

"47 T No claimant against the fund has a right of action against a person with whom a contract of insurance is made under this Part in respect of that contract, or has a right to claim any moneys paid by the insurer in accordance with the contract of insurance; but all such moneys shall be paid into the fund and shall be supplied in or towards the settlement of relevant claims.

Application of insurance moneys. *Ibid.*, s. 90.

"47 U While the fund exceeds fifteen thousand pounds the Council—

Payment to practitioner on retirement in necessitous case.

I Upon the death of a solicitor shall pay to his personal representative a sum equal to the aggregate amount of his contributions to the fund: and

51 (Vict.), No. 12 (W.A.), s. 28 V.

II Upon the voluntary retirement from practice of a practising solicitor or his voluntary or statutory retirement from legal employment of a solicitor who is not a practising solicitor may in their discretion pay to him a sum not exceeding the aggregate amount of his contributions to the fund in satisfaction *pro tanto* of the amount payable under paragraph I of this section.

"47 v For the purposes of this Part the Council may, with the approval of the judges or any three of them, make rules for the purposes of this Part, and in particular for:—

Council may make rules for purposes of this Part.

I Providing for the investment of so much of the fund as is not immediately required for the purpose thereof: and

1931, No. 46 (N.Z.), s. 93.

II Prescribing forms of notice to be given to the Council in relation to claims against the fund, and the conditions subject to which and the extent to which the Council may settle any such claims without recourse to legal proceedings."

3 Section forty-eight of the Principal Act is amended by adding at the end thereof the words " , Part IV A excluded "

Judges to make rules to regulate examinations.

MAINTENANCE.

No. 93 of 1957.

AN ACT to amend the *Maintenance Act* 1921.

[23 December 1957.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—(1) This Act may be cited as the *Maintenance Act* 1957.

Short title and citation.

(2) The *Maintenance Act* 1921, as subsequently amended, is in this Act referred to as the Principal Act.

Interpretation.

2 Section three of the Principal Act is amended by omitting from the definition of "Other State" the word "mandate," and substituting therefor the words "trusteeship agreement,".

Mother and child may be joined in one complaint.

3 Section nine of the Principal Act is amended by omitting therefrom the words "subsection (1) (a)" and substituting therefor the words "sub-paragraph (a) of paragraph 1".

Powers of court.

4 Section ten of the Principal Act is amended by adding at the end thereof the following subsection:—

"(3) On the hearing of a complaint under this Part or at any time thereafter, the court may order that at such times, and subject to such conditions, as the court thinks fit and as may be specified in the order, the defendant shall have access to all or any of the children the legal custody of whom has been committed to the complainant pursuant to an order under this section, or that the complainant shall have access to all or any of the children who are in the custody of the defendant and in respect of whom no order for custody has been made under this section."

Discharge of order in certain cases.

5 Section fourteen of the Principal Act is amended by adding at the end thereof the following subsection:—

"(2) In discharging an order pursuant to this section, the court may order that the discharge shall take effect from such date as it may think fit, but not being earlier than the date on which the application for the discharge was filed."

Establishment of reciprocity by proclamation.

6 Section twenty-seven of the Principal Act is amended—

- (a) by omitting from subsection (1) the words "State of the Commonwealth" and substituting therefor the words "other State";
- (b) by inserting in that subsection, after the word "Act", the words "or a law";
- (c) by omitting from subsection (2) the words "State of the Commonwealth" and substituting therefor the words "other State";
- (d) by inserting in that subsection, after the word "Act", the words "or a law"; and
- (e) by omitting from subsection (6) the word "mandate" and substituting therefor the words "trusteeship agreement".

Summons for relief issued in another State may be served in this State.

7 Section twenty-eight of the Principal Act is amended by inserting in sub-paragraph (b) of paragraph 1, after the word "made", the words " , registered, or confirmed".

- 8** Section twenty-nine of the Principal Act is amended—
- (a) by inserting in sub-paragraph (b) of paragraph I, after the word “made”, the words “, registered, or confirmed”; and
 - (b) by inserting after the word “made” (last occurring) the words “, registered, or confirmed”.

Summons for relief against defaulter in another State.

- 9** Section thirty-six of the Principal Act is amended by inserting in paragraph I, after the word “made” (wherever occurring), the words “, registered, or confirmed”.

Application for making order for relief enforceable in this State.

- 10** Section forty-one of the Principal Act is amended—
- (a) by inserting after the word “State” (second occurring) the words “or an order has been registered or confirmed in this State,”;
 - (b) by omitting the word “made,” (fourth occurring) and substituting therefor the words “made or by the person on whom by law the duty to enforce a maintenance order that has been registered or confirmed in this State is cast,”; and
 - (c) by omitting from paragraph I the word “made,” (second occurring) and substituting therefor the words “made, registered, or confirmed in this State,”.

Collector of this State to forward orders for relief for service in other States.

- 11** Section forty-two of the Principal Act is amended by omitting from subsection (2) the word “made,” and substituting therefor the words “made, registered, or confirmed,”.

Affidavit or certificate of Collector sufficient proof of payment.

- 12** Section fifty-two of the Principal Act is amended by inserting after subsection (5) thereof the following subsection:—

“(5A) Where a provisional order has been confirmed under this section, it shall, from and after the date on which it is so confirmed, have the same force and effect, and, subject to the provisions of this Act, all proceedings may be taken on the order as if it had been an order originally obtained in the court by which it is so confirmed, and that court shall have power to enforce the order accordingly.”.

Power of court to confirm order made in England or Ireland.

- 13** Section fifty-three of the Principal Act is repealed and the following section is substituted therefor:—

“53. Where a provisional maintenance order has been made and documents have been transmitted to the Governor as provided in section fifty-two, and the Governor is satisfied that the person against whom the order was made is not resident in this State, the Governor may transmit the documents to the Governor of any other State if the Governor has reasonable cause to believe that—

Transmission of provisional orders.

- I That person is resident or likely to be resident in the other State:

- II The law of that other State permits the confirmation in that State of a provisional maintenance order made in the place where the order was made and transmitted in the manner provided by this section: and
- III The law of the place where the order was made permits a provisional maintenance order made in that place and transmitted in the manner provided by this section to be confirmed in that other State.”.

14 After section fifty-nine of the Principal Act the following section is inserted:—

Statement of
assets.

“59A.—(1) A party to any proceedings under this Act may, by notice in writing, request any other party thereto to lodge with the court a statement of the assets and liabilities of that other party and of the total receipts, whether of money or property, of that other party during the preceding twelve months, and to give a copy of that statement to the first mentioned party.

“(2) A statement under subsection (1) of this section shall be lodged with the court, and a copy thereof shall be given to the party requesting it, within seven days after the making of a request under that subsection.

“(3) If a party fails to comply with a request under subsection (1) of this section within the time specified in subsection (2) of this section the court may, on the application of the party by whom the request is made, order the first-mentioned party, within such time as the court may order in that behalf, to lodge with the court a statement in accordance with that subsection and give a copy thereof to the other party.

“(4) The court may, of its own motion and whether a request under subsection (1) of this section has been made by one party to another party or not, order any party to any proceedings in the court, within such time as the court may allow in that behalf, to lodge with the court a statement in accordance with that subsection and to give a copy thereof to the other party.

“(5) A statement lodged with the court pursuant to this section shall be verified by a statutory declaration made by the party by or on whose behalf it is lodged.”.

Security for
compliance
with order.

15 Section sixty-one of the Principal Act is amended—

- (a) by inserting in subsection (1), after the word “made”, the words “, registered, or confirmed”; and
- (b) by inserting in that subsection, after the word “decision,”, the words “or at any time while the order remains in force,”.

16 Section sixty-two of the Principal Act is amended by inserting in subsection (1), after the word "made" (first occurring), the words ", registered, or confirmed". Non-compliance with order.

17 After section sixty-two of the Principal Act the following section is inserted:—

"62A—(1) On the making, registration, or confirmation of an order, the court may order the defendant to secure, to the satisfaction of the court, the sums of money directed by the order to be paid to the complainant, and for that purpose
Securing of payment of moneys ordered to be paid by defendant.
 may—

I Settle and approve: or

II Refer the matter to a barrister or solicitor nominated by the court to settle and approve,

a proper deed or instrument to be executed by all necessary parties.

"(2) Where the court nominates a barrister or solicitor to settle and approve a deed or instrument pursuant to this section, it may order the defendant to pay to that barrister or solicitor the costs of that barrister or solicitor in settling and approving that deed or instrument."

18 Section sixty-three of the Principal Act is amended by inserting in subsection (1), after the word "making", the words ", registration, or confirmation". Seizure of defendant's goods, &c.

19 After section sixty-four of the Principal Act the following section is inserted:—

"64AA.—(1) Where an order is made under section sixty-three and it is made to appear to the satisfaction of the court that the defendant has insufficient goods and chattels, or that his rents, annuity, and other income or moneys payable to or for him are insufficient, to satisfy any order against the defendant made, registered, or confirmed under this Act the court may, on the application of the person in favour of whom the last-mentioned order operates, authorize the clerk of the court to issue under his hand a writ of *fiery facias* as a warrant of execution to some police officer or other person named in the warrant to levy, or cause to be levied, by seizure and sale of the lands of the defendant such sum of money as is required to satisfy the last-mentioned order and also the costs of and incidental to the execution of the warrant.
Sale of defendant's lands.

"(2) The court may, for the purposes of subsection (1) of this section, direct that the seizure and sale of the lands of a defendant shall be effected upon and subject to such terms and conditions as the court may determine, and any seizure and sale effected pursuant to that subsection shall be effected upon and subject to the terms and conditions (if any) that are so determined.

“(3) All police officers shall aid in the execution of a warrant under this section.

“(4) A warrant under this section has effect to authorize the police officer or other person named therein, subject to the observance of the terms and conditions (if any) determined by the court pursuant to subsection (2) of this section, to take in execution and sell any real property of the defendant or any interest therein, whether legal or equitable.

“(5) For the purposes of any enactment relating to the registration of title to land, a warrant under this section has the same effect in all respects as if it were a warrant of execution under section one hundred of the *Local Courts Act 1896*, and any such enactment shall be construed accordingly.

“(6) The provisions of subsection (2) of section one hundred and two of the *Local Courts Act 1896*, as modified by subsection (7) of this section, have effect in relation to a warrant under this section as if it were a warrant of execution under that Act.

“(7) In the application to a warrant under this section of the provisions mentioned in subsection (6) of this section—

I Any reference to the bailiff shall be construed as a reference to the police officer or other person by whom the warrant under this section is required to be executed: and

II Any reference to a party or to the party against whom execution issued shall be construed as a reference to the defendant.”

Order on
employer for
payment of
salary.

20 Section sixty-four A of the Principal Act is amended by inserting in subsection (1), after the word “made” (first occurring), the words “, registered, or confirmed”.

21 After section sixty-four A of the Principal Act the following section is inserted:—

Certain
orders of
Supreme
Court
enforceable
through
courts of petty
sessions.

Cf., 28 Vict.,
No. 29.
(Q’ld.),
s. 47A.

“64AB.—(1) Where an order for alimony or maintenance is made by, or registered or confirmed in, the Supreme Court, the Registrar of that Court shall, if the person in favour of whom the order was made makes application in that behalf, direct that that alimony or maintenance (including any arrears thereof due at the date of the making of the application) shall be paid to the clerk of petty sessions at such place as the Registrar may determine.

“(2) The Registrar of the Supreme Court shall cause an office copy of the decree or order in respect of which an application under this section is made to be forwarded, in duplicate, to the appropriate clerk of petty sessions.

“(3) If any decree or order for the payment of alimony or maintenance (being a decree or order a copy of which has been forwarded to a clerk of petty sessions) is altered, varied, suspended, or discharged by the Supreme Court or

a judge thereof, the Registrar of the Supreme Court shall cause an office copy of the order altering, varying, suspending, or discharging the first-mentioned decree or order to be forwarded, in duplicate, to that clerk of petty sessions.

“(4) For the purposes of subsections (2) and (3) of this section, an office copy of any decree or order may be forwarded to a clerk of petty sessions by delivery to him at his office or by post by means of the certified mail service.

“(5) Upon receipt of an office copy of a decree or order that is forwarded to him pursuant to this section, the clerk of petty sessions shall enter it in a special register to be kept by him for that purpose and cause a copy of the decree or order to be served on the defendant either personally or by post by means of the certified mail service, and upon the service thereof on the defendant the decree or order shall, subject to any further order altering, varying, suspending, or discharging it, be of the same force and effect and enforceable in the same manner as if it were an order made by a court of petty sessions under this Act.

“(6) The foregoing provisions of this section do not operate so as to confer on any court other than the Supreme Court any power to alter, vary, suspend, or discharge any decree or order to which those provisions relate.

“(7) This section applies to and in relation to decrees and orders for alimony or maintenance made, registered, or confirmed in the Supreme Court whether before or after the commencement of this section.”.

22 Section seventy-one A of the Principal Act is repealed and the following section is substituted therefor:—

“71A.—(1) A person who is aggrieved by an order made, ^{Appeals.} registered, or confirmed under this Act may—

- I Move the Supreme Court, under section one hundred and forty-six of the *Justices Procedure Act 1919*, to review the order:
- II Appeal to the Supreme Court under section one hundred and fifty-two of that Act: or
- III Request the court to state a case for the opinion of the Supreme Court under section one hundred and fifty-four of that Act.

(2) A court under this Act may, whether or not a request is made under paragraph III of subsection (1) of this section, state a case for the opinion of the Supreme Court under section one hundred and fifty-four of the *Justices Procedure Act 1919* on a question arising in any matter or proceeding before the first-mentioned court under this Act.

(3) Notwithstanding anything to the contrary in the *Justices Procedure Act 1919*, any maintenance order or order for payment of preliminary expenses in respect of which any appeal is, or other proceedings are, made under the foregoing

provisions of this Act remains in full force and effect until the appeal is, or the other proceedings are, heard and determined by the Supreme Court.

“(4) In this section, ‘order’ includes any conviction, dismissal of a complaint, determination, and adjudication.”.

Orders may
be varied, &c.

23 Section seventy-two of the Principal Act is amended—

(a) by inserting in paragraph II after the word “court”, the words “or a justice”; and

(b) by adding at the end thereof the following subsection:—

“(2) Where the court alters, varies, or discharges an order pursuant to this section, it may fix and determine a date (being not earlier than the date on which the application for the alteration, variation, or discharge was filed) on and from which the alteration, variation, or discharge shall take effect.”.

Power to
order costs.

24 Section seventy-five of the Principal Act is amended by inserting therein, after the word “making”, the words “, registering, or confirming”.

Procedure.

25 Section seventy-eight of the Principal Act is amended by inserting in subsection (1), after the word “made” (first occurring), the words “, registered, or confirmed”.

Second
schedule.

26 The second schedule to the Principal Act is amended by adding at the end of paragraph 1 of the form set forth therein the words “and such other order was registered [or confirmed] by [state by what court of the State] on the day of 19 .).”.

Third
schedule.

27 The third schedule to the Principal Act is amended—

(a) by adding at the end of paragraph 2 of the form set forth therein the words “and such order was registered [or confirmed] by [state by what court of the State] on the day of 19 .”; and

(b) by inserting in paragraph 3 of that form, after the word “order”, the words “or against the registration [or confirmation] of the said order.”.