

Bill No. 61 of 1932.

A BILL TO PROVIDE FOR THE ENFORCEMENT OF
ALIMONY, MAINTENANCE AND AFFILI-
ATION ORDERS.

This Bill makes new provisions for the enforcement of alimony, maintenance and affiliation orders.

By section 3 of the Bill a summons may be issued against any person who is in default in making payments under any such order at the instance of the person entitled to such payments, requiring the defaulter to attend before a judge and show cause why he should not be committed to prison on the ground that his default is wilful.

By section 8 of the Bill the judge is empowered to commit the defaulter to gaol for a period of not exceeding forty days, with or without hard labour, if the defaulter refuses to submit himself to examination or does not make answer to the satisfaction of the judge with respect to any matter as to which he is required to be examined, or if the judge is satisfied that the defaulter has disposed of his property to avoid judgment, or if the judge is satisfied that the defaulter has had sufficient means, ability or resources to comply with the order, either wholly or in part, and has refused or neglected to pay.

Section 15 of the Bill provides for the enforcement of judgments or orders in the nature of alimony orders, maintenance orders or affiliation orders, wherever made, in the same way as if such judgments or orders had been made by a court of competent jurisdiction in the Province of Alberta, and empowers the judge to reduce or increase the amounts payable in respect of such orders as and from the date of the application for enforcement thereof, and also to reduce the amount of arrears then owing.

R. ANDREW SMITH,
Legislative Counsel.

(This note does not form any part of the Bill and is offered merely as a partial explanation of some of its provisions.)

BILL

No. 61 of 1932.

An Act to provide for the Enforcement of Alimony,
Maintenance and Affiliation Orders.

(Assented to _____, 1932.)

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 Alimony Orders Enforcement Act.*"

2. In this Act, unless the context requires a contrary meaning—

- (a) "Court" means the Supreme Court or the District Court;
- (b) "Judge" means any judge of the Supreme Court or of the District Court and includes any local judge in chambers and any master in chambers;
- (c) "Peace officer" means and includes a sheriff, deputy sheriff, sheriff's officer, any justice of the peace, and also the warden, deputy warden, bailiff, or keeper of any common gaol or prison, and any police officer, police constable, bailiff, constable or other person employed for the preservation or maintenance of the public peace, or for the service or execution of civil process.

3.—(1) In any case where any person against whom an order has been made for the payment of any money under the provisions of *The Maintenance Order Act* or *The Children of Unmarried Parents Act*, or for alimony, has not paid any or all of the sums payable by virtue of such order, the person to whom such sums are payable may procure from the Clerk of the Supreme Court of the judicial district in the case of orders made in the Supreme Court, and in the case of all other orders from the Clerk of the District Court of the district in which the defendant resides or carries on business, a summons in Form A in the Schedule to this Act, requiring the defendant to appear before a judge at a time and a place within such judicial district therein named, for the purpose of being examined on oath touching his estate and effects, and in particular as to the means or ability or resources he has of complying with the order, the disposal he has made of any property since the order was made, and any and what debts are owing to him and requiring him to

show cause why he should not be committed to prison on the ground that his failure to comply with the order is wilful.

(2) Every such summons shall be served upon the defendant in such manner as the judge may direct, and in default of any such direction, shall be served upon the defendant personally.

4. In case application is made for the issuance of a summons under this Act within six months next after the issuance of a previous summons under this Act against the same defendant, the clerk shall not issue a subsequent summons without the leave of the judge who may in his discretion grant or refuse such leave.

5. At the time and place mentioned in the summons or at any other date appointed by the judge by way of adjournment, the judge shall proceed with any inquiry as to any means, or ability, or resources which the defendant has of complying with the order, the disposal he has made of any property since the order was made, any and what debts are owing to him, and the circumstances under which the defendant has made default in complying with the order, and for that purpose shall examine on oath the plaintiff and any witness produced by the plaintiff and the defendant and any witness produced by the defendant.

6. Every such inquiry shall be held *in camera* and no person other than the plaintiff and the defendant and their respective solicitors and witnesses, and such other persons as the judge may permit, shall be allowed to be present thereat.

7. In case the defendant does not attend for examination in obedience to the summons or good and sufficient reason for non-attendance is not shown, the judge may forthwith issue his warrant for procuring the apprehension of the defendant and the production of the defendant before him at a time and place to be fixed by the judge.

8.—(1) The judge may by order commit the defendant to a common gaol for any period not exceeding forty days with or without hard labour—

- (a) if the defendant refuses to submit himself to examination in obedience to the summons; or
- (b) if the defendant does not make answer to the satisfaction of the judge with respect to any matter as to which he is required to be examined; or
- (c) if the judge is satisfied, as a result of the examination of the plaintiff or the defendant or any witnesses produced by either of them, that the defendant—

- (i) has made or caused to be made any gift, delivery or transfer of property, or has removed or concealed the same with intent to avoid compliance with the order; or
- (ii) has, when proceedings to obtain the order were begun against him or since the order was obtained against him, had sufficient means or ability, or resources to comply with the same either wholly or in part and has refused or neglected to pay the same either wholly or in part at the time and in the manner ordered.

(2) Whenever an order of commitment has been made, the clerk of the court shall issue a warrant of commitment in Form B in the Schedule to this Act directed to any peace officer who may by virtue thereof arrest any person against whom it is issued.

9. All the constables and other peace officers, within their respective jurisdictions, shall aid in the execution of every warrant of commitment, and the gaoler or keeper of the common gaol shall receive and keep the defendant therein until discharged under the provisions of this Act, or otherwise by due course of law.

10. A person failing to attend as required by a summons issued under the provisions of this Act shall not be liable to be committed to gaol for the default unless the judge is satisfied that such non-attendance is wilful, or that such person has failed to attend after being twice summoned; and if at the hearing it appears to the judge, upon the examination or otherwise, that such person ought not to have been so summoned, or if the person who obtained the summons does not appear, the judge may award to the person summoned such witness fees as may be allowed to a witness in an ordinary action under Schedule D of the Rules of Court as to costs, to be recovered against the person who obtained the order in the same manner as any other judgment of the court; and in such case, such person shall also pay the costs of the summons and the subsequent proceedings thereon, to be recovered as the judge shall direct.

11. Any person imprisoned under this Act who has complied with the terms of the order and the costs remaining due when the order of imprisonment was made, together with the costs of obtaining the order for imprisonment, and all subsequent costs, shall, upon a certificate of such satisfaction signed by the clerk of the court from which the order issued, or by leave of a judge on the same or any other grounds he may think sufficient, be discharged out of custody.

12. The judge, before whom a summons is heard, may rescind or alter any order for payment previously made against the defendant and make any further or other order

either for the payment of any sum due under the provisions of the order and all costs, forthwith or by instalments, or in any other manner that he thinks reasonable and just.

13. If the defendant in proceedings to obtain a maintenance order, an order for alimony or an affiliation order, has been personally served with the proper notice to appear, or personally appears at the trial, and judgment is given against him, the judge or other person before whom the case is heard may at the hearing of the case or at any adjournment thereof examine the defendant and the plaintiff and any other person touching the several things hereinbefore mentioned, and may commit the defendant to prison, with or without hard labour, and make an order in like manner as he might have done in case the plaintiff has obtained a summons under the provisions of this Act for that purpose after judgment.

14. No imprisonment under this Act shall impair the order for maintenance, alimony or affiliation, or extinguish the cause of action on which the order has been obtained, or deprive the person obtaining it of any right to take out execution against the defendant.

15.—(1) Any person being resident in Alberta to whom or for whose benefit any sum is payable by virtue of any judgment or order of any court or judge, made by any court judge or judicial officer elsewhere than in Alberta, directing the payment of alimony or maintenance under such circumstances as a similar judgment or order might have been made by a court judge or judicial officer in Alberta for alimony or under *The Maintenance Act* or *The Children of Unmarried Parents Act* if the court judge or judicial officer, as the case may be, had had jurisdiction over the persons affected by such judgment or order, may upon filing the original, or an exemplification or certified copy of such judgment or order in the case of alimony with the Clerk of the Supreme Court of the judicial district, and in the case of all other orders, with the Clerk of the District Court of the district in which the person liable under any such order resides or has property, apply to the judge of the court in the office whereof such judgment or order is filed for an order for leave to enforce the same within the Province.

(2) In the case of any judgment or order of a court of record, the copy thereof filed pursuant to this section shall be certified as a true copy by such court, and in the case of all other judgments or orders, the copy shall be certified as a true copy by the court judge or judicial officer making the same.

16. If, upon any application for leave to proceed to the enforcement of any such judgment or order, the judge is satisfied that such judgment or order was made under such circumstances as a similar judgment or order might have

been made by a court judge or judicial officer in Alberta for alimony or under *The Maintenance Act* or *The Children of Unmarried Parents Act* if the court judge or judicial officer, as the case may be, had had jurisdiction over the persons affected by such judgment or order, the judge may proceed thereon *ex parte* or upon such notice to the person liable under the judgment or order as he may require and may take evidence either orally or by affidavit as he may deem proper, and may make an order for the enforcement thereof or refuse so to do.

17. Upon any application for leave to enforce any such order or judgment, or upon the application of or upon any application made at any time thereafter by the person entitled to the benefit of or liable under any such judgment or order, the judge shall have the power to reduce or increase the amount payable in respect of such order as and from the date of the application therefor and to order that in respect of any arrears such lesser sum as the judge may in his discretion deem proper, having regard to the circumstances of the parties, or any of them, and that upon payment of such sum, the payment of any arrears in excess of such sum shall no longer be enforceable within the Province.

18. Every such judgment or order shall, upon the making of any order for the enforcement thereof pursuant to this Act, be enforceable within the Province as if the same had been made by a court of competent jurisdiction within the Province but subject always to any variation or modification of the terms thereof set out in the order for enforcement thereof or any subsequent order affecting the same.

SCHEDULE.

FORM A.

(The Alimony Orders Enforcement Act).

SUMMONS TO

Whereas it has been made to appear that you are indebted to.....in the sum ofdollars under an order for (alimony, or as the case may be) made against you by (name of authority making the order).

These are, therefore, to command you, in His Majesty's name, to attend before Mr. Justice....., or His Honour Judge....., as the case may be, at.....in the.....of....., in the Province of Alberta, on the.....day of....., at the hour of.....in the.....noon, for the purpose of being examined on oath touching your estate and effects, and in particular as to the means, resources or ability you have of complying with the order; the disposal you have made of any property since the said order was made, and any and what debts are owing to you, and requiring you to show cause why you should not be committed to prison on the ground that your failure to comply with the aforesaid order was wilful.

Given under my hand at my office in the Court House atin the Province of Alberta, this.....day of....., in the year 19...

..... Clerk of the Supreme Court of the Judicial District of

..... or Clerk of the District Court of the Judicial District of

FORM B.

(The Alimony Orders Enforcement Act).

WARRANT OF COMMITMENT.

Province of Alberta, to Wit.

To all peace officers in and for the Province of Alberta, and to the Keeper of the Common Gaol at.....in the Province of Alberta.

Whereas pursuant to the provisions of The Alimony Orders Enforcement Act..... (hereinafter called "the defaulter") upon the complaint of

....., alleged to be entitled to receive payment from the defaulter of the sum of.....dollars pursuant to an order for.....made byappeared before me on the.....day of..... for examination and to show cause why he should not be committed to prison on the ground that his failure to comply with the said order was wilful;

And whereas upon such examination, and after hearing the witnesses then produced before me, I adjudged that the defaulter had wilfully failed to comply with the said order and that he be imprisoned in the common gaol at..... for the term of..... months unless the said sum of..... dollars so due and owing as aforesaid, together with costs amounting to.....dollars, and together with the costs and charges of commitment and conveying the defaulter to the said common gaol be sooner paid.

These are, therefore, to command you to take the defaulter and him safely convey to the said common gaol and deliver him to the keeper thereof together with this precept, and I do hereby command you the keeper of the said common gaol to receive the defaulter into your custody in the said common gaol there to imprison him for the term ofdays unless the said several sums and the costs and charges of the commitment and of conveying him to the said common gaol are sooner paid unto you, and for your so doing this shall be your sufficient warrant.

Given under my hand this.....day of , in the year 19...

.....
Judge of the Supreme Court
or
Judge of the District Court.

No. 61.

SECOND SESSION
SEVENTH LEGISLATURE
22 GEORGE V
1932

BILL

An Act to provide for the Enforcement of Alimony, Maintenance and Affiliation Orders.

Received and read the

First time.....

Second time.....

Third time.....

HON. MR. LYMBURN

EDMONTON:
W. D. MCLEAN, KING'S PRINTER
1932