

THE TERRITORY FOR THE SEAT OF GOVERNMENT.

No. 9 of 1927.

AN ORDINANCE

**To facilitate the enforcement in the Territory for the
Seat of Government of Maintenance Orders made in
England and Ireland and other parts of His Majesty's
Dominions and Protectorates and vice versa.**

BE it ordained by the Governor-General of the Commonwealth of Australia, with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *Seat of Government Acceptance Act* 1909 and the *Seat of Government (Administration) Act* 1910, as follows:—

1. This Ordinance may be cited as the *Maintenance Orders* Short title.
(Facilities for Enforcement) Ordinance 1927.

2. In this Ordinance, unless the contrary intention appears— Definitions.

“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;

“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;

“Ireland” means Ireland exclusive of the Irish Free State;

“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

“Reciprocating State” means any part of His Majesty's Dominions outside England and Ireland to which the Imperial Act intituled “*The Maintenance Orders (Facilities for Enforcement) Act* 1920” extends, and which has been declared by the Governor-General to be a reciprocating State for the purposes of this Ordinance.

3.—(1.) Where a maintenance order has, whether before or after the commencement of this Ordinance, been made against any person by any Court in England or Ireland or any reciprocating State, and a certified copy of the order has been transmitted by the

Enforcement
in the Territory
of maintenance
orders made
elsewhere.

Secretary of State for Dominion Affairs or by the Governor of the reciprocating State, as the case may be to the Governor-General, and it appears to the Governor-General that the person against whom the order was made is resident in the Territory; the Governor-General shall send a copy of the order to the officer in charge of the records of a Court having jurisdiction in the Territory for registration; and on receipt thereof, the order shall be registered by that officer in a book to be kept for that purpose, and shall, from the date of such registration, be of the same force and effect, and, subject to the provisions of this Ordinance, all proceedings may be taken on the 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 Court of superior jurisdiction, be the High Court of Australia, and if the Court was not a Court of superior jurisdiction, be a Court of summary jurisdiction.

Transmission of maintenance orders made in the Territory.

4. Where a Court having jurisdiction in the Territory has, whether before or after the commencement of this Ordinance, 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-General for transmission to the Secretary of State for Dominion Affairs or to the Governor of that reciprocating State, as the case may be, a certified copy of the order.

Power to make provisional order of maintenance against persons resident elsewhere.

5.—(1.) Where an application is made to a Court having jurisdiction in the Territory 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 a reciprocating State, as the case may be.

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

(3.) Where an order is made under this section, the Court shall send to the Governor-General for transmission to the Secretary of State for Dominion Affairs 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 taken on the hearing of the application, 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 order under this section 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 which made the order for the purpose of taking further evidence, that Court or any other Court sitting and acting for the same place shall, after giving notice to such persons and in such manner as to the Court seems just, proceed to take the evidence in like manner and subject to the like conditions as the evidence in support of the original application.

(5.) If upon the hearing of the 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-General and dealt with in like manner as the original depositions.

(6.) The confirmation of an order made under this section shall not affect any power of a Court 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-General for transmission to the Secretary of State for Dominion Affairs, or to the Governor of the reciprocating State in which the original order was confirmed, as the case may be, and that in the case of an order varying the original order the varying 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, 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.

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 having jurisdiction in the Territory, 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-General, and it appears to the Governor-General that the person against whom the order was made is resident in the Territory, the Governor-General may send the said documents to the officer in charge of the records of the appropriate Court having jurisdiction in the Territory, 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 the documents and requisition the Court shall issue the summons and cause it to be served upon that person.

Power of Court to confirm maintenance order made elsewhere.

(2.) A summons so issued may be served in the Territory in the same manner as if it had been originally issued or subsequently endorsed by a Court 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.

(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 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.

Communication
between
Courts.

7. The regulations may prescribe the manner in which a case may be remitted by a Court authorized to confirm a provisional order to the Court which made the provisional order, and generally for facilitating communications between those Courts.

Mode of
enforcing
orders.

8.—(1.) A Court in which an order has been registered under this Ordinance, or by which an order has been confirmed under this Ordinance, and the officers of that Court, shall take all such steps for enforcing the order as are prescribed.

(2.) Every such order shall be enforceable in like manner as if the order were for the payment of a civil debt 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 by a Court for the purpose of enforcing any order so registered or confirmed may be executed in any part of the Territory in the same manner as if the warrant had been originally issued or subsequently endorsed by a Court having jurisdiction in the place where the warrant is executed.

9. 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 document signed by officers of Court.

10. Depositions taken in a Court in England or Ireland or in a reciprocating State for the purposes of this Ordinance may be received in evidence in proceedings before Courts having jurisdiction in the Territory under this Ordinance.

Depositions to be evidence.

11.—(1.) Where the Governor-General is satisfied that reciprocal provisions have been made by the Legislature or other competent authority of any part of His Majesty's Dominions outside England and Ireland for the enforcement within that part of maintenance orders made by Courts within the Territory, the Governor-General may by Proclamation published in the *Gazette* declare that part to be a reciprocating State for the purposes of this Ordinance.

Reciprocal arrangements.

(2.) In any proceedings under this Ordinance the fact that any part of His Majesty's Dominions outside the United Kingdom is a reciprocating State shall be judicially noticed.

(3.) For the purposes of this section the expression "part of His Majesty's Dominions outside the United Kingdom" shall be deemed to include any territory which is under His Majesty's protection or in respect of which a mandate is being exercised by the Government of any part of His Majesty's Dominions.

Regulations.

12. The Attorney-General may make regulations, not inconsistent with this Ordinance, prescribing all matters which are, by this Ordinance, required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for giving effect to this Ordinance.

Dated this third day of May, One thousand nine hundred and twenty-seven.

STONEHAVEN,
Governor-General.

By His Excellency's Command,
THOS. W. CRAWFORD,
for Minister of State for Home and Territories.

By Authority: H. J. GREEN, Government Printer, Canberra.