating State” means any part of His Majesty’s dominions outside the United Kingdom which the Governor has by proclamation declared to be a reciprocating State for the purposes of this Act.

Enforcement in South Australia of maintenance orders made elsewhere.

Cf. *ibid.*, 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 for the Colonies 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 South Australia 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 the order may be enforced 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 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.

Transmission of maintenance orders made in South Australia.

Cf. *ibid.*, s. 2.

4. Where a Court in South Australia has, whether 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, for transmission to the Secretary of State for the Colonies or to the Governor of that reciprocating State, as the case may be, a certified copy of the order.

Power to make provisional orders of maintenance against persons resident outside South Australia.

Cf. *ibid.*, s. 3.

5. (1) Where an application is made to a Court of summary jurisdiction in South Australia for a maintenance 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 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 reciprocating State 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 Secretary of State for the Colonies in

Maintenance Orders (Facilities for Enforcement) Act.—1922.

in a case where the person against whom the 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, 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 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.

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 certified copy thereof to the Governor for transmission to the Secretary of State for the Colonies or to the Governor of the reciprocating State, as the case may be, in which the original order was confirmed, 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 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 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 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 South Australia, 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 to the Governor, and it appears to the Governor that the person against whom the order was made is resident in South Australia, 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

Power of Court of summary jurisdiction to confirm maintenance order made out of South Australia.

Cf. *ibid.*, s. 4.

Maintenance Orders (Facilities for Enforcement) Act.—1922.

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 South Australia in the same manner as if the proceedings had been originally commenced in South Australia and such summons were a summons issued in those proceedings.

(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 proceeding 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.

(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 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.

(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.

Regulations for facilitating communications between Courts.

Cf. *ibid.*, s. 5.

Mode of enforcing orders.

Cf. *ibid.*, s. 6.

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.

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.

(2) Every

Maintenance Orders (Facilities for Enforcement) Act.—1922.

(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: Provided that, if the order is of such a nature that if made by the Court in which it is so registered, or by which it is so confirmed, it would be enforceable in like manner as an order of affiliation, the order shall be so enforceable.

(3) A warrant of distress or commitment issued for the purpose of enforcing any order so registered or confirmed may be executed in any part of South Australia in the same manner as if the proceedings had been originally commenced in South Australia and such warrant were a warrant issued in those proceedings.

9. All proceedings before Courts of summary jurisdiction under this Act shall be disposed of summarily.

Proceedings to be disposed of summarily.

(*Cf. ibid.*, s. 7.

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.

(*Cf. ibid.*, 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 any Court under this Act.

Depositions to be evidence.

(*Cf. 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 South Australia, the Governor may by proclamation declare such part to be a reciprocating State for the purposes of this Act.

Reciprocal arrangements.

(*Cf. ibid.*, s. 12.

(2) The Governor may by proclamation revoke or vary any proclamation made under this section.

(3) A copy of the *Government Gazette* purporting to contain a copy of a proclamation under this section shall be conclusive evidence of the validity, contents, making, and publication of such proclamation, and of the fulfilment of all conditions precedent to the valid making thereof.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

G. J. R. MURRAY, Lieutenant-Governor.