

PAPUA.



No. 16 of 1923.

AN ORDINANCE

To Facilitate the Enforcement in The Territory of Papua of Maintenance Orders made in England and Ireland and other parts of His Majesty's Dominions and Protectorates and vice versa.

J. H. P. MURRAY.

[L.S.]

27th December, 1923.

BE it enacted by the Lieutenant-Governor of the Territory of Papua with the advice and consent of the Legislative Council thereof as follows:—

1. This Ordinance may be cited as the *Maintenance Orders (Facilities for Enforcement) Ordinance, 1923.* Short title.

2. In this Ordinance unless the contrary intention appears—

“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;

Definitions.
Norfolk Is.,
No. 5 of 1923,
s. 2.
Cf. Fiji, No. 8
of 1923, s. 2.



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“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 ;

“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 ;

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

Enforcement
in Papua of
maintenance
orders made
elsewhere.
Cf. 10 and 11,
Geo. V, c. 33,
s. 1.
Cf. N. Is., *Ib.*
s. 3.
Cf. Fiji, *Ib.* s. 3.

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 Secretary of State for the Colonies or by the Governor of the reciprocating State, as the case may be to the Lieutenant-Governor and it appears to the Lieutenant-Governor that the person against whom the order was made is resident in the Territory the Lieutenant-Governor shall send a copy of the order to the prescribed officer of a Court 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 be a Court of Petty Sessions established

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or deemed to have been established under the provisions of the *Justices Ordinance, 1912-1920.*

4. Where a Court 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 Lieutenant-Governor for transmission to the Secretary of State for the Colonies or to the Governor of that reciprocating State, as the case may be, a certified copy of the order.

Transmission
Transmission of maintenance orders made in Papua.
Cf. 10 and 11, Geo. V, Ch. 33, s. 2.
Cf. N. Is., *Ib.* s. 4.
Cf. Fiji, *Ib.* s. 4.

5. (1) Where an application is made to a Court in the Territory for a maintenance order against any person, and it is proved that that person is resident in England or Ireland or 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.

Power to make provisional orders of maintenance against persons resident outside Papua.
Cf. 10 and 11, Geo. V, Ch. 33, s. 3.
Cf. N. Is., *Ib.* s. 5.
Cf. Fiji, *Ib.* s. 5.

(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 Lieutenant-Governor for transmission to the Secretary of State for the Colonies, 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

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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 Lieutenant-Governor 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 Lieutenant-Governor for transmission to the Secretary of State for the Colonies, or to the Governor of the reciprocating State, as the case may be, in which the original order was confirmed, 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.

Power of Court
to confirm
maintenance
order made
outside Papua.
Cf. 10 and 11,
Geo. V. Ch. 33,
s. 4.
Cf. Norfolk Is.,
Ib. s. 6.
Cf. Fiji, Ib. s. 6

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 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

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order might have been opposed has been transmitted to the Lieutenant-Governor and it appears to the Lieutenant-Governor that the person against whom the order was made is resident in the Territory the Lieutenant-Governor may send the documents to the prescribed officer of a Court of Petty Sessions 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 such person.

(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 of Petty Sessions having jurisdiction in the place where the person happens to be, or, if that manner proves not to be effective, in such manner as is prescribed.

(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 seems 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

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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.

Power to make Regulations for communications between courts. Cf. 10 and 11, Geo. V. Ch. 33, s. 5. Cf. N. Is., *Ib.* s. 7. Cf. Fiji, *Ib.* s. 7.

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. Cf. 10 and 11, Geo. V. Ch. 33, s. 6. Cf. N. Is., *Ib.* s. 8. Cf. Fiji, *Ib.* s. 8.

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.

Proof of documents signed by Officers of Court. Cf. 10 and 11, Geo. V. Ch. 23, s. 8. Cf. N. Is., *Ib.* s. 9. Cf. Fiji, *Ib.* s. 9.

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.

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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 in the Territory under this Ordinance.

Depositions to be evidence. Cf. 10 and 11, Geo. V, Ch. 33, s. 9. Cf. N. Is., Ib. s. 10. Cf. Fiji, Ib. s. 10.

11. (1) Where the Lieutenant-Governor is satisfied that reciprocal provisions have been made by the legislature of any part of His Majesty's Dominions outside the United Kingdom for the enforcement within that part of maintenance orders made by Courts within the Territory the Lieutenant-Governor may by Proclamation published in the *Gazette* declare that part to be a reciprocating State for the purposes of this Ordinance.

Reciprocal arrangements. Cf. 10 and 11, Geo. V, Ch. 33, s. 12. Cf. N. Is., Ib. s. 11. Cf. Fiji, Ib. s. 11.

(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) **12.** The Lieutenant-Governor 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.

Regulations. Cf. N. Is., Ib. s. 12.

Passed in Council this twenty-seventh day of December, in the year of Our Lord One thousand nine hundred and twenty-three.