

Bill No. 24 of 1947.

A BILL TO FACILITATE THE ENFORCEMENT IN
ALBERTA OF MAINTENANCE ORDERS MADE
IN ENGLAND AND NORTHERN IRELAND
AND OTHER PARTS OF HIS MAJESTY'S
DOMINIONS AND PROTECTORATES
AND VICE VERSA

NOTE.

In 1920 there was passed by the Parliament of the United Kingdom *The Maintenance Orders (Facilities for Enforcement) Act* which provided for enforcement in England and Ireland (now limited to Northern Ireland) of Maintenance Orders made in any part of His Majesty's Dominions outside the United Kingdom to which the Act extended; the Act extends to all such parts where reciprocal arrangements have been made by the Legislature. Reciprocal legislation has been in force for some time in the Commonwealth of Australia, the Australian States, New Zealand, the Union of South Africa and Southern Rhodesia. The Commissioners on the Uniformity of Legislation adopted an Act in the form of this Bill at its 1945 session and it has already been passed by the Legislatures of Manitoba, Saskatchewan and British Columbia.

The proposed Act is entirely procedural and its effect is to make maintenance orders issued in England or Northern Ireland against residents of Alberta enforceable in Alberta, and on the other hand, to make maintenance orders issued in Alberta against residents of England and Northern Ireland enforceable in those portions of the United Kingdom.

"Maintenance order" is defined as being 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.

It is important to note that an order made in England or Northern Ireland cannot be enforced in Alberta except through an Alberta Court before which the defendant may appear and contest the validity of the order. Similar provisions apply to orders made in Alberta against residents of England or Northern Ireland.

Section 3 sets out the procedure for registering the order in the appropriate Alberta Court.

Sections 4 and 5 provide the procedure for obtaining a provisional order in an Alberta Court against a resident in

England or Northern Ireland though the defendant be not present or have no notice of the application, and sets out the subsequent procedure required to be followed to have the order enforced in England or Northern Ireland.

Section 6 sets out the procedure to be adopted in Alberta to enforce an order made in England or Northern Ireland against a resident of Alberta, which order is of no effect until confirmed by a Court in Alberta. By subsection (2) the defendant is given every opportunity to raise any defence he might have raised in the original proceeding. By subsection (4) he may ask the case to be remitted for further evidence to the Court which made the order. Subsection (6) provides that an appeal may be taken from the confirmation of the order.

Provision is made by section 12 for the extension of the benefit of this Act to any other part of His Majesty's Dominions in which, to the satisfaction of the Lieutenant Governor in Council, similar reciprocal provisions have been made for the enforcement within that part of maintenance orders made in Alberta.

W. S. GRAY,
Legislative Counsel.

(This note does not form any part of the Bill but is offered in explanation of its provisions.)

BILL

No. 24 of 1947.

An Act to facilitate the Enforcement in Alberta of Maintenance Orders made in England and Northern Ireland and other Parts of His Majesty's Dominions and Protectorates and vice versa.

(Assented to , 1947).

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

1. This Act may be cited as "*The Maintenance Orders (Facilities for Enforcement) Act.*"

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

- (a) "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;
- (b) "Court" when used with reference to Alberta, includes any authority having statutory jurisdiction to make maintenance orders;
- (c) "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 place where such maintenance order is made;
- (d) "Governor" includes an administrator, commissioner, resident, or other officer representing His Majesty in any British Protectorate;
- (e) "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;
- (f) "Prescribed" means prescribed pursuant to the provisions of this Act;
- (g) "Reciprocating State" means any part of His Majesty's Dominions outside England and Northern Ireland to which the Imperial Act intituled the "Maintenance Orders (Facilities for Enforcement) Act, 1920," extends, or is hereafter extended, and which has been declared under section 12 of this Act to be a reciprocating State for the purposes of this Act;
- (h) "Secretary of State" means His Majesty's Secretary of State charged with the duties prescribed under

the Imperial Act intituled the "Maintenance Orders (Facilities for Enforcement) Act, 1920."

3.—(1) Where a maintenance order has, whether before or after this Act comes into force, been made against any person by any court in England or Northern Ireland or in any reciprocating State and a certified copy of the order has been transmitted by the Secretary of State or by the Governor of the reciprocating State to the Lieutenant Governor of Alberta and forwarded by him to the Attorney General, the Attorney General shall send a copy of the order to the prescribed officer of a court in Alberta 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 that court shall have power to enforce the order accordingly.

(2) The court in which an order is to be registered 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, shall be such one of the District Courts as is determined by the Attorney General.

4. Where a court in Alberta has, whether before or after this Act comes into force, 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 Northern Ireland or in a reciprocating State, the court shall, on the request of the person in whose favour the order was made, send a certified copy of the order to the Attorney General for transmission to the Secretary of State or to the Governor of that reciprocating State, as the case may require, and the Attorney General shall transmit the certified copy accordingly.

5.—(1) Where an application is made to a court in Alberta for a maintenance order against any person, and it is proved that that person is resident in England or Northern Ireland or in a reciprocating State, the court may, in the absence of that person and without service of notice on him, 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 Northern Ireland or in such reciprocating State, as the case may require.

(2) If the evidence of any witness who is examined on any such application is not taken in shorthand the evidence

shall be put into the form of a deposition, and such deposition shall be read over and signed by the witness and also by the judge or other person presiding at the hearing.

(3) Where an order is made pursuant to subsection (1), the court shall send to the Attorney General a certified copy of the order for transmission to the Secretary of State if the person against whom the order is made is alleged to reside in England or Northern Ireland or to the Governor of the reciprocating State if the person against whom the order is made is alleged to reside in a reciprocating State.

(4) The court shall also prepare,—

(a) A statement showing 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

(b) A statement showing such information as the Court possesses for facilitating the identification of the person against whom the order is made and ascertaining his whereabouts.

(5) With the certified copy of the order the court shall also send to the Attorney General for transmission to the Secretary of State or to the Governor, as the case may be,—

(a) The depositions or a certified copy of the transcript of the evidence;

(b) The statement referred to in paragraph (a) of subsection (4); and

(c) The statement referred to in paragraph (b) of subsection (4).

(6) The Attorney General shall transmit the documents sent to him by the court to the Secretary of State or to the Governor of the reciprocating State, as the case may be; but before transmission the Attorney General may, if he sees fit, amend or add to the statement of grounds on which the making of the order might have been opposed.

(7) Where any such provisional order has come before a court in England or Northern Ireland or in a reciprocating State for confirmation and the order has by that court been remitted to the court in Alberta that made the order for the purpose of taking further evidence, the last mentioned 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.

(8) If upon the hearing of such evidence it appears to the court in Alberta that the order ought not to have been made, the court may rescind the order, but in any other case the depositions or a certified copy of the transcript of the evidence if it was taken in shorthand shall be sent to the Attorney General and dealt with in like manner as the depositions or transcript of the original evidence.

(9) The confirmation of an order made under this section shall not affect any power of the court by which the order

was originally made to vary or rescind the order; provided that on the making of a varying or rescinding order the court shall send a certified copy thereof, together with the depositions of a certified copy of a transcript of any new evidence adduced before the court, to the Attorney General for transmission to the Secretary of State or to the Governor of the reciprocating State in which the original order was confirmed, as the case may require, and 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.

(10) 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 Northern Ireland or in a reciprocating State and the order is provisional only and has no effect unless and until confirmed by a court in Alberta, 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 is received by the Attorney General and it appears to him that the person against whom the order was made is resident in Alberta, the Attorney General may send the said documents to the proper officer of the Supreme Court if the court by which the order was made was a court of superior jurisdiction or of a District Court if the court by which the order was made was not a court of superior jurisdiction; and upon receipt of such documents the court shall issue a summons calling upon the person against whom the order was made to show cause why the order should not be confirmed, and cause it to be served upon such person.

(2) At the hearing it shall be open to the person on whom the summons was served to raise any defence that he might have raised in the original proceedings had he been a party thereto but no other defence; and the statement from the court that 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 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.

(4) 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 that 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.

(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 confirming court, and where on application for rescission or variation the court is satisfied that it is necessary to remit the case to the court that 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.

(6) 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.

7.—(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 proper steps for enforcing the order.

(2) Every such order shall be enforceable in like manner as if the order were a judgment of the court in which the order is so registered or by which it is so confirmed.

8. The Lieutenant Governor in Council may make rules prescribing the practice and procedure under this Act.

9. The Lieutenant Governor in Council may make regulations as to the manner in which a case can 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 such courts.

10. Any document purporting to be signed by a judge or officer of a court in England or Northern 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.

11. Depositions or certified copies of transcripts from shorthand of evidence taken in a court in England or Northern Ireland or in a reciprocating State, for the purposes of this Act, may be received in evidence in proceedings before courts in Alberta under this Act.

12.—(1) Where the Lieutenant Governor in Council is satisfied that reciprocal provisions have been made by the Legislature of any part of His Majesty's Dominions outside England and Northern Ireland for the enforcement, within

that part, of maintenance orders made within Alberta, the Lieutenant Governor in Council may by order in council declare such part to be a reciprocating State for the purposes of this Act, and thereupon that part shall become a reciprocating State within the meaning of this Act.

(2) In any proceeding under this Act, the fact that any part of His Majesty's Dominions outside England and Northern Ireland is a reciprocating State shall be judicially noticed.

13. This Act shall come into force on the day upon which it is assented to.

No. 24

FOURTH SESSION
TENTH LEGISLATURE

11 GEORGE VI

1947

BILL

An Act to facilitate the Enforcement
in Alberta of Maintenance Orders
made in England and Northern
Ireland and other Parts of His
Majesty's Dominions and Protect-
orates and vice versa.

Received and read the

First time

Second time

Third time

HON. MR. MAYNARD.

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