

JOINT SELECT COMMITTEE
REPORTS OF LEGISLATIVE
ASSEMBLY - 1921

The Maintenance Orders Enforcement Bill, 1921

List of Reports of Select or Joint Committees
presented in the Legislative Assembly in 1921.

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LEGISLATIVE DEPARTMENT.

WE, the undersigned, Members of the Select Committee to which the Bill to facilitate the enforcement in British India of Maintenance Orders made in other parts of His Majesty's Dominions and Protectorates and *vice versa* was referred, have considered the Bill and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

Clause 1.—We have added an extent sub-clause to make it clear that this Act will extend only to British India, though it applies in respect of certain orders made elsewhere but enforceable in India.

Clause 2.—Definitions :—

- (a) The words " other than illegitimate children " have been omitted from the definition of dependants, and the corresponding words of the English Act, *i.e.*, " other than an order of affiliation " have been inserted in the definition of " maintenance order " so as to follow the wording of the English Act.
- (b) The definition of " maintenance order " has also been amplified to make it clear that such an order includes orders passed by Courts either in the exercise of civil or criminal jurisdiction.
- (c) A definition of " proper authority " has been inserted, as it was considered to be incorrect to prescribe by rules the authority of the reciprocating territory, from which communications should be received. The laws passed, or to be passed, in such territories will provide for the proper authority for the transmission of communications. Consequential amendments following this definition have been made, in clauses 4, 5, 6 and 7 of the Bill.
- (d) The definition of " reciprocating British possession " has been changed into a definition of " reciprocating territory " as the term " British possession, " as defined in the General Clauses Act, 1897, does not include the United Kingdom. Consequential amendments have been made throughout the Bill to give effect to this change in definition.

Clause 4, Sub-clause (1).—The words " in Council " have been omitted after the words " Governor General " where they first occur, as, under the English Act, communications have to be addressed to the " Governor " of the possession, and the term " Governor " under the English Interpretation Act, 1889, as applied, means the Governor General, and not the Governor General in Council.

Clause 6. Marginal heading.—The words " of Summary Courts " have been inserted in the marginal heading to make it clear that the making of provisional orders is confined to Summary Courts.

Clause 6, Sub-clause (1).—The words " if such person had wilfully neglected to attend the Court " have been substituted for the words " if a summons had been duly served on the person and he had failed to appear at the hearing, " to bring the wording of this sub-clause into conformity with the wording of section 488 of the Code of Criminal Procedure, 1898.

Sub-clause (6).—The words " or to which it was sent for confirmation " have been inserted after the words " was confirmed " in the proviso to this sub-clause, as it is proposed that a Court, which has made a provisional order, may vary or rescind that order after the taking of further evidence before the order has actually been confirmed in the reciprocating possession, and also that it may vary or rescind the order after it has been confirmed.

Sub-clause (7) of clause 6 has been omitted following the provisions of the maintenance sections in the Code of Criminal Procedure, 1898. There is no appeal from an order of maintenance under that Code, and this sub-clause would therefore be misleading. In the absence of any provision for such appeal, we do not consider it desirable that there should be an appeal in the cases dealt with under this clause, which are treated as analogous to maintenance cases dealt with under the Code of Criminal Procedure.

Sub-clause (4) of clause 7.—We are of opinion that the clause, as it stood, would perhaps not permit of the confirmation of a provisional order, made for example in the United Kingdom, for a sum greater than Rs. 50 per mensem, which is the limit imposed by section 488 of the Code of Criminal Procedure, 1898. The limit for maintenance orders in the case of a wife in the United Kingdom is two pounds a week, and for a child one pound a week. It was considered desirable that it should be open to the Court to enforce provisional orders up to the full amount of the provisional order, but not to increase the order beyond that amount. Amendments to impose a limit as aforesaid have been made in this clause.

Provision has been made in sub-clauses (5) and (6) for the transmission of records in the same manner as is provided in the proviso to sub-clause (6) of clause 6.

Sub-clause (7) of clause 7 has been omitted for the same reason as sub-clause (7) of clause 6.

Clause 8, sub-clause (1).—The words “ in the exercise of its civil jurisdiction ” have been inserted after the words “ High Court ” to make it clear that, except in the case of orders executed by Courts of summary jurisdiction, which will be orders for the payment of comparatively small amounts, the procedure in execution will be in accordance with the Code of Civil Procedure. The difference in execution procedure in the various High Courts necessitates a double procedure in the Bill so as to cover registration in High Courts possessing only appellate jurisdiction.

A new clause 9 has been inserted, as we think that it is just to a wife or other person, in favour of whom a maintenance order is made, that such person should receive the full amount awarded and not be debited with the costs of transmission, and other incidental charges. Such charges should be borne by the person against whom the order is made.

Clauses 9, 10 and 11 have been re-numbered clauses 10, 11 and 12.

Provision has been made in clause 12, as re-numbered, for the fixing by rules, made by the Governor General in Council, of a scale of costs and charges in connection with things done under this Act. We consider it expedient that the rules in this matter should be made by the Governor General in Council, as there will be communications between British India and countries outside, and the Governor General in Council is in the best position to fix a fair scale of charges in this respect.

2. The Bill was published in the Gazette of India, dated the 19th February 1921.

3. We think that the Bill has not been so altered as to require re-publication, and we recommend that it be passed as now amended.

T. B. SAPRU.

W. H. VINCENT.

ISWAR SARAN.

SHAHABUDDIN.

T. V. SESHAGIRI AYYAR.

P. E. PERSIVAL.

JOGENDRANATH MUKHERJI.

The 14th September, 1921.

[Words printed in italics indicate the amendments suggested by the Select Committee.]

A

BILL

TO

Facilitate the enforcement in British India of Maintenance Orders made in other parts of His Majesty's Dominions and Protectorates and vice versa.

WHEREAS it is expedient to facilitate the enforcement in British India of Maintenance Orders made in other parts of His Majesty's Dominions and Protectorates and *vice versa*; It is hereby enacted as follows :—

1. (1) This Act may be called the Maintenance Orders Enforcement Act, 1921.

(2) *It extends to the whole of British India, including the Southal Pargannas and British Baluchistan.*

2. In this Act, unless there is anything repugnant in the subject or context,—

“Court of summary jurisdiction” means the Court of a Chief Presidency Magistrate or of a District Magistrate;

“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 maintenance order is made;

“maintenance order” means an order, other than an order of affiliation, made by a Court in the exercise of civil or criminal jurisdiction 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;

“prescribed” means prescribed by rules made under this Act;

“Proper authority” means the authority appointed by, or under the law of, a reciprocating territory to receive and transmit documents to which this Act applies; and

“reciprocating territory” means any part of His Majesty's Dominions in respect of which this Act for the time being applies.

3. (1) If the Governor General in Council is satisfied that provisions have been made by the legislature of any part of His Majesty's Dominions for the enforcement within that part of maintenance orders made by Courts in British India, the Governor General in Council may, by notification in the Gazette of India, declare that this Act applies in respect of that part of His Majesty's Dominions, and thereupon it shall apply accordingly.

(2) The Governor General in Council may, by like notification, declare that this Act applies in respect of any British protectorate, or in respect of any State in India, and where such a declaration has been made, this Act shall apply as if such protectorate or State were a reciprocating territory.

4. (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 reciprocating territory, and a certified copy of the order has been transmitted by the proper authority of that territory to the Governor General, the Governor General in Council shall send a copy of the order to the prescribed officer of a Court in British India for registration, and on receipt thereof the order shall be registered in the prescribed manner.

Registration in British India of maintenance orders made in other parts of His Majesty's Dominions.

(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, in the opinion of the Governor General in Council, a Court of superior jurisdiction, be a High Court, and, if the Court was not, in his opinion, a Court of superior jurisdiction, be a Court of summary jurisdiction.

5. Where a Court in British India 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 a reciprocating territory, the Court shall send to the Governor General in Council, for transmission to the proper authority of that territory, a certified copy of the order.

Transmission of maintenance orders made in British India.

6. (1) Where application is made to a Court of summary jurisdiction in British India for a maintenance order against any person, and it is proved that that person is resident in a reciprocating territory, 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 that person had wilfully neglected to attend the Court; 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 territory.

Power of Summary Courts to make provisional maintenance orders against persons resident in His Majesty's Dominions outside British India.

(2) The evidence of every witness who is examined on any such application shall be reduced to 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 General in Council, for transmission to the proper authority of the reciprocating territory 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 a reciprocating *territory* 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 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.

(5) If it appears to the Court hearing such evidence 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 in Council 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 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 General in Council for transmission to the *proper* authority of the *reciprocating territory* in which the original order was confirmed, or to which it was sent for confirmation 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.

7. (1) Where a maintenance order has been made by a Court in a reciprocating *territory* and the order is provisional only and has no effect unless and until confirmed by a Court of summary jurisdiction in British India, and a certified copy of the order, together with the depositions of the 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 in Council that the person against whom the order has been made is resident in British India, the Governor General in Council 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 issued under sub-section (1) shall for all purposes be deemed to be a summons issued by the Court in the exercise of its original criminal jurisdiction.

(3) At the hearing it shall be open to the person to whom the summons was issued 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, notwithstanding any pecuniary limit imposed on its power by any law for the time being in force in British India confirm the order either without modification or with such modifications as to the Court after hearing the evidence may seem just:

Provided that no sum shall be awarded as maintenance under this section, or shall be recoverable as such, at a rate exceeding that proposed in the provisional order.

(5) If the person to 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 for that purpose send a certified copy of the record to the Governor General in Council for transmission to that Court through the proper authority of the reciprocating territory, and may adjourn the proceedings.

(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 provisional order for the purpose of taking any further evidence, the Court may for that purpose send a certified copy of the record to the Governor General in Council for transmission to that Court through the proper authority of the reciprocating territory, and may adjourn the proceedings.

8. (1) Subject to the provisions of this Act, Enforcement of where an order has been maintenance order. registered under this Act in a High Court, the order shall, from the date of such registration, be of the same force and effect, and all proceedings may be taken thereon as if it had been an order originally obtained in the High Court in the exercise of its civil jurisdiction, or in such Civil Court subordinate to that High Court as may be named by the High Court in this behalf and that Court shall have power to enforce the order accordingly.

(2) 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 have such powers and perform such duties, for the purpose of enforcing the order, as may be prescribed.

9. A Court in registering or confirming an order for maintenance in accordance with the provisions of this Act shall direct that the charges for the transmission to the Court, from which the order has been received or in which the provisional order has been made, as the case may be, of the sum awarded as maintenance shall be borne by the person against whom the order has been so made or confirmed, and shall be recovered from him in addition to the sum awarded as maintenance and in addition to and in the same manner as such other costs and charges as may be awarded or levied by the Court.

10. For the purposes of this Act, any document purporting to be signed by a judge or officer of a Court outside British India 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.

11. Depositions taken in a Court in any reciprocating territory may, for the purposes of this Act, be received in evidence in proceedings before Courts of summary jurisdiction under this Act.

12. The Governor General in Council may make rules for the purpose of carrying into effect the purposes of this Act, and in particular may make rules for the levy of the costs or charges for anything done under this Act and for all matters which are directed or permitted to be prescribed.

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

Report of the Select Committee on the
Bill to facilitate the enforcement in Bri-
tish India of Maintenance Orders made
in other parts of His Majesty's Dominions
and Protectorates and *vice versa*.

(Bill as amended.)